Dear AI members, AI Section Directors, and AI Board members:

We write to express our support for the resolution requesting “the International Board to adopt a policy that seeks attainment of the highest possible protection of the human rights of sex workers, through measures that include the decriminalisation of sex work.” We are a diverse group of academics and scholars who have extensively researched the regulation and criminalization of sexuality through criminal law, including the exchange of sex for money, in both developed and developing countries. Our research addresses women, men and transpersons in sex work. We support efforts to counteract trafficking of under-age persons and adults into the sex sector. We base our support of AI’s proposal on scholarship and research: our own research as well as our knowledge of empirically sound and analytically rigorous global research on sex work, prostitution law, trafficking, and human rights law. AI’s human rights goals would be best served by state policies decriminalizing the un-coerced selling and buying of sex and the range of activities (such as forming groups, living or working together, advertising services, etc.) that, when un-coerced and legal, support the rights of people in sex work.

AI’s general policy is to be wary of criminal law regulating gender and sexuality.\footnote{We find that the ICM proposal on prostitution law is consistent with AI’s existing positions against the application of criminal law vis \textit{a vis} sex among competent and consenting partners. This includes strong stances against the criminalization of women who choose to seek abortion services, as well as the providers who provide them, and persons who engage in same sex behavior. See Sexual and Reproductive Rights: Some Frequently Asked Questions. London: Amnesty International, 2007. Accessed August 2, 2015. 
https://www.amnestyusa.org/sites/default/files/making_love_a_crime_-_africa_lgbti_report_emb_6.24.13_0.pdf In situations where partners are not competent or consenting – such as in cases of rape or sexual violence – AI supports the application of human rights law to protect victims and uphold justice in criminal court. See Rape and Sexual Violence: Human Rights Law and Standards in the International Criminal Court. London: Amnesty international, 2011. Accessed August 2, 2015. https://www.amnesty.org/en/documents/IOR53/001/2011/en/} We recognize that the criminal law does play an important role with respect to sex work: to ensure the rights of persons affected by violence or other harms such as wage theft. In all cases the application of the criminal law must be assessed in light of whether it provides equal and accessible justice for the victim and the accused.

We focus on two specific issues: 1) why existing credible research supports the rejection of the so-called Nordic model (decriminalizing the seller of sex while penalizing the buyer) and 2) why rigorous studies on the relationship between human trafficking and the sex sector supports total decriminalization. In particular we note empirically and analytically sound research that debunks the Nordic model and refutes claims that legalization or decriminalization of sex work will ‘increase’ the risk of trafficking into the sex sector.\footnote{For discussion purposes, we are using the word ‘trafficking’ as it is defined in the UN Palermo Protocol, See United Nations Convention against Transnational Organized Crime. New York: United Nations Treaty}
We fully appreciate that for a human rights organization, any victim deserves rights protection and public attention: we applaud this approach. What concerns us is methodology. Victims’ stories, however affecting and deserving of attention, may call us to respond, but should not alone dictate the form of policy. As feminists and theorists, we listen carefully to the many stories of differently situated people, and use methodologies to generate knowledge of what can work best to promote the rights of the diverse populations affected by law. As scholars of the criminal law’s operation on sexuality, we each know well the complexity of its impact on rights, including many negative consequences.

Decriminalization of sex work protects sex workers from HIV and violence

Evidence shows that people in sex work face heightened risks for human rights violations including HIV exposure and serious violence, particularly from state agents, as well as discrimination in housing, access to healthcare, education, etc. Many of us work in health, law and human rights and are deeply familiar with or have carried out the research cited in these debates: we flag only a few of the more recent well-documented inquiries cited by UNDP, WHO, the UN Special Rapporteur on The Right to Health, and Human Rights Watch.

Public health research supports the conclusion that criminalization of sex work prevents sex workers from having equal access to health services, including HIV-related services. A 2015 Lancet study estimated that decriminalization of sex work...
could avert 33-46% of new HIV infections in the next decade. Other research findings point to the relationships between criminalization of sex work and negative health issues such as violence, poor condom negotiation, mental health stresses, and general disempowerment. Similarly, with regards to violence, available evidence shows that criminalization impedes sex workers' access to health services, impairs their ability to negotiate better living and working conditions, and makes them vulnerable to a range of human rights abuses, especially violence.

Studies have shown that criminalization reduces the ability of people in sex work to organize, be visible, participate in public life as full citizens and be treated with dignity.

Criminalizing buyers and not sellers does not protect sex workers' rights

Supporters of the different policies and practices encompassed by the Nordic model promote the decriminalization of sex work and criminalization of buyers as a way to 'end-demand.' This model might seem appealing at first glance, but it relies on two assumptions that undermine it: 1) an ideological position that selling sex is always victimizing and buying sex is always exploitative; 2) assumptions that the Nordic model protects the seller from harm.

Supporters of the ideology that sex work is inherently degrading argue that prostitution should be eliminated through criminal law. Some feminists find this persuasive because it comports with their view that all women are always sexually subject to men. Yet many female-identified sex workers have spoken out against this


assumption, arguing that while many face negative social responses and bad conditions in the work they do, their work is not inherently degrading. Underlying these assumptions are the pre-conceived notions of the ‘seller’ and ‘buyer’ as female and male in an extreme power dynamic without recognizing that sellers also include men and transgendered persons, amid very diverse conditions of work shaped by the landscape of criminalization.

Second, the assumption that ‘decriminalization’ of the seller frees the seller of all of the harms of the criminal justice system and surveillance defies reality. The practices of policing and prosecution, as demonstrated by research in countries adopting the so-called Nordic model, drive transactional sex underground with less time to screen clients. The policing of clients also exposes sex workers to increased violence from state agents and clientele. Persons who sell sex are still subjected to abusive police and criminal justice policies. Al members will recognize this problem: police as coercive state agents around the world are generally the perpetrators of human rights violations, not trusted agents of protection, particularly for stigmatized persons.

The Nordic model makes assumptions about the ‘inherent degradation’ of sex work and does little to address the continued violence associated with criminalization or support alternatives suggested by sex workers to improve their working conditions.

The relationship between prostitution and trafficking

Proponents of the Nordic model assert that decriminalization of sex work will increase trafficking. This is too simplistic, as well as improbable. Trafficking is the result of multiple factors that promote vulnerability, not the result of the labor sector per se. For example, both domestic work and fisheries are within the legal sector, yet trafficking into them is rampant in many countries—the variables that lead to trafficking work through vulnerability and coercion, the inability to migrate legally, harsh border controls, a lack of state accountability, and police corruption.

The criminal or legal status of the work in question remains but one feature in a complex landscape.

Advocates (including media, and at times governments) often argue 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.” In keeping with persistent efforts to distinguish prostitution from trafficking, our review of the research literature still does not find convincing evidence to support the assertion that legalized prostitution causes or increases trafficking. Statistics about trafficking are notoriously slippery. According to research by UNESCO-Bangkok on trafficking, available statistics are unreliable, in part because of the variability of the definitions used to identify who is a ‘trafficked person’. Another significant problem is the lack of social science research that meaningfully compares trafficking (as defined in international law) and prostitution under different legal regimes (i.e., legalization, criminalization and tolerance). The impossibility of ‘proving’ what many opponents of prostitution passionately believe bedevils many of the arguments they make. It is equally if not more plausible, that there be an association between the increased identification of trafficked persons in decriminalized regimes of sex work when states have not only progressively reformed their prostitution law, but also paired this with more effective, accountable interventions against trafficking.

Evidence on decriminalization of sex work shows that it is an important part of a set of interventions to combat trafficking into the sex sector. Legal prostitution, combined with effective rights-based anti-trafficking laws, makes it easier to identify and combat trafficking as workers and clients in the legal sector can report

21 "UN Women’s note on sex work sexual exploitation and trafficking.” Geneva: UN Women, 2013. Accessed August 2, 2015. http://bit.ly/1IU6KtJ ("The conflation of consensual sex work and sex trafficking leads to inappropriate responses that fail to assist sex workers and victims of trafficking in realizing their rights. Furthermore, failing to distinguish between these groups infringes on sex workers’ right to health and self-determination and can impede efforts to prevent and prosecute trafficking.")
22 See http://www.unescobkk.org/culture/trafficking. UNESCO’s Trafficking Statistics Project is an ongoing project attempting to assess the scale of the problem, as well as the empirical validity of various estimates and guesstimates in wide circulation.
23 One recent study (Cho et al. 2013), using non-comparable data criticized for its poor quality, claimed to find an association between “human trafficking inflows” and legalized prostitution, which the authors interpret as causality. They argue that legalized prostitution contributes to increases in trafficking. Cho et al. acknowledge that their correlational finding cannot demonstrate causality, so they turn to what they term ‘anecdotal evidence’ for 3 countries whose policies have changed, though data on ‘trafficking inflows’ are lacking for 2 of the 3 countries. Any association between more reported or prosecuted trafficking cases and decriminalized sex work regimes can equally, if not more plausibly, be explained by the practices of states, which have not only progressively reformed their prostitution law but also paired this with more effective, accountable interventions against trafficking. A parallel interpretive problem is posed by increased reports of violence against women. We question whether these are instances of increased occurrence or increased detection. For the full methodology see, Seo-Young Cho and Axel Dreher and Eric Neumayer. "Does Legalized Prostitution Increase Human Trafficking?" World Development 41, no. 1 (2013): 67-82. For a thorough dismantling of this study see, Weitzer, Ronald. "New directions in research on human trafficking." The Annals of the American Academy of Political Science and Social Science," vol.653 (May): no. 1 (2014): 6-24.
trafficked or suspicious cases without fear of arrest.\(^{24}\) Moreover, conditions for cooperation with authorities are improved which, along with the ability of workers to claim rights, make the violence and exploitation of trafficked persons more visible. In short, decriminalization makes it clear what the crime of trafficking really stands for -- severe labor exploitation and coercion/deception, not simply the selling or buying of sex. This distinction between sex work and trafficking also comports with the overall philosophy and innovation of the UN Palermo Protocol (2000), which suggests that people who have been trafficked are not criminals, but crime victims. This distinguishes between prostitution and trafficking into prostitution.\(^{25}\)

We encourage AI to recognize victims of sex-trafficking in the larger context of human trafficking. A single-issue focus on prostitution as the 'cause' of trafficking, 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), would move AI away from responding to the needs of all trafficked persons with a coherent, overall strategy.\(^{26}\) AI has long taken a leading role in the struggle for the human rights of trafficked persons. It is all the more important for AI’s work to support policies and programs that are grounded in valid research.

**Keeping the Flame**

We understand that ultimately AI’s position will not be resolved by recourse to research alone: the positions taken by partisans on all sides are also ideological and passionate, as claims involving human dignity ought to be. However, we highlight in our conclusion that a number of us are long-time AI members as well as past staff, consultants, or national section Board members (here we flag Gruskin, Roseman and Miller). We were involved in the 1991 and onward struggle over the adoption of persons as prisoners of conscience if they were arrested for same-sex behavior; others of us were active in the decisions that allowed AI to work on violence against women more generally as well as on abortion and reproductive health rights. In each of these cases, partisans on all sides were passionate, and often very high profile: celebrities and AI members alike have strong convictions on sexuality.


The final decisions on these past votes on same sex behavior as well as the decriminalization of abortion were taken through a mixture of evidence-based support, passion and consistency with human rights principles. We acknowledge how painful many individuals may find the idea of AI working against some of their most renowned supporters, but we don’t need to remind AI that it has consistently carried the banner for human rights when popular opinion has thought otherwise. We urge AI to continue keeping this powerful flame.

We appreciate your careful and thorough concern as Amnesty International debates this crucial issue. Any one of us would be happy to be contacted in regard to our research and/or for more sources and analysis as you proceed with your debates.

Sincerely,

Alice Miller, J.D.
Associate Professor (Adjunct, Spring/Fall) Yale Law School*
Assistant Clinical Professor of Epidemiology, Yale School of Public Health*
Co-Director, Global Health Justice Partnership

Rebecca Schleifer, J.D., MPH
Visiting Fellow, Yale University’s Global Health Justice Partnership*

Dr. Mindy Jane Roseman
Lecturer on Law, Harvard Law School*

Carole Vance, PhD, MPH
Professor of Anthropology, Columbia University*

Sofia Gruskin, J.D., MIA
Director, Program on Global Health & Human Rights
Professor, Keck School of Medicine, Gould School of Law
University of Southern California* and
Adjunct Professor, Harvard School of Public Health*

Aziza Ahmed, J.D.
Associate Professor of Law, Northeastern University School of Law*

Elizabeth Bernstein, PhD
Associate Professor of Women’s Studies and Sociology, Barnard College*

Denise Brennan, PhD
Professor and Chair of Anthropology Department, Georgetown University**

* Affiliation is for identification purposes only.
**Affiliation is for identification purposes only.
Sealing Cheng, PhD
Associate Professor, Chinese University of Hong Kong*

Janie Chuang, J.D.
Researcher, Interdisciplinary Project on Human Trafficking
Professor of Law, Washington College of Law at American University*

Janet Halley, J.D.
Royall Professor of Law, Harvard Law School*

Dina Francesca Haynes, J.D, LLM
Professor of Law and Director of the Human Rights and Immigration Law Project,
New England Law in Boston*

Shohini Ghosh
Sajjad Zaheer Professor
AJK Mass Communication Research Centre
Jamia Milia Islama (Central University)*, New Delhi

Kathleen C. Kim, J.D.
Skadden Fellow, Human Trafficking Project
Professor of Law, Loyola Law School*

Dr. Prabha Kotiswaran
Advisory Board, Work in Freedom
Senior Lecturer in Law, King’s College London*

Chi Adanna Mgbako, J.D.
Clinical Professor of Law
Director, Walter Leitner International Human Rights Clinic
Fordham Law School

Alicia W. Peters, PhD
Assistant Professor of Anthropology and affiliated faculty in the Program in
Women's and Gender Studies, University of New England*

Oliver Phillips, PhD
Researcher, Center for Law Gender Sexuality
Reader in Law, University of Westminster*

Peter Rosenblum, J.D. LL.M.
Professor of International Law and Human Rights, Bard College*

Lara Stemple, J.D.
Director, Health and Human Rights Law Project
8/4/2015

Director of Graduate Studies, UCLA School of Law*

Dr. Baerbel Heide Uhl
International coordinator datACT*, Berlin