

## HUMAN TRAFFICKING FOR SEXUAL EXPLOITATION AT WORLD SPORTING EVENTS

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### INTRODUCTION

World sporting events, long known as “showcase[s] of world-class athleticism and teamwork” are now plagued with concerns that the influx of people attending the events will cause an increase in human trafficking for the purpose of sexual exploitation (sex trafficking).<sup>1</sup> International concern about world sporting events and sex trafficking first emerged in the lead-up to the 2006 World Cup.<sup>2</sup> The governments of numerous countries, the European Parliament, Non-Governmental Organizations (NGOs), and the media all expressed fear that the World Cup would be plagued with sex trafficking.<sup>3</sup> As the world expressed concern about a dramatic increase in sex trafficking for the 2006 World Cup, Raymond Domenech, coach of the French World Cup soccer team commented:

It is truly scandalous. People are talking about women, importing them to satisfy the base instincts of people associated with football. It is humiliating enough for me that football is linked with alcohol and violence. But this is worse. It is slaves that will come and be put into houses. Human beings are being talked about like cattle, and football is linked with that.<sup>4</sup>

Empirical data on trafficking is scarce, making it difficult to verify whether concerns about surges in sex trafficking during global sporting events are justified.<sup>5</sup> But the rationale for fear is logical. The massive num-

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1. *Germany's World Cup Brothels: 40,000 Women and Children at Risk of Exploitation Through Trafficking: Hearing Before the Subcomm. on Africa, Global Human Rights and Int'l Operations of the House Comm. on Int'l Relations*, 109th Cong. 1 (2006) [hereinafter *Hearings*] (statement of Rep. Christopher Smith, Chairman).

2. JANA HENNIG, SARAH CRAGGS, FRANK LACZKO & FRED LARSSON, INTERNATIONAL ORGANIZATION FOR MIGRATION, *TRAFFICKING IN HUMAN BEINGS AND THE 2006 WORLD CUP IN GERMANY* 10 (2007).

3. *Id.*

4. *Hearings*, *supra* note 1, at 11 (prepared statement of Mr. Michael Horowitz, Senior Fellow, Hudson Institute).

5. HENNIG ET AL., *supra* note 2, at 5. Due to the highly organized and secretive nature of human

ber of people attending world sporting events naturally increases the demand for prostitution in the host city. Traffickers see this as a business opportunity and can take advantage of travel visas issued for the games by masquerading their victims as spectators.<sup>6</sup> World sporting events also make recruitment easier for traffickers. Unaware of traffickers' true intentions, women and girls may believe that they are being offered legitimate jobs in the host country.<sup>7</sup> According to Jennifer Roemhildt, the executive director of a Greek NGO that offers support and assistance to prostitutes and victims of sex trafficking:

Trafficking is a trap. And an event like the World Cup—or the Olympics—is the bait. Pushed by poverty, pulled by hopeful dreams of life in the West, and exploited by opportunists, women suspend disbelief and their better judgment and gamble on a better life.<sup>8</sup>

As countries hosting world sporting events struggle to prevent an increase in sex trafficking at the events, calls for the legalization of prostitution are emerging.<sup>9</sup> In Canada, a group called the B.C. Coalition of Experiential Communities lobbied the government to legalize brothels for the 2010 Olympics.<sup>10</sup> Although the proposal was ultimately rejected by the Canadian Justice Minister, it did have the support of Libby Davies, a member of the Canadian Parliament, and Sam Sullivan, the mayor of Vancouver.<sup>11</sup> Similarly, George Lekgetho, a member of the South African Parliament, has called for South Africa to legalize prostitution for the 2010 World Cup.<sup>12</sup> The basic rationale behind these calls for legalization is that

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trafficking, accurate statistics on the scope and extent of sex trafficking are unavailable. Jacqueline Berman, *The Left, the Right, and the Prostitute: The Making of U.S. Antitrafficking in Persons Policy*, 14 TUL. J. INT'L & COMP. L. 269, 284 (2006). The United States government estimates that as many as 800,000 people are trafficked across international borders each year and that even more are trafficked internally within countries. OFFICE OF THE UNDER SEC'Y FOR GLOBAL AFFAIRS, U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 7 (2008) [hereinafter TIP REPORT], available at <http://www.state.gov/documents/organization/105501.pdf>. Of these approximately 800,000 trafficked persons, the United States government estimates that at least eighty percent are victims of trafficking for sexual exploitation. *Id.*

6. THE FUTURE GROUP, FASTER, HIGHER, STRONGER: PREVENTING HUMAN TRAFFICKING AT THE 2010 OLYMPICS 4 (2007), [hereinafter THE FUTURE GROUP].

7. *Hearings*, *supra* note 1, at 20 (prepared statement of Jennifer Roemhildt, Executive Director, Lost Coin NGO, Athens, Greece).

8. *Id.*

9. See, e.g., Hilary White, *No Legalized Brothels for 2010 Olympics—Canadian Justice Minister*, LIFE SITE NEWS, Feb. 8, 2008, <http://www.lifesitenews.com/ldn/2008/feb/08020806.html> (discussing legalization in Canada for the 2010 Olympics); Shanaaz Parker, *Will the 2010 World Cup Increase Modern Day Slavery?*, ISS TODAY, July 3, 2008, [http://www.iss.co.za/static/templates/tmpl\\_html.php?id=3435&slink\\_id=6217&slink\\_type=12&link\\_id=4059](http://www.iss.co.za/static/templates/tmpl_html.php?id=3435&slink_id=6217&slink_type=12&link_id=4059) (discussing legalization in South Africa for the 2010 World Cup).

10. White, *supra* note 9.

11. *Id.*

12. SA Prostitution Plans Condemned, BBC News, July 16, 2008, <http://news.bbc.co.uk/2/hi/africa/7509357.stm> (last visited Apr. 10, 2010).

legalized systems allow local volunteer prostitutes to meet the increased demand for prostitutes during the event, thus reducing the need for international trafficking.<sup>13</sup>

This Note explores the connection between prostitution laws and sex trafficking, as well as the link between world sporting events and sex trafficking.<sup>14</sup> Part I sets forth the international definition of human trafficking, explaining how this definition affects national approaches to regulating prostitution. Part II outlines the four general approaches to prostitution legislation: complete criminalization, partial decriminalization, decriminalization, and legalization. This section provides arguments for and against each approach and explores how each approach could affect sex trafficking at world sporting events.

Part III examines human trafficking for sexual exploitation at the 2004 Athens Olympics, 2006 World Cup in Germany, and 2008 Beijing Olympics, analyzing the countries' relative successes and failures in mitigating the increase in sex trafficking that is believed to accompany world sporting events with a focus on the role of the countries' legal frameworks regarding prostitution. Empirical data on sex trafficking, both in general and at world sporting events, is scarce, so this section takes a theoretical approach, examining the dynamics of human trafficking at these events and how, on a theoretical level, the differing approaches to prostitution laws may affect these dynamics.

Part IV argues that both the link between sex trafficking and prostitution laws, and the link between sex trafficking and world sporting events, are highly manufactured for use as tools in morally charged campaigns about the nature of prostitution. Specifically, I argue that, although world sporting events may not lead to a flood of sex trafficking, the hosting countries should utilize this opportunity to revise and refine their anti-trafficking legislation and overall strategies for combating human trafficking.

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13. Parker, *supra* note 9.

14. The Comment uses gendered language (e.g., the term "prostitute" instead of "sex worker" and references to prostitutes as female) because discourse about prostitution and sex trafficking is generally gendered, focusing on women who are bought or trafficked for "the purposes of men's sexual gratification." Joyce Outshoorn, *The Political Debates on Prostitution and Trafficking of Women*, 12 *SEXUAL POL.: INT'L STUD. IN GENDER, STATE, AND SOC'Y* 141, 147 (2005). Although there are male prostitutes and men and boys are sometimes trafficked for commercial sexual exploitation, the majority of prostitutes and victims of sex trafficking are female. *Id.* Similarly, most clients of prostitutes are male—even male prostitutes are frequented primarily by male clients. Kathleen D. Vohs and Jannine LaSaleta, *Heterosexual Sexual Behavior is Governed by Social Exchange and Basic Economic Principles: Sexual Economics Theory*, 9 *MINN. J. L. SCI. & TECH.* 785, 792 (2008). This Comment does not intend to discount the issue of male sex trafficking or perpetuate myths that all prostitutes are female, but uses gendered language and focuses on the female aspects of prostitution because the dominant discourses on prostitution and sex trafficking use this language.

Finally, Part V describes the approaches taken by Canada and South Africa in combating human trafficking and regulating prostitution and the debates surrounding the legalization of prostitution in each country. This section also critiques Canada for failing to effectively use the 2010 Olympics as a platform for its commitment to combating human trafficking, and provides general recommendations for strengthening South Africa's anti-trafficking efforts in order to best showcase South Africa's commitment to combating trafficking.

### I. THE INTERNATIONAL DEFINITION OF HUMAN TRAFFICKING

The United Nations *Palermo Protocol*<sup>15</sup> is an agreement to enact legislation to punish traffickers of human beings, to create programs to protect and provide assistance to victims of human trafficking, and to enact measures to prevent trafficking in human beings. The *Palermo Protocol* defines the offense of "trafficking in persons" as consisting of three elements:

**1. Acts** ("the recruitment, transportation, transfer, harbouring or receipt of persons"<sup>16</sup>);

**2. Means** ("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"<sup>17</sup>);

**3. Intent** ("for the purpose of exploitation;"<sup>18</sup> "exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."<sup>19</sup>)

The *Palermo Protocol* provides an international standard for combat-

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15. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, art 3(a), Nov. 15 2000, S. TREATY DOC. NO. 108-16 (2004), 40 I.L.M. 335 [hereinafter *Palermo Protocol*]. The United Nations General Assembly adopted the Protocol in November 2000 and there are currently 117 signatories and 124 parties to the Protocol. United Nations Office on Drugs and Crime (UNODC), <http://www.unodc.org/unodc/en/treaties/CTOC/countrylist-traffickingprotocol.html> (last visited Jan. 23, 2009).

16. *Palermo Protocol*, *supra* note 15, at Article 3(a).

17. *Id.*

18. *Id.*

19. *Id.* When the means set forth in the second element of the offense are used, the alleged consent of the victim is irrelevant. *Id.* at art 3(b). In the case of children under the age of eighteen, the second element is assumed and only the acts element and the mental element are required. *Id.* at art 3(c). Crossing an international border is not required; men, women, and children can be trafficked within their own countries. Martti Lehti & Kauko Aromaa, *Trafficking for Sexual Exploitation*, 34 CRIME & JUST. 133, 173 (2006).

ing trafficking in human beings in all its forms and is not specifically directed at combating trafficking for sexual exploitation or at regulating prostitution.<sup>20</sup> The drafting process was nonetheless embroiled in debates regarding prostitution policies.<sup>21</sup> One faction, taking a position that can be referred to as the “prostitution as violence” approach,<sup>22</sup> argued that the term trafficking should encompass all forms of prostitution, including prostitution that is considered “voluntary.”<sup>23</sup> Voluntary prostitution, they argued, was as morally reprehensible as forced prostitution and should be outlawed along with other forms of trafficking.<sup>24</sup> From their perspective, no woman ever truly *chose* to become a prostitute but rather found herself *forced* into prostitution either through direct coercion (what is traditionally known as “forced prostitution”) or by “poverty, inadequate education, homelessness, drug dependency and sex- and racial discrimination.”<sup>25</sup>

Opponents to this approach (taking a position referred to as the “prostitution as work” approach)<sup>26</sup> argued that some women freely choose prostitution as a form of economic livelihood and should not be penalized for that decision.<sup>27</sup> They argued that laws penalizing voluntary prostitutes violated the individual liberty of the prostitutes.<sup>28</sup> Ultimately, the *Palermo Protocol* did not resolve this debate and left the issue open by declining to define “exploitation of prostitution of others” and “other forms of sexual exploitation.”<sup>29</sup> Accordingly, parties to the *Palermo Protocol* are free to choose whether or not to criminalize all forms of prostitution: “The terms ‘exploitation of the prostitution of others’ or ‘other forms of sexual exploitation’ are not defined in the *Protocol*, which is therefore without prejudice to how State Parties address prostitution in their domestic laws.”<sup>30</sup>

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20. *Id.*

21. Janie Chuang, *The United States as Global Sheriff: Using Unilateral Sanctions to Combat Human Trafficking*, 27 MICH. J. INT’L L. 437, 442 (2006).

22. Belkys Garcia, *Reimagining the Right to Commercial Sex: The Impact of Lawrence v. Texas on Prostitution Statutes*, 9 N.Y. CITY L. REV. 161, 161 (2005).

23. Chuang, *supra* note 21, at 443.

24. *Id.* at 444.

25. SWEDEN’S MINISTRY OF INDUSTRY, EMPLOYMENT AND COMMUNICATIONS FACT SHEET: PROSTITUTION AND TRAFFICKING IN HUMAN BEINGS 2 (2005) [hereinafter FACT SHEET].

26. Garcia, *supra* note 22, at 161.

27. Chuang, *supra* note 21, at 443.

28. *Id.* at 444.

29. *Id.* at 445.

30. U.N. GAOR, 55th Sess., *Interpretative Notes for the Official Records (travaux préparatoires) of the Negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, ¶ 64, U.N. Doc. A/55/383/Add.1 (Nov. 3, 2000).

## II. APPROACHES TO PROSTITUTION LEGISLATION

The *Palermo Protocol's* refusal to create a working definition of prostitution allows countries to adopt differing approaches to regulating prostitution. Four general approaches to regulating prostitution have emerged: complete criminalization, partial decriminalization, decriminalization, and legalization.<sup>31</sup> Practical arguments exist both for and against each approach, but objective assessment is often difficult because the issue of prostitution is intertwined with “fundamental questions about the kind of society one wishes to see, how one understands gender equality, and what it means to sell sex.”<sup>32</sup> Accordingly, discourse on the varying approaches to prostitution laws tends to be “polarized and intolerant” and approaches are often summarily dismissed without meaningful consideration of the possible benefits of each approach.<sup>33</sup> The following is an overview of the four dominant regulatory schemes, ranging from a rigid intolerance for prostitution (as found in completely criminalized and partially decriminalized schemes) to a rigid tolerance of prostitution (legalized schemes) to an open tolerance of prostitution (decriminalized schemes). This overview attempts to provide a basic but meaningful understanding of the positions taken by the advocates and opponents of each approach.

### A. Complete Criminalization

In a completely criminalized regime (such as in almost every state in the United States) all aspects of prostitution—both the sale and purchase of sex, as well as all third party involvement—are illegal and appear as offenses in the criminal code.<sup>34</sup> The goal of complete criminalization is to eradicate the sex industry completely.<sup>35</sup> This position is generally supported by those who have moral, religious, or feminist objections to prostitution.<sup>36</sup> Moral and religious objections to prostitution are often based on the belief that prostitution violates the Christian moral principal of absti-

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31. Janet Halley, Prabha Kotiswaran, Hila Shamir & Chantal Thomas, *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism*, 29 HARV. J. L. & GENDER 335, 338–39 (2006). Partial decriminalization is also referred to as abolitionist criminalization. ELAINE MOSSMAN, INTERNATIONAL APPROACHES TO DECRIMINALISING OR LEGALISING PROSTITUTION 5–6 (2007).

32. JULIE BINDEL & LIZ KELLY, A CRITICAL EXAMINATION OF RESPONSES TO PROSTITUTION IN FOUR COUNTRIES: VICTORIA, AUSTRALIA; IRELAND; THE NETHERLANDS; AND SWEDEN 2 (2003).

33. NOMI LEVENKRON, THE HOTLINE FOR MIGRANT WORKERS, THE LEGALIZATION OF PROSTITUTION: MYTH AND REALITY 13 (Ella Keren ed., Shaul Vardi trans., 2007).

34. See MOSSMAN, *supra* note 31, at 5; Halley et al., *supra* note 31, at 339.

35. See MOSSMAN, *supra* note 31, at 5.

36. *Id.*

nence outside of marriage.<sup>37</sup> From this perspective, prostitution should be condemned on all fronts as a moral nuisance that threatens public health and leads to other forms of criminal activity.<sup>38</sup> Feminist objections to prostitution are often based on the belief that prostitution is a form of male patriarchy over women.<sup>39</sup> Complete criminalization sets norms for society, emphasizing that the sale and purchase of sex is not socially acceptable and that “the state authority find prostitution so appalling and injurious to those involved that they should be stigmatized as criminals.”<sup>40</sup> By completely criminalizing prostitution, a state attempts to reduce both supply and demand of prostitution by deterring both prostitutes and their clients.<sup>41</sup>

Completely criminalized regimes legislatively place the prostitute and the client in similar situations with equal degrees of criminal culpability.<sup>42</sup> When put in practice, however, laws prohibiting the *sale* of sex are more rigorously enforced than those prohibiting the *purchase* or *accommodation* of its sale.<sup>43</sup> Additionally, among prostitutes, only the poorest and most marginalized (generally the street prostitutes) are subject to arrest, weakening the effectiveness of criminalization.<sup>44</sup>

Critics of criminalization argue that legislation against prostitution improperly mandates morality.<sup>45</sup> Some argue that this morality-driven legislation deprives women of their civil rights by denying them the right to choose their own profession.<sup>46</sup> They argue that many women choose to become prostitutes for economic reasons, noting that “given their lack of social, economic, and political power, prostitution is a practical option for

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37. Berman, *supra* note 5, at 271–72.

38. Nicole A Hough, Comment, *Sodomy and Prostitution: Laws Protecting the “Fabric of Society,”* 3 PIERCE L. REV 101, 103–04 (2004).

39. Berman, *supra* note 5, at 270.

40. WORKING GROUP ON THE LEGAL REGULATION OF THE PURCHASE OF SEXUAL SERVICES, PURCHASING SEXUAL SERVICES IN SWEDEN AND THE NETHERLANDS 14–15 (2004) [hereinafter NORWEGIAN REPORT] (abbreviated English version).

41. *Id.*

42. Dorchen Leidholdt, *Prostitution: A Violation of Women’s Human Rights*, 1 CARDOZO WOMEN’S L.J. 133, 134 (1993).

43. DONNA M. HUGHES, THE DEMAND FOR VICTIMS OF SEX TRAFFICKING 17 (2005), available at [http://www.uri.edu/artsci/wms/hughes/demand\\_for\\_victims.pdf](http://www.uri.edu/artsci/wms/hughes/demand_for_victims.pdf); see Leidholdt, *supra* note 42, at 134 (discussing how the United States legal system “judges prostitutes as culpable and lets johns off the hook”); Halley et al., *supra* note 31, at 415 (discussing how the Indian legal system contains “a substantive bias in the law that explicitly scapegoats the victims of commercial sexual exploitation, namely sex workers, but does not criminalize customers”).

44. Phyllis Coontz & Anne Stahl, *Revisiting Anti-Prostitution Sanctions: An Argument for Changing Policy*, 43 CRIM L. BULL. 297, 298 (2007).

45. See Hough, *supra* note 38, at 103 (discussing morality as the basis for criminalizing prostitution).

46. Melissa Farley, *Prostitution, Trafficking, and Cultural Amnesia: What We Must Not Know in Order to Keep the Business of Sexual Exploitation Running Smoothly*, 18 YALE J. L. & FEMINISM 109, 136 (2006).

women foreclosed from the paid labor market because it requires little skill and it generates quick needed cash.”<sup>47</sup> Moreover, opponents of criminalization argue that criminalization is not effective in reducing prostitution, noting that prostitution continues to exist under criminalized regimes.<sup>48</sup> Arresting and prosecuting a prostitute, they argue, increases the likelihood that she will have to remain in prostitution for economic reasons because the conviction on her record decreases her access to legal jobs and education.<sup>49</sup>

Advocates of criminalization argue that criminalization deters sex trafficking because traffickers conduct rational cost-benefit analyses and the risk of arrest and prosecution can outweigh the expected profit yield.<sup>50</sup> Opponents of this position rely on economic literature that “tends to show that abolition of illicit products and services can have the effect of exacerbating the harms they cause.”<sup>51</sup> While criminalization may deter small-time criminals, they argue, it increases the market equilibrium price, creating incentives for organized criminals to enter the market.<sup>52</sup> Criminalization, they argue, actually increases trafficking because it decreases the supply of women who choose to work as prostitutes in a certain country, which provides an opportunity for traffickers to meet that demand.<sup>53</sup> When demand for prostitution continues, as it often does because laws criminalizing the sale of sex are more strictly enforced than those criminalizing the purchase of sex, an insufficient supply leads to an explosion in the trafficking industry. When the demand for prostitution exceeds the supply, traffickers use the opportunity to move women and girls into countries with insufficient supply.<sup>54</sup> For example, in Southeast Asia in the 1960s the arrival of American soldiers demanding prostitutes far exceeded the existing supply of prostitutes and caused a boom in regional sex trafficking.<sup>55</sup> Furthermore, opponents argue that criminalizing prostitution causes prostitution to become more coercive, “by increasing the vulnerability of women who are prostitutes, and . . . entrenching the institutions of trafficking in part be-

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47. Coontz & Stahl, *supra* note 44, at 300.

48. *See id.* (analyzing prostitution-arrest data in the United States).

49. HUGHES, *supra* note 43, at 39.

50. *Id.* at 10.

51. Halley et al., *supra* note 31, at 392.

52. *Id.*

53. *See* Iris Yen, Comment, *Of Vice and Men: A New Approach to Eradicating Sex Trafficking by Reducing Male Demand through Educational Programs and Abolitionist Legislation*, 98 J. CRIM. L. & CRIMINOLOGY 653 (2008) (arguing for an approach that decreases demand for prostitution rather than penalizing the prostitutes).

54. *Id.*

55. *Id.*

cause of their intensified vulnerability.”<sup>56</sup> When prostitutes fear being punished for the crime of prostitution, they are easier to coerce and victimize.<sup>57</sup>

If advocates of criminalization are correct, criminalization should act as a deterrent to sex trafficking for world sporting events because the risk of arrest and prosecution for prostitution would outweigh the potential benefits for traffickers. From this perspective, visitors attending world sporting events would fear punishment and be deterred from visiting prostitutes, thus decreasing the demand for both prostitutes and sex trafficking. This argument is strongest for a criminalized regime that is enforced evenly. Even a regime that is enforced unevenly may deter visitors from frequenting prostitutes, however, because foreign visitors may be unaware of the uneven enforcement of the laws.

On the other hand, if opponents of criminalization are correct, criminalization may encourage sex trafficking at world sporting events. Because criminalization is not generally enforced against clients, visitors may not be deterred from frequenting prostitutes. If the supply of local voluntary (i.e., non-trafficked and non-forced) prostitutes is diminished (by criminalization enforced against prostitutes), an increase in the demand for sex trafficking to meet the demands of undeterred visitors will take place.

#### *B. Partial Decriminalization—Decriminalizing the Prostitute*

In a partially decriminalized regime (such as in Sweden) the activities of the actual prostitutes are decriminalized, but all other prostitution-related activities, such as purchasing sex or facilitating prostitution, remain criminalized.<sup>58</sup> The rationale behind this approach is that prostitution is an inherently evil practice in which “sex workers are vulnerable victims of systematic patriarchal exploitation.”<sup>59</sup> Although buying sex is an offense, prostitutes are not viewed as culpable for selling sex.<sup>60</sup> Even women who claim to be voluntary prostitutes are viewed as victims of unfair socio-economic circumstances that “forced” them into prostitution.<sup>61</sup> From this perspective, prostitution is a form of male violence against women and a hindrance to achieving gender equality.<sup>62</sup> Rather than punish the victims of

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56. Halley et al., *supra* note 31, at 391.

57. *Id.* at 392.

58. *Id.* at 338, 396–98.

59. *Id.* at 339.

60. NORWEGIAN REPORT, *supra* note 40, at 16.

61. FACT SHEET, *supra* note 25, at 2.

62. BINDEL & KELLY, *supra* note 32, at 24.

what is seen as an unjust society, this scheme focuses on decreasing demand and aiding the victims.<sup>63</sup>

Whereas complete criminalization focuses on the supply-side of prostitution (by aggressively prosecuting prostitutes but not clients), advocates for partial decriminalization argue that it decreases the *demand* for trafficked women by criminalizing the purchase of a prostitute.<sup>64</sup> Advocates also claim that victims of trafficking are more likely to assist the authorities in investigating trafficking when they do not risk penalization themselves.<sup>65</sup>

Opponents of partial decriminalization argue that partial decriminalization is demeaning to women and paternalistic because it views prostitutes as “passive victims in need of rescuing” and denies women of their “right to choose whether they work in prostitution.”<sup>66</sup> Some even argue that prostitution can be liberating because it allows a woman to control what she does with her own body.<sup>67</sup> Proponents of this view argue that any governmental approach that views prostitutes as passive victims denies these women their liberty and agency.<sup>68</sup> They also argue that, although the prostitute is not criminalized, the law criminalizing the purchase of sex penalizes the prostitute by decreasing her client base, effectively forcing her out of her job.<sup>69</sup> Increased criminalization of non-prostitutes involved in the practice of prostitution, such as customers or brothel-keepers, may lead to more abusive conditions for the prostitutes because the increased costs for the customers and brothel-keepers will be transferred to the prostitutes.<sup>70</sup> For example, because customers know they risk prosecution they may feel entitled to engage in more violent sexual activities or unprotected sex.<sup>71</sup> Similarly, the decrease in demand caused by partial decriminalization increases competition among prostitutes and causes them to engage in riskier activities to please customers.<sup>72</sup>

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63. *Id.*

64. Gunilla Eckberg, *The Swedish Law that Prohibits the Purchase of Sexual Services*, 10 VIOLENCE AGAINST WOMEN 1187, 1200–01 (2004).

65. See TIP REPORT, *supra* note 5, at 235 (discussing Sweden’s policy of allowing victims of trafficking to remain in the country if they assist in police investigations).

66. BINDEL & KELLY, *supra* note 32, at 28.

67. Halley et al., *supra* note 31, at 351.

68. *Id.*

69. See Petra Östergren, *Sexworkers Critique of Swedish Prostitution Policy*, [http://www.petraostergren.com/pages.aspx?r\\_id=40716](http://www.petraostergren.com/pages.aspx?r_id=40716) (last visited Apr. 10, 2010) (describing the experiences of Swedish prostitutes).

70. Halley et al., *supra* note 31, at 416.

71. NORWEGIAN REPORT, *supra* note 40, at 12. In Sweden, for example, prostitutes reported engaging in more dangerous activities and an increased fear of violence from clients after the purchase of sex was criminalized. *Id.* at 13.

72. Östergren, *supra* note 69.

Opponents also argue that, rather than decreasing human trafficking, partial decriminalization simply forces sex trafficking deeper underground and exposes victims of trafficking to even greater abuse.<sup>73</sup> When trafficking is deeper underground, locating and assisting trafficked persons and other victims of abuse in the sex industry is more difficult.<sup>74</sup> Prostitutes, they argue, are more likely to protect their clients than assist in their prosecution, and clients (who were previously a valuable tool in prosecuting traffickers) are unwilling to volunteer information when they fear criminal retribution.<sup>75</sup> Additionally, because all prostitutes are viewed as victims, the unique needs of victims of trafficking may be ignored under this approach.<sup>76</sup> Victims of trafficking have unique rehabilitative needs because they have been coerced and abused and may require special health services and education on how to avoid falling victim to trafficking again.<sup>77</sup> In addition, foreign victims of trafficking face the unique challenges of deportation and reintegration into a home country that may shame or stigmatize them as sexually impure.<sup>78</sup>

If the advocates of partial decriminalization are correct, partial decriminalization should deter sex trafficking for world sporting events. Laws that punish the client and not the prostitute should instill enough fear of retribution in visitors at the events that they would be deterred from frequenting prostitutes and the demand for prostitution and sex trafficking would therefore not increase with the influx of visitors for the event. This is similar to the result that could be achieved by an evenly enforced criminalized regime.

If opponents of partial decriminalization are correct, however, the demand for prostitutes and sex trafficking at world sporting events would be unaffected by the laws criminalizing the purchase of sex. Sex trafficking would occur in less visible places, leading to more dangerous situations for the women involved. Because women working as prostitutes would not fear criminal retribution (as they would in a criminalized regime), it is possible that local voluntary prostitutes could fill the increased demand for prostitutes, decreasing the need for forced prostitutes to be trafficked for the

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73. Halley et al., *supra* note 31, at 396.

74. LEVENKRON, *supra* note 33, at 10.

75. Nicolé Fick, Sex Worker Education and Advocacy Task Force, *Well Intentioned But Misguided? Criminalising Sex Workers' Clients*, 22 SA CRIME Q. 33, 35 (2007). Clients can be a valuable tool in combating trafficking because they have insider knowledge on the prostitutes and may notice suspicious situations or have trafficking victims confide in them. *Id.*

76. Halley et al., *supra* note 31, at 397.

77. Stacey Antimone, *Sexual Trafficking: The United States' Response to a Growing International Problem*, 24 SUFFOLK TRANSNAT'L L. REV. 149, 174-75 (2000).

78. *Id.*

event. If women were trafficked for the event, however, authorities would have difficulty identifying these women in the clandestine sex industry and many abuses would go unchecked. From this view, voluntary prostitutes would risk abuse at the hands of their clients while victims of trafficking would risk abuse at the hands of both their clients and their traffickers.

### C. Complete Decriminalization

In a decriminalized regime, all laws concerning prostitution have been repealed and no prostitution-specific controls are imposed.<sup>79</sup> Sex trafficking, which is viewed as distinct from prostitution, continues to be criminalized, but all forms of what is considered consensual prostitution are decriminalized.<sup>80</sup> Theoretically, in a decriminalized regime, prostitution is considered a legitimate and normal business that is not differentiated from other businesses.<sup>81</sup> While legalization focuses on maintaining social order, decriminalization attempts to focus on the rights of prostitutes and their clients. Advocates for decriminalization argue that, by imposing prostitution-specific controls, legalization continues to stigmatize and punish female prostitutes, whereas decriminalization will help protect prostitutes and allow them to escape stigmatization.<sup>82</sup> Despite the claimed advantages of a decriminalized regime, currently no country has completely decriminalized prostitution.<sup>83</sup> New South Wales and New Zealand have attempted decriminalization, but both have elements of regulation and legalization in their regimes.<sup>84</sup> In practice, because no country seems willing to allow prostitution to exist completely unchecked, decriminalization is “best understood as a transition phase or part of the process toward either legalization or abolition, but it is not an end point in itself.”<sup>85</sup> For example, New South Wales and New Zealand first decriminalized prostitution and then created regulatory restrictions, making their regimes legalized rather than decriminalized.<sup>86</sup>

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79. MOSSMAN, *supra* note 31, at 12.

80. *Id.*

81. *Id.*

82. Ji Hye Kim, Comment, *Korea's New Prostitution Policy: Overcoming Challenges to Effectuate the Legislature's Intent to Protect Prostitutes from Abuse*, 16 PAC. RIM L. & POL'Y J. 493, 518 (2007).

83. MOSSMAN, *supra* note 31, at 6.

84. *Id.* For example, “brothel operators in New Zealand require certification; and street-based work in New South Wales is still prohibited.” *Id.*

85. HUGHES, *supra* note 43, at 38.

86. See MOSSMAN, *supra* note 31, at 17 tbl.1 (discussing the regulations on prostitution in New South Wales and New Zealand).

Many of the arguments against legalization (discussed below) could also be wielded against decriminalization. Namely, “prostitution as violence” opponents argue that decriminalization endorses male violence against women by encouraging prostitution and failing to protect and assist the women who are victims of prostitution. Decriminalization’s ideal of freedom and self-determination for prostitutes is misguided and unattainable because prostitution is a form of male dominance over women. From this view, sex trafficking and other abuses are implicitly promoted through decriminalization’s promotion of prostitution. Decriminalization may be more vehemently opposed than legalization because not only does decriminalization promote prostitution, it allows it to exist completely unregulated by the state, providing absolutely no protection for women.

Advocates for complete decriminalization could argue that decriminalization would prevent sex trafficking for world sporting events because voluntary prostitutes would fill the supply-side of the market and meet the demand for prostitution. These women would consciously decide to engage in prostitution and be treated like any other professionals as they reap economic benefits from the world sporting events.

If opponents of decriminalization are correct, however, decriminalization would be the worst scheme for combating sex trafficking for world sporting events because it allows prostitution to take place freely and openly, encouraging visitors to engage in prostitution and greatly increasing the demand for prostitution. Whereas a legalized regime at least has a system of regulations that attempt to ensure the safety of women in the sex industry and prevent sex trafficking, a decriminalized regime offers no similar mechanisms.

#### *D. Legalization*

In a legalized regime (such as in Germany and the Netherlands) prostitution is allowed in certain conditions, as specified by the government.<sup>87</sup> Such regimes are also sometimes referred to as “regulated” because there is legislation regulating the sex industry through prostitution-specific controls.<sup>88</sup> These controls regulate the manner and conditions under which prostitution is allowed.<sup>89</sup> The controls may include, for example, a ban on brothels (or a requirement that all brothels be registered with the state) and

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87. *Id.* at 12.

88. *Id.*

89. *Id.*

that all prostitutes be licensed and submit to mandatory health examinations.<sup>90</sup>

Each country's regulatory scheme differs among three general categories of prostitution offenses: laws aimed at prostitutes, laws aimed at third parties, and laws aimed at those who purchase sex.<sup>91</sup> Notably, many countries with legalized prostitution continue to criminalize acts of third parties, such as pimping<sup>92</sup> and human trafficking.<sup>93</sup> Similarly, legislation may differentiate between *kinds* of prostitution.<sup>94</sup> For example, both the Netherlands and Turkey have legalized prostitution in state-registered brothels, but prohibit most street prostitution.<sup>95</sup>

The basic premise behind most legalized regimes is that prostitution is a part of the social order, but needs to be controlled in order to protect public order and health.<sup>96</sup> An editor in the *Economist* exemplified this premise by opining that "wise governments will accept that paid sex is ineradicable, and concentrate on keeping the business clean, safe and inconspicuous."<sup>97</sup> Even the International Labor Organization has advocated "for prostitution and sex industries to be officially recognized as a legitimate economic sector because they are already 'integrated into the economic, social and political life' of countries and 'contribute in no small measure to employment, national income, and economic growth.'"<sup>98</sup>

Advocates for legalization argue that it progressively allows women to choose how to use their own bodies.<sup>99</sup> Advocates also argue that legalized prostitution benefits society because it decreases violence against prostitutes by allowing women to report abuse without fear of repercussion, frees

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90. *Id.*

91. *Id.* at 13.

92. A "pimp" is generally defined as "a man who is an agent for a prostitute or prostitutes and lives off their earnings." WEBSTER'S NEW WORLD COLLEGE DICTIONARY 1093 (4th ed. 2000). Although a pimp is generally defined as being male, there are also female pimps. Wardell B. Pomeroy, *Some Aspects of Prostitution*, 1 J. OF SEX RES. 177, 178 (1965). A "madam" is not the female version of a pimp; a madam is a "woman in charge of a brothel." WEBSTER'S NEW WORLD COLLEGE DICTIONARY 861 (4th ed. 2000). Although some brothel owners, both male and female, act as pimps, some brothel owners simply own and manage the property and allow the prostitutes to work in the brothel as self-employed, renting a room in the brothel or otherwise contracting to control their own employment. See LEVENKRON, *supra* note 33, at 57 (discussing the way prostitutes in the Netherlands may choose to be self-employed in a brothel or work under the control of the brothel owner or manager).

93. See LEVENKRON, *supra* note 33, at 15–17 (discussing various approaches to legalizing prostitution).

94. MOSSMAN, *supra* note 31, at 14.

95. *Id.* at 23 tbl.3.

96. *Id.* at 12.

97. *The Sex Business*, ECONOMIST, Feb. 14, 1998, at 17–18.

98. HUGHES, *supra* note 43, at 10.

99. Hanh Diep, Comment, *We Pay—The Economic Manipulation of International and Domestic Laws to Sustain Sex Trafficking*, 2 LOY. U. CHI. INT'L L. REV. 309, 329 (2005).

women from pimps, allows women to control their own sex businesses, decreases the stigmatization of prostitutes, reduces sexually transmitted diseases among prostitutes and their clients, creates revenues for the state through taxes, and allows police to focus their attention on more serious crimes, such as trafficking and child prostitution.<sup>100</sup> In regards to human trafficking, advocates of legalization argue that legalization decreases trafficking because voluntary prostitutes fill the supply-side of local sex markets, putting traffickers out of business.<sup>101</sup> Moreover, they argue, clients of prostitutes will be more likely to report cases of trafficking because they will not fear legal repercussions.<sup>102</sup> Ideally, under a legalized regime, prostitution becomes a safe, regulated industry where women choose to be prostitutes (rather than being forced into prostitution).<sup>103</sup>

Opponents of legalization argue that the alleged benefits of legalization are illusory. They claim that legalization expands the sex industry instead of controlling it, increases the demand for prostitution, and increases stigmatization by forcing women to register, submit to mandatory health examinations, and otherwise be known and subjected to prostitution-specific controls.<sup>104</sup> Moreover, they argue that sexually transmitted diseases continue to plague prostitutes because clients are not subjected to mandatory health examinations.<sup>105</sup> Instead of creating a safe industry for prostitutes, legalization creates a safe haven for traffickers.<sup>106</sup> They argue that legalization leads to police investigating the sex industry less stringently, which causes a decrease in the number of detected cases of sex trafficking but not a decrease in the number of actual cases of sex trafficking.<sup>107</sup> Social and ethical barriers to prostitution deteriorate in legalized regimes, causing the sex industry to expand.<sup>108</sup> As prostitution becomes legally and socially acceptable, "men, who would not ordinarily engage in illegal prostitution [become] encouraged to solicit prostitutes."<sup>109</sup> Brothels, strip clubs, and massage parlors that facilitate prostitution create a constant

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100. BINDEL & KELLY, *supra* note 32, at 12.

101. LEVENKRON, *supra* note 33, at 11.

102. See Fick, *supra* note 75, at 35 (describing how clients can be a valuable asset in identifying victims of trafficking so long as they do not fear criminal sanctions for their use of prostitutes).

103. LEVENKRON, *supra* note 33, at 11.

104. Janice G. Raymond, *10 Reasons for Not Legalizing Prostitution*, Mar. 25, 2003, [http://www.rapereliefshelter.bc.ca/issues/prostitution\\_legalizing.html](http://www.rapereliefshelter.bc.ca/issues/prostitution_legalizing.html).

105. *Id.*

106. Diep, *supra* note 99, at 329.

107. Anne Marie Tavella, Comment, *Sex Trafficking and the 2006 World Cup in Germany: Concerns, Actions and Implications for Future International Sporting Events*, 6 NW. UNIV. J. INT'L HUM. RTS. 196, ¶ 30 (2007).

108. Yen, *supra* note 53, at 681.

109. *Id.* at 682.

demand for “new merchandise” that drives international trafficking.<sup>110</sup> According to this line of reasoning, the increasing demand for prostitutes outgrows the local supply of volunteer prostitutes, creating a sex-worker deficit that can be filled by illegal trafficking.<sup>111</sup>

Additionally, the sexual tastes of men often dictate demand, and volunteer prostitutes may not be able to satisfy these tastes.<sup>112</sup> Specifically, men may have preferences for specific racial or ethnic backgrounds.<sup>113</sup> For example, different markets exist in the United States for Chinese, Spanish-speaking, and Russian-speaking women, and in Liberia there is a market for white or Arabic-speaking women.<sup>114</sup> Furthermore, men who purchase sex are often looking for sex in a context where they can “humiliate, degrade, and hurt the woman or child.”<sup>115</sup> Volunteer prostitutes may not be willing to subject themselves to this treatment, whereas trafficked women are more easily manipulated and forced into this treatment.<sup>116</sup> Critics also argue that the men who use prostitutes cannot be expected to act proactively to prevent or report human trafficking.<sup>117</sup> These men, they argue, do not care if the girl or woman has been forced into prostitution or trafficked, or even if she is of legal age.<sup>118</sup>

Critics also believe that legalization makes work easier for traffickers because they can obtain valid work permits for the women they are trafficking for sexual exploitation.<sup>119</sup> The traffickers obtain valid work permits for their victims and coach them to describe themselves as “migrant sex workers” rather than victims of trafficking.<sup>120</sup> This allows the trafficker to absolve himself of the crime of trafficking.

If advocates of legalization are correct, legalization will ensure that sex trafficking does not increase during world sporting events because local voluntary prostitutes will fill the supply-side of the market, adequately meeting the demand for prostitution. These prostitutes will work in safe, government-sanctioned brothels that guarantee safety and security for the prostitutes.

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110. MONICA O’CONNOR & GRAINNE HEALY, *THE LINKS BETWEEN PROSTITUTION AND SEX TRAFFICKING: A BRIEFING HANDBOOK* 10 (2006).

111. Yen, *supra* note 53, at 682.

112. HUGHES, *supra* note 43, at 24.

113. *Id.*

114. *Id.*

115. *Id.* at 7.

116. *Id.* at 59.

117. O’CONNOR & HEALY, *supra* note 110, at 10.

118. *Id.* at 10–11.

119. *Id.* at 16.

120. *Id.*

Conversely, if opponents of legalization are correct, legalization will encourage sex trafficking during world sporting events. Without fear of legal retribution, fans attending the events will flock to prostitutes, greatly increasing demand and exceeding the existing voluntary supply. Even if there is sufficient supply, the sexual tastes of these men may vary from the available local supply, leading to a demand for young, exotic, or vulnerable women to be trafficked to meet this demand.

### III. SEX TRAFFICKING AT RECENT WORLD SPORTING EVENTS

Recent world sporting events (the 2004 Olympics in Athens, Greece, the 2006 World Cup in Germany, and the 2008 Olympics in Beijing, China<sup>121</sup>) did not experience the expected influx of human trafficking for commercial sexual exploitation. Prostitution is legalized in both Greece and Germany yet there is no evidence that sex trafficking drastically increased during the world sporting events hosted in those countries. Similarly, there is no evidence that sex trafficking increased during the 2008 Olympics in China, where prostitution is criminalized. This section explores concerns about sex trafficking leading up to these events, measures taken to combat sex trafficking for the events, and the relative successes of these measures. These events demonstrate that world sporting events may not attract increased sex trafficking. Even if world sporting events present a risk of increased sex trafficking, countries—regardless of their schemes for regulating prostitution—can effectively mitigate this risk with preventive measures aimed at discouraging sex trafficking and increasing assistance to victims of trafficking.

#### A. *Sex Trafficking at the 2004 Olympics in Athens*

Prior to the 2004 Olympics in Athens, Greece, there was not a vast amount of international attention directed at the issue of human trafficking at world sporting events. Some Non-governmental Organizations (NGOs) working in Greece, however, recognized the potential risk that the Games could lead to an increase in women and girls trafficked for sexual exploitation in Greece.<sup>122</sup> The Italian NGO *Terre Libere*, for example, noted that “the cost and number of women being smuggled into Greece is expected to rise during [the 2004] Olympics in Athens, with traffickers apparently cal-

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121. Other recent world sporting events, such as the Sydney Olympics in 2000, the Salt Lake City Olympics in 2002, and the Turin Olympics in 2006, also did not experience any reported surge in sex trafficking during the events, but are not discussed here because there is little available information about prostitution and sex trafficking during those events.

122. HENNIG ET AL., *supra* note 2, at 12.

culating that the prostitution business [would] be brisk.”<sup>123</sup> Academics familiar with sex trafficking patterns warned of the possibility of “an ‘influx’ of as many as 2,000 women over the weeks of the Athens games.”<sup>124</sup>

The Greek government, as well as numerous NGOs working in Greece, strategized to prevent this anticipated increase in sex trafficking and to reduce the harms associated with sex trafficking.<sup>125</sup> Greek NGOs contributed by launching public awareness campaigns, distributing literature about sex trafficking, and increasing their presence in the streets, where prostitution often occurs.<sup>126</sup> The Greek government focused on increasing assistance and protection for victims of sex trafficking, ignoring the demand side of the equation.<sup>127</sup> The Greek Embassy produced a paper entitled *Greek Actions for the Suppression of Trafficking in Human Beings* that outlined three activities, to be enacted by the Ministry of Foreign Affairs, specifically related to sex trafficking during the Olympic Games: provision of free legal aid, establishment of a human trafficking monitor, and an information campaign.<sup>128</sup>

Municipal authorities licensed more brothels in Athens in an effort to increase the monitoring of prostitution and decrease illegal and unregulated facilities that accommodate sex trafficking.<sup>129</sup> Members of the international community criticized this decision as pandering to criminals by legitimizing widespread prostitution during the Games.<sup>130</sup> Prostitutes, too, opposed the municipality’s decision, seeing it as encroaching on their ability to work by imposing strict rules and regulations.<sup>131</sup> A strike by the prostitutes’ union caused the municipalities to apply its rules less stringently.<sup>132</sup>

The promised post-Games assessment of sex trafficking by the Ministry of Foreign Affairs did not materialize and no report was made of the extent of sex trafficking during the Games.<sup>133</sup> The NGO Lost Coin reported, however, that no new victims of trafficking were found on the streets during the Games and that prostitution, in general, did not increase

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123. *Id.*

124. *Hearings, supra* note 1, at 17 (prepared statement of Jennifer Roemhildt, Executive Director, Lost Coin, Athens, Greece).

125. *Id.* at 19.

126. *Id.*

127. *Id.* at 20.

128. Embassy of Greece, *Greek Actions for the Suppression of Trafficking in Human Beings*, Oct. 12, 2005, <http://www.greekembassy.org/Embassy/content/en/Article.aspx?office=1&folder=845&article=15996>.

129. *Hearings, supra* note 1, at 20.

130. *Id.*

131. *Id.*

132. *Id.*

133. HENNIG ET AL., *supra* note 2, at 12.

during the Games.<sup>134</sup> Similarly, the Greek Ministry of Public Order's 2004 Annual Report on Organized Crime in Greece did not reference instances of trafficking for sexual exploitation at the Games.<sup>135</sup> Additionally, the International Organization for Migration (IOM) studied seven cases of sex trafficking in Athens in 2004 and did not find a relationship between the victims and the Games.<sup>136</sup>

The absence of reports of victims of trafficking identified as being trafficked in connection with the Olympic Games does not conclusively indicate that sex trafficking did not increase during the Games. Freelance journalist and feminist political activist Julie Bindel interviewed a Russian woman who was abducted and trafficked to Athens for the 2002 Games. Describing her experience from a safe house in London the woman said:

I was worn out, literally used up and spat out . . . During the games I saw hundreds of men . . . who thought that a good day was watching sport, drinking and having sex. We [prostitutes and victims of trafficking] were just part of the entertainment.<sup>137</sup>

Additionally, comparative statistical data on human trafficking between 2003 and 2005 prepared by the Greek Ministry of Public Order indicate a large increase in the number of known human trafficking cases in 2004.<sup>138</sup> In 2004, the year of the Athens Olympics, the number of identified human trafficking victims nearly doubled the number of identified victims in 2003. In 2003, ninety-three victims of trafficking were identified, compared to one hundred and eighty-one identified in 2004.<sup>139</sup> In 2005, the number decreased to one hundred and thirty-seven, a twenty-four percent decrease from 2004.<sup>140</sup> Whether the Games contributed to the sharp increase in the number of victims identified in 2004 is uncertain, but the statistics do provide some support to that conclusion.<sup>141</sup> The absence of any reports of new trafficking victims identified during or around the Games may be indicative of sex trafficking occurring in a more covert manner during that period due to the increased scrutiny of law enforcement and protection agencies. The sharp increase in indentified victims in 2004 certainly suggests that the Games caused an increase in sex trafficking. On the other hand, NGOs who were specifically researching sex trafficking in

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134. *Hearings, supra* note 1, at 20 (prepared statement of Jennifer Roemhildt, Executive Director, Lost Coin, Athens, Greece).

135. HENNIG ET AL., *supra* note 2, at 12.

136. *Id.* at 44 n.14.

137. Julie Bindel, *Foul Play*, THE GUARDIAN, May 30, 2006, at 11.

138. THE FUTURE GROUP, *supra* note 6, at 14.

139. *Id.*

140. *Id.*

141. *See id.*

relation to the Games did not report increases in trafficking. This could indicate that the high number of victims identified in 2004 was the result of increased awareness of human trafficking and increased efforts to identify victims of trafficking. The concern about sex trafficking specifically for the Games may have increased investigative efforts in general, causing investigators to detect and report higher numbers without an actual increase in sex trafficking.

### B. *Sex Trafficking at the 2006 World Cup in Germany*

Despite inconclusive research about sex trafficking at the Athens Olympics, international media alleged that 40,000 women and children would be trafficked to Germany for sexual exploitation during the 2006 World Cup.<sup>142</sup> The basis for this estimate of 40,000 is unclear. Maureen Greenwood-Basken, Advocacy Director for Europe and Eurasia, Amnesty International, reported that the figure came from a Council of Europe report, but is unclear what the report's source for the number was.<sup>143</sup> Michael Horowitz, a Senior Fellow at the Hudson Institute, alleges that the number came from the German Women's Council.<sup>144</sup> Dr. Juliette Engel, Director of MiraMed Institute in Russia, reports that the number derived from advertisements in Russia for 40,000 temporary jobs in Germany for the World Cup, noting that, in Russia, advertisements for jobs in foreign countries are often schemes for recruiting new victims for sex trafficking.<sup>145</sup>

Despite the uncertainty about its source, the media reported this 40,000 figure widely.<sup>146</sup> German officials and NGOs disclaimed the number as highly sensationalist.<sup>147</sup> Internationally, some people continued to cling to that number, reasoning that 40,000 was only ten percent of 400,000, the estimated number of prostitutes in Germany, and that it was reasonable to expect that such a large sporting event would cause a ten percent increase.<sup>148</sup>

Many who were concerned argued that Germany was implicitly foster-

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142. See, e.g., Karen Chon & Derek Ellerman, *Soccer with a Side of Slavery*, WASH. POST., June 10, 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/06/09/AR2006060901477.html>.

143. *Hearings*, *supra* note 1, at 63 (written responses from Ms. Maureen Greenwood-Basken, Advocacy Director for Europe and Eurasia, Amnesty International).

144. *Id.* (written response from Michael Horowitz, Senior Fellow, Hudson Institute).

145. *Id.* at 58 (statement of Juliette Engel, M.D., Director, MiraMed Institute, Moscow Russia).

146. See Sanja Milivojevic & Sharon Pickering, *Football and Sex: The 2006 FIFA World Cup and Sex Trafficking*, TEMIDA, June 2008, at 29–30, available at <http://www.doiserbia.nb.rs/img/doi/1450-6637/2008/1450-66370802021M.pdf> (collecting references to the 40,000 figure).

147. Tavella, *supra* note 107, ¶ 2.

148. *Hearings*, *supra* note 1, at 64 (written response from Michael Horowitz, Senior Fellow, Hudson Institute).

ing sex trafficking by allowing legalized prostitution.<sup>149</sup> Anecdotal evidence suggested that fans would frequent brothels (increasing demand for prostitution and, consequently, sex trafficking) simply because it was legal in Germany.<sup>150</sup> For example, some British soccer fans declared that they would visit the German brothels during the World Cup for the same reason they would smoke hash at coffee shops in Amsterdam—because it was legally available.<sup>151</sup>

Despite “no conclusive evidence [that] Germany’s liberal approach to prostitution made it more attractive to human traffickers,”<sup>152</sup> members of the European Parliament were reportedly “sobered by the expectation that—especially since the matches were being held in Germany, which legalized pimping and prostitution in 2001—that World Cup fans would be legally free to rape women in brothels or even in mobile units designed specifically for this form of exploitation.”<sup>153</sup> Opponents of legalization dismissed arguments that legalization actually decreased the risk of sex trafficking by allowing voluntary legal prostitutes to meet the increased demands at the World Cup.<sup>154</sup> The United States, in particular, called for the German government to criminalize all prostitution.<sup>155</sup>

Although the German government did not acquiesce to the pleas for criminalization of prostitution, it did take several proactive measures to reduce the risk of increased trafficking during the event.<sup>156</sup> These measures included “increased police presence in host cities, a prevention plan developed under a national security concept, emergency hotlines and other NGO support.”<sup>157</sup>

NGOs conducted four major information campaigns: 1) “Final Whistle—Stop Forced Prostitution”; 2) “Red Card for Sexual Exploitation and Forced Prostitution”; 3) “Stop Forced Prostitution”; and 4) “Action Against Forced Prostitution.”<sup>158</sup> The “Final Whistle” used the event to raise awareness about sex trafficking in general as well as at world sporting events and advocated for more effective prevention and prosecution.<sup>159</sup> The NGO

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149. *See id.* at 3 (statement of R. Christopher Smith, Chairman).

150. *See* Bindel, *supra* note 137, at 11.

151. *Id.*

152. Andreas Tzortzis, *World Cup Goal: Stem Prostitution*, CHRISTIAN SCI. MONITOR, May 5, 2006, <http://www.csmonitor.com/2006/0505/p06s02-woeu.html>.

153. *Hearings*, *supra* note 1, at 2 (statement of Rep. Christopher Smith, Chairman).

154. *See id.* (stating that legalization would actually increase demand).

155. *Id.*

156. Tavella, *supra* note 107, ¶ 3.

157. *Id.*

158. HENNIG ET AL., *supra* note 2, at 17–18.

159. Tavella, *supra* note 107, ¶ 37.

Solwodi conducted the “Red Card” campaign, distributing “100,000 leaflets, 10,000 posters and 40,000 stickers in Germany.”<sup>160</sup> The NGO Frauenrecht ist Meenschenrecht directed the “Stop Forced Prostitution” campaign at customers of prostitutes to inform them of issues of forced prostitution and sex trafficking.<sup>161</sup> The welfare organization Diakonie implemented “Action Against Forced Prostitution” to distribute information to the general public and encourage customers of prostitutes to report possible cases of forced prostitution and sex trafficking.<sup>162</sup>

The estimated 40,000 victims of trafficking did not materialize at the World Cup.<sup>163</sup> Because that figure was highly exaggerated, it is not surprising that the 40,000 mark was not reached.<sup>164</sup> Importantly, though, there is little evidence indicating a dramatic increase in sex trafficking at the World Cup.<sup>165</sup> Gathering accurate empirical data on sex trafficking is impossible and it is likely that some women and girls who were trafficked for the World Cup went unreported, but the existing data does not show any significant increase in known cases of trafficking.<sup>166</sup>

The Federal Criminal Police Office in Germany investigated thirty-three cases of suspected sex trafficking around the time of the World Cup, but concluded that only five of them were directly linked to the World Cup.<sup>167</sup> The victims linked to the World Cup were two twenty-year-old women from Bulgaria, one twenty-year-old man from Hungary, one nineteen-year-old woman from the Czech Republic, and one nineteen-year-old woman from Germany.<sup>168</sup>

Available evidence indicates that the demand for prostitutes did increase during the World Cup.<sup>169</sup> Police reports indicate that the number of prostitutes at the game venues and surrounding areas was high compared to the usual numbers of prostitutes in the area.<sup>170</sup> In Munich, for example, the number of prostitutes working during the World Cup rose from 500 to 800.<sup>171</sup> Evidence suggests that prostitutes from other regions in Germany

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160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.* ¶ 41. Although there are no accurate statistics on the number of women and girls trafficked to Germany for the World Cup in 2006, there was clearly no marked increase in sex trafficking during the period, as would be necessary for the 40,000 figure to be reached.

164. *See id.* ¶ 2 (stating that many experts believed the 40,000 figure was “unrealistic”).

165. *Id.* ¶ 43.

166. *Id.*

167. HENNIG ET AL., *supra* note 2, at 21.

168. *Id.*

169. THE FUTURE GROUP, *supra* note 6, at 12.

170. *Id.* at 11.

171. Mark Landler, *World Cup Brings Little Pleasure to German Brothels*, N.Y. TIMES, July 3,

travelled to the area to work at the games.<sup>172</sup> Reports differ on how much the demand for prostitution increased.<sup>173</sup> Some articles reported brothel owners being disappointed by the turnout, reporting a smaller increase in the number of customers than they had expected.<sup>174</sup> Others articles reported a huge increase in demand that resulted in prostitutes working double shifts to meet the demand.<sup>175</sup>

Despite the uncertainty about how much the demand increased, some scholars speculate that an increase in demand for prostitutes in countries that do not have legalized prostitution will lead to an increase in sex trafficking because voluntary legal prostitutes will not be available to meet the demand.<sup>176</sup> On the other hand, it can be argued that the increased demand for prostitution is directly linked to legalized prostitution and that in countries where prostitution is criminalized similar increases will not occur. From this view, although prostitution was legal, Germany was able to prevent a drastic increase in the demand for prostitution and sex trafficking by incorporating elements of a criminalized regime (e.g., regulating the sex industry closely and threatening to prosecute all abuses of the system) during the 2006 World Cup. Anecdotal evidence supports this theory: Brothel owners who reported a smaller increase in demand than they had hoped partially ascribed the lesser demand to the increased police presence around brothels due to the fear of sex trafficking.<sup>177</sup>

Why the fears of increased trafficking during the World Cup were unrealized is unclear.<sup>178</sup> Three possible explanations are the effectiveness of prevention efforts, the fan base being disinclined to visit prostitutes, and traffickers being uninterested in the event.<sup>179</sup> Certainly, the increased efforts of the NGOs were impressive and should be encouraged, but there is no conclusive evidence indicating that an increase in trafficking would have occurred without these campaigns.<sup>180</sup> World sporting events present a unique opportunity to raise awareness because of the mass appeal of the events and NGOs should be encouraged to use these events as part of larger campaigns directing sex trafficking in general as well as at the particular

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2006, at A3, available at <http://www.nytimes.com/2006/07/03/world/europe/03berlin.html>.

172. THE FUTURE GROUP, *supra* note 6, at 12.

173. Tavella, *supra* note 107, ¶ 44.

174. Landler, *supra* note 171.

175. Tavella, *supra* note 107, ¶ 44.

176. THE FUTURE GROUP, *supra* note 6, at 12–13.

177. Landler, *supra* note 171.

178. Tavella, *supra* note 107, ¶ 41.

179. HENNIG ET AL., *supra* note 2, at 6.

180. *Id.* at 29.

event.<sup>181</sup> It is possible, however, that the World Cup fans simply did not have the “time, money or inclination to visit prostitutes.”<sup>182</sup> Rather than visiting prostitutes, which is considered a solitary event, fans chose to spend time celebrating as part of a group.<sup>183</sup> Moreover, the event may not have seemed profitable to traffickers.<sup>184</sup> Trafficking involves great organization and logistics; traffickers may not have considered the World Cup a wise investment because it was a short one-time event.<sup>185</sup>

### C. *Sex Trafficking at the 2008 Olympics in Beijing*

The 2008 Beijing Olympics garnered vast international attention—even calls for the Games to be boycotted—because of widespread human rights abuses in China.<sup>186</sup> While some organizations called for boycotting the 2008 Games because of alleged human rights abuses, others saw the Games as a prime opportunity for the Chinese government to “demonstrate to its people and the world a commitment to . . . fundamental freedoms” and expressed hope that the “international spotlight and sustained international pressure [could] move Chinese leaders to remove obstacles to the full enjoyment of those rights for [China’s] citizens.”<sup>187</sup> The alleged human rights abuses perpetuated by the Chinese government included repressive infringements on freedom of information, religion, and speech, as well as unlawful evictions of Beijing residents and abuse of migrant workers.<sup>188</sup> Some scholars expressed surprise and dismay that concerns about sex trafficking for the Games were not vocalized as loudly or frequently as other human rights concerns.<sup>189</sup> The absence of vocalized concern about sex trafficking for the 2008 Games was especially confounding because both Canada and Great Britain were already addressing trafficking concerns for their upcoming 2010 and 2012 Games.<sup>190</sup>

Despite little vocalized international concern about sex trafficking at

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181. *Id.* at 30.

182. Tavella, *supra* note 107, ¶ 44.

183. *Id.*

184. HENNIG ET AL., *supra* note 2, at 29.

185. *Id.*

186. See, e.g., Reporters without Borders, *Repression Continues in China, One Month before Olympic Games*, June 25, 2007, <http://www.rsf.org/Repression-continues-in-China-one.html>; Human Rights Watch, *Beijing Olympics Basics*, [http://china.hrw.org/press/faq/beijing\\_olympics\\_basics](http://china.hrw.org/press/faq/beijing_olympics_basics) (last visited Apr. 10, 2010).

187. Human Rights Watch, *Beijing Olympics Basics*, [http://china.hrw.org/press/faq/beijing\\_olympics\\_basics](http://china.hrw.org/press/faq/beijing_olympics_basics).

188. *Id.*

189. Suki Falconberg, *Sex-for-Sale at the Olympics and at the World Cup*, AM. CHRON., Aug. 22, 2008, <http://www.americanchronicle.com/articles/view/71663>.

190. *Id.*

the 2008 Games, the Chinese government did include combating prostitution in the promises it made in order to secure the Olympic Games.<sup>191</sup> The government's *Legal Guidelines for Foreigners Entering, Exiting and Staying in China during the Olympics* prohibited "those who are believed to potentially engage in smuggling, narcotic trafficking or prostitution" from entering the country.<sup>192</sup> The *Guidelines* also stated that "China forbids obscene performances, prostitution and other forms of sexual services."<sup>193</sup> There is no evidence that the Chinese government or NGOs operating in China took any additional measures to specifically combat sex trafficking. The practicality of the Chinese government's plan to prohibit entrance to smugglers, narcotic traffickers, and prostitutes was questioned prior to the Games.<sup>194</sup> One journalist noted that "[e]ven for an authoritarian government as strict as Beijing, it seems an immense undertaking to pre-determine the . . . intent of millions of expected tourists."<sup>195</sup> The same journalist speculated that the Chinese sex trade would be in full operation during the Games because of the lucrative opportunity the influx of tourists for the Games provided.<sup>196</sup>

China is both a source and destination country for trafficking for the purposes of commercial sexual exploitation (such as prostitution) and many Chinese women are also trafficked internally for prostitution purposes.<sup>197</sup> Although China criminalizes prostitution, the Chinese prostitution industry is constantly expanding.<sup>198</sup> The Chinese sex industry flourishes in part because of tacit approval by authorities and unequal enforcement of the laws.<sup>199</sup> Lax and unequal enforcement of prostitution policies may also cause sex trafficking to go undetected. This may be part of a Chinese strategy to encourage international business on its soil, as foreign clients of prostitutes are only occasionally arrested for visiting prostitutes and gener-

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191. See William Sparrow, *Stamp out Sex with an Olympic Baton*, ASIA TIMES ONLINE, June 14, 2008, <http://www.atimes.com/atimes/China/JF14Ad02.html>.

192. *Explanation of the "Legal Guidelines for Foreigners Entering, Exiting and Staying in China during the Olympics,"* June 2, 2008, <http://hrichina.org/public/PDFs/PressReleases/Legal-Advisory-04Jun08-Guidelines-Translation.pdf> (Human Rights in China trans.).

193. *Id.* at 12.

194. Sparrow, *supra* note 191.

195. *Id.*

196. *Id.*

197. TIP REPORT, *supra* note 5, at 91.

198. Maureen Fan, *Oldest Profession Flourishes in China*, WASH. POST, Aug. 5, 2007, at A16, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/08/04/AR2007080401309.html>.

199. Andreas Landwehr, *Despite the Clampdown, Prostitution Booms During Olympics*, MONSTERS AND CRITICS, Aug. 21, 2008, [http://www.monstersandcritics.com/sport/olympics2008/news/article\\_1425753.php/Depite\\_the\\_clampdown\\_prostitution\\_booms\\_during\\_the\\_Olympics\\_\\_Feature](http://www.monstersandcritics.com/sport/olympics2008/news/article_1425753.php/Depite_the_clampdown_prostitution_booms_during_the_Olympics__Feature).

ally face only a few days of detainment if they are arrested.<sup>200</sup> Trafficked women are often charged for the crime of prostitution while their traffickers are ignored.<sup>201</sup>

There are currently no reports available about sex trafficking for the 2008 Beijing Olympics. The lack of reports on sex trafficking for the Games does not necessarily indicate that sex trafficking did not occur. Because the international community was preoccupied with concerns about other human rights abuses perpetuated by the Chinese government, sex trafficking simply may not have registered as a large concern. Reports on prostitution, however, indicate that prostitution continued to occur in Beijing during the Games, but that the industry did not expand and may have even diminished due to increased police pressure. The absence of a surge in the sex industry, coupled with strict border controls, indicates that sex trafficking probably did not increase for the Games.

While many Chinese businesses, including nightclubs, predicted a boom in business during the Games, the Chinese government's tightening of visa and border requirements seems to have prevented this boom.<sup>202</sup> Prostitution was not widely visible during the Games but it continued to occur.<sup>203</sup> One Chinese prostitute explained that even during the Games there was little concern that the police would bother foreigners about prostitution.<sup>204</sup> Nonetheless, there was no "boom" for the Chinese prostitution industry during the Games.<sup>205</sup> Some of the less reputable bars in Beijing were shut down prior to the Olympics, and those that remained open did not experience the expected influx in customers.<sup>206</sup> One nightclub owner expressed dismay that his club was not packed "all night every night until dawn" as he had expected.<sup>207</sup> Other bars and night-shift taxi drivers were similarly dismayed by a downturn in business because of the government enforcing prostitution laws more strictly.<sup>208</sup>

As with the 2004 Olympics in Athens and the 2006 World Cup in Germany, it is possible that the sex industry—including sex trafficking—was forced deeper underground during the Games and that more sex trafficking occurred for the Games than was documented. This concern is

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200. *Id.*

201. Jason Chan, *Current Development: Decriminalization of Prostitution in China*, 13 *NEW ENG. J. INT'L & COMP. L.* 329, 338 (2007).

202. *Going for Gold*, *THE ECONOMIST*, Aug. 14, 2008, at 41–42.

203. Landwehr, *supra* note 199.

204. *Id.*

205. *Going for Gold*, *supra* note 202.

206. Landwehr, *supra* note 199.

207. *Going for Gold*, *supra* note 202.

208. *Id.*

more reasonable in countries that legalize prostitution, such as Greece and Germany, because tourists attending the sporting event are more likely to frequent prostitutes when they don't fear criminal retribution. In China, where prostitution is criminalized and the government is known for being extremely strict, tourists are less likely to be tempted to illegally frequent prostitutes, despite loose enforcement of the law for foreigners. Moreover, given the international community's great concern over the Beijing Olympics, international organizations were extremely vigilant in investigating alleged human rights violations in China during the Games and would likely have discovered and reported on any drastic increase in sex trafficking at the Games.

#### IV. USING WORLD SPORTING EVENTS TO CAMPAIGN FOR PROSTITUTION POLICIES

Opponents of legalized prostitution argue that Athens and Germany were relatively successful in preventing a surge of sex trafficking for the world sporting events they hosted *in spite of* the legalization of prostitution, while advocates of legalization argue that these successes were *because of* the legalization of prostitution. For example, Jennifer Roemhildt, executive director of the anti-legalization NGO Lost Coin in Athens, attributes the absence of reports of increased sex trafficking during the 2004 Olympics to "Divine Intervention" and continues to call for the criminalization of prostitution to combat sex trafficking.<sup>209</sup> On the other side of the spectrum, the B.C. Coalition of Experiential Communities argues that legalized prostitution allows willing prostitutes to meet the demands of fans, eliminating the need for sex trafficking for world sporting events.<sup>210</sup> But in the end, a country's policy approach concerning prostitution may not truly affect sex trafficking.<sup>211</sup> As Michele Clark, head of the anti-trafficking assistance unit at the Organization for Security and Cooperation in Europe (OSCE), explains, "[w]hat we can say for certain is that human trafficking exists everywhere. . . . Where you have an illegal sex industry you have abuses of it. Where you have legalized prostitution, you also have abuses."<sup>212</sup>

Endorsement of the differing approaches to prostitution policies is often driven by moral and social values rather than concern about sex traf-

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209. *Hearings*, *supra* note 1, at 20–21 (prepared statement of Jennifer Roemhildt, Executive Director, Lost Coin, Athens, Greece).

210. *See* White, *supra* note 9.

211. *See* Tzortzis, *supra* note 152.

212. *Id.*

ficking.<sup>213</sup> Opponents and advocates of each approach are generally opposed to sex trafficking, but their positions on prostitution are generally adopted because of their values rather than their concerns about sex trafficking.<sup>214</sup> Although a country's approach to regulating prostitution may not affect the country's ability to combat sex trafficking for world sporting events, world sporting events do provide advocates of each approach a convenient platform to campaign for their preferred method. Because world sporting events garner broad international attention, advocates of the various approaches to regulating prostitution can use that attention to further their positions. By linking the risks of sex trafficking at these events to the issue of prostitution in general, morally charged arguments both for and against prostitution can be brought to international attention.

The United States took the forefront in the international attack on Germany's legalized prostitution during the 2006 World Cup.<sup>215</sup> The United States has been vocal in its belief that it is morally obligated to eradicate both prostitution and sex trafficking<sup>216</sup> and the 2006 World Cup provided a perfect platform for its campaign against prostitution. The House of Representatives' Subcommittee on Africa, Global Human Rights and International Operations held a hearing entitled *Germany's World Cup Brothels: 40,000 Women and Children at Risk of Exploitation through Trafficking*, where members of the Subcommittee and other interested parties, including representatives from international NGOs, joined in disparaging Germany's policy of legalized prostitution.<sup>217</sup> Notably, Republican Congressman Christopher H. Smith, a primary drafter of the United States' Trafficking Victims Protection Act, argued that, "especially since the matches were being held in Germany, which legalized pimping and prosti-

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213. Hendrick Wagenaar, *Prostitution Policy is Too Morally Charged*, March 04, 2008, [http://www.eukn.org/netherlands/news/2008/04/interview-hendrik-wagenaar\\_1023.html](http://www.eukn.org/netherlands/news/2008/04/interview-hendrik-wagenaar_1023.html).

214. *Id.*

215. Milivojevic & Pickering, *supra* note 146, at 31.

216. In signing the 2006 Trafficking Victims Protection Reauthorization Act, President Bush articulated his view that "America has a particular duty to fight this horror because human trafficking is an affront to the defining promise of our country." Press Release, U.S. Office of the Press Sec'y, President Signs H.R. 972, Trafficking Victims Protection Reauthorization Act, Jan. 10, 2006, <http://georgewbush-whitehouse.archives.gov/news/releases/2006/01/print/20060110-3.html>. Joseph E. Schmitz, the Bush-appointed inspector general of the Defense Department, explained:

Whatever else one might say about sex slavery in the 21st century . . . proactive measures taken by the U.S. . . . reaffirm the "moral truth" that prostitution and human trafficking fall within those "dissolute and immoral practices" envisioned by our Continental Congress when it prescribed a duty to "guard against and suppress" such practices through, *inter alia*, vigilance by leaders in "inspecting the conduct of all persons who are placed under their command."

Eartha Melzer, *Trafficking in Politics: Bush's Strong Rhetoric on Sex Slavery Masks Policy Failures*, IN THESE TIMES, Mar. 14, 2005, <http://www.inthesetimes.com/site/main/article/2007/>.

217. *Hearings*, *supra* note 1.

tution in 2001 . . . World Cup fans would be legally free to rape women in brothels or even mobile units designed specifically for this form of exploitation.”<sup>218</sup>

Abolitionist feminist organizations, religious communities, and faith based organizations, both in the United States and abroad, joined in the campaign against legalized prostitution under the veil of voicing concern about sex trafficking at the 2006 World Cup.<sup>219</sup> Even the European Union (EU), which had pledged to avoid running a “campaign against normal prostitution,” eventually took the abolitionist position, with the EU’s employment commissioner Vladimir Spidla declaring that “very few people become prostitutes out of their free will,” and that “prostitution is incompatible with human dignity.”<sup>220</sup> Accordingly, most media attention leading up the 2006 World Cup manipulated concerns about sex trafficking to justify moral opposition to prostitution in general rather than sex trafficking in particular:

Soon after the first media headlines about new “sex huts” built to satisfy the demand for commercial sex and a possible increase in the number of sex workers in Germany during the World Cup, the abolitionist coalition of women’s groups, faith communities and human rights organizations joined forces, sparking the panic that predominantly targeted sex work rather than trafficking, arguing that “prostitution is to sex trafficking what coal is to steam engines.”<sup>221</sup>

The tables have turned in 2010—the year when Canada hosted the winter Olympics and South Africa will be hosting the World Cup. Because both Canada and South Africa criminalize prostitution,<sup>222</sup> the 2010 events provide an opportunity for advocates of legalization or decriminalization of prostitution to manipulate concerns about sex trafficking at world sporting events to justify their views.<sup>223</sup> Proposals to legalize prostitution for the 2010 World Cup and Olympics have not caused an international media frenzy like the one surrounding the 2006 World Cup, however. This could be because the relatively low number of trafficked persons identified during the 2006 World Cup may have assuaged international fears about sex trafficking for world sporting events, causing the international community to be less interested in commenting on the upcoming events. Additionally,

218. *Id.* at 2 (statement of Rep. Christopher Smith, Chairman).

219. Milivojevic & Pickering, *supra* note 146, at 32.

220. *Id.* at 35 (quoting Expatica, 8 March 2006).

221. *Id.* at 31 (quoting the Christianity Today website).

222. In Canada prostitution is legal but most activities associated with it, such as soliciting or owning, operating, working at, or visiting a brothel, are criminalized, making prostitution effectively illegal. Elaine Craig, *Re-Interpreting the Criminal Regulation of Sex Work in Light of R. c. Labaye*, 12 CAN. CRIM. L. REV. 327, 342 (2008).

223. See White, *supra* note 9; Parker, *supra* note 9.

opponents of legalization, especially the United States, may be refraining from the debates because they do not believe that either Canada or South Africa will actually decide to legalize prostitution. Canada, in fact, ultimately rejected legalization, but debates about prostitution and sex trafficking at the Olympics continued through the commencement of the Games. South Africa may still decide to legalize prostitution in anticipation of the World Cup. If South Africa chooses to do so, the international community—especially the United States—will certainly be watching and evaluating the results.

## V. SEX TRAFFICKING IN CANADA AND SOUTH AFRICA

The international community will be watching and judging Canada and South Africa as they host the Olympics and the World Cup. Some politicians and NGOs in both South Africa and Canada proposed legalizing prostitution in preparation for these events.<sup>224</sup> While some members of the public support these proposals, many oppose them.<sup>225</sup> As discussed in the preceding section, reconsidering prostitution policies in anticipation of the events may not actually affect sex trafficking, and the events may not even cause a surge in sex trafficking. Nonetheless, countries hosting world sporting events should use the international attention to their advantage by using the events as a platform for showcasing their commitments to combating human trafficking.

This section examines current anti-trafficking and prostitution policies in Canada and South Africa and describes the legalization of prostitution debates in each country. Part A argues that Canada correctly rejected calls for legalization prior to the recently completed Vancouver Olympics, but failed to effectively utilize the Olympics as a vehicle for demonstrating Canada's commitment to combating trafficking. Part B argues that South Africa should reject legalization, strengthen its anti-trafficking efforts, and truly utilize the World Cup as a vehicle for demonstrating South Africa's commitment to combating trafficking.

### A. *Sex Trafficking, Prostitution Laws, and the 2010 Vancouver Olympics*

Canada is both a source and a destination country for sex trafficking.<sup>226</sup> Women and children (primarily from Asia and Eastern Europe) are

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224. See White, *supra* note 9; Parker, *supra* note 9.

225. See White, *supra* note 9; Parker, *supra* note 9.

226. TIP REPORT, *supra* note 5, at 86.

trafficked to Canada for sexual exploitation.<sup>227</sup> Because Canada has less stringent border restrictions than the United States, numerous women and children are trafficked through Canada for sexual exploitation in the United States.<sup>228</sup> Canadian women and girls are also trafficked and sexually exploited within Canada.<sup>229</sup> Sex tourism (particularly tourists from the United States) increases the demand for trafficking women and children to Canada for sexual exploitation.<sup>230</sup>

Canada is a party to the *Palermo Protocol* and was actively involved in the negotiations leading to its adoption by the United Nations.<sup>231</sup> Despite this involvement, Canada did not enact trafficking-specific legislation until 2005.<sup>232</sup> In 2005, Section 279.01 of the Criminal Code criminalized the offense of trafficking for all forms of exploitation.<sup>233</sup> Trafficking is punished by up to fourteen years imprisonment.<sup>234</sup> The penalty can be expanded to a life sentence when committed under aggravated circumstances (e.g., when the victim is kidnapped, sexually assaulted, or killed during commission of the offense).<sup>235</sup> In some cases, trafficking across international borders can also be prosecuted under Section 118 of Canada's Immigration and Refugee Protection Act (IRPA), which instills a maximum penalty of life imprisonment and a one million dollar fine.<sup>236</sup> Receiving a financial or material benefit from trafficking is an offense punishable by up to 10 years of imprisonment<sup>237</sup> and withholding or destroying documents in order to commit or facilitate the offense of trafficking is punishable by up to five years of imprisonment.<sup>238</sup>

While these laws fully comply with the *Palermo Protocol*, Canada's enforcement efforts are weak.<sup>239</sup> The United States' 2008 *Trafficking in Persons Report* (issued each year by the U.S. Department of State) criticized Canada for weak enforcement of its trafficking laws, noting that only

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227. *Id.* at 86.

228. *Id.*

229. *Id.*

230. *Id.*

231. JACQUELINE OXMAN-MARTINEZ & JILL HANLEY, A FOLLOW-UP STUDY OF CANADIAN POLICY ON HUMAN TRAFFICKING: IMPACTS OF THE IMMIGRATION AND REFUGEE PROTECTION ACT 6 (2004), available at [http://im.metropolis.net/research-policy/research\\_content/doc/oxman-martinez%20trafic.pdf](http://im.metropolis.net/research-policy/research_content/doc/oxman-martinez%20trafic.pdf).

232. TIP REPORT, *supra* note 5, at 86.

233. Criminal Code, R.S.C., § 279.01 (2005) (Can.).

234. *Id.* § 279.01(1)(b).

235. *Id.* § 279.01(1)(a).

236. Immigration and Refugee Protection Act, R.S.C., ch. 27, § 119 (2001) (Can.).

237. Criminal Code, R.S.C., § 279.02 (Can.).

238. *Id.* § 279.03.

239. TIP REPORT, *supra* note 5, at 86.

thirteen individuals have been charged under Section 279.01, and recommending that Canada increase efforts toward investigating trafficking cases and prosecuting traffickers.<sup>240</sup>

In accordance with the *Palermo Protocol*, the Canadian government also takes efforts to prevent human trafficking and provide protection and assistance to victims of trafficking.<sup>241</sup> Until recently, the Canadian government's commitment to protecting and assisting victims of trafficking was a largely symbolic commitment.<sup>242</sup> The Canadian government stated a commitment to providing services to victims but failed to develop a system for actually providing these services.<sup>243</sup> As a result, many victims of trafficking were immediately deported for illegal migration before they could be identified as victims.<sup>244</sup> In 2007, published criticism of the Canadian government's efforts spurred governmental action, and the government is now increasing its coordinated efforts toward combating trafficking.<sup>245</sup> The government is increasing anti-trafficking training for law enforcement officials, providing victims with a 180 day reflection period during which they are provided with medical and psychiatric care, and using a victim's fund that supplies monetary assistance to NGOs that provide services for victims.<sup>246</sup>

Unlike human trafficking, prostitution is not illegal in Canada.<sup>247</sup> Almost all acts associated with prostitution are illegal, however, making prostitution *de facto* illegal.<sup>248</sup> Although the actual exchange of sex for money is not illegal, prostitution is indirectly criminalized by laws criminalizing keeping, visiting, or living in a "bawdy-house;"<sup>249</sup> inducing others into prostitution, or living off the means of a prostitute;<sup>250</sup> and "communicat[ing] or attempt[ing] to communicate with any person for the purpose of engaging in prostitution or of obtaining the sexual services of a prostitute."<sup>251</sup> The law criminalizing keeping, visiting, or living in a "bawdy-house" (the Bawdy House Law) makes it illegal for a woman to sell sex in

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240. *Id.*

241. THE FUTURE GROUP, *supra* note 6, at 16.

242. Lorraine Chan, *Reforming Canada's Record on Human Trafficking*, UBC REPORTS, Sept. 6, 2007, <http://www.publicaffairs.ubc.ca/ubcreports/2007/07sep06/reform.html>.

243. *Id.*

244. *Id.*

245. *Id.*

246. TIP REPORT, *supra* note 5, at 86-87.

247. Craig, *supra* note 222, at 342.

248. *Id.*

249. Criminal Code, R.S.C., § 210 (Can.). A "bawdy-house" is defined as "a place that is . . . kept or occupied . . . for the purpose of prostitution or the practice of acts of indecency." *Id.* § 197.

250. *Id.* § 212.

251. *Id.* § 213.

her own home because she could be prosecuted for living in a bawdy-house.<sup>252</sup> A woman selling sex outside of her home may be prosecuted for communicating for the purposes of prostitution in a public place.<sup>253</sup>

Advocates for the legalization or decriminalization of prostitution in Canada argue that the laws that make prostitution *de facto* illegal harm prostitutes by forcing them to engage in prostitution in more dangerous underground settings.<sup>254</sup> Prostitution, they argue, is not harmful to society, but criminalizing all acts associated with prostitution is harmful to prostitutes, especially street prostitutes.<sup>255</sup> Advocates argued that prostitution should be decriminalized or legalized prior to the 2010 Olympics to ensure that the projected increase in demand for prostitution would be accommodated in a manner that was safe for prostitutes.<sup>256</sup> Moving prostitution from the streets to legal brothels, they argued, would reduce violence associated with prostitution.<sup>257</sup> Moreover, they argued that legalizing prostitution would create a thriving business, helping to fulfill the Olympic committee's goal of fostering local economic development.<sup>258</sup>

Advocates for legalization (both in anticipation of the Olympics and generally) argue that the Canadian Supreme Court's recent decision in *R. v. Labaye*<sup>259</sup> demonstrates that Canadians are becoming more tolerant of liberal sexual activity and suggests that morality-based justifications for criminalizing prostitution are eroding.<sup>260</sup> Specifically, they argue that the Bawdy House Law improperly enforces moral standards and should be applied only in circumstances where actual harm is caused by the activities.<sup>261</sup> Section 197 of the Criminal Code defines a bawdy house as "a place that is . . . kept or occupied . . . for the purpose of prostitution or the practice of acts of indecency."<sup>262</sup> In *Labaye*, the Canadian Supreme Court held that the legal definition of "indecency" was not determined by society's moral tastes.<sup>263</sup> Instead, the Court introduced an objective test for determin-

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252. Craig, *supra* note 222, at 343.

253. *Id.* at 342.

254. John Lowman, *Reconvening the Federal Committee on Prostitution Law Reform*, 171 CAN. MED. ASS'N J. 147 (2004), available at <http://www.cmaj.ca/cgi/reprint/171/2/147>.

255. *Id.*

256. Wency Leung, *Sex Workers Plan Brothel in 2010 Olympics City*, WOMEN'S ENEWS, Oct. 11, 2007, <http://www.womensenews.org/story/prostitution-and-trafficking/071011/sex-workers-plan-brothel-in-2010-olympics-city>.

257. *Id.*

258. *Id.*

259. *R. v. Labaye*, [2005] 3 S.C.R. 728 (Can.).

260. Craig, *supra* note 222, at 343.

261. *Id.* at 344-46.

262. Criminal Code, R.S.C., § 197 (Can.).

263. *R. v. Labaye*, [2005] 3 S.C.R. 728 (Can.), para. 14.

ing whether conduct was “indecent”:

1. That, by its *nature*, the conduct at issue causes harm or presents a significant risk of harm to individuals of society in a way that undermines or threatens to undermine a value reflected in and thus formally endorsed through the Constitution or similar fundamental laws . . . [and]

2. That the harm or risk of harm is of a *degree* that is incompatible with the proper functioning of society.<sup>264</sup>

Applying this test the Court found that a members-only sex club that provided a place for its members to meet others interested in group sex and provided a room where members participated in and watched group sex was not a bawdy-house because the behavior did not cause harm and was, therefore, not indecent.<sup>265</sup>

Advocates of legalization in Canada argue that the *Labaye* test should be applied to the “prostitution” component of the Bawdy House Law as well as the “indecent” component.<sup>266</sup> Just as society’s view of sexual morality cannot be used to define what behavior is indecent, the societal view that prostitution is immoral should not be used to justify acts of consensual prostitution being criminalized through the Bawdy House Law.<sup>267</sup> Applying the *Labaye* test to prostitution would mean that only prostitution that caused significant harm (e.g., because there was no consent or the consent was coerced, the sex involved a victim of human trafficking, the sex involved a child, etc.) would be illegal under the Bawdy House Law.<sup>268</sup>

Even if the *Labaye* reasoning can be applied to prostitution and legalization is in Canada’s future, the Canadian government properly decided against legalization prior to the 2010 Olympics. The Olympics were not the appropriate time to enact a legalized regime because hastily decriminalizing prostitution and the operation of bawdy-houses (for prostitution purposes) could have led to unsystematic and ineffective application of regulations intended to prevent abuse and trafficking in these institutes. Legalized prostitution could have encouraged tourists to visit brothels and use prostitutes whereas the same tourists would not do so if their actions were criminalized.

By rejecting proposals for legalization prior to the Vancouver Olympics, the Canadian government ensured that its Olympic preparations could focus specifically on strengthening its anti-trafficking efforts, rather than on determining how to regulate a legalized prostitution industry. Unfortu-

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264. *Id.* at para. 62.

265. *Id.* at para. 70.

266. Craig, *supra* note 222, at 343.

267. *Id.*

268. *Id.* at 344.

nately, aside from rejecting legalization, the Canadian government did little to demonstrate a united stance against human trafficking. Efforts were probably made to strengthen anti-trafficking efforts, but the extent of these efforts was downplayed and there is little information available about what exactly these efforts entailed. Much media attention was paid to criticisms of the government's lack of action and debates among religious organizations, prostitution advocacy groups, the government, and the police about whether the Olympics would increase sex trafficking, and little attention was paid to actual efforts to combat human trafficking or strengthen existing anti-trafficking policies.<sup>269</sup> Just days before the commencement of the Games, a coalition of academics, politicians, and women's groups, known as the Citizens Summit against Sex Slavery, "gave the Vancouver Olympics organizing committee, the B.C. government and the federal government an 'F' for 'failing to make sure women and youth are secure against human trafficking during the 2010 Olympics.'"<sup>270</sup>

In January of 2009, Canadian Parliament Member Joy Smith introduced Bill C268<sup>271</sup> (which would amend the Criminal Code to include a minimum punishment of imprisonment for a term of five years for offenses involving trafficking of persons under the age of eighteen) with hopes that the Bill would be enacted before the Olympics.<sup>272</sup> Although the bill was passed by the House of Commons, the Parliament prorogated<sup>273</sup> before it could be passed by the Senate, and the bill was not enacted prior to the Olympics.<sup>274</sup> No other trafficking specific legislation was proposed or enacted prior to the Olympics.

A few faith-based Canadian NGOs launched human trafficking awareness campaigns in anticipation of the Olympics. Notably, the Cana-

269. See, e.g., *Human-trafficking Fight Draws Criticism*, CBC NEWS, Sept. 24, 2009, <http://www.cbc.ca/canada/british-columbia/story/2009/09/24/bc-salvation-army-sex-trafficking.html>; Rikki Ratliff, *As Olympic Flame Burns, Canada's Sex Industry Heats Up*, HOLY POST, Nov. 3, 2009, <http://network.nationalpost.com/np/blogs/holy-post/archive/2009/11/03/as-olympic-flame-burns-canada-s-sex-industry-heats-up.aspx>.

270. Mike Barber, *Vancouver Olympics Get an 'F' for Failing to Curb Sex Trafficking Group*, OTTAWA CITIZEN, Feb. 9, 2010, [http://www.ottawacitizen.com/news/Vancouver+Olympics+failing+curb+trafficking+group/2542883/story.html?utm\\_source=feedburner&utm\\_medium=feed&utm\\_campaign=Feed%3a+canwest%2F7811+\(Ottawa+Citizen++Olympics+2010\)](http://www.ottawacitizen.com/news/Vancouver+Olympics+failing+curb+trafficking+group/2542883/story.html?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3a+canwest%2F7811+(Ottawa+Citizen++Olympics+2010)).

271. An Act to amend the Criminal Code, Bill C-268, 40th Parl., 2d Sess. (2009) (Can.) (as passed by the House of Commons), available at <http://www2.parl.gc.ca/HousePublications/Publication.aspx?Docid=4117133&file=4>.

272. Joy Smith, *Prorogation and C-268*, [http://www.joysmith.ca/index.asp?ID=76&cat\\_ID=1&sub\\_ID=501](http://www.joysmith.ca/index.asp?ID=76&cat_ID=1&sub_ID=501) (last visited Apr. 10, 2010).

273. Prorogation is the end of a session of the Canadian Parliament. Compendium, House of Commons-Procedure Online, [http://www.parl.gc.ca/compendium/web-content/c\\_g\\_parliamentarycycle-e.htm](http://www.parl.gc.ca/compendium/web-content/c_g_parliamentarycycle-e.htm) (last visited Feb. 22, 2010).

274. Joy Smith, *supra* note 272.

dian Religious Conference (CRC) created an educational kit entitled “We are a Global Village—Human Trafficking and the 2010 Olympics” that included lesson plans for teachers and a DVD called “The Oldest Oppression.”<sup>275</sup> The kit was intended to increase awareness of human trafficking among Canadian high school students and reduce their risk of becoming victims of trafficking.<sup>276</sup> The Salvation Army prepared brochures, bulletins, and posters about sex trafficking and trained volunteers to detect sex trafficking at the Games.<sup>277</sup> Resist Exploitation, Embrace Dignity (REED) also launched an awareness campaign and distributed posters, stickers, buttons, and t-shirts with the message “Buying Sex is not a Sport.”<sup>278</sup> Each of these organizations opposes prostitution and their messages carried moral overtones about the role of prostitution in society.<sup>279</sup> The fact that the campaigns came from faith-based organizations that conflated prostitution with sex trafficking did not undermine the laudable goal of raising awareness about sex trafficking, but the absence of awareness-raising campaigns from other perspectives was conspicuous and unfortunate.

Vancouver Police Inspector John de Hass publicly disparaged the Salvation Army’s campaign for being emotionally charged and failing to propose concrete actions.<sup>280</sup> De Hass noted that the police would launch their own—presumably less emotional—awareness campaign during the month of the Olympics, but did not explain what concrete actions the campaign would propose or how the campaign would be more effective than the Salvation Army’s campaign.<sup>281</sup> Inspector de Hass added that “it wouldn’t make a lot of sense” for the Olympics to create a surge in trafficking.<sup>282</sup> Similarly, Canada’s Public Safety Minister, Peter Van Loan, asserted that human trafficking was the “focus of the government’s attention” while preparing for the Olympics, but quickly added, “[w]e have not seen any evidence of any special human trafficking plans that organized crime, say,

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275. Frank Stirk, *Salvation Army to Help Deter Olympics Sex Traffickers*, July 31, 2009, <http://www.salvationarmy.ca/2009/07/31/salvation-army-to-help-deter-olympics-sex-traffickers/>.

276. *Id.*

277. *Id.*

278. REED: Resist Exploitation, Embrace Dignity, *Buying Sex is Not a Sport*, <http://www.embracedignity.org/?page=buyingsexisnotasport> (last visited Feb. 22, 2010).

279. See *Canada: Prostitution, Porn Linked to Human Trafficking*, CRC NEWS, May 21, 2009, <http://crc-news.blogspot.com/2009/05/canada-prostitution-porn-linked-to.html>; REED: Resist Exploitation, Embrace Dignity, <http://www.embracedignity.org/?page=home&archive=2009> (last visited Feb. 22, 2010); The Salvation Army, *The Truth Isn’t Sexy, The Lies vs. The Truth*, <http://www.thetruthisntsexy.ca/sex-lies-the-truth/theliesvsthe truth> (last visited Feb. 22, 2010).

280. *New Anti-sex-trafficking Campaign Before Games: Police*, CBC NEWS, Sept. 28, 2009, <http://www.cbc.ca/canada/british-columbia/story/2009/09/28/bc-salvation-army-human-sex-trafficking-police.html>.

281. *Id.*

282. *Id.*

might be utilizing around the Olympics.”<sup>283</sup> Although the government and police could be correct about a surge in human trafficking being unlikely, their focus on dispelling “rumors” about sex trafficking at the Olympics created the impression that the Canadian authorities do not take human trafficking seriously. Moreover, by failing to initiate their own public awareness campaigns, the government allowed morally charged faith-based awareness campaigns to steer the public discourse surrounding the risk of sex trafficking at the Olympics. If the police and government were hoping to prevent a debate about prostitution, sex trafficking, and the Olympics, their interests would have been better served by producing their own substantive campaigns and action plans, rather than merely criticizing the campaigns of others.

Ultimately, Canada’s failure to significantly strengthen anti-trafficking efforts prior to the 2010 Olympics may have had little effect on sex trafficking at the Olympics.<sup>284</sup> It will, however, have an effect on the way the international community judges Canada as an Olympic host country. Unlike China, Canada was not plagued with allegations of human rights abuses that needed to be eliminated or concealed prior to the Games. The main scandal surrounding the Vancouver Olympics was the possibility of an increase in sex trafficking during the Games. Accordingly, the Olympics were a prime opportunity for Canada to showcase its commitment to combating sex trafficking. Canada failed to utilize this opportunity and left the general impression that the Canadian government is not significantly concerned about sex trafficking.

*B. Sex Trafficking, Prostitution Laws, and the 2010 World Cup in South Africa*

Like Canada, South Africa is both a source and a destination country for sex trafficking.<sup>285</sup> As a destination country, South Africa is an endpoint for women, children, and some men (primarily from other African countries, southeastern Asia, and Eastern Europe) who are trafficked for sexual exploitation in South Africa.<sup>286</sup> As a source country, South African women and children are trafficked internally and externally (primarily to Ireland, the Middle East, and the United States) for commercial sexual exploitation

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283. Harleen Kaur, *Canadian Government Gears to Curb Human Trafficking During Olympics*, CANADAUPDATES, Nov. 26, 2009, <http://www.canadaupdates.com/content/canadian-government-gears-curb-human-trafficking-during-olympics>.

284. No reports about sex trafficking at the Olympics were released by the date of this article’s publication.

285. TIP REPORT, *supra* note 5, at 227.

286. *Id.* at 228.

and domestic servitude.<sup>287</sup> Child sex tourism, which is prevalent in many South African cities, increases the demand for sex trafficking in South Africa.<sup>288</sup>

Although South Africa signed the *Palermo Protocol* in 2000 and ratified it in 2004, South Africa has not enacted any comprehensive trafficking legislation.<sup>289</sup> Traffickers can only be prosecuted for committing related crimes, such as kidnapping, assault, extortion, and slavery.<sup>290</sup> The Criminal Law (Sexual Offences and Related Matters) Amendment Act<sup>291</sup> (Sexual Offences Act), which came into effect in December 2007, provides interim provisions related to sex trafficking that are valid pending the enactment of comprehensive anti-trafficking legislation.<sup>292</sup> The Sexual Offences Act partially complies with the *Palermo Protocol* by creating an offense of trafficking for sexual exploitation that can be punished by life imprisonment.<sup>293</sup> The Act also prohibits charging victims of trafficking with offenses associated with their victimization (e.g., prostitution or migration-related offenses).<sup>294</sup> The Children's Act<sup>295</sup> also provides interim provisions criminalizing the trafficking of children for sexual and other forms of exploitation. The Act defines exploitation as including all forms of slavery or similar practices, forced marriage, debt bondage, sexual exploitation, servitude, forced labor or services, prohibited forms of child labor, and the removal of body parts.<sup>296</sup> Trafficking children is punished by a fine and up to twenty years imprisonment.<sup>297</sup>

The South African government intends to repeal the trafficking-related provisions of both the Sexual Offences Act and Children's Act when comprehensive anti-trafficking legislation is adopted and the anti-trafficking

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287. *Id.*

288. *Id.*

289. Luke Hilton, *Contemporary Slavery: Sex Trafficking in South Africa and Suggested Solutions*, 3 POSTAMBLE 48, 52 (2007), available at <http://www.africanstudies.uct.ac.za/postamble/vol3-1/slavery.pdf>.

290. SOUTH AFRICAN LAW REFORM COMMISSION, REPORT ON TRAFFICKING IN PERSONS 11 (2008) [hereinafter SALRC REPORT], available at [http://www.justice.gov.za/salrc/reports/r\\_pr131\\_trafficking\\_2008.pdf](http://www.justice.gov.za/salrc/reports/r_pr131_trafficking_2008.pdf).

291. Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 [hereinafter Sexual Offenses Act], available at <http://www.childlawsa.com/docs/Sexual%20Offences%20Amendment%20Act%2032%20of%202007.pdf>.

292. SALRC REPORT, *supra* note 290, at 11.

293. Sexual Offenses Act, *supra* note 291, §§ 70–72.

294. *Id.* § 71 (5).

295. Children's Act 38 of 2005 [hereinafter Children's Act], available at [http://www.saflii.org/za/legis/num\\_act/ca2005104.pdf](http://www.saflii.org/za/legis/num_act/ca2005104.pdf).

296. *Id.* § 1.

297. *Id.* § 305(8).

provisions become incorporated in this legislation.<sup>298</sup> These temporary provisions are useful for combating trafficking but are insufficient because they do not criminalize the trafficking of adults for non-sexual exploitation (e.g., forced labor), and because they do not include provisions for the prevention of human trafficking or protection of victims of trafficking as required by the *Palermo Protocol*. In August 2008, the South African Law Reform Commission produced a draft bill of comprehensive anti-trafficking legislation including measures for prosecution of traffickers and facilitators of trafficking, prevention of human trafficking, and protection of victims of trafficking.<sup>299</sup> Until this bill is enacted into law, the Sexual Offences Act and the common law offenses of kidnapping and assault are the most effective legislation for prosecuting traffickers.<sup>300</sup>

The Sexual Offences Act also contains important prostitution-related legislation. The Act amends the Sexual Offences Act of 1957 to criminalize the purchase of sex as well as the sale of sex.<sup>301</sup> South Africa criminalized prostitution in 1988 when Section 20(1)(aA) was added to the Sexual Offences Act of 1957.<sup>302</sup> Section 20(1)(aA) makes it an offense to engage in sexual intercourse or perform indecent acts for reward.<sup>303</sup> Section 20(1)(aA) was frequently criticized for perpetuating gender biases by criminalizing the (usually female) prostitute but not the (usually male) client.<sup>304</sup> Concerns about gender biases in the law, as well as concerns about criminalizing private behavior between consenting adults, caused many South Africans to argue that the law relating to prostitution needed to be repealed (and prostitution decriminalized) or amended to include provisions criminalizing the client.<sup>305</sup>

The constitutionality of Section 20(1)(aA) was affirmed in *S. v. Jordan and Others*.<sup>306</sup> The majority of the South African Constitutional Court held that Section 20(1)(aA) did not discriminate against women because the provision was gender neutral and criminalized male prostitutes as well

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298. SALRC REPORT, *supra* note 290, at 11.

299. *Id.* at Annexure D.

300. *Id.* at 11.

301. Sexual Offences Act, *supra* note 291, at 88–90.

302. Jayne Arnott, Sex Worker Education and Advocacy Taskforce, *Law Reform in South Africa: Presentation at the 15th International AIDS Conference: Bangkok, June 4, 2006*, [http://www.sweat.org.za/index.php?option=com\\_content&task=view&id=60&Itemid=28#](http://www.sweat.org.za/index.php?option=com_content&task=view&id=60&Itemid=28#).

303. *Id.*

304. Kakule Kalwahali, *The Criminalization of Prostitution in South African Criminal Law* 18 (November 2005) (unpublished LLD dissertation, University of South Africa), available at <http://etd.unisa.ac.za/ETD-db/theses/available/etd-05312006-142512/unrestricted/01dissertation.pdf>.

305. *Id.* at 26.

306. *S. v. Jordan*, 2002 (11) BLCR 1117 (CC).

as female prostitutes.<sup>307</sup> The Court also held that criminalizing the prostitute and not the client was constitutional because most prostitutes were repeat offenders and it was uncertain whether clients were.<sup>308</sup> Despite this ruling, many South Africans still questioned the wisdom of Section 20(1)(aA), calling for it to be either amended or repealed.<sup>309</sup>

The Sexual Offences Act addressed this issue by amending Section 20 to criminalize the client of prostitutes as well as the prostitute.<sup>310</sup> Not everyone is satisfied with this solution, however.<sup>311</sup> For example, the Sex Worker Education and Advocacy Taskforce (SWEAT) argues that criminalizing the client of prostitutes is counterproductive and that prostitution—both the sale and purchase of sex—should be decriminalized.<sup>312</sup> While the Portfolio Committee on Justice and Constitutional Development justifies criminalizing clients as a means of reducing female exploitation, SWEAT argues that criminalizing the client actually hurts female prostitutes who need clients for economic reasons.<sup>313</sup> Similarly, SWEAT argues that criminalizing the client does not decrease sex trafficking and actually makes it more difficult for authorities to discover sex trafficking because clients are no longer willing to report suspicious behavior by pimps and prostitutes.<sup>314</sup> SWEAT relies on information about Sweden's criminalization of the purchase of sex to demonstrate that criminalizing the client can hurt the female prostitutes, place them in more dangerous situations, and impede sex trafficking investigations.<sup>315</sup>

The World Cup should not be used an excuse to press legislative reforms that the government has already considered and rejected. The debate regarding decriminalizing prostitution for the 2010 World Cup is likely motivated by organizations (such as SWEAT) that were pressing for decriminalization prior to South Africa being awarded the World Cup. The enactment of the Sexual Offences Act, which both criminalizes the clients of prostitutes and provides interim legislation regarding trafficking, demonstrates that the South African government considered prostitution policy and human trafficking in South Africa and decided that criminalizing both the sale and purchase of sex would be the most effective means for dealing with prostitution in South Africa.

307. *Id.* ¶ 9; see Kalwahali, *supra* note 304, at 18.

308. *S. v. Jordan*, 2002 (11) BLCR 1117 (CC) ¶ 10; see Kalwahali, *supra* note 304, at 19.

309. Kalwahali, *supra* note 304, at 26.

310. Sexual Offences Act, *supra* note 291, at 88–90.

311. See Fick, *supra* note 75.

312. *Id.* at 36.

313. *Id.* at 34.

314. *Id.* at 35.

315. *Id.*

Advocates of decriminalization point to Germany's success in avoiding an influx of sex trafficking for the 2006 World Cup as a model for decriminalization, but South Africa cannot easily imitate Germany's success. Germany legalized prostitution and operating brothels in 2002<sup>316</sup>—four years prior to hosting the World Cup. Accordingly, Germany had a system of legalization in place long before the World Cup occurred. In South Africa, on the other hand, prostitution continues to be debated, and hastily decriminalizing prostitution for the World Cup despite conscious decisions by the government to criminalize it could lead to serious problems. Whereas Germany already had a system of brothels, prostitutes, and prostitution-specific controls in place, South Africa does not. Encouraging tourists to visit prostitutes without such a system in place could cause chaos and lead to increased sex trafficking to South Africa. Some scholars speculate that traffickers did not consider the 2006 World Cup a profitable venture because it was a one-time event. Trafficking women to South Africa for sexual exploitation could be seen as a profitable venture, however, because a country that has freshly decriminalized prostitution will be in need of a supply of prostitutes to fill the demand both during and after the event.

Rather than debating prostitution policies in order to prepare for the World Cup, the South African government should focus on enacting comprehensive anti-trafficking legislation, promulgating anti-trafficking campaigns aimed at both citizens and tourists as Germany did prior to the 2006 World Cup, creating systems of identifying and providing assistance to victims of sex trafficking during the World Cup as Greece did prior to the 2006 Olympics, and enforcing border control measures aimed at preventing trafficking as China did during the 2008 Olympics. A praiseworthy example of campaigns that can be undertaken is the Human Trafficking Awareness Week campaign that started in 2007, with a South African soccer team, the Kaiser Chiefs, wearing t-shirts with an anti-trafficking message and the phone number to the International Office of Migration's trafficking hotline.<sup>317</sup> The World Cup is an opportunity for South Africa to demonstrate its sincere commitment to combating human trafficking and complying with the *Palermo Protocol*. Instead of providing the world with a scene of hastily enacted prostitution policies that may or may not be consistent with the needs of the country, South Africa should provide the world with an image of a country that is steadily making progress toward combating human trafficking.

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316. Lehti & Aromaa, *supra* note 19, at 140.

317. OFFICE OF THE UNDER SECRETARY FOR GLOBAL AFFAIRS, U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 38 (2007), available at <http://www.state.gov/documents/organization/82902.pdf>.

## VI. CONCLUSION

Despite incomplete empirical evidence, the 2004 Athens Olympics, 2006 World Cup in Germany, and 2008 Beijing Olympics indicate that international concerns about world sporting events leading to *drastic* increases in sex trafficking may be exaggerated. Similarly, research suggests that differing approaches to prostitution policies have little effect on sex trafficking in general and at world sporting events in particular. This does not indicate that concerns about sex trafficking are unwarranted, or that countries hosting world sporting events should ignore sex trafficking. World sporting events provide an opportunity to increase global awareness about the evils of sex trafficking and also provide an opportunity for the host country to showcase its commitment to—and strategy for—combating human trafficking.

Morally charged debates on prostitution policies will exist regardless of whether the country is hosting an upcoming world sporting event or not. World sporting events should not be used as a tool for fueling these moral debates. In preparation for these events, hosting countries should eschew the morally charged debate on prostitution policies in favor of focusing on their own nation's commitment to combating sex trafficking.

Because of the great international scrutiny placed on host countries, world sporting events provide incentives for countries to review their anti-trafficking legislation and national action plans for combating human trafficking to ensure that their efforts will pass international muster. Just as the 2008 Olympics provided China with the opportunity to demonstrate a commitment to human rights, future world sporting events will provide hosting countries with the opportunity to demonstrate a commitment to combating sex trafficking.