

Ms. Helen Clark  
Administrator  
United Nations Development Programme  
One United Nations Plaza  
New York, NY 10017  
USA

15 November 2012

Re: Recent UN reports on HIV prevention efforts, the commercial sex industry and sex trafficking

Dear Administrator Clark:

We write from organizations in many different countries working to end sex trafficking and the exploitation of women and girls in prostitution to express great concern about two recent reports on efforts to prevent HIV within the commercial sex industry: the Global Commission on HIV and the Law report *HIV and the Law: Risks, Rights and Health* (“Global Commission Report”) released on 9 July 2012, and the UNDP, UNFPA and UNAIDS report *Sex Work and the Law in Asia and the Pacific* (“Asia Pacific Report”) released on 18 October 2012. Many of our organizations are led by trafficking survivors and know first-hand the human rights violations inherent in sex trafficking and exploitation; others have spent years working internationally against the sexual exploitation of women and bring substantial expertise and experience to this field.

We applaud the United Nations ongoing commitment to end the global AIDS epidemic and welcome the clear call to end the discrimination, stigma and police harassment faced by people living with HIV. We support the Global Commission Report’s focus on the role that violence against women and gender discrimination play in making women and girls particularly vulnerable to HIV, and its call to link effective HIV prevention to gender equality efforts (and note the disturbing absence of a gender perspective in the Asia Pacific Report). However, we are deeply concerned with both reports’ incomplete and misleading information regarding the effects of decriminalizing prostitution and surrounding activities, including brothel-keeping and pimping, and its effect on anti-trafficking efforts as well as women’s rights.

We recognize that you have been a passionate participant in the prostitution debate and, as Prime Minister of New Zealand at the time, strongly supported decriminalization. Notwithstanding, we are hopeful that you will consider the concerns raised by the many organizations we represent.

*Effect on efforts to prevent and combat sex trafficking*

The broad legislative reforms called for in both reports with respect to prostitution, including decriminalizing the entire prostitution industry and significantly narrowing the definition of sex trafficking, run counter to international consensus regarding effective ways to address and prevent sex trafficking. The 2000 UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, contains the first internationally agreed upon definition of trafficking; crucially, this definition reflects the wide variety of sex trafficking survivors’ experiences. Anti-trafficking activists have advocated for countries to adopt this definition for the last 12 years in order to ensure that traffickers are brought to justice and survivors receive necessary

services. Yet the reports recommend that this definition be revised and narrowed. In conjunction with limiting this definition, the reports call for the decriminalization of exploitive conduct that would clearly be covered by the Protocol's definition, including pimping and profiting off of another's prostitution.

In addition, the reports call for the repeal of all laws prohibiting the purchase of sex, even though the UN Trafficking Protocol<sup>1</sup>, the UN Committee on the Elimination of all Forms of Discrimination against Women<sup>2</sup>, and the head of UN Women<sup>3</sup> have all called for countries to combat the demand for sex in order to prevent sex trafficking. Not only are the reports' recommendations in direct opposition to efforts and policies that have been and are widely supported throughout the UN, but they may also jeopardize efforts to prevent sex trafficking, which cannot be a side effect of efforts to prevent HIV.

The reports draw a distinct line between "voluntary adult sex work" and "exploitative, coerced, often violent trafficking of people". Through our experiences working with survivors of trafficking, we have learned that in practice it is often difficult to draw this distinct line, as a large proportion of people in prostitution were coerced or entered the sex industry as minors, and many traffickers, pimps and exploiters can exercise subtle, psychological control – rather than overt violence - over their victims.<sup>4</sup> Changing laws even for "voluntary adult sex work" impacts the entire spectrum of the sex industry, including sex trafficking. In the Netherlands<sup>5</sup> and New Zealand<sup>6</sup>, where prostitution is legal, minors and adults continue to be exploited in the legal prostitution industry.

#### *Women's ability to negotiate condom use*

In order to stop the spread of HIV, women must be able to negotiate condom use. Both reports state that laws regulating the sex industry make it harder to negotiate safe conditions and consistent condom use and imply that legalization or decriminalization of prostitution will enable women to more effectively insist on the use of condoms. This argument is deeply flawed. The Global Commission Report recognizes that many women are in prostitution "in order to support a family, an education or maybe a drug habit," underlining the dependency these women have on money they receive from sex buyers. Women in prostitution often do not have the ability to require the men who buy sex from them to use a condom, nor do they have the ability to turn away the additional money often offered by men for sex without a condom.<sup>7</sup> For example, Senegal legalized prostitution in 1969, and yet the president of a non-profit that works with HIV positive women notes the role of economic desperation on condom use, "Sex workers have told us that when they ask a client to use a condom, he offers to double the price to have sex without the condom. These women are trying to provide for their children and families, so they take the offer."<sup>8</sup> Women in prostitution may also face additional violence if they insist on condom use.<sup>9</sup> In addition, in countries where prostitution is legal, many in prostitution do not register with authorities and many remain in the illegal sector and thus are outside the reach of HIV prevention campaigns, outreach and services.<sup>10</sup>

#### *Incomplete information regarding effects of decriminalization of prostitution*

While both reports champion New Zealand's law decriminalizing prostitution as a best practice to protect people in prostitution, reduce violence and prevent HIV, the New Zealand government's official report (published during your term as Prime Minister) on the effects of the law tells a different story. According to the government report, "the majority of sex workers interviewed felt that the [act decriminalizing prostitution] could do little about violence that occurred"<sup>11</sup> in the sex industry and were not more likely to report acts of violence to the police<sup>12</sup>. In addition, most people

in prostitution “felt there had been no great change”<sup>13</sup> in their access to health services and information, and key informants “were not aware of any substantial change in the use of safer sex practices by sex workers”<sup>14</sup>.

Conversely, the reports dismiss and mischaracterize the effects of Sweden’s law, which decriminalizes prostitution for those selling sex, but criminalizes the purchase of sexual services as well as third party activities surrounding prostitution. This approach is consistent with targeting the demand that fuels sex trafficking. Contrary to the reports’ accounts that ‘end demand’ approaches are ineffective, in a 2010 government report analyzing the effects of the law, street prostitution has halved (while increasing dramatically in Sweden’s neighbors<sup>15</sup>), the number of foreign women in street prostitution hasn’t dramatically increased (as has happened in Sweden’s neighbors), and Sweden has become an undesirable destination for human traffickers since the passage of the law.<sup>16</sup>

While there is disagreement within the human rights community as to the best approach to combat sex trafficking as well as prevent the spread of HIV, the reports present a biased and misleading snapshot of the effects of various approaches. If the drafters of the reports – in particular the Asia Pacific Report - had consulted with a broader range of stakeholders, including anti-trafficking and women’s rights organizations as well as trafficking survivors, the reports could have presented a HIV prevention approach that did not call for rolling back the progress made by the anti-trafficking and women’s rights movements. The legislative recommendations steer countries towards an approach that has neither improved the health or safety of those in prostitution, nor reduced exploitation and trafficking in the sex industry.

To be truly effective, efforts to prevent HIV and sex trafficking must be pursued simultaneously through a holistic approach. For vulnerable and marginalized populations, including people in prostitution, the focus must address comprehensive health and safety needs. This includes HIV prevention, but must also include responding to the physical, emotional and sexual violence often experienced by those in prostitution. Efforts and resources must also focus on providing exit options for people who wish to exit prostitution, particularly because many women in prostitution are not able to negotiate condom use. The most effective way to empower persons in prostitution to better protect themselves against HIV is to increase their ability to get out of a situation in which they are at increased risk of it. Indeed, we must work to promote gender equality in all aspects of society so that fewer women and girls are put in this vulnerable position in the first place. We respectfully request that you re-examine the findings and recommendations included in these two reports, and that you consult with organizations that work closely with trafficking survivors – including those that have signed on to this letter – to discuss your findings. We ask you to publicize these concerns by posting this letter on the Global Commission on HIV and the Law, UNDP, UNFPA and UNAIDS websites.

Thank you for your attention and we look forward to hearing from you. Please reach out Lauren Hersh at Equality Now at +1 (212) 586-0906 or at [lhersh@equalitynow.org](mailto:lhersh@equalitynow.org).

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<sup>1</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Article 9(5).

<sup>2</sup> See e.g., CEDAW Committee, *Concluding Observations: Republic of Korea*, para. 23(f), U.N. Doc.

CEDAW/C/KOR/CO/7 (2011) (calling on the Republic of Korea to “[t]ake appropriate measures to suppress the exploitation of prostitution of women, including by discouraging the demand for prostitution”); CEDAW Committee, *Concluding Observations: Botswana*, para. 28, U.N. Doc. CEDAW/C/BOT/CO/3 (2010) (calling on Botswana to “take appropriate measures to suppress the exploitation of prostitution of women, including through the discouragement of the demand for prostitution”); CEDAW Committee, *Concluding Observations: Denmark*, para. 35, U.N. Doc.

CEDAW/C/DEN/CO/7 (2009) (calling on Denmark to “strengthen measures aimed at addressing the exploitation of prostitution in the country and, in particular, the demand for prostitution”).

<sup>3</sup> Michelle Bachelet, “Fighting Human Trafficking: Partnership and Innovation to End Violence Against Women and Children”, United Nations General Assembly Interactive Dialogue, 3 April 2012, available at:

<http://www.unwomen.org/2012/04/remarks-of-michellebachelet-fighting-human-trafficking-partnership-and-innovation-to-end-violence-against-women/>.

<sup>4</sup> In fact, since 1949 the General Assembly of the United Nations has recognized the inextricable link between prostitution and trafficking. See e.g., Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, U.N. Doc. A/RES/317 (1949).

<sup>5</sup> Daalder, A.L., *Prostitution in the Netherlands since the lifting of the brothel ban*, WODC (Research and Documentation Centre, Dutch Ministry of Security and Justice) (2007).

<sup>6</sup> New Zealand Ministry of Justice, *Report of the Prostitution Law Committee on the Operation of the Prostitution Reform Act 2003*, May 2008, pg. 112, available at: <http://www.justice.govt.nz/policy/commercial-property-and-regulatory/prostitution/prostitution-law-review-committee/publications/plrc-report/documents/report.pdf>; “Men ‘the only winners of Prostitution Reform Act’,” Stuff.co.nz, 20 Nov 2008, available at:

<http://www.stuff.co.nz/national/727258/Men-the-only-winners-of-Prostitution-Reform-Act>.

<sup>7</sup> See e.g. Michael Fleshman, “Women: the face of AIDS in Africa: More action needed against high female infection rates”, *Africa Recovery*, United Nations (2004), available at:

[http://www.un.org/ecosocdev/geninfo/afrec/vol18no3/183women\\_aids.htm](http://www.un.org/ecosocdev/geninfo/afrec/vol18no3/183women_aids.htm); The Independent, “Safe Sex? Indonesia’s conservatives would rather ‘sinners’ and sex workers got Aids”, 7 August 2012, available at:

<http://www.independent.co.uk/news/world/asia/safe-sex-indonesias-conservatives-would-rather-sinners-and-sexworkers-got-aids-8010008.html>

<sup>8</sup> Voice of America, “Africa’s Sex Workers Have Hard Time Leaving Streets,” 1 November 2009, available at:

<http://www.voanews.com/content/a-13-2007-02-13-voa17/342251.html>. See also Rao, V, Gupta, I, Lokshin, M, Jana, S., *Sex Workers and the Cost of Safe Sex: The Compensating Differential for Condom Use in Calcutta*, Journal of Development Economics, Vol 71 (2): 585-603(2003) (finding that when women in prostitution used condoms, they were paid 66% - 79% less by johns).

<sup>9</sup> See e.g. Karim, Q.A., Karim, S.S., Soldan, K., and Zondi, M., *Reducing the risk of HIV infection among South African sex workers: socioeconomic and gender barriers*, American Journal of Public Health, 85(11): 1521-1525 (1995).

<sup>10</sup> See e.g. German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, *Report by the Federal Government on the Impact of the Act Regulating the Legal Situation of Prostitutes (Prostitution Act)*, July 2007, pg. 16 – 29; Andreas Shloenhardt & Human Trafficking Working Group, *Happy Birthday, Brothels! Ten Years of Prostitution Regulation in Queensland*, The University of Queensland, TC Beirne School of Law, 21 September 2009 (which estimated that 90% of the commercial sex industry existed outside the legal sector).

<sup>11</sup> New Zealand Ministry of Justice, *Report of the Prostitution Law Committee on the Operation of the Prostitution Reform Act 2003*, *supra* note 6 at pg. 14.

<sup>12</sup> *Id.* at pg. 58.

<sup>13</sup> *Id.* at pg. 49.

<sup>14</sup> *Id.* at pg. 50.

<sup>15</sup> Neither Norway nor Denmark had adopted effective measures to combat the demand for commercial sexual services until 2009, when Norway adopted a law banning the purchase of sexual services. At the time of this evaluation of the Swedish law, the Norwegian law had not been in place for sufficient time to significantly impact the level of prostitution or sex trafficking in the country. Currently, Denmark is also considering a law banning the purchase of sexual services.

<sup>16</sup> Swedish Ministry of Justice, *English summary of the Evaluation of the ban on purchase of sexual services (1999-2008)*, 2 July 2010. It should be noted that the report acknowledges the limitations in trying to determine the prevalence of illegal activities (such as trafficking and the purchase of sexual services), but even with these limitations, it is confident in the statements listed above.