

September 22, 2011

Ambassador-at-Large Luis CdeBaca  
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United States Department of State  
Washington, DC

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Dear Ambassador CdeBaca:

We are writing with regard to the State Department document entitled “Prevention: Fighting Sex Trafficking by Curbing Demand for Prostitution.”<sup>1</sup> We are researchers and policy advocates and many of us have worked for over a decade for the human rights of trafficked persons. As such, we are concerned that the Obama Administration has produced a document that asserts as *matters of proven fact* a number of statements, which, given the state of information on both trafficking and prostitution worldwide, are unsupported or unproven by valid research methods and data.

We are deeply concerned that the document is illogical, misleading and therefore potentially damaging to on-going efforts globally to prevent trafficking and protect the rights of trafficked persons. The document moves policy away from assessing actual factors contributing to human trafficking and evidence of what works to end abuses, and towards programs and policies based on presumed associations between male desires (so called ‘demand’) and the abuses of trafficking for forced labor. We are deeply concerned that these assumptions are not proven in any empirically meaningful way, and believe that they only serve to deflect attention away from the structures and actors that in fact lead to trafficking of women, men and children. The proposals and statements in the document threaten to divert precious resources from protecting victims of trafficking who urgently need help into a politically contested and futile anti-prostitution campaign.

We fully support the Obama Administration’s commitment to the use of rigorous evidence to drive policy. This commitment is outlined in numerous documents, including statements by Peter R. Orszag, Director of the White House Office of Management and Budget. In a Memorandum to all Departments and Agencies, he has called for “[r]igorous, independent program evaluations”<sup>2</sup> and, in an on-line blog, he notes that “[m]any programs were founded on good intentions and supported by compelling anecdotes, but don’t deliver results<sup>3</sup>.”

So, we are writing seek more information about a factual basis for a number statements in document to learn whether they are based on “rigorous, independent” evidence or “good intentions and...compelling anecdotes.” We make these inquiries because, to our knowledge, there is no evidence supporting the main assertions of the document. If, in fact, the document is supported by any evidence, we would appreciate your sending us references (and weblinks) for such materials.

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<sup>1</sup> <http://www.state.gov/g/tip/rls/fs/2011/167224.htm>

<sup>2</sup> Memorandum for the Heads of Executive Departments and Agencies, Peter R. Orszag, Director, October 7, 2009, [http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda\\_2010/m10-01.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m10-01.pdf)

<sup>3</sup> Building Rigorous Evidence to Drive Policy, Director Peter Orszag, June 8, 2009, <http://www.whitehouse.gov/omb/blog/09/06/08/BuildingRigorousEvidencetoDrivePolicy/>

Since the U.S. government has taken a leading role internationally in the struggle against human trafficking, it is all the more important for your office to reconsider the approach contained in the document and to develop policies and programs that are supported by valid research. We are committed to eradicating the conditions that put women, men and children at risk of trafficking and we promote solid, scholarly research that can help governments and NGOs link evidence to policy and create the interventions that end trafficking and promote rights. Unfortunately, we find a number of ‘facts’ and assertions contained in the document to be highly questionable.

We are particularly concerned about the following three sets of paragraphs, which set out the logic of the argument and rely on vague terms, unclear legal concepts and assertions of belief as ‘facts’.

**FIRST**, the document states that:

“But the fact remains: *if there were no demand for commercial sex, trafficking in persons for commercial sexual exploitation would not exist* in the form it does today. This reality underscores the need for *continued strong efforts to reduce demand for sex trafficking* by enacting policies and promoting cultural attitudes that reject the idea of paying for sex.”

The document provides no support for these assertions and raises several questions that require clarification of terms, evidentiary support and explanation.

#### ***What are ‘commercial sexual exploitation’ and ‘sex trafficking’?***

By using these two terms, the document is unclear about the subject matter being discussed. Clear terminology is essential for clear understandings. As you are aware, the federal definition of ‘sexual exploitation’ applies only to minors.<sup>4</sup> Consequently, the subject of the above text is unclear with respect to adults. Do you intend to apply the definition to adults as well for the purpose of this document?

The meaning is further confused by the use of the term ‘sex trafficking’ in the same paragraph. As you know, under federal law, “sex trafficking” is defined as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.”<sup>5</sup> This term (sex trafficking) does not appear on its own in the criminal code and so, in fact, it is not operational. Additionally, the above definition includes all activities involving a ‘commercial sex act’, even commercial sex acts that are legal, such as pornography and prostitution in parts of Nevada. Is this what is intended?

We assume that your office actually intended to refer to the *crimes* of trafficking as defined in 18 USC sec. 1590<sup>6</sup> (Trafficking with respect to peonage, slavery, involuntary servitude, or forced labor)

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<sup>4</sup> 18 USC sec. 2251. Sexual exploitation of children

<sup>5</sup> 22 USC sec. 7102 (9). Sex Trafficking

<sup>6</sup> § 1590. Trafficking with respect to peonage, slavery, involuntary servitude, or forced labor

(a) Whoever knowingly recruits, harbors, transports, provides, or obtains by any means, any person for labor or services in violation of this chapter shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap,

and 18 USC sec. 1591<sup>7</sup> (Sex trafficking of children or by force, fraud, or coercion). These are the operational definitions under federal criminal law and so should be the definitions guiding the work of your office. Do these legal definitions guide the work of your office?

***What evidence is there of a unique relationship between sex work and trafficking, as distinct from every other labor and service field into which the US law accepts that trafficking occurs?***

The statement “*if there were no demand for commercial sex, trafficking in persons for commercial sexual exploitation would not exist*” implies that there is a unique relationship between prostitution and trafficking that does not exist between, for example, domestic work and trafficking, farm work and trafficking or fishing and trafficking. So, if you believe that eliminating the sector is the best solution to ending trafficking into the sex sector, is it not also logically the case that if there is no domestic work there can be no trafficking into domestic work? Does your office propose criminalizing the purchasing of services for domestic work (or farm work or fishing) in order to stop trafficking?

If not, then the document posits that there is a special or unique link between sex work and trafficking that does not exist between other industries and trafficking. What evidence is there to support this belief?

***What evidence supports the ‘end demand’ policy approach?***

The statement assumes that criminal law or policy can stop men from buying sex. Can it also stop women (and men and transgenders) from selling sex? The logic of ‘end demand’ proposition is that sex sellers are all victims and that they only sell sex because there are buyers. Where is the research showing this to be the case?

Although the document does not call for the ‘end demand’ approach of the Swedish government - criminalizing sex buyers but not sex sellers – it implicitly supports the view when it uses the ‘end demand’ rhetoric. However, the Swedish government has not been able to provide any evidence that its approach has reduced prostitution or trafficking. In 2007, eight years after passage of the new law, the Swedish government concluded that “[w]e cannot give any unambiguous answer to [the question of whether prostitution has increased or decreased]. At most, we can discern that street prostitution is slowly returning, after swiftly disappearing in the wake of the law” (Swedish National Board 2007,

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aggravated sexual abuse, or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.

<sup>7</sup> § 1591. Sex trafficking of children or by force, fraud, or coercion

(a) Whoever knowingly—

(1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, or maintains by any means a person; or

(2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1),

knowing, or in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).

33). The report concluded that “[n]o causal connections can be proven between legislation and changes in prostitution,”<sup>8</sup>

By 2010, the government was still unable to provide any evidence that the law had *caused* a drop in prostitution or human trafficking. In a 2010 report, the government admitted failure:

“Our task includes the analysis of the significance the ban against the purchase of sexual services has had for the forms, incidence, and changes with reference to prostitution and human trafficking for sexual purposes in Sweden. However, it is difficult to determine whether changes in prostitution are a result of the ban or of other measures or circumstances. It is also difficult to know with any certainty how prostitution and human trafficking might have changed if there had been no ban.”<sup>9</sup>

Nonetheless, your office adopts the ideas underpinning this unproven model even though there is evidence in the U.S. that the approach is ineffective. The U.S. has its own ‘end demand’ model as clients and sex sellers are criminalized in almost the entire country. However, these laws have not stopped prostitution or trafficking into prostitution. The U.S. end demand approach is a failure. Not only is it ineffective but the criminalization of sex workers is also counterproductive because having a police record prevents people from moving out of prostitution. So, what then is the reason for the Obama Administration to promote a policy that has so dramatically failed domestically and internationally?

If the well-being of those who sell sex is the goal of this document, where is the evidence that making purchasers of sex into criminals will actually benefit sex sellers, rather than divert sex work underground, where it can be much more dangerous to the sellers, the majority of whom are women?

Moreover, if it is the position of the Obama Administration that the sex seller is a victim, the U.S. government should propose to end the criminalization of selling sex in the U.S. If it fails to take this step, is the U.S. in fact now proposing a new version of the ‘end demand’ approach that continues to treat the sellers of sex as criminals? Unless the Obama Administration proposes to decriminalize sex sellers, then the rhetoric of the end demand approach defies logic and misleads readers into thinking that the U.S. supports decriminalization of sex sellers, which it does not.

***What evidence supports the unstated assumption that sex sellers will be able to find other means to earn a living?***

Evidence suggests that the reasons for selling sex vary widely. Although many people might be motivated to find other work, for those who lack social support systems, or who have few options for training and entry into other work, exit from prostitution and easy entry into other work is not a realistic option. This inability to find other work is compounded by criminal records for prostitution. Thus, a simplistic market model explaining the existence of sex work as a function of the demand for prostitution from male buyers ignores reasons why people enter into and remain in prostitution.

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<sup>8</sup> *Prostitution in Sweden 2007*, Swedish National Board of Health and Welfare, p. 46.,

[http://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/8806/2008-126-65\\_200812665.pdf](http://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/8806/2008-126-65_200812665.pdf)

<sup>9</sup> Selected extracts of the Swedish government report SOU 2010:49: “the Ban against the Purchase of Sexual Services. An evaluation 1999-2008,” Swedish Institute, November 2010, p. 35.

Moreover, while the document emphasizes the end of demand, it provides no evidence or policy of a (logically) essential component – what means will sex workers have for survival since the goal of the model is to deprive needy people of a means to survive. The model does not offer them any real alternatives. As such, it appears to be built on “good intentions” rather than on evidence and solid commitments to support viable alternatives.

***What evidence is there that trafficking into forced prostitution is caused by a “demand for sex trafficking” victims?***

This statement assumes that sex buyers ‘demand’ victims of sex trafficking [i.e., they express a preference for coerced, abused sexual partners]. Although there may be a few buyers who seek to engage in the criminal act of raping an unfree sex seller, we know of no evidence that they are driving the entire criminal enterprise of trafficking into forced prostitution.<sup>10</sup> The assertion also assumes that buyers somehow know which sex seller is a trafficking victim and which ones are not. Can you provide us with evidence to support these beliefs?

Moreover, the underlying logic of this argument dictates a potentially unconstitutional outcome, violating the basic rights of defendants. It would logically require states to adopt laws to punish (as traffickers or persons complicit in trafficking) all persons who buy sex from trafficked persons, whether they are aware of the fact that the adult was being held against her or his will or not. Is this the position of the Obama Administration – is your office promoting the elimination of the mens rea (mental accountability) factor in criminal law with respect to trafficking of adults into forced prostitution?

Lastly, it appears to us that the document’s focus on ‘male demand for paid sex’ misidentifies a more logical source of the ‘demand’ in all sectors, including the sex sector, in which trafficking and forced labor occur: the profit maker who demands low wages/low cost services and high profits. Since the persons holding the trafficked persons are the ones deriving the profit off the forced labor of their victims, it seems logical that they are the ones ‘demanding’ a supply of workers over whom they can assert absolute control. As there is very little research currently directed at the structural market factors that contribute to trafficking,<sup>11</sup> we remain open to any evidence you have demonstrating that the purchasers of sex (and agricultural and other products, for example, cheap tomatoes and T-shirts), and not profit makers, are the real engines driving the crime.

**SECOND**, the following passage in the document is highly ambiguous and appears to make claims for which there is no evidence:

A prostituted person may have initially consented, may believe that she or he is in love with her or his trafficker, may not self-identify as a victim, may not be operating in the vicinity of the pimp, or may have been away from the pimp’s physical control with what seemed to be ample opportunity to ask for help or flee. None of these

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<sup>10</sup> See, Is Trafficking in Human Beings Demand Driven? A Multi-Country Pilot Study, Bridget Anderson and Julia O’Connell Davidson, IOM Migration Research Series No. 15, 2003.  
[http://www.compas.ox.ac.uk/fileadmin/files/pdfs/Bridget\\_Anderson/BA1\\_Anderson%20IOM%20report.pdf](http://www.compas.ox.ac.uk/fileadmin/files/pdfs/Bridget_Anderson/BA1_Anderson%20IOM%20report.pdf)

<sup>11</sup> See, e.g., Jennifer M. Chacon, Misery and Myopia: Understanding the Failures of U.S. Efforts to Stop Human Trafficking, Fordham Law Review, vol. 74, no. 6, May 2006 (regarding the connections between US migration and labor policies and conditions for trafficking).

factors, taken alone or in sum, means that she or he is not a victim of a severe form of trafficking. Ensuring that these facts are part of the required training for every government employee and everyone who does business with or on behalf of a government is an important step in shifting attitudes about commercial sex.

***What evidence supports the claim, which the document implies, that all acts of prostitution are trafficking?***

The “*does not mean that she is not*” formulation of this sentence creates ambiguity. Does this passage mean to say that a person in prostitution who does not see herself (or himself) as currently victimized or who foregoes opportunities to flee may nevertheless have been subjected to trafficking? If so, then how is the situation of people working in prostitution different from the situation of people working in agricultural or sweat shop work in this regard? The same point apply to all.

Or does the passage mean that a woman in prostitution who loves her pimp or who elects to work in the sex sector is being trafficked *because the work she is doing is prostitution*? If yes, then is the State Department’s position that prostitution is intrinsically coercive? We are aware of many sex worker organizations worldwide that contest this idea and who regard its promotion as directly adverse to their interests. At the very least, documents circulated by the Department should not create ambiguities of this kind.

If either the above interpretations is the right one, what evidence does the Department have supporting it?

**THIRD**, the document also contains other statements in furtherance of the ‘end demand’ approach, such as:

“Governments can lead both in practice and by example by implementing zero-tolerance policies for employees, uniformed servicemembers, and contractors paying for sex. If paying for sex is prohibited for those who work for, or do business with, a government, the ripple effects could be far reaching.”

Educating “every government employee and everyone who does business with or on behalf of a government” about the conditions of trafficking into forced prostitution are “an important step in shifting attitudes about commercial sex.”

Reducing the “demand for sex trafficking...can only be achieved by rejecting the long-held notions that regard commercial sex as a ‘boys will be boys’ phenomenon and instead sending the clear message that buying sex is wrong.”

***What evidence is there that these approaches work?***

We are aware that, in furtherance of the above objectives, your office has taken an interest in ‘John schools,’ which require men arrested for solicitation to attend a class on prostitution, health, laws and harms as a means to reduce recidivism. These programs are promoted as a means to ‘end demand’. We also note that you hosted a lunch<sup>12</sup> for Dr. Michael Shively who has co-authored an evaluation of

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<sup>12</sup> Demand Change: Everyone Can Work To End Modern Slavery, Luis CdeBaca, March 29, 2011, Abstract

the San Francisco John school in which he claims that the program has “been effective in substantially reducing recidivism among men arrested for soliciting prostitutes.”<sup>13</sup>

We have serious concerns about the quality of that research. Our concerns are supported by a 2009 study conducted by the San Francisco Budget Analyst office: “Management Audit of the San Francisco First Offender Prostitution Program” (FOPP).<sup>14</sup> The Audit evaluated “FOPP’s objectives, activities, effectiveness, and financial management.”<sup>15</sup>

The Audit found that

“FOPP lacks well-defined goals. The District Attorney’s Office, which administers the program, has various documents stating that FOPP (1) reduces the demand for prostitution through educating men about the consequences of prostitution, (2) reduces recidivism, or (3) assists women to exit prostitution. However, the District Attorney’s Office lacks a single document...that defines the specific purpose of FOPP and the goals to be achieved.”<sup>16</sup>

The Audit concludes that FOPP

“is not a sufficiently comprehensive program to reduce recidivism or assist women to leave prostitution. FOPP is designed to achieve much more limited goals: providing (1) education on the consequences of prostitution to men arrested for solicitation, and (2) social services to women arrested for prostitution. FOPP does not meet the National Institute of Justice’s characterization of programs to reduce recidivism...Nor does FOPP provide sufficiently comprehensive services to assist women in leaving prostitution.” The report concludes “the District Attorney’s Office can not determine if FOPP is an effective program.”<sup>17</sup>

Since your office, nonetheless, appears to believe in the value of John schools, do you have reliable, independent evidence demonstrating a *causal* relationship (1) between John schools and a reduction in recidivism and (2) between a reduction in recidivism and (a) less prostitution and (b) less trafficking into prostitution?

The document also touts the benefits of changing the culture around buying and selling sex by virtue of corporate and governmental zero tolerance policies. What specific research does your office rely on, other than the policy recommendations of various advocates, to support the implicit claim that shifts in attitude reduce prostitution or trafficking?

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[http://blogs.state.gov/index.php/site/entry/demand\\_change\\_end\\_modern\\_slavery/](http://blogs.state.gov/index.php/site/entry/demand_change_end_modern_slavery/)

<sup>13</sup> Final Report on the Evaluation of the First Offender Prostitution Program, Michael Shively, et al., Office of Research and Evaluation, National Institute of Justice, March 7, 2008,

<http://www.ncjrs.gov/pdffiles1/nij/grants/222451.pdf>

<sup>14</sup> <http://www.sfbos.org/Modules/ShowDocument.aspx?documentid=34782>

<sup>15</sup> Audit, p. i.

<sup>16</sup> Audit, p. 1.

<sup>17</sup> Audit, p. 3.

In closing, we reiterate that we are writing because we are convinced that good research and evidence will indeed contribute to more effective interventions to prevent and respond to trafficking. As these selected questions illustrate, however, the statements contained in the document are not, to our knowledge, supported by any independent, reliable evidence. Indeed, the statements, if accepted into law and policy, move attention (including research) away from addressing the conditions that make persons vulnerable to trafficking – conditions such as unrealistic labor migration laws and policies, a lack of programs for the safe reintegration of former victims, the lack of full and equal rights protections for women, migrants, marginalized and stigmatized populations, an inability to access legal protections due to the criminalized or irregular immigration status, and a failure to ensure labor rights for all.

We expect the Obama Administration to support good research and we look forward to entering into a dialogue with your office about the types of studies that can be or are being conducted globally and the types of rigorous research criteria that should be required of future scholarship and program and policy evaluations, so that the evidence obtained will be helpful in the formation of U.S. policy and programs.

To contribute to the promotion of transparency and accountability in public policymaking, we plan to release this letter publicly on October 5 and hope to receive a reply from you before then. We will also release your response so that the public may have to opportunity to become engaged in this discussion.

Thank you for your attention.

Very truly,

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