

Submission to Amnesty International's Global Policy Consultation on Sex Work

March 2014



1. About the End Violence Against Women Coalition

End Violence Against Women (EVAW) is a UK-wide coalition¹ of women's organisations, frontline service providers, survivors, human rights organisations, academics and activists who came together in 2005 to campaign for strategic approaches to all forms of violence against women and girls in the UK. We work to the UN definition of violence against women and girls (VAWG) as "violence directed at a woman because she is a woman or acts of violence which are suffered disproportionately by women".²

Our members campaigned successfully for the Westminster, London and Wales Violence Against Women and Girls (VAWG) strategies and we run a network of experts on preventing VAWG. We campaign to end the prejudicial and sexist treatment of women across the media, and gave evidence to the Leveson Inquiry in 2012 with other women's groups.

We are proud that Amnesty UK was a founding member of EVAW during the global Stop Violence Against Women campaign. We are grateful to Amnesty UK for providing us with the opportunity to respond to their consultation on a proposed 'sex work' policy and we hope that this is helpful in formulating such a policy. This response is from the EVAW Board and has been prepared by Dr Maddy Coy.³

2. Starting points

EVAW supports the 'Nordic Model' of tackling the harms of prostitution and unequivocally supports the decriminalisation of those who sell sex, in order that support, including sexual and reproductive health care, can be legally and efficiently provided and security and dignity protected. Addressing the safety of women who sell sex is essential. As women involved in prostitution experience disproportionately high levels of sexual and physical violence and emotional abuse, specialised support services must be available and adequately resourced. Enabling women to leave prostitution is also crucial; one global study of 854 people in prostitution found that 89 per cent wanted to stop selling sex, but had no way of doing so.⁴ UK research has also highlighted the importance of specialist support in creating options for women to exit prostitution.⁵

However, decriminalising the prostitution *system*, including the purchase of sexual acts, does not protect women's human rights. The prostitution system as an institution of inequality and violence against women is incompatible with human rights, and is indefensible in the context of human rights provisions and values. Our submission is not based on a moralistic approach, but concerns human rights and particularly the human rights of women.

¹ Members include Child and Woman Abuse Studies Unit, Object, Rape Crisis England and Wales, Amnesty UK, Women's Institute, Imkaan, Women's Aid, Eaves, Zero Tolerance, Equality Now, Fawcett, Platform 51, Respect, Refuge, Rights of Women, TUC and others.

² Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 19 (eleventh session, 1992)*.

³ We are also grateful to Dr Helen Pringle, University of New South Wales, Australia, for contributing.

⁴ Farley, M, Cotton, A, Lynne, J, Zumbek, S, Spiwak, F, Reyes, M.E., Alvarez, D & Sezgin, U. (2003) Prostitution and trafficking in nine countries: Update on violence and posttraumatic stress *Journal of Trauma Practice* 2(3/4):33-74

⁵ Bindel, J, Brown, L, Easton, H, Matthews, R & Reynolds, L. (2013) *Breaking down the barriers: A study of how women exit prostitution* London: Eaves and London South Bank University (LSBU)

- **The prostitution system as cause and consequence of gender inequality**

We consider the understanding that the prostitution system comprises ‘the selling and buying of consensual sex between two adults’ to be a flawed premise. Prostitution is not a myriad of individual acts of transactional sex. It is a highly organised industry, and the reality of that industry globally is that men are overwhelmingly the majority of those who buy sexual acts, and women and girls those whose bodies are bought. It is not an exchange between ‘similarly situated individuals who are making complementary choices: one to buy sex and the other to sell it’.⁶

Prostitution is a reminder of continuing inequalities between women and men: the gender pay gap; the sexualisation of female bodies in popular culture; histories of violence and abuse in both childhood and adulthood that underpin many women’s entry into the sex industry. The persistence of these economic and social inequalities around the globe is well documented in a wealth of research. Together these layers of disadvantage experienced by women mean that so-called ‘free’ choices – ‘consensual’ choices – in prostitution are actually decisions made in conditions of already existing inequality and discrimination. Women’s choices should not be measured simply by where they end up (in prostitution), but by the circumstances in which these choices must be made. Choices made in conditions of being unequal cannot be considered ‘free’. Recognising the discrimination and inequality of the system of prostitution means that it can be viewed as a violation of women’s human rights because it is built on and perpetuates women’s social, economic and cultural inferiority to men. Accepting the inevitability of prostitution means accepting the fiction that it is natural for men to buy access to women and children’s bodies for sexual release. The longevity of the institutions of prostitution should not be confused with inevitability. As the great liberal writer John Stuart Mill recognised 150 years ago, prostitution is not a profession but a system of violence and inequality, which is analogous to slavery, and is sustained by the acceptance of male sexual entitlement as natural.⁷

Decriminalising, and thus legitimising, the purchase of access to women’s bodies sends a powerful social message to women and girls that they are sexual commodities. The consequences of such a move affect the status of all women and girls.

- **Prostitution and human rights**

The recent resolution adopted by the European Parliament on sexual exploitation and prostitution and its impact on gender inequality⁸ drew on a number of human rights instruments. This resolution called on member states to recognise prostitution as cause and consequence of gender inequality and a violation of women’s human rights. It echoed an earlier European Parliament resolution which rejected the idea that ‘working as a prostitute can be equated with doing a job’.⁹

One of the earliest human rights formulations also recognised prostitution as problematic; the 1949 United Nations Convention on ‘*the Suppression of the Trafficking in Persons and of the Exploitation of the*

⁶ Leidholdt, D. (1993) *Prostitution: A Violation of Women's Human Rights* Cardozo Women’s’ Law Journal 1993-1994: 133

⁷ Pringle, H. (forthcoming 2014) ‘Equality of Rights in Civil Life: Mill and the Prostitution of Women’ in Biswas, S. & Mallick, S. (eds) *De-Coding the Silence! Reading John Stuart Mill's the Subjection of Women* Jaipur: AADI Publishers; McGlynn, C. (2012) John Stuart Mill on Prostitution: Radical Sentiments, Liberal Proscriptions *Nineteenth-Century Gender Studies* 8(2)

⁸ European Parliament resolution of 26 February 2014 on sexual exploitation and prostitution and its impact on gender equality (2013/2103(INI)).

⁹ European Parliament resolution of 2nd February 2004 on current situation in combating violence against women and any future actions (2004/2220(INI)).

Prostitution of Others' states that 'prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community'.¹⁰ This therefore defines prostitution as incompatible with the UN Declaration of Human Rights 1948 which guarantees human dignity and integrity to all.

More recent human rights approaches refer to trafficking and 'forced' prostitution, but as many have argued, 'force' need not be coercion from a third party, but can also describe a lack of alternative means to support oneself and family. Commentary on Article 6 in UN General Recommendation 19 on Violence Against Women recognises that poverty and unemployment 'force many women, including young girls, into prostitution'.¹¹ If force or coercion can be exercised as conditions of poverty and unemployment, which disproportionately affect women and girls throughout the world, then gender inequality itself can be described as 'force'. This cannot be described as 'consent' to sell sexual services. The United Nations Special Rapporteur on Trafficking pointed this out in noting that 'it is rare that one finds a case in which the path to prostitution and/or a person's experience does not involve, at the very least an abuse of power and/or an abuse of vulnerability. Power and vulnerability in this context must be understood to include power disparities based on gender, race, ethnicity and poverty'.¹²

Intersecting inequalities of gender and race/ethnicity are also hugely significant in women's entry into, and experiences of, the prostitution system. Studies consistently demonstrate the over-representation of women and girls from minority communities in the prostitution system and particularly in its most abusive contexts.¹³ The Aboriginal Women's Action Network on Prostitution in Canada has led a high profile campaign against proposals to decriminalise prostitution on the basis that disparities in socio-economic resources which make selling sex a gendered survival strategy are deepened for indigenous women.¹⁴ Decriminalising the buying of sexual acts, which serves to legitimise the sex industry, fails to acknowledge these contexts of inequality that mean limited economic options – poverty and unemployment – disproportionately affect women of colour. In addition, racist stereotyping in the sex industry is pervasive.

Article 6 of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) requires states to combat and suppress 'all forms of traffic in women and exploitation of the prostitution of others'. While 'exploitation of prostitution' is not 'prostitution', those who exploit the circumstances which put women in prostitution (e.g. poverty, discrimination and abuse) are those who buy sexual acts, whose demand fuels the global sex industry.¹⁵ Sweden, where the purchase of sexual services is criminalised on the basis that prostitution is incompatible with gender equality and the integrity of the person, describe their model as evidence of compliance with Article 6 obligations. The CEDAW committee have also applied this interpretation.¹⁶

Furthermore, commentary on Article 2 of General Recommendation 19 states that 'attitudes by which women are regarded as subordinate to men or as having stereotyped roles contribute to the propagation of

¹⁰ See Turner, J. (2012) *The Means of Delivery: the trafficking of women into prostitution, harms and human rights discourse* in Coy, M. (2012) (ed.) *Prostitution, Harm and Gender Inequality: Theory, Research and Policy* Farnham: Ashgate.

¹¹ General Recommendation 19, paragraph 15.

¹² Huda, S. (2006) *Report of the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children* Geneva: United Nations E/CN.4/2006/62

¹³ See Farley, M. Lynne, J & Cotton, A. (2005) Prostitution in Vancouver: Violence and the Colonization of First Nations Women *Transcultural Psychiatry* 42(2): 242–271; Sepowitz, D.E. (2012) Juvenile Entry Into Prostitution: The Role of Emotional Abuse *Violence Against Women* 18(5): 562–579

¹⁴ See www.rapereliefshelter.bc.ca/learn/resources/aboriginal-womens-action-network-prostitution; <http://easilyriled.wordpress.com/2011/07/17/aboriginal-womens-action-network-declaration-of-indigenous-women-to-abolish-prostitution>; www.facebook.com/pages/Indigenous-Women-Against-the-Sex-Industry/402934106468517.

¹⁵ MacKinnon, C. (2006) *Pornography as Trafficking in Are Women Human? And other international dialogues* Cambridge: The Belknap Press

¹⁶ Ibid

pornography and the depiction and other commercial exploitation of women as sexual objects, rather than as individuals'.¹⁷ Here again is an explicit link in a human rights framing which makes it clear that the depersonalisation of women both in the prostitution system and in each commercial sex encounter¹⁸ violates women's human rights.

There is a great deal of evidence about the multiple harms that women who sell sex experience: sexual and physical violence; increased likelihood of murder; negative impacts on sexual, mental and physical health from living with risk, threats and the actuality of violence, including post-traumatic stress disorder; problematic substance misuse as a psychological survival tactic.¹⁹ Given this evidence, and the gendered asymmetry of the sex industry, it is possible to view prostitution as meeting the definition of violence against women in the 1993 Declaration, as 'gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women'.²⁰ In CEDAW's formulation, such gender-based violence is a form of discrimination that 'impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions'.²¹ This places Amnesty International's proposal at direct odds with international human rights obligations on violence against women and tackling gender discrimination and inequality.

Research also shows that significant proportions of those in the prostitution system were under the age of 18 at entry.²² Young people are not exploited in separate sex markets to those of adult women, but within the same ones, specially where youth is eroticised and valued either as an aesthetic ideal and/or as a misguided 'cure' for HIV. Thus any approach which normalises prostitution and leads to an increase in sex markets is likely to be counter to obligations under the Conventions on the Rights of Child, which requires State parties 'to protect the child from all forms of sexual exploitation and sexual abuse'.²³

In addition to these binding obligations, there are other precedents under which the prostitution system can be viewed as a violation of human rights.

- The Declaration and World Plan of Action adopted by the first world women's conference held at Mexico City in 1975 called on women all over the world to unite to eliminate sexual violence and prostitution as well as other violations of the human rights of women.²⁴

- **Addressing demand**

The approach of abolishing prostitution through addressing the demand for commercial sex is enshrined in a number of human rights protocols, e.g.:

¹⁷ See Turner, J. (2012) *The Means of Delivery: the trafficking of women into prostitution, harms and human rights discourse* in Coy, M. (2012) (ed.) *Prostitution, Harm and Gender Inequality: Theory, Research and Policy* Farnham: Ashgate.

¹⁸ For a discussion of research, see Coy, M. (2012) 'I Am a Person Too': Women's Accounts and Images about Body and Self in Prostitution in Coy, M. (ed) *Prostitution, Harm and Gender Inequality: Theory, Research and Policy* Farnham: Ashgate

¹⁹ *Ibid*

²⁰ Declaration on the Elimination of Violence against Women, Article 1.

²¹ Comments on General Recommendation 19, paragraph 7.

²² See for example, Cusick, L. (2002) Youth Prostitution: A Literature Review *Child Abuse Review* 11: 230-251; Farley, M, Cotton, A, Lynne, J, Zumbek, S, Spiwak, F, Reyes, M.E., Alvarez, D & Sezgin, U. (2003) Prostitution and trafficking in nine countries: Update on violence and posttraumatic stress *Journal of Trauma Practice* 2(3/4):33-74

²³ Convention on the Rights of the Child, Article 34.

²⁴ Leidholdt, D. (1993) *Prostitution: A Violation of Women's Human Rights* Cardozo Women's Law Journal 1993-1994: 133

- Strategic objective d.3 of the Beijing Platform for Action requires states to ‘take appropriate measures to address the root factors, including external factors, that encourage trafficking in women and girls for prostitution and other forms of commercialized sex’.²⁵
- Article 9 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (The Palermo Protocol) requires States Parties to ‘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’.
- The UN Recommended Principles on Human Rights and Human Trafficking (2002) specify that ‘strategies aimed at preventing trafficking shall address demand as a root cause of trafficking’.²⁶

Decriminalising the purchase of sexual services will not only weaken imperatives to discourage demand, but research shows that ‘legalising prostitution will therefore almost invariably increase demand for prostitution’. Attitudes shift where the purchase of sexual acts is criminalised, with surveys in Sweden for example consistently showing that a large majority of both men and women now think that the purchase of sexual acts is unacceptable.²⁷ Law is a powerful tool in defining and changing what is, and is not, socially acceptable behaviour.

Finally, there is universal consensus that trafficking is a grave violation of human rights. Systematic research that examined prostitution policy regimes and patterns of trafficking concluded that legalisation ‘leads to an expansion of the prostitution market and thus an increase in human trafficking’; ‘on average countries where prostitution is legal, experience larger reported human trafficking inflows.’²⁸ In contrast, countries where the purchase of sexual acts has been criminalised have seen sex markets shrink, and trafficking reduced.²⁹ Amnesty’s proposed approach to prostitution is also therefore at odds with binding human rights obligations to tackle trafficking for sexual exploitation.

We reiterate here that we wish to see the decriminalisation of those who sell sex, but support measures that criminalise others in the prostitution system: those who exploit including the buyers of sexual acts.

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²⁵ Beijing Platform for Action, Strategic objective d.3, para 130.

²⁶ Office of the High Commissioner for Human Rights (2002) *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1), page 1.

²⁷ See data and analysis in Max Waltman (2011) Sweden’s Prohibition of Purchase of Sex: The Law’s Reasons, Impact, and Potential *Women’s Studies International Forum* 34: 459-460

²⁸ Cho, S-Y, Dreher, A & NeuMayer, E. (2012) Does Legalized Prostitution Increase Human Trafficking? *World Development* 41: pp. 67–82

²⁹ Max Waltman (2011) Sweden’s Prohibition of Purchase of Sex: The Law’s Reasons, Impact, and Potential *Women’s Studies International Forum* 34: 459-460