

## Amnesty International: Decriminalize Sex Work.

Prostitutes have human rights. In recognition of those rights, Amnesty International is calling on all states to decriminalize prostitution. In particular, at its August meeting in Dublin, AI's decision-making body adopted a resolution authorizing its International Board to develop a policy supporting full decriminalization of all aspects of consensual sex work. They did the right thing.

Rather than eliminating prostitution, criminalizing the prostitute just shuts her out of mainstream protections. As AI explains, sex workers are one of the most marginalized groups in the world. In many countries they work with little or no legal protection and are exposed to discrimination, such as exclusion from health care and housing services, and to abuses, including rape, beatings, trafficking, extortion, and evictions. Included in those administering abuse are the police themselves.

The objective of decriminalization is to afford sex workers at least some protection from abuse, reasonable access to the law for their protection, and greater control over their own lives and working conditions.

Supporters of AI's policy include the International Committee on the Rights of Sex Workers in Europe, the Global Network of Sex Work Projects, and Freedom Network USA, an organization of 38 providers of service to victims of trafficking. But the Coalition Against Trafficking in Women (CATW) has come out in opposition. CATW agrees with decriminalizing sex workers themselves, but it vigorously opposes the legalization of pimping, brothel owning and sex buying which would be decriminalized as "aspects of consensual sex work."

No doubt with CATW in mind, AI has been at pains to point out that, under its model, third parties who exploit or abuse sex workers will remain criminalized. The pimp who

coerces, the brothel owner who exploits and the buyer who is violent will be criminals. But it is counterproductive to criminalize all third parties just because they are connected in some way to sex work. For example, laws against brothels prevent sex workers from working together for safety. Criminalizing buyers means sex workers will take more risks to protect their buyers from the police, like visiting an unknown customer's home rather than meeting at a more open location where the sex worker feels safe.

Here AI has a telling point. We cannot in good conscience say to a poor, marginalized sex worker, "we have your best interest at heart so we will not criminalize you, but we will criminalize anyone who gives you a place to live in exchange for money, or anyone who gives you advice on staying safe, or who provides some protection to you in exchange for a share of your earnings. And if you try to find security in a place where you can work with other women we will call that a brothel and criminalize the owner. And, of course, we will criminalize anyone who gives you business."

It is not a mark of compassion to ignore the real-life difference between a madam who finds and screens clients for her call girls and a lowlife who threatens a young woman into sexual submission and beats her if she doesn't work hard enough. It is not a badge of sensitivity to, instead, react with moral outrage to the label "pimp." It is not about labels. It is about realities on the ground. That is what AI understands.

Rather than enacting catch-all proscriptions which worsen the conditions under which prostitutes work, AI calls for laws to be "re-focused" to address the actual harms of exploitation, abuse and trafficking.

CATW also claims that legalization elsewhere has led to an increase in sex trafficking. Explicit in AI's new policy is its abhorrence of sex trafficking and its call for it to be

criminalized as a matter of international law. But it correctly points out that there is no evidence to suggest that decriminalization increases sex trafficking. To the contrary, there is reason to believe that Sweden's criminalization of buyers (but not sellers) has strengthened, not weakened, the hands of the criminal networks that facilitate illegal migration. Trafficking in Germany has decreased since third-party involvement in prostitution was legalized in 2002. The available data from the Netherlands since that country's legalization of prostitution do not tell us how many prostitutes have been coerced or duped into selling sex, but a New Zealand study found that prostitution did not increase after that country decriminalized prostitution in 2003. In fact, two-thirds of New Zealand's prostitutes now feel they have more power in dealing with their clients.

Decriminalization actually supports the effort to detect trafficking. AI points out that in a decriminalized atmosphere sex workers are not only able to work together to preserve their own rights, but are able to work with law enforcement in identifying traffickers and their victims. Logically, none of this is surprising. As noted criminologist and sex-trafficking expert Ronald Weitzer notes, organized crime thrives where the marketed service is illegal, not where it is legal.

AI's stand touches a nerve in California. In March, a grassroots organization for erotic service providers and others, with the descriptive name "Erotic Service Provider Legal, Education and Research Project" (ESPLERP), brought a federal action challenging as unconstitutional this state's anti-prostitution provision, Penal Code 647(b). That section broadly criminalizes both the buyer and seller of any sexual touching, regardless of privacy or context. (Section 647(b) is not one of the provisions that addresses third party issues such as trafficking and pimping.) In addition to constitutional analysis, this action will demand factual analysis of a core question: whether the state has a legitimate or compelling interest in criminalizing prostitution. AI's findings are a significant development in our evolving understanding of the

facts relevant to state interest. Its conclusions are based on its own research and on evidence drawn from numerous interested organizations including several UN agencies. Its mission reflects our own courts' civil rights jurisprudence: to protect the vulnerable, the politically powerless and the overlooked.

AI has taken heat and will continue to take heat from those who will publish sensational attacks on its motives. CATW's open letter, for example, announces that, with its new polity, AI will be siding "with buyers of sex, pimps and other exploiters." In this environment, AI's stand is bold, one might even say, courageous.