

April 21, 2005

Ambassador John Miller
Director, Office to Monitor and Combat Trafficking in Persons
U.S. Department of State
Washington, DC

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Dear Ambassador Miller:

We are writing with regard to the State Department fact sheet entitled “The Link between Prostitution and Sex Trafficking.”¹ We are researchers and policy advocates who have worked for over a decade for the human rights of trafficked persons. As such, we are concerned that the United States government has produced a document which asserts as *matters of proven fact* a number of statements, which, given the state of information on both trafficking and prostitution worldwide, are unsupported or unproven by valid research methods and data. We are deeply concerned that the current fact sheet is misleading and therefore potentially damaging to on-going efforts globally to prevent trafficking and protect the rights of trafficked persons. The fact sheet moves policy away from assessing actual factors and evidence towards programs based on presumed associations that have yet to be determined to be correct.

The U.S. government is obligated, of course, to enforce its own laws criminalizing prostitution within the U.S. Our concern, however, is with the government’s propagation of policies based on unsupported or unproven assertions that unique links exist between trafficking and prostitution as compared with any other sector into which people are trafficked. Our analysis of the sources cited to support the assertions made in the fact sheet lead us to conclude that the fact sheet is not based upon valid research. The sources, thus, fail to prove the main thesis of the fact sheet—that *prostitution* in itself is a cause of human trafficking. Moreover, the single-issue focus on prostitution, rather than on the exploitation that operates in all of the different sectors in which trafficking occurs (e.g., in agricultural work, domestic work, factory work and prostitution), seems to be moving the U.S. government away from the crime of trafficking and from responding to the needs of all trafficked persons.

Since the U.S. government has taken a leading role internationally in the struggle against trafficking, it is all the more important for the government to reconsider the approach contained in the fact sheet and to develop policies and programs that are supported by valid research. We are committed to eradicating the conditions that put women, men and children at risk of trafficking and so we look forward to the publication of solid, scholarly research that can help governments and NGOs link evidence to policy and create the interventions that end trafficking and promote rights. Unfortunately, we find a number of ‘facts’ contained in the fact sheet to be highly questionable.

¹ <http://www.state.gov/documents/organization/38901.pdf> (last visited April 21, 2005)

For example, the fact sheet asserts, without citing a source, that “80 percent of victims are female and 50 percent are children” and that an “estimated 600,000 to 800,000 people [are] trafficked across international borders annually.” What research supports these assertions? As the US government is well aware, in many countries, no data exist on the trafficking of men because many governments and researchers use a definition of ‘trafficking’ that is limited only to women, or only to women in prostitution. Data collected according to such limited definitions of trafficking cannot support the fact sheet’s assertions.

Statistics about trafficking are notoriously slippery. According to research by UNESCO-Bangkok on trafficking², available statistics are not reliable, in part because of the variability of the definitions used to identify who is a ‘trafficked person’. Even the US government has been revising its own numbers carefully over the last 5 years. It is not clear what definition of trafficking is used in the fact sheet or if studies cited use a uniform definition of trafficking. The new federal trafficking law (18 USC 1589) provides a definition of trafficking that allows for the proper collection of data on trafficking of women, men and children in all the sectors where forced labor, slavery and servitude are found. If data are carefully collected under the federal criminal law definition, it will be possible to draw conclusions, make comparisons and broaden our understanding of the scope of the problem.

We also wonder about the basis for the assertions that “[w]here prostitution is legalized or 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.” The fact sheet provides no support for this assertion. The fact sheet contains similar assertions elsewhere, citing a book by the journalist Malarek and Congressional testimony by D. Hughes. First, journalistic research does not deliver the necessary scientific rigor and validity that primary studies can provide. Second, the use of Hughes’ testimony to support this position is questionable, given the fact that her conclusions are based upon various sources using different methodologies and definitions of trafficking, which we have already pointed out can lead to inaccurate and non-comparable data. What studies exist comparing trafficking (as defined in U.S. criminal law) and prostitution under different legal regimes (i.e., legalization, criminalization and tolerance)? Are you aware of any empirical, peer-reviewed research that proves a causal link between criminalization or legalization of prostitution and a rise or fall in trafficking into the sex sector or any other sector?

Additionally, if we look at countries that your office has placed in Tier 1 of the TIP Reports, such as The Netherlands and Germany, both countries have legalized some forms of prostitution for some categories of persons and are also actively and effectively prosecuting and punishing traffickers. On the other hand, countries that criminalize prostitution may not place real resources in the fight against trafficking and so cannot be placed in Tier 1 of the TIP Report.

Thus, the statements that “[I]legalization of prostitution expands the market for commercial sex, opening markets for criminal enterprises and creating a safe haven for criminals who traffic people into prostitution” and “where prostitution has been legalized or tolerated, there is an increase in the demand for sex slaves and the number of victimized foreign women - many likely victims of

² <http://www.unescobkk.org/index.php?id=1022> (last visited April 21, 2005).

human trafficking” seems to contradict the government’s own conclusions in the TIP Reports.³ ‘Safe havens’ and criminal enterprises flourish in countries where ineffective law enforcement, corruption and indifference are the norm, which has nothing to do with the legality or illegality of the site, such a prostitution or factories, into which people are trafficked.

The Swedish Government (upon whose policy the US government appears to be relying heavily in this fact sheet) asserts a decrease in the numbers of men buying sex and the number of women prostitution following its 1998 law criminalizing clients. Unfortunately, these claims, while interesting for future research, are not persuasive or conclusive because the government has only examined street prostitution and has not accounted for the number of men buying sex and women selling sex over the Internet, in residences, via mobile phones, or in clandestine brothels. The fact sheet also makes the statement that “[t]rafficking for the purpose of sexual exploitation decreased as well.” Does the paper by Ekberg (which is not publicly available) describe the research that would necessarily have had to be conducted before and after passage of the 1998 law to support this conclusion?

You may be interested in research reaching different conclusions about the new Swedish law.⁴ The Norwegian Ministry of Justice and Police Affairs commissioned a Working Group that reviewed the Swedish law and found that the Swedish government could not demonstrate that prostitution had decreased overall, that a decrease in the number of prostitutes on the streets was related to the legislation or other factors, or that any cases of trafficking into prostitution had been uncovered in Stockholm as a result of the law.⁵ The International Labor Organization has also written an important paper linking trafficking to the unmet demand for labor in countries of destination where governments set unrealistically low caps on migrant labor.⁶ Additionally, the International Organization for Migration has produced a groundbreaking piece of research on the question of “Is trafficking in human beings demand driven?”⁷ The researchers conducted field research among employers of domestic workers and clients of sex workers in four countries and found a causal link between labor protections and trafficking: “In both sex and domestic work, the

³ This conclusion is also contradicted by findings cited in a Norwegian Ministry of Justice and Police Affairs report, which note that that Dutch police find that legalization has opened better contacts and information exchange with people in prostitution that allows more effective investigation of trafficking. See, *Purchasing Sexual Services in Sweden and the Netherlands: Legal Regulation and Experience*, Ministry of Justice and Public Affairs report series /2004 (G—367), Report written by the Working Group on the legal regulation of and purchase of sexual services, 8 October 2004, An Abbreviated English version, at p. 39.

⁴ Professor Don Kulick has written a provocative article showing that the Swedish policy of criminalizing clients was not driven by evidence about prostitution and trafficking, but by concerns about Sweden’s entry into the European Union. Sex in the New Europe: The Criminalization of Clients and Swedish Fear of Penetration, by Don Kulick, Volume: 3 Number: 2 Page: 199 – 218, DOI: 10.1177/1463499603003002005, Publisher: Sage Publications. <http://ant.sagepub.com/cgi/content/refs/3/2/199> (last visited April 21, 2005).

⁵ *Purchasing Sexual Services in Sweden and the Netherlands: Legal Regulation and Experience*, [Ministry of Justice and Public Affairs report series /2004 (G—367), Report written by the Working Group on the legal regulation of and purchase of sexual services, 8 October 2004, An Abbreviated English version] at pp. 9-11, 22-23.

⁶ Getting at the Roots: Stopping Exploitation of Migrant Workers by Organized Crime, Patrick A. Taran and Gloria Moreno-Fontes (2003) <http://www.ilo.org/public/english/protection/migrant/download/pom/pom1e.pdf> (last visited April 21, 2005).

⁷ Is Trafficking in Human Beings Demand Driven? A Multi-Country Pilot Study, Bridget Anderson and Julia O’Connell Davidson, for IOM (December 2003). <http://www.iom.int/iomwebsite/Publication/ServletSearchPublication?event=detail&id=2932> (last visited April 21, 2005).

absence of effective regulation is one of the factors that help to create an environment in which it is possible and profitable to use unfree labour.”

With regard to the assertions about prostitution per se, we question the methodologies and the generalizations contained in the studies cited in the fact sheet. The fact sheet quotes M. Farley as the source for the statement that “[f]ield research in nine countries concluded that 60-75 percent of women in prostitution were raped, 70-95 percent were physically assaulted, and 68 percent met the criteria for post traumatic stress disorder....”. We note first that Farley’s study was about prostitution and not human trafficking. We also note that her methodology does not guard against research bias, which would arise because most of the subjects selected for questioning about harm in prostitution were already part of a sub-set of persons who were seeking assistance because of histories of harm and were recruited from drug, vocational rehabilitation, and social service centers. The implications of this design flaw are such that, while the specific findings may be accurate for that sub-population, the findings cannot be generalized across the population of persons in prostitution as whole, or of persons trafficked into prostitution. Bias could have been reduced or eliminated if the author had conducted separate studies, for example, of (a) women trafficked into or held in forced prostitution, (b) women working in prostitution in countries where prostitution is criminalized, (c) women working in countries where prostitution is not criminalized but third parties are criminalized and (d) women working in countries or areas where prostitution is legal or decriminalized.

In addition to questioning the sources cited in the fact sheet, we also want to raise our serious concern about the photograph of the Moldovan and Romanian women on the front page of the fact sheet. The worldwide dissemination of the pictures of women who have been victims of a serious transnational crime could be an invasion of their right to privacy and create a serious risk to their security.⁸ Did all of these women give the U.S. government their fully informed, written consent to have their pictures reproduced in this specific document, meaning that they understood that their pictures, which identify them as having been trafficked into prostitution, would be disseminated worldwide by the US government? Also, is anyone following up to ensure that no harm comes to these women as a result of their exposure in the fact sheet?

In closing, we reiterate that we are writing because we are convinced that good research will indeed contribute to more effective interventions to prevent and respond to trafficking. As these selected questions illustrate, however, the research marshaled on by the US government in this fact sheet does not support the government’s claims and, in places, no empirical data or support are even provided.

⁸ Victims of human trafficking can suffer stigmatization, persecution, violence and reprisals and, consequently, the US government and the international community have recognized the necessity of protecting their identities. The TIP Office Model Law to Combat Trafficking in Persons, Witness Protection article 301(e) calls for “protection of confidentiality of identity and location.” U.S. law also requires government officials to protect trafficked persons from harm, which extends beyond the investigation and prosecution stages. Article III of the Attorney General Guidelines for Victim and Witness Assistance (2000) accords victims the “right to be treated with fairness and respect for the victim’s dignity and privacy.” The UN Trafficking Protocol (art.6.1) requires governments to “protect the privacy and identity of victims of trafficking in persons.” Lastly, the Recommended Principles and Guidelines on Human Rights and Human Trafficking of the UN High Commissioner for Human Rights (Guideline 6.6) recommends that “there should be no public disclosure of the identity of trafficking victims and their privacy should be respected and protected to the extent possible....”

We expect the US government to support good research and look forward to a dialogue with your office about the types of studies that can be or are being conducted globally and the types of rigorous research criteria that should be required of future scholarship, so that the evidence obtained will be helpful in the formation of U.S. policy and programs. We expect to receive an answer from you in the next month. In any case, as we consider this issue, together with the demands of governmental transparency and principled scholarship, to be matters of accountable public policy, we would expect to make this letter and your responses to it public information. The serious obligation to defend the rights of trafficked persons demands that we do no less.

We plan to release this letter publicly three weeks from today's date and will also consider your reply to the letter to be a public document that we can share with others.

Sincerely

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