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Did anyone get it “right?” A comparison of the Netherlands’ and the United States’ prostitution-schemes on human trafficking.

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I. INTRODUCTION

In 2012 at the global Clinton initiative in New York, President Obama announced that more than 20 million people worldwide were victims of human trafficking, including children forced to work in sweatshops and women pushed into the sex trade. President Obama referred to human trafficking as “modern slavery.”¹ Worldwide concern grew on April 14, 2014, when Boko Haram kidnapped 276 girls from a school in Chibok, Nigeria to be used as sex and labor slaves as well as suicide bombers.² After the Chibok abduction, it was estimated that over 3,000 women and children were trafficked by Daesh³ to Syria including males for extremist military groups.⁴

UNICEF⁵ estimates that there are 5.5 million children trafficked each year and while a gendered crime, primarily affecting women and girls, the number of men and boys being

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¹Jonathan Lemire, *President Obama speaks out against human trafficking at Clinton Global Initiative*, N.Y. Daily News (Sep. 25, 2012), <http://www.nydailynews.com/news/election-2012/president-obama-speaks-human-trafficking-clinton-global-initiative-article-1.1168184>.

²Tara John, *Boko Haram Has Kidnapped Dozens of Schoolgirls, Again. Here’s What to Know*, Times (Feb. 26, 2018), <http://time.com/5175464/boko-haram-kidnap-dapchi-schoolgirls/>.

³Daesh is the third name created for an Islamic terrorist group more commonly known as ISIS or ISIL. Felicia Schwartz, *“One More Name for Islamic State: Daesh,”* The Wall Street Journal (Dec. 23, 2014), <https://blogs.wsj.com/washwire/2014/12/23/one-more-name-for-islamic-state-daesh/>.

⁴Ewelina U. Ochab, *The World’s Fastest Growing Crime*, Forbes (Jul. 29, 2017), <https://www.forbes.com/sites/ewelinaochab/2017/07/29/the-worlds-fastest-growing-crime/#1955428a3aae>.

⁵ UNICEF is the United Nations International Children’s Emergency Fund which was established in 1946 by the United Nations to address post-war needs of children. Emily Pasnak-Lapchick, *What’s Next in the Fight Against Child Trafficking?*, UNICEF-USA (Jan. 9, 2017), <https://www.unicefusa.org/stories/whats-next-fight-against-child-trafficking/31677>.

trafficked each year increases.⁶ The United Nations (UN) office on Drugs and Crime announced that “No country is immune from trafficking in persons.”⁷ In fact, Human Trafficking is the world’s fastest growing crime that requires action on a national and international level.⁸ In response to this growing concern, the UN General Assembly passed a resolution on December 18th, 2013 designating July 30th as the World Day Against Human Trafficking.⁹ Additionally, countries around the world have taken a stance by adopting different approaches to combat human trafficking including the legalization of prostitution.¹⁰ Prostitution laws range from all-inclusive prohibition and criminalization of prostitutes and/or clients to complete legalization.¹¹ The United States and the Netherlands are prime examples of countries using very different approaches to address human trafficking.¹² This article discusses the approaches used to negate human trafficking by the United States and the Netherlands.¹³ Specifically, the article will

⁶Ewelina U. Ochab, *The World’s Fastest Growing Crime*, Forbes (Jul. 29, 2017),

<https://www.forbes.com/sites/ewelinaochab/2017/07/29/the-worlds-fastest-growing-crime/#1955428a3aae>.

⁷UNODC, *Virtually no country immune from human trafficking, UNODC Report Shows*, UNODC (Apr. 24, 2006), http://www.unodc.org/unodc/en/press/releases/press_release_2006_04_24.html.

⁸Phillip Martin, *Human Trafficking Outpaces Drugs, Guns As World’s Fastest Growing Criminal Industry*, WGBH (December 27, 2011, <https://www.wgbh.org/news/post/human-trafficking-outpaces-drugs-guns-worlds-fastest-growing-criminal-industry>).

⁹G.A. Res. 68/192, ¶5 (Feb. 14, 2014).

¹⁰Judith Kilvington, Sophie Day and Helen Ward, *Prostitution Policy in Europe: A Time of Change?*, Palgrave Macmillan Journals, *Feminist Review*, No. 67, 78-93, (2001), <http://www.jstor.org/stable/1395532>.

¹¹ UNODC FAQ: What is UNODC’s Stance on Prostitution?, http://www.unodc.org/unodc/en/human-trafficking/faqs.html#What_is_UNODC's_stance_on_prostitution (last visited Oct. 11, 2018).

¹² See *supra* note 11 and accompanying text.

¹³ Sex Trafficking Prevention Course, *Four Legal Approaches to Prostitution and Human Trafficking*, <https://agapewebsite.org/wp-content/uploads/2012/02/Four-Legal-Approaches-to-Prostitution-and-Human-Trafficking.pdf> (last visited October 11, 2018); Erin Corrigan, MPH, *Regulatory Approaches to Prostitution: Comparing Sweden, Denmark, and Nevada, USA*, In *Violence and Abuse in Society (Volume 3)*, Angela Browne-Miller, Ed. (Santa Barbara, CA: ABCCLIO, LLC/Praeger, 2012, Chapter 19, pages 257-270); Max Waltman, *Prohibiting Sex Purchasing and Ending Trafficking: The Swedish Prostitution Law*, 33 *Mich. J. Int’l L.* 133 (2011); Owen Bowcott, *The Guardian*, Amnesty International in global programme to decriminalise sex work, *Anonymous Sex Worker* (2016) <https://www.theguardian.com/world/2016/may/26/amnesty-international-decriminalise-sex-work-prostitution-human-rights>; Ekberg (2010) *The Swedish law that prohibits the purchase of sexual services. Violence Against Women*, 10, 1187-1218: www.prostitutionresearch.com/pdf/EkbergVAW.pdf; Wendel Schaeffer, a social worker for Prostitute & Gezondheidscentrum, PG292, explained in a *Humanity In Action* report <https://mic.com/articles/123851/the-netherlands-15-years-after-legalizing-prostitution#.U9RY0xgko>; Margaret Wentz, *Forget Legalization of Prostitution –Just Turn a Blind Eye* (Updated May 8, 2018) <https://www.theglobeandmail.com/opinion/forget-legalization-of-prostitution---just-turn-a-blind->

compare the impact of each of these countries' prostitution laws on their effect on human trafficking.¹⁴

This article proceeds in three sections. First, the Background examines the global stance on human trafficking, the legal concept of human trafficking, the Trafficking Victims Protection Act of 2000 (TVPA), the United States' human trafficking tier system, and the primary legal approaches to prostitution.¹⁵ This article then advances to the Argument section, comparing how the United States' and the Netherland's prostitution laws have impacted human trafficking.¹⁶ This argument will evaluate which prostitution scheme was more successful against human trafficking and the consequences of each country's approach.¹⁷

II. BACKGROUND

Article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons defines Trafficking in Persons as “the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”¹⁸ “Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of

eye/article4190390/; Polaris, *Human Trafficking Issue Brief: Safe Harbor* (2015), <https://polarisproject.org/sites/default/files/2015%20Safe%20Harbor%20Issue%20Brief.pdf>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*. G.A. Res. 55/25, §3 (Nov. 15, 2000).

organs.”¹⁹ To simplify, human trafficking is comprised of three primary elements which includes: the Act, the Means, and the Purpose.²⁰ These elements are defined as the recruitment, transportation, transfer, harboring or receipt of persons (act); the threat of or use of force, deception, coercion, abuse of power or position of vulnerability (means) and ; exploitation (purpose).²¹ The UN’s Beijing Declaration and Platform for Action further defines human trafficking:

The definition of violence, contained in the Platform for Action, is broad, including "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life."²²

The UN deliberately omitted the terms “exploitation of the prostitution of others” and left “sexual exploitation” undefined.²³ The UN trafficking protocol purposefully refrained from taking a position as to whether non-coerced adult sex should be criminalized in order to reach an agreement between the signatory countries.²⁴ The UN recognized that there are a range of approaches to prostitution from complete prohibition to decriminalization.²⁵ With this in mind, the UN has not taken a stance on prostitution admitting that it is unclear which approach has the most positive effect and has left the decision to regulate prostitution up to the member states.²⁶

¹⁹ *United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, G.A. Res. 55/25, §38 (Nov. 15, 2000).

²⁰ United Nations Office on Drugs and Crime, <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html?ref=menuaside>.

²¹ United Nations Office on Drugs and Crime, http://www.unodc.org/unodc/en/human-trafficking/faqs.html#What_is_UNODC's_stance_on_prostitution.

²² World Conference on Women, *Report of the Fourth World Conference on Women*, Sales No. 96.IV.13, chap. I, resolution 1, annex I, (1996).

²³ Ann D. Jordan, *Global Rights, Annotated Guide to The Complete UN Trafficking Protocol*, (2002) https://www.lawschool.cornell.edu/womenandjustice/upload/Annotated_Protocol.pdf

²⁴ *Id.*

²⁵ United Nations Office on Drugs and Crime, <http://www.unodc.org/unodc/en/human-trafficking/faqs.html>.
United Nations Office on Drugs and Crime, <http://www.unodc.org/unodc/en/human-trafficking/faqs.html>.

Amongst the UN member states, there continues to be a global debate about legalizing and regulating prostitution.²⁷

The Netherlands, for example, have legalized prostitution, even using it as a mechanism to regulate human trafficking.²⁸ By contrast, the United States, overall has criminalized prostitution and brothels, adopting a much different approach to fight human trafficking.²⁹ Despite these different approaches, both countries are currently listed as category tier one countries—described below.³⁰

A. THE UNITED STATES' TIER SYSTEM

The United States (U.S.) passed the Trafficking Victims Protection Act of 2000 (TVPA) in an attempt to combat the growing issue of trafficking persons.³¹ The TVPA supported the Transnational Crime Commission that banned trafficking through the development of the Palermo Protocol filling in the gaps in U.S. law.³² Similar to how the UN defined trafficking, the TVPA divided the law into three (p) categories; protection, prosecution, and prevention.³³ The U.S. wanted to increase the government's efforts to protect trafficked victims, strengthen efforts to prosecute traffickers, and allow for increased prevention measures.³⁴ In 2003, 2005, 2008, 2013, and 2015, U.S. congress reauthorized the TVPA because foreign corruption was evident,

²⁷ See *supra* note 23.

²⁸ Liz Kelly, Maddy Coy, & Rebecca Davenport, *Shifting Sands: A Comparison of Prostitution Regimes Across Nine Countries 23-25*, <https://www.vicerversadundee.org.uk/files/shifting-sands.pdf>.

²⁹ United States Department of State, *Moving Toward a Decade of Delivery – Prosecution Trafficking In Persons Report*, (2011) <https://www.state.gov/j/tip/rls/tiprpt/2011/166772.htm>.

³⁰ United States of American Department of State, *Trafficking in Persons Report*, Trafficking Victims Protection Act of 2000, Div. A of Pub. L. No. 106-386, § 108, as amended, (2016) <https://www.state.gov/documents/organization/258876.pdf>.

³¹ Victims of Trafficking and Violence Protection of Oct. 28, 2000, Pub. Act 106-386, H.R.3244 - 106th Congress (1999-2000).

³² *Id.*

³³ United States Department of Justice (Jan. 6, 2017), <https://www.justice.gov/humantrafficking/key-legislation>.

³⁴ *Id.*

and the U.S. recognized that human trafficking was not just a foreign problem but a domestic one.³⁵

As a consequence, the TVPA mandated that the Department of State place each country into one of four tiers to measure the government's action against human trafficking.³⁶ The TVPA minimum standards, consistent with the Palermo Protocol, read:

(1) The government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking; (2) For the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of giving meaningful consent, or of trafficking which includes rape or kidnapping or which causes a death, the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault; (3) For the knowing commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense; (4) The government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons.³⁷

Tier one is the highest ranking, however, that does not mean the country is free of human trafficking but rather that the government has acknowledged the issue of human trafficking, is

³⁵ United States Department of Justice (Jan. 6, 2017), <https://www.justice.gov/humantrafficking/key-legislation>.

³⁶ United States of American Department of State, *Trafficking in Persons Report*, Trafficking Victims Protection Act of 2000, Div. A of Pub. L. No. 106-386, § 108, as amended, (2016) <https://www.state.gov/documents/organization/258876.pdf>.

³⁷ United States of American Department of State, *Trafficking in Persons Report*, Trafficking Victims Protection Act of 2000, Div. A of Pub. L. No. 106-386, § 108, as amended, (2016) <https://www.state.gov/documents/organization/258876.pdf>.

attempting to rectify the issue, and has met the TVPA's minimum standards.³⁸ Tier two countries are those that do not fully meet the TVPA's minimum standards but are making significant efforts to meet those standards.³⁹ When a country receives a tier two ranking, they are put on a watch list where the country's number of victims and efforts are monitored.⁴⁰ Tier three ranked-countries "do not meet the TVPA's minimum standards and are making no significant efforts to do so."⁴¹ The TVPA does consider additional factors when "determining whether a country should be a tier two or three."⁴² Some of the additional considerations include whether the country is "a destination for severe forms of trafficking", "the extent to which the country's government does not meet the TVPA's minimum standards" and complicity as well as what "reasonable measures the government would need to undertake to be in compliance with the TVPA's minimum standards in light of the country's economic position."⁴³ However, "no tier-ranking is permanent"; countries are assessed on an annual basis in effort to encourage "all countries to maintain and continually increase their efforts" against human trafficking.⁴⁴

B. LEGAL APPROACHES TO PROSTITUTION

Under international law, there are many avenues to suppress and punish those involved in human trafficking.⁴⁵ Often, the terms sex-work and trafficking are conflated, but each of these terms are expressly defined both internationally and domestically.⁴⁶ "Sex work refers to a

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ United States of American Department of State, *Trafficking in Persons Report*, Trafficking Victims Protection Act of 2000, Div. A of Pub. L. No. 106-386, § 108, as amended, (2016) <https://www.state.gov/documents/organization/258876.pdf>.

⁴² *Id.*

⁴³ United States of American Department of State, *A Guide to the Tiers*, Trafficking in Persons Report, (2016) <https://www.state.gov/documents/organization/258876.pdf>.

⁴⁴ See Mohamed Y. Mattar, "Comparative models of Human rights monitoring and reporting mechanisms," Vanderbilt Journal of Transnational Law, vol.41, No.5 (2008).

⁴⁵ Anne Paglia, *Sex Trafficking vs. Sex Work: What You Need to Know*, Human Trafficking Search (last updated 2017), <http://humantraffickingsearch.org/2017725sex-trafficking-vs-sex-work-what-you-need-to-know/>.

⁴⁶ Amnesty International Ltd., *Sex Workers At Risk: A Research Summary on Human Rights*

contractual arrangement where sexual services are negotiated between consenting adults,” as though they enjoyed a seller and buyer relationship, whereas trafficking is explicitly non-consensual.⁴⁷

Similarly, the legal approaches to prostitution are used interchangeably despite their own distinct legal definitions.⁴⁸ The four primary legal approaches to prostitution include criminalization, decriminalization, legalization, and abolition.⁴⁹ Criminalization prosecutes “pimps, traffickers, sex buyers, and prostituted women” under the premise that “it is illegal to purchase or sell commercial sex anywhere.”⁵⁰ Decriminalization is the legal concept that all purchases and sales of sex are legitimate, but prostitution, itself, remains an illegitimate profession.⁵¹ Varying by jurisdiction, decriminalization typically does not punish anyone involved in the commercial sex industry, but pimps and traffickers remain vulnerable to citations.⁵² The third legal approach to prostitution and human trafficking is legalization which only punishes human-traffickers because “prostitution is legal and regulated.”⁵³ The fourth and final approach is the abolition of prostitution; this model hinges on the idea “that human trafficking will be abolished if prostitution is abolished.”⁵⁴ Because the abolition view sympathizes with prostitutes, this approach decriminalizes prostituted women.⁵⁵ The U.S.’s legal approach to prostitution and human trafficking is *criminalization* excluding several counties in

Abuses Against Sex Workers, (2016), https://www.amnestyusa.org/files/briefing_-_sex_workers_rights_-_embargoed_-_final.pdf.

⁴⁷ *Id.*

⁴⁸ Sex Trafficking Prevention Course, *Four Legal Approaches to Prostitution and Human Trafficking*, <https://agapewebsite.org/wp-content/uploads/2012/02/Four-Legal-Approaches-to-Prostitution-and-Human-Trafficking.pdf> (last visited October 11, 2018).

⁴⁹ *Id.* at 1.

⁵⁰ *Id.* (All parties found to be involved in a commercial sex transaction may be arrested and subject to criminal penalties).

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* (Removes all criminal penalties).

the state of Nevada, United States.⁵⁶ On the other hand, the Netherlands have adopted the *legalization* approach where they punish traffickers only.⁵⁷

III. ARGUMENT

Data shows, that neither the United States' nor the Netherlands' prostitution legal approaches are "right."⁵⁸ The U.S. and the Netherlands should both consider reframing their prostitution laws because, as Sweden has demonstrated, the abolition of prostitution approach has proven to be the most successful against human trafficking.⁵⁹ The current U.S. and Netherlands "anti-trafficking laws fail to distinguish between consensual sex work and human trafficking in the sex sector."⁶⁰ As one sex worker described, "You only call the police if you think you are going to die. If you call the police you lose everything."⁶¹ Another stated that she did not report abuse because "If she is abused and she goes to the police, they'll tell me, 'that's what you deserve.'"⁶²

A. WHY THE NETHERLAND'S LEGALIZATION APPROACH FAILS

The Netherlands follow a legalization model where prostitutes are often required to register, visit physicians for a checkup annually, and satisfy other additional requirements such

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Erin Corrigan, MPH, *Regulatory Approaches to Prostitution: Comparing Sweden, Denmark, and Nevada, USA, In Violence and Abuse in Society (Volume 3)*, Angela Browne-Miller, Ed. (Santa Barbara, CA: ABCCLIO, LLC/Praeger, 2012, Chapter 19, pages 257-270).

⁵⁹ Max Waltman, *Prohibiting Sex Purchasing and Ending Trafficking: The Swedish Prostitution Law*, 33 *Mich. J. Int'l L.* 133 (2011).

⁶⁰ Amnesty International Ltd., *Sex Workers At Risk: A Research Summary on Human Rights Abuses Against Sex Workers*, (2016), https://www.amnestyusa.org/files/briefing_-_sex_workers_rights_-_embargoed_-_final.pdf.

⁶¹ Owen Bowcott, *The Guardian*, Amnesty International in global programme to decriminalise sex work, *Anonymous Sex Worker* (2016) <https://www.theguardian.com/world/2016/may/26/amnesty-international-decriminalise-sex-work-prostitution-human-rights>.

⁶² Amnesty International Ltd., *Sex Workers At Risk: A Research Summary on Human Rights Abuses Against Sex Workers*, (2016), https://www.amnestyusa.org/files/briefing_-_sex_workers_rights_-_embargoed_-_final.pdf.

as having a panic button in their room.⁶³ As a prostitute, “you have to pay your rent, your tax, and sometimes your pimp; that leaves you with no money.”⁶⁴ “Legalized prostitution laws specify where prostitution is permitted to take place” through the use of zoning laws, sometimes labeled as municipal tolerance zones or red-light zones.⁶⁵

Amsterdam Councillor and prostitute survivor, Katrina Schaapman, announced that there are people who are proud of the red light district as a tourist attraction, but believes it to be a cesspit; observing the exploitation of women.⁶⁶ “Amsterdam’s Mayor Job Cohen even closed a number of legal prostitution zones in the city stating the system of legal prostitution did not reduce crime as they had hoped it would.”⁶⁷ In fact, crime increased and women in prostitution were no safer than prior to legalization.⁶⁸ Supporting the Netherlands’ observations, studies have shown that buyers flock to legalized prostitution jurisdictions inevitably increasing the demand for sex.⁶⁹ Additionally, trafficking and organized crime increase as result per the economic principal of supply and demand.⁷⁰ Over time, traffickers and pimps are viewed as entrepreneurs and business owners versus exploiters.⁷¹ This results in a large number of trafficked women who are unable to seek many legal avenues.⁷²

⁶³ Ekberg (2010) The Swedish law that prohibits the purchase of sexual services. *Violence Against Women*, 10, 1187-1218: www.prostitutionresearch.com/pdf/EkbergVAW.pdf.

⁶⁴ Wendel Schaeffer, a social worker for Prostitute & Gezondheidscentrum, PG292, explained in a *Humanity In Action* report <https://mic.com/articles/123851/the-netherlands-15-years-after-legalizing-prostitution#.U9RY0xgko>.

⁶⁵ Ekberg (2010) The Swedish law that prohibits the purchase of sexual services. *Violence Against Women*, 10, 1187-1218: www.prostitutionresearch.com/pdf/EkbergVAW.pdf.

⁶⁶ Margaret Wente, *Forget Legalization of Prostitution – Just Turn a Blind Eye* (Updated May 8, 2018) <https://www.theglobeandmail.com/opinion/forget-legalization-of-prostitution---just-turn-a-blind-eye/article4190390/>.

⁶⁷ Ekberg (2010) The Swedish law that prohibits the purchase of sexual services. *Violence Against Women*, 10, 1187-1218: www.prostitutionresearch.com/pdf/EkbergVAW.pdf.

⁶⁸ *Id.* at 2.

⁶⁹ Sex Trafficking Prevention Course, *Four Legal Approaches to Prostitution and Human Trafficking*, <https://agapewebsite.org/wp-content/uploads/2012/02/Four-Legal-Approaches-to-Prostitution-and-Human-Trafficking.pdf> (last visited October 11, 2018).

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

B. WHY THE UNITED STATES' CRIMINALIZATION MODEL FAILS

Generally, “under the criminalization legal model it is illegal to purchase or sell commercial sex anywhere” meaning that all parties involved, including the prostitute, may be sanctioned.⁷³ However, the U.S. has carved out several exceptions known as the “safe harbor” laws where law enforcement must treat any prostituted person, who is a minor, as a trafficking victim rather than a criminal.⁷⁴ But because prostitutes are typically viewed as criminals, they are not offered resources to abandon this lifestyle and the cycle of prostitution and incarceration continues.⁷⁵

“*The Lancet* and other credible research institutions have collected data which shows criminalization of sex work does not reduce trafficking.”⁷⁶ In fact, research supports the notion that decriminalization may help victims of trafficking.⁷⁷ Similarly, sex workers are more likely to “collaborate with police to identify women and children who have been trafficked” and help these individuals find much needed services to recover.⁷⁸ Often, criminalization of prostitutes has forged a gap between law enforcement and the prostitutes; officers are perceived as an enemy.⁷⁹

⁷³ Sex Trafficking Prevention Course, *Four Legal Approaches to Prostitution and Human Trafficking*, <https://agapewebsite.org/wp-content/uploads/2012/02/Four-Legal-Approaches-to-Prostitution-and-Human-Trafficking.pdf> (last visited October 11, 2018).

⁷⁴ Polaris, *Human Trafficking Issue Brief: Safe Harbor* (2015), <https://polarisproject.org/sites/default/files/2015%20Safe%20Harbor%20Issue%20Brief.pdf>.

⁷⁵ Ekberg (2010) The Swedish law that prohibits the purchase of sexual services. *Violence Against Women*, 10, 1187-1218: www.prostitutionresearch.com/pdf/EkbergVAW.pdf.

⁷⁶ Amnesty International Ltd., *Sex Workers At Risk: A Research Summary on Human Rights Abuses Against Sex Workers*, (2016), https://www.amnestyusa.org/files/briefing_-_sex_workers_rights_-_embargoed_-_final.pdf.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

The criminalization approach punishes everyone involved but the punishment is blindly applied.⁸⁰ Prostitution arrests are immensely disproportionate to the arrests of pimps, buyers, and traffickers.⁸¹ For example, “one national study estimated that ninety percent of all prostitution-related arrests were comprised of only prostitutes while a mere ten percent were of buyers;” other data suggests a 95.5 and 4.5 percent discrepancy totals.⁸² Criminalization is ignorant of those in the prostitution industry as studies have shown that most women in prostitution are those with histories of sexual abuse, neglect, coercion, or isolation.⁸³ When prostitutes are treated like criminals, the abuse, rape, and other violence suffered goes unreported and is often overlooked⁸⁴

C. THE SWEDISH APPROACH TO PROSTITUTION

The Swedish government adopted the abolition approach/model after reasoning that... “By prohibiting the purchase of sexual services prostitution and its damaging effects can be counteracted more effectively than hitherto. . . The government considers, however, that it is not reasonable to punish the person selling a sexual service, the prostitute. In the majority of cases at least, this person is a weaker partner who is exploited by those who only want to satisfy their sexual drives.”⁸⁵

⁸⁰ Sex Trafficking Prevention Course, *Four Legal Approaches to Prostitution and Human Trafficking*, <https://agapewebsite.org/wp-content/uploads/2012/02/Four-Legal-Approaches-to-Prostitution-and-Human-Trafficking.pdf> (last visited October 11, 2018).

⁸¹ *Id.*

⁸² Sex Trafficking Prevention Course, *Four Legal Approaches to Prostitution and Human Trafficking*, <https://agapewebsite.org/wp-content/uploads/2012/02/Four-Legal-Approaches-to-Prostitution-and-Human-Trafficking.pdf> (last visited October 11, 2018).

⁸³ *Id.* at 4 and 5.

⁸⁴ Ekberg (2010) The Swedish law that prohibits the purchase of sexual services. *Violence Against Women*, 10, 1187-1218: www.prostitutionresearch.com/pdf/EkbergVAW.pdf.

⁸⁵ *Id.*

“The abolition model is based on the idea that human trafficking will only be abolished if prostitution is abolished.”⁸⁶ This approach sees “prostituted women as victims rather than criminals and decriminalizes them (removing all criminal penalties) while criminalizing pimps/traffickers and buyers.”⁸⁷

The Swedish government has sought to protect and assist prostituted women in an effort to leave their prostitution lifestyle, approaching prostitutes as victims they are rather than criminals.⁸⁸ With this new perspective of prostitutes, the Swedish government enacted the abolition model on January 1, 1999.⁸⁹ This was one of the first laws that recognized the man, gender neutral format, who buys a woman for sexual purposes is the criminal who should be penalized.⁹⁰

“In 1999, the Swedish government estimated that approximately 2,500 prostituted women were bought at least one to two times per year.”⁹¹ Often it can take years to see the effects of a new law, but from 1999-2004, street prostitution decreased 30 to 50% and the recruitment of new prostitutes declined to almost none.⁹² In 2002, the number of women prostituting in Sweden was no more than 1,500 which was a decrease from the 2,500 at the time the law was passed.⁹³ Over 15 years later, Sweden continues to report a decline in the number of prostitutes by two-thirds.⁹⁴ While Sweden provides some of the best protection for

⁸⁶ Sex Trafficking Prevention Course, *Four Legal Approaches to Prostitution and Human Trafficking*, <https://agapewebsite.org/wp-content/uploads/2012/02/Four-Legal-Approaches-to-Prostitution-and-Human-Trafficking.pdf> (last visited October 11, 2018).

⁸⁸ Ekberg (2010) The Swedish law that prohibits the purchase of sexual services. *Violence Against Women*, 10, 1187-1218: www.prostitutionresearch.com/pdf/EkbergVAW.pdf.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.* at 1193.

⁹² *Id.*

⁹³ The Guardian, *Prostitution: Why Swedes Believe They Got it Right* (2013) <https://www.theguardian.com/global-development/2013/dec/11/prostitution-sweden-model-reform-men-pay-sex>.

⁹⁴ *Id.*

trafficking victims, there remains room for improvement, but notwithstanding, Sweden continues to report “significantly lower human trafficking numbers than other countries.”⁹⁵

Sweden is not alone in their approach.⁹⁶ A review commissioned by New Zealand’s justice ministry “found that prior to decriminalization, sex workers were less willing to disclose” their activities to health professionals or carry contraceptives for fear of punishment.⁹⁷ However, when New Zealand adopted a decriminalization approach, similar to abolition, in 2003, government research showed that the relationship between sex workers and law enforcement improved.⁹⁸ Specifically, “a 2008 study found that 70 percent of sex workers were more likely to report crimes of violence” because police were no longer viewed as an enemy.⁹⁹ Moreover, “sex workers were able to obtain justice through the courts” as result of the improved relations with police.¹⁰⁰

Sweden’s experience has shown that when buyers risk punishment, the number of individuals, “who buy prostituted women, decreases, and the local prostitution markets become less worthwhile.”¹⁰¹ As a consequence, traffickers turn to other countries that are more profitable and less risky.¹⁰² If more countries follow Sweden’s approach to prostitution, honing in on criminalizing the pimps, traffickers, and buyers rather than the prostituting women global human trafficking would be greatly minimized.¹⁰³

⁹⁵ *Id.*

⁹⁶ Amnesty International Ltd., *Sex Workers At Risk: A Research Summary on Human Rights Abuses Against Sex Workers*, (2016), https://www.amnestyusa.org/files/briefing_-_sex_workers_rights_-_embargoed_-_final.pdf.

⁹⁷ *Id.* at 20.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ Ekberg (2010) The Swedish law that prohibits the purchase of sexual services. *Violence Against Women*, 10, 1187-1218: www.prostitutionresearch.com/pdf/EkbergVAW.pdf.

¹⁰² *Id.*

¹⁰³ *Id.*

IV. CONCLUSION

Human Trafficking is a fast-growing enterprise with over 21 million trafficked people around the world.¹⁰⁴ Sweden has used their abolition of prostitution laws to address human trafficking with success; decreasing prostitution by over 50% within the first three years of enacting their abolition law.¹⁰⁵ While the Netherlands and the U.S. have taken two very different approaches, passing laws that legalize and criminalize prostitution, they have been equally unsuccessful in their efforts to significantly impact human trafficking.¹⁰⁶

Salil Shetty, the Amnesty's secretary general, stated, "Sex workers are one of the most marginalized groups in the world, who in most instances face constant risk of discrimination, violence and abuse."¹⁰⁷ As a result, criminalizing prostitutes only furthers their inability to escape this type lifestyle, especially those who have been trafficked. Legalizing prostitution, like the Netherlands, distances victims of trafficking because the sex industry is considered acceptable leaving few options for legal recourse. These two approaches, adopted by the Netherlands and the U.S., are on opposite ends of the spectrum but neither have been successful in the war against human trafficking. By contrast, Sweden seems to have found the most successful approach using prostitution to combat human trafficking. Sweden has adopted the abolition of prostitution approach where buyers, pimps, and traffickers are punished, but prostitutes, seen as victims, are not. Sweden focuses on protecting sex workers from violence

¹⁰⁴ Ewelina U. Ochab, *The World's Fastest Growing Crime*, Forbes (Jul. 29, 2017), <https://www.forbes.com/sites/ewelinaochab/2017/07/29/the-worlds-fastest-growing-crime/#1955428a3aae>.

¹⁰⁵ Ekberg (2010) The Swedish law that prohibits the purchase of sexual services. *Violence Against Women*, 10, 1187-1218: www.prostitutionresearch.com/pdf/EkbergVAW.pdf.

¹⁰⁶ Sex Trafficking Prevention Course, *Four Legal Approaches to Prostitution and Human Trafficking*, <https://agapewebsite.org/wp-content/uploads/2012/02/Four-Legal-Approaches-to-Prostitution-and-Human-Trafficking.pdf> (last visited October 11, 2018).

¹⁰⁷ Amnesty International Ltd., *Sex Workers At Risk: A Research Summary on Human Rights Abuses Against Sex Workers*, (2016), https://www.amnestyusa.org/files/briefing_-_sex_workers_rights_-_embargoed_-_final.pdf.

and crime as well as directing them to resources to escape the prostitution lifestyle. The U.S. is closer to this abolition approach than many recognize. If the U.S. shifts all the focus on the buyers, pimps, and traffickers, and decriminalizes prostitutes, the U.S. could see a significant decrease in human trafficking cases and a decline in prostitutes.