

WHORE OR HOMEMAKER? THE ROCKY STATE OF ILLEGAL PROSTITUTION IN THE NEWLY-FORMED SOUTH SUDAN AND A PRACTICAL RESOLUTION TO CURTAIL THE EPIDEMIC

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I. INTRODUCTION

The Republic of South Sudan, located at the center of the African continent, became the world's newest country on July 2, 2011, with a democratic government after declaring its independence from the northern portion of Sudan.¹ Since South Sudan's birth, prostitution—or sex work, generally defined as engaging in sexual activity as a form of business in return for payment²—has become an issue of great concern within the nation.³ While many aspects of prostitution like soliciting or maintaining a brothel have been outlawed in South Sudan, the practice has grown exponentially over the past few years.⁴ Lax regulation and over-criminalization of prostitution can lead to stigmatization of sex workers, increase in societal violence, spread of diseases, and numerous other negative effects for a community.⁵ If the South Sudanese government hopes to implement any changes to its approach of criminalizing certain aspects of prostitution and slow the growth of or reverse the effects of illegal sex work in the country, immediate action needs to be taken before prostitution becomes an uncontrollable problem for the rookie nation. South Sudan should make the decision now as to whether its current regime of penalizing broad aspects of the sex industry should be continued, or whether these laws should be revised.

Examining the laws aimed at regulating prostitution in other countries and the consequences of such legislation can provide constructive insight as to the route South Sudan should take to curb this growing epidemic. For example, the prostitution regulations in the fellow African country of Nigeria illustrates specific drawbacks that may result from demoralizing prostitution and refusing to recognize the legitimacy of sex work.⁶ Nigeria has adopted an approach that criminalizes many features of prostitution completely,

¹ David Hollenbach, *Creating South Sudan*, AM. MAG. (Nov. 7, 2011), http://www.americamagazine.org/content/article.cfm?article_id=13119.

² 63C AM. JUR. 2D *Prostitution* § 1 (2012).

³ See Judy Mandelbaum, *UN Blamed for Prostitution Boom in South Sudan*, OPEN SALON (July 16, 2012), http://open.salon.com/blog/judy_mandelbaum/2012/07/16/un_blamed_for_prostitution_boom_in_south_sudan (discussing the rising prevalence of prostitution in South Sudan and the increasing concern about prostitution).

⁴ *Id.*; PENAL CODE ACT §§ 252–256 (2008) (South Sudan), available at http://www.goss-online.org/magnoliaPublic/en/Laws—Legislation—Policies/mainColumnParagraphs/0/content_files/files12/15.pdf.

⁵ See discussion *infra* Part III.A (describing Nigeria's approach to sex work and its failure to achieve desired results).

⁶ See discussion *infra* Part III.A (describing Nigeria's approach to sex work and its failure to achieve desired results).

which has not achieved the desired result the Nigerian legislature sought when making the decision to penalize sex work.⁷ On the opposite end of the spectrum, the approach embodied by the Netherlands can serve to highlight lucrative benefits that a country can realize by treating prostitution as a career and closely monitoring the industry. Legalizing sex work would aid in curbing many of the social, political, and economic issues bombarding the new South Sudan.⁸ Using the frameworks and demonstrated results of these differing schemes as guidance could be beneficial to the South Sudanese government in moving forward with a new stance towards prostitution.

This Note will critically analyze the history, language, enforcement, and consequences, both positive and negative, of the legislation concerning work in the sex industry enacted in Nigeria as well as in the Netherlands. Primarily, this Note will advance the position that the interests of South Sudan would be better served if the country amended its current laws penalizing certain facets of prostitution to mimic the Dutch Penal Code governing sex work in the Netherlands, as opposed to continuing its current regime, which closely resembles the stance on prostitution taken by Nigeria. Part II of this Note explores the current pervasiveness of illegal prostitution in South Sudan and the laws regulating and prohibiting the activity. Part III of this Note will look at the ineffective decriminalization and prohibitionist scheme surrounding prostitution in Nigeria. Conversely, Part III analyzes the approach taken by the Netherlands and the effectiveness of the Dutch regime. Part IV suggests that South Sudan should follow the Netherlands in legalizing prostitution and discusses the implications such a policy would have on the South Sudanese government, the country's economic situation, and the social circumstances of the community. Part V concludes the comparison between the two approaches and reiterates that South Sudan will fare better by legalizing prostitution.

⁷ Criminal Code Act (1990) Cap. (21), § 225(B) (Nigeria), available at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&docid=49997ade1a&skip=0∓coi=NGA&querysi=criminal%20code&searchin=title&display=10&sort=date>.

⁸ See Jessica N. Drexler, *Governments' Role in Turning Tricks: The World's Oldest Profession in the Netherlands and the United States*, 15 DICK. J. INT'L L. 201, 201-02 (1996) (noting the positive effects of legalization of prostitution in the Netherlands).

II. BACKGROUND OF PROSTITUTION IN SOUTH SUDAN

A. *The Current Crisis of Illegal Prostitution*

Following the end of the brutal Sudanese civil war, South Sudan emerged as the world's newest country and shortly thereafter proceeded to join the United Nations (UN).⁹ South Sudan's independence espoused principles and ideals of justice for its people and protection of their civil rights.¹⁰ In the years following its creation, as with many fledgling countries, South Sudan began to experience internal complications in a variety of sectors including the criminal system.¹¹ One such complication was the growth of prostitution.¹² In the capital city of Juba, prostitution has flourished in just the few years since South Sudan gained independence.¹³ Foreigners comprise the majority of sex workers in this city.¹⁴ While the number of prostitutes in Juba was only a few thousand a couple years ago, the current number in Juba is estimated to be about 10,000 according to an ongoing study in the area.¹⁵

These individuals, mainly women and girls, justify their migration to Juba as a way to achieve sexual freedom and improve their financial situation.¹⁶ Poverty is one of the most influential factors forcing the women in South Sudan and neighboring countries to resort to prostitution in order to sustain life.¹⁷ Even with other legal forms of income, some individuals must resort

⁹ See Hollenbach, *supra* note 1 (summarizing how the emergence of South Sudan resulted after years of exploitation of the Southern Sudanese peoples and the deaths and displacement of millions); Jure Vidmar, *South Sudan and the International Legal Framework Governing the Emergence and Delimitation of New States*, 47 TEX. INT'L L.J. 541, 542 (2012).

¹⁰ See Hollenbach, *supra* note 1 (outlining the goals of the South Sudanese people as obtaining a peaceful future with freedom and justice for all of the country's population).

¹¹ See *id.* (describing the daunting tasks ahead of South Sudan of maintaining peace with northern Sudanese groups and establishing institutions to facilitate the growth of South Sudan both politically and economically); see also Mandelbaum, *supra* note 3 (describing the rising problem of prostitution).

¹² Mandelbaum, *supra* note 3.

¹³ *Id.*

¹⁴ Manyang Mayom, *Sex Workers Tell Their Stories about Growing Prostitution in South Sudan*, SUDAN TRIB. (Oct. 4, 2010), <http://www.sudantribune.com/spip.php?article36487>.

¹⁵ Mandelbaum, *supra* note 3.

¹⁶ See *id.* (detailing how women escaped Islamic law in Arab nations that prohibited sex outright).

¹⁷ See *id.* (chronicling the stories of multiple sex workers in Juba and showing how the perceived wealth of the industry attracted women to the trade); see also Joyce Joan Wangui, *East Africa: Prostitution in Juba, the Inside Story*, STAR (Aug. 8, 2012), <http://www.the-star.co.ke/news/article-7109/prostitution-juba-inside-story> (describing a woman's difficult decision to abandon her marriage to enter into the world of prostitution to escape severe poverty).

to prostitution as a supplement to gainful employment.¹⁸ For those living in overwhelmingly harsh conditions in East Africa, Juba appears to be an extremely attractive destination because of the perceived profit potential from sex work.¹⁹

A large portion of the sex worker population in South Sudan, Juba especially, consists of young girls hailing from both within South Sudan and places such as Kenya, Congo, Uganda, and Khartoum, the capital of northern Sudan.²⁰ Juba is an attractive metropolitan area and a very conducive environment for human trafficking.²¹ Many of the girls coming into South Sudan are victims of human trafficking who were deceived into relocating to Juba under the ruse of an illegitimate agency that transports women to the city to become employed in a legitimate, more customary profession.²² Instead, these women and girls are trapped in the inescapable sex trade as slaves.²³

The extreme growth of prostitution in South Sudan can also be partially attributed to the latest influx of foreign aid workers and other UN personnel into the new country.²⁴ These foreign aid workers are highly attractive customers for prostitutes, pimps, and brothel-owners because they come into the country with excess money to spend, and most of the international UN soldiers, employees of non-governmental organizations, workers in foreign-owned companies, and other aid workers in the country are men away from their families.²⁵

The current institution of prostitution in South Sudan is accompanied by many major conflicts.²⁶ The sex industry in South Sudan is rife with different forms of crime, involuntary slavery (human trafficking), health concerns, and police harassment and brutality.²⁷ Specifically, the inadequate supply of condoms, clients' refusal to use condoms when available, and the difficulty in accessing medication to treat current HIV infections greatly

¹⁸ Wangui, *supra* note 17.

¹⁹ *Id.*

²⁰ *Id.*; Mayom, *supra* note 14.

²¹ Wangui, *supra* note 17.

²² *See id.* (documenting how women are forced to work in the plentiful brothels throughout South Sudan disguised as "lodges").

²³ *Id.*

²⁴ Mandelbaum, *supra* note 3.

²⁵ *See id.* (noting that workers in South Sudan are usually bound by work policies that do not include a family package or simply do not allow families to come along with these men); Wangui, *supra* note 17.

²⁶ Wangui, *supra* note 17.

²⁷ *Id.*

intensify the health risks.²⁸ These problems raise concerns for the well-being of South Sudanese prostitutes and the apprehensions regarding the rapidly increasing spread of diseases throughout the population.²⁹ In spite of the HIV epidemic in the country, some customers offer to pay large amounts to forego the use of condoms, and some prostitutes find that offer hard to refuse.³⁰

However, sex work has indeed served to greatly improve the quality of life for at least some individuals who voluntarily enter into the sex business.³¹ For example, some girls lucratively profit from sex work by targeting rich, influential officials who oftentimes pay for a prostitute's services with brand new houses, cars, rent payments, or simply large sums of cash.³²

B. Existing Mechanisms in South Sudan to Combat Prostitution

The current legislation in South Sudan punishes soliciting others for prostitution; profiting from, managing, or facilitating brothels; procuring others for prostitution; and trafficking humans outside the country for sex work.³³ The punishments for these offenses include fines, short-term imprisonment, or both.³⁴ However, in regards to prostitution involving underage individuals, the South Sudanese legislature took a stronger stance and enacted harsher punishments with the passage of the Child Act of South Sudan in 2008 (Child Act).³⁵ This Act explicitly protects children under the age of eighteen from any type of violence and abuse, whether mental or physical, as well as any exploitation, or trafficking.³⁶ The Child Act specially notes that a child has the right to protection from sexual abuse, coercion, use in pornographic materials, or use in any form of prostitution.³⁷

²⁸ *Id.*

²⁹ *Id.*

³⁰ See Mayom, *supra* note 14 (illustrating how, even though this particular sex worker preferred and always advised the use of condoms, some customers demanded unprotected sex and paid large sums for it).

³¹ Wangui, *supra* note 17.

³² *Id.*; Mayom, *supra* note 14.

³³ PENAL CODE ACT, *supra* note 4, § 258.

³⁴ See *id.* (setting forth the relatively short, five-year maximum term for an offense concerning prostitution that does not involve underage persons).

³⁵ Child Act, 2008 (Southern Sudan) [Sudan] (Oct. 13, 2008), available at <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=country&category=&publisher=&type=LEGISLATION&coi=SDN&rid=456d621e2&docid=49ed840c2&skip=0> (last visited Jan. 17, 2013).

³⁶ *Id.* §§ 5, 22(3).

³⁷ *Id.* §§ 22(3)(c)–(d).

The Act goes further, criminalizing interference with any of these minors rights and imposing potentially lengthy prison sentences for engaging in such activities.³⁸

III. TWO COMPARATIVE METHODS OF CONTROLLING PROSTITUTION

A. Nigeria: A Blend of Prohibition and Decriminalization

The Nigerian government's approach towards the institution of prostitution is equally, or arguably more, stringent than the position taken by South Sudan.³⁹

Influential public figures and state governments within Nigeria have often publicly expressed a deep-rooted intolerance for all forms of prostitution and its accompaniments, refusing to accept the business within the country.⁴⁰ In the past, public officials have openly declared that prostitution is in direct conflict with Nigerian culture, morals, and beliefs and have called for its eradication.⁴¹ In addition to public condemnation, those involved in the industry face extreme stigmatization.⁴² Prostitutes in Nigeria are regarded as vessels carrying the dreaded AIDS virus, outsiders to Nigerian culture and principles, avenues for continued violence throughout Nigerian communities, and immoral characters lacking much-needed ministry education.⁴³ As a

³⁸ *Id.* § 22(4).

³⁹ See Criminal Code Act, *supra* note 7, §§ 216, 218–227 (Nigeria) (criminalizing multiple subsets of prostitution altogether).

⁴⁰ See Abiodun Oluwarotimi, *Nigeria: Amaechi Takes Campaign Against Prostitution to US*, LEADERSHIP (Sept. 24, 2012, 12:40 PM), http://leadership.ng/nga/articles/35564/2012/09/24/amaechi_takes_campaign_against_prostitution_us.html (recounting the public denouncement of prostitution in the lives of young girls by the Rivers State Governor's wife); see also Nicholas Ibewuike, *Nigeria Intensifies Campaign Against Prostitution*, PANAFRICAN NEWS AGENCY (Dakar), Oct. 5, 2000, available at 10/5/00 PANA (Westlaw) (documenting the Edo government's attempt to stifle the growth of prostitution by imposing weighty fines and extensive prison terms for trafficking and participation in the sex trade as either a worker or a client).

⁴¹ Victor Ofure Orehobo, *Benin: Legal Clamp on Sex Workers Taking Effect*, P.M. NEWS (Lagos) (Sept. 15, 2000), <http://allafrica.com/stories/200009150231.html> (detailing the Edo State Governor's denial of prostitution as congruent with the state's culture).

⁴² Chi Mgbako & Laura A. Smith, *Sex Work and Human Rights in Africa*, 33 FORDHAM INT'L L.J. 1178, 1191 (2010).

⁴³ *Id.*; see *Nigeria: Catholic Church Explains Clamour for Return of Schools to Missionaries*, DAILY TRUST (Sept. 12, 2012), <http://allafrica.com/stories/201209160410.html> (attributing the occurrence of prostitution to a lack of Catholic education).

result, sex workers face overwhelming marginalization and isolation from Nigerian society.⁴⁴

Nigeria as a whole has adopted a hybrid prohibitionist-decriminalization scheme concerning prostitution.⁴⁵ Countries promoting a prohibition system, otherwise termed criminalization, are extremely stern and unforgiving, punishing prostitution offenses strictly.⁴⁶ Prohibitionist systems criminalize almost every aspect of payments or exchanges for sexual services including procuring, soliciting, and wholly, or partly, surviving on funds from prostitution and other related activities.⁴⁷ The prohibition of these activities, even if the jurisdiction does not blatantly outlaw the actual act of prostitution, makes legally partaking in the sex trade practically impossible except for a few, extremely regulated situations.⁴⁸ Under these regimes, not only is the sex worker penalized, but the clientele and other parties associated with the act including brothel owners, traffickers, and procurers are also punished.⁴⁹ Nigeria follows this criminalization rationale as the Nigerian Criminal Code criminalizes most forms of prostitution, including the use of brothels, and imposes penalties ranging from the imposition of a fine to fourteen years confinement.⁵⁰

On the other hand, a decriminalization system removes all laws concerning prostitution from the penal code, including laws regulating the procurement and solicitation of business, brothel ownership, and any activity relating to the sex industry.⁵¹ However, jurisdictions embodying decriminalization do not go so far as to publicly take the stance that prostitution is a legitimate profession.⁵² In this way, individuals are left with limited freedom to determine how they build clientele, what working conditions they allow, and what moral and legal stigma will attach to the institution.⁵³

⁴⁴ Mgbako & Smith, *supra* note 42, at 1191.

⁴⁵ Criminal Code Act, *supra* note 7, §§ 217–227.

⁴⁶ Mgbako & Smith, *supra* note 42, at 1205–06.

⁴⁷ *Id.*

⁴⁸ See Ebum Sessou, *Legalising Prostitution: Women Give Ekweremadu Hard Knocks*, JUST HUMAN (Oct. 15, 2011), <http://www.vanguardngr.com/2011/10/legalising-prostitution-women-give-ekweremadu-hard-knocks/> (describing the Nigerian Penal Code sections aimed at prostitution).

⁴⁹ Mgbako & Smith, *supra* note 42, at 1206.

⁵⁰ Criminal Code Act, *supra* note 7, § 226(B).

⁵¹ Mgbako & Smith, *supra* note 42, at 1208.

⁵² See *id.* (summarizing decriminalization's laissez-faire approach to prostitution).

⁵³ See *id.* at 1209 (contrasting a decriminalization scheme with a legalization regime and noting the higher level of state control legalization jurisdictions have over the business).

Nigeria embodies both a decriminalization and a prohibitionist system. While Nigeria's Criminal Code does not criminalize the simple act of a woman of age acting on her own accord without any coercion to engage in sex for money, the Code contains numerous provisions prohibiting the use of brothels, solicitation to build client bases, solely deriving income from prostitution, as well as other correlated activities that do not necessarily contain a coercive element.⁵⁴ This system severely limits, and in some instances eliminates, a sex worker's freedom of choices and access to certain necessary resources.

Due to Nigeria's strong leanings towards a criminalization scheme concerning the sex business, those involved in prostitution are stripped of resources and forums for recourse when they are subjected to violence and abuse within the trade.⁵⁵ When faced with violence from pimps and clients, prostitutes are unable to report this activity to local authorities.⁵⁶ Additionally, because prostitutes cannot access the legal system to recover damages, sex workers in this regime are often denied payment for services already rendered, losing money and time.⁵⁷ Prostitutes in Nigeria are also routinely the victims of police brutality, harassment, and other forms of abuse.⁵⁸ One could easily imagine that reporting such police misconduct to other criminal justice authorities would only result in even harsher treatment of that prostitute by the local police as well as retaliatory arrests and resulting penalties.

However, even with such stringent provisions aimed at curtailing prostitution, Nigerians are still trafficked out of the country for prostitution purposes, and Nigeria remains a large hub for prostitution within the continent.⁵⁹ In a 2011 global observation of human trafficking, Nigeria provided a substantial supply of victims of trafficking internationally and

⁵⁴ Criminal Code Act, *supra* note 7, §§ 217–227.

⁵⁵ Mgbako & Smith, *supra* note 42, at 1206.

⁵⁶ *See id.* (positing that sex workers in a prohibitionist jurisdiction are denied the basic rights afforded to other citizens not engaging in sex work).

⁵⁷ *See id.* (describing how prostitutes are often the victims of exploitation due to lack of access to legal forums).

⁵⁸ *See Ekweremadu: The Pimp in the Senate*, SAHARA REPORTERS (Oct. 16, 2011), <http://saharareporters.com/report/ekweremadu-pimp-senate> (calling attention to the ill treatment of prostitutes by the police force).

⁵⁹ *See* Emmanuel Okubenji, *NAPTIP Rescues 10 Nigerian Girls in Abidjan*, DAILY TIMES (Nigeria) (Sept. 16, 2012), <http://dailytimes.com.ng/article/naptip-rescues-10-nigerian-girls-abidjan> (describing the rescue of young Nigerian girls trafficked into Cote d'Ivoire and forced to work as sex slaves, which seems to be a growing industry).

locally throughout the country.⁶⁰ Young girls in major Nigerian cities can be easily observed working in brothels and reporting to pimps, yet action is rarely taken to put a stop to this illegal activity.⁶¹ Even with institutions such as the National Agency for the Prohibition of Traffic in Persons and Other Related Matters (NAPTIP), an agency with proven success decreasing the occurrence of human trafficking, a considerable portion of victims taken for prostitution continues to hail from Nigeria in alarming proportions.⁶² The disparities in effectiveness of NAPTIP can arguably be attributed to the lack of governmental and law enforcement cooperation to raise public awareness and allocate sufficient resources to the cause.⁶³ Intensifying the human trafficking epidemic in Nigeria is the existence of authoritative criminal powerbases scattered throughout the country.⁶⁴ These clusters of powerful criminals routinely coerce women and girls to other countries to enslave them in the sex industry.⁶⁵ Quite often, the victims are not even aware that they are being trafficked until they are already deeply involved in prostitution in the foreign country.⁶⁶

The conditions that generally push individuals to enter into prostitution or to commit crimes relating to human trafficking resemble the current political and economic circumstances in South Sudan. Although poverty is the leading catalyst to entering the world of prostitution in Nigeria, other major impetuses include gender inequality, discrimination, and violence against women.⁶⁷ Due to this harsh regime, gaining legitimate employment in this society seems to be a near impossibility faced by prostitutes. Prostitutes, who have accumulated a criminal record and reputation due to their illegal involvement in the industry, will likely be trapped in an inescapable cycle with no choice but to continue sex work as a means of obtaining the basic

⁶⁰ See Chioma Gabriel, *Human Trafficking is Growing in Nigeria – Ngozi Ezeilo*, PRIME WOMAN (July 23, 2011), <http://www.vanguardngr.com/2011/07/human-trafficking-is-growin-g-in-nigeria-ngozi-ezeilo/> (labeling Nigeria as a source country to take women and children for sexual exploitation elsewhere and mentioning how thousands of Nigerians are traded locally each year).

⁶¹ *Id.*

⁶² See *id.* (noting how, even though NAPTIP is overall a positive establishment to curtail human trafficking, the organization is not operating optimally to address the crisis in Nigeria).

⁶³ See *id.* (recognizing that NAPTIP would likely be more effective if innovative technological resources were used to tackle the issue).

⁶⁴ PO (Nigeria) v. Secretary of State for the Home Department, [2011] EWCA (Civ) 132, [3], (Eng.), 2011 WL 578962.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Gabriel, *supra* note 60.

necessities of life.⁶⁸ Since poverty is such a huge concern for Nigeria, criminalizing most aspects of prostitution dealing with performing the work prosperously appears only to be increasing the economic disparity throughout the nation and acting completely contrary to the goals of the country.⁶⁹

Nigerian government officials have even expressed inclinations towards legalizing the sex industry.⁷⁰ For example, Ike Ekweremadu, the Deputy Senate President, called for a modification of Nigeria's current legislative scheme governing prostitution and suggested legalization with a system of registration and licensure instituted to regulate the business.⁷¹ Ekweremadu acknowledged what may be deemed as an overwhelmingly blatant observation: that the objective of ending prostitution entirely is a virtual impossibility.⁷² The better course of action, he proclaimed, would be to mimic other countries, legalize the institution, and allow individuals to decide more freely whether to engage in the sex business.⁷³ Even some leading female scholars in Nigeria have expressed ideologies opposed to criminalization and have articulated the need for the government to implement regulations in order to better monitor the system and alleviate some of the dangerous side effects that may result from prostitution.⁷⁴

Despite Nigerian government officials and Nigerian society's continued support for a mixed decriminalization and prohibitionist approach to prostitution, such a regime has failed to illicit many positive results.⁷⁵ In contrast, the Netherlands has implemented an entirely different tactic to confront the issues that accompany illegal prostitution—legalization, which appears to be much more effective than Nigeria's system.⁷⁶

⁶⁸ Mgbako & Smith, *supra* note 42, at 1208–09.

⁶⁹ See *Poverty in Nigeria: Between Alleviation and Eradication*, THIS DAY LIVE (Jan. 31, 2013), <http://www.thisdaylive.com/articles/poverty-in-nigeria-between-alleviation-and-eradication/137986/> (noting Nigeria's gloomy outlook for its current poverty crisis).

⁷⁰ Ekweremadu, *The Pimp in the Senate*, *supra* note 58.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ See Ebum Sessou, *Legalising Prostitution: Women Give Ekweremadu Hard Knocks*, VANGUARD (Oct. 15, 2011), <http://www.vanguardngr.com/2011/10/legalising-prostitution-women-give-ekweremadu-hard-knocks/> (noting Ngozi Nwosu Juba's belief that legalizing prostitution is the only way to ensure that lives are protected).

⁷⁵ See *id.* (calling attention to continued police harassment of prostitutes); see also Okubenji, *supra* note 59 (discussing a recent instance of human trafficking in Nigeria); *Poverty in Nigeria: Between Alleviation and Eradication*, *supra* note 69 (focusing on Nigeria's poverty crisis).

⁷⁶ See Drexler, *supra* note 8, at 229 (noting that the rate of prostitution-related crime in the Netherlands is very low).

*B. Netherlands: Legalization**1. The Political Shift to Legalize Sex Work*

In direct opposition to Nigerian belief and practice, the Netherlands acknowledges prostitution as a well-known and recognized profession.⁷⁷ The stance the Netherlands takes regarding sex work is termed “legalization”: governments consider work in the sex industry a legal, legitimate profession and authorize a great deal of state control over the practice.⁷⁸ Legalization allows for heavy governmental involvement in the industry through regulation implementation, taxation on monies exchanged for services, and greater penalties and punishments for activities outside the bounds of permitted conduct within the profession.⁷⁹ For example, countries operating within a legalization framework possess authority to set standards for brothel activity and street prostitution, impose licensing requirements, and require regular health testing.⁸⁰ In addition, countries applying legalization policies may regulate the visibility of the sex industry in the community, set age limits and other minimum working conditions for prostitutes, and develop administrative bodies to oversee different aspects of the industry.⁸¹

In 2000, the Netherlands formally acknowledged prostitution as a genuine commercial business, even though all forms of prostitution were never expressly prohibited.⁸² The legislature took this leap by amending the Dutch Penal Code (DPC) to eliminate the section criminalizing consensual adult prostitution as well as the general ban on brothels and pimping.⁸³ Now, the only provisions in the DPC addressing prostitution are sections that specifically address the ways in which prostitution may be performed illegally and provisions setting forth punishments for coercing individuals into the sex industry.⁸⁴ In enacting this legislation, the government focused

⁷⁷ *Id.* at 202.

⁷⁸ Mgbako & Smith, *supra* note 42, at 1207.

⁷⁹ *Id.*; Drexler, *supra* note 8, at 216.

⁸⁰ Mgbako & Smith, *supra* note 42, at 1207.

⁸¹ A.L. DAALDER, WETENSCHAPPELIJK ONDERZOEKEN DOCUMENTATIECENTRUM, PROSTITUTION IN THE NETHERLANDS SINCE THE LIFTING OF THE BROTHEL BAN 11–12 (2007).

⁸² See Drexler, *supra* note 8, at 217 (summarizing the Netherlands’ outdated decriminalization scheme and the legislative history surrounding regulation of activities associated with prostitution without banning the practice entirely).

⁸³ Janie A. Chuang, *Rescuing Trafficking from Ideological Capture: Prostitution Reform & Anti-Trafficking Law & Policy*, 158 U. PA. L. REV. 1655, 1718 (2010) (discussing the removal of the brothel and pimping ban after years of public debate); DAALDER, *supra* note 81, at 11, 17.

⁸⁴ See DUTCH PENAL CODE art. 273(f) SR (2005) (punishing the act of threatening or forcing an individual for the purpose of exploitation; transporting, recruiting, or abducting a person to

heavily on increasing penalties for violations of prostitution regulations and the sexual abuse and exploitation of women and minors.⁸⁵ The core requirements the Netherlands imposed for legal prostitution are: (1) the sex worker must be of age, currently defined as eighteen years or older; (2) the prostitute must engage in the work completely voluntarily; and (3) the sex work must be performed in compliance with all regulations of the controlling municipality, including any licensing and legal residence requirements enforced by the individual municipalities.⁸⁶ As expressed by the legislature, the overarching impetuses for amending the law were to reduce the occurrences of human trafficking into the Netherlands for sexual purposes, to separate criminal connotations from prostitution, to protect the well-being of those in the sex industry, to protect minors from involvement in prostitution, to prevent coerced sex work, and to create a means of allowing some governmental control over voluntary prostitution.⁸⁷

2. The Beneficial Nature of Legal Sex Work as Opposed to Decriminalization

The potential benefits of choosing a legalization scheme are plentiful. Legalizing prostitution provides the government with the ability to control and limit the growth of at least the transparent subset of the industry. As seen in the Netherlands, smaller local governments can control and limit sex work by issuing licenses, performing inspections, and even setting a maximum quota to place a cap on the number of sex businesses or brothels operating in a particular area.⁸⁸ Also, since sex work is regarded as a legitimate career in this regime, monies paid and earned from prostitution can be considered taxable income and used to increase the revenue of the

persuade the individual to engage in sexual activity in another country; or profiting from such exploitation or coercion).

⁸⁵ See Drexler, *supra* note 8, at 216–17 (describing the legislature’s concern with the crime involved in the sex industry in the Netherlands and its decision to retain laws focusing on protecting sex workers from abuse); see also DUTCH PENAL CODE art. 273(f) SR (2005) (punishing all offenses regarding coercion, trafficking, and profiting from exploitation and involvement with sex workers under the age of eighteen with maximum prison terms of fifteen years, the imposition of fines, or both).

⁸⁶ See DAALDER, *supra* note 81, at 17 (positing that the heart of this amendment to the DPC is to legalize those forms of prostitution that involve brothels and pimps, but also to stress that the age and voluntariness requirement and observance of the applicable regulations must be practiced in order to avoid punishment).

⁸⁷ *Id.* at 39.

⁸⁸ *Id.* at 12.

country or smaller locality.⁸⁹ Allowing municipalities or other local governments to limit areas for streetwalking can serve to decrease the visibility of the profession.⁹⁰ Legalization schemes can also possibly lessen the prevalence of trafficking into a nation for prostitution purposes because of the legal residence permit requirement and the increased authority afforded police forces to administer such policies.⁹¹

With increased opportunities to regulate enforcement as well as to establish administrative bodies to create and enforce licensing policies, the government may be better able to monitor who is participating in the sex business and ensure that the workers are legitimately present in the jurisdiction.⁹² Furthermore, legalizing prostitution allows for the creation of outlets to report abuse and crime within the industry, which may further decrease the violence and exploitation experienced by sex workers at the hands of pimps, clients, and even police officers.⁹³ Along similar lines, prostitutes working under this system have the option to leave a particular establishment and relocate to another business if he or she has encountered an abusive work environment.⁹⁴ The possibility of worker migration should provide business owners with incentives to maintain suitable working conditions in their establishments for fear of losing all employees and,

⁸⁹ See *Tax Revenue*, CASE FOR LEGALIZING PROSTITUTION FOLLOWING THE NEVADA MODEL, http://people.emich.edu/tsonntag/engl444/printtweb/tax_revenue.html (last visited Oct. 23, 2012) (using the Nevada model to suggest that taxing income from sex work could raise considerable amounts for the state); see also Toby Sterling, *Dutch Government Enforcing Taxes on Prostitution*, WASH. TIMES, Jan. 16, 2011, <http://www.washingtontimes.com/news/2011/jan/16/dutch-government-enforcing-taxes-on-prostitution/?page=all> (noting that the Dutch government is now taking steps to audit and enforce tax requirements on prostitutes working in the Red Light District and is not meeting much opposition, even from those working in the industry).

⁹⁰ DAALDER, *supra* note 81, at 30. Streetwalking is a form of prostitution where a “zone of tolerance” exists for sex workers to openly walk around, recruit clients in public areas and perform sexual activities at different locations or in cars.

⁹¹ *Id.* at 12.

⁹² See *id.* at 11, 13 (describing the amendment’s licensing obligation, which mandates that brothels and other visible sex businesses must conform to the municipality’s licensing requirement, pointing out the pertinent role and extreme authority the police force has in monitoring the licensed sector of prostitution and performing inspections, and also discussing the legal residence permit needed for foreign individuals to participate in the sex industry in the Netherlands).

⁹³ See *id.* at 14–15 (discussing the passing of the Public Administration Probity Screening Act (BIBOB) that permits administrative bodies to deny licensing applications and to even revoke licenses if a severe risk exists that the entity will be engaging in criminal activity or benefiting from criminal uses of the license in addition to the creation of anonymous crime reporting lines); Mgbako & Smith, *supra* note 42, at 1208.

⁹⁴ DAALDER, *supra* note 81, at 15.

consequently, the client base.⁹⁵ Additionally, because prostitution in the Netherlands is recognized as an actual career, certain rights accompany this recognition including the ability to unionize to demand humane job environments, suitable wages, fair hours, and even possibly benefits.⁹⁶

Legalizing—as opposed to penalizing—all acts of sex work also allows for better control over the spread of diseases through inspections and health testing requirements in licensed brothels and other sex businesses.⁹⁷ The municipalities and local entities are granted the power to focus heavily on health regulations and can use administrative bodies and police authority to ensure sex workers and establishments are complying with all health laws, being tested regularly, and receiving proper safeguards to combat the spread of sexually transmitted diseases, particularly HIV/AIDS.⁹⁸ A more liberal benefit perceived from legalizing sex work is the freedom of choice granted to individuals to decide what to do with one's own body.⁹⁹ Deciding whether to participate in the sex trade, the argument goes, is equivalent to a woman's right to choose abortion, and sex workers should be granted similar discretion concerning personal bodily decisions.¹⁰⁰

3. *Perceived Negative Consequences Resulting from Legalization*

Opponents to a legalization scheme present arguments that must be considered when determining whether or not to make prostitution a legitimate profession. Those against legalization argue that, even with all these regulations in place, a more-or-less invisible sector of prostitution still exists which does not have to abide by all the regulation policies: i.e., home prostitution.¹⁰¹ However, because of all the protections and potential of

⁹⁵ See, e.g., *Lufthansa Workers Strike for Higher Pay, More Secure Jobs*, DW (Mar. 21, 2013), <http://www.dw.de/lufthansa-workers-strike-for-higher-pay-more-secure-jobs/a-16686873?maca=en-rss-en-all-1573-rdf> (noting that a German airline was forced to cancel flights due to an employee strike for better working hours and pay).

⁹⁶ See *Prostitution in Amsterdam*, AMSTERDAM.INFO, <http://amsterdam.info/prostitution> (introducing The Red Thread as one of Amsterdam's prominent labor unions fighting for women's rights in the prostitution business).

⁹⁷ Mgbako & Smith, *supra* note 42, at 1208.

⁹⁸ See DAALDER, *supra* note 81, at 48, 54 (noting the systematic and regular inspections conducted by the police as well as local health service providers, sometimes more frequently than once a year, and most municipalities' special regard to the health conditions of sex workers); Mgbako & Smith, *supra* note 42, at 1208.

⁹⁹ See Drexler, *supra* note 8, at 210 (applying this rationale to decriminalization).

¹⁰⁰ *Id.*

¹⁰¹ See DAALDER, *supra* note 81, at 12, 22, 29, 74 (describing "sex saunas" where paid sex is the main purpose behind the establishments).

benefits that come along with working in the visible, regulated sector, more sex workers could potentially be compelled to seek employment in a business as opposed to working underground. Some may also posit that a particular group of prostitutes cannot register because of their status as illegal immigrants or may simply choose not to in order to avoid the stigma associated with the sex trade.¹⁰²

Another potential difficulty that may arise in this sort of jurisdiction is that prostitutes have the option of relocating to areas with more lax policies regarding registration since local governments are in charge of enacting specific regulations and these laws may differ.¹⁰³ However, so long as the smaller governments are still mandated to abide by a minimum base set of rules, possibly on a federal level, prostitutes will continue to be compelled by law to conform to some type of registration policy that furthers the objectives the jurisdiction hoped to achieve by legalizing the practice.¹⁰⁴ Allocating the design of laws to a smaller government agency at a local level allows local governments to tailor the laws to the specific needs of the community while still maintaining some form of uniformity.¹⁰⁵

Others, including many African countries, may continue to vehemently oppose legalizing sex work due to the stigma that prostitution is an immoral practice, no matter how the work is carried out, and regardless of whether the government chooses to legalize its occurrence.¹⁰⁶ Nevertheless, with a push for international sex workers' rights and the cooperation and collaboration between women's rights organizations and development groups in African countries across the continent, the age-old moral justification for banning sex work will likely fade in importance, taking a back seat to fair working conditions, the right to be free from abuse, and the right of bodily freedom advocated by these groups.¹⁰⁷

¹⁰² Mgbako & Smith, *supra* note 42, at 1208.

¹⁰³ DAALDER, *supra* note 81, at 16, 61.

¹⁰⁴ *Id.* at 43–44, 47.

¹⁰⁵ See *id.* at 43 (laying out the General Bye-Law option afforded municipalities in the Netherlands in which the municipalities may adopt the bye-law that regulates commercial prostitution as opposed to pursuing an individualized prostitution policy).

¹⁰⁶ Drexler, *supra* note 8, at 206; see also Mgbako & Smith, *supra* note 42, at 1189–91 (noting many public denouncements of prostitution by officials in Rwanda, the Republic of Gambia, and Nigeria due to incongruence with African culture).

¹⁰⁷ See Mgbako & Smith, *supra* note 42, at 1193, 1197–98 (detailing the evolution of the International Sex Workers' Rights Movement as well as the growing support for prostitution and sex work activity by African organizations exhibited through the sex workers' rights conference in March 2008 and the "HIV and Sex Work" conference in Mozambique in October 2007).

Adversaries may also call attention to the possibility that legalizing brothels can strip sex workers of control over their working conditions, which, in turn, could facilitate abuses and violations to the disadvantage of the individual prostitute.¹⁰⁸ However, as previously acknowledged, the creation of unions and the ability of sex workers to move from business to business until he or she is satisfied with the conditions of the establishment will likely adequately address this concern, providing sex workers with sufficient resources to advocate for and obtain humane working environments.¹⁰⁹ Further, local governments have the choice to severely penalize inappropriate conduct by pimps and business owners, which should provide a deterrent for abusive behavior, especially since legalization schemes contain greater channels to report abuse.¹¹⁰ Therefore, while potential problems may actually arise and can have effects upon the individual sex workers as well as the surrounding communities, the safeguards provided by the implementation of laws, outlets, and other resources can effectively reduce the negative consequences of legalization.

4. *The Actual State of Prostitution in the Netherlands*

The Netherlands can be used as an illustrative and persuasive demonstration of the positive impacts that may result from legalizing prostitution. From its evolution from the decriminalization era into its current legalization structure, the Netherlands has enjoyed a decrease in crime rates as well as a reduction in sexually transmitted infections.¹¹¹ Also, in terms of visibility, the Netherlands has succeeded in lessening the number of streetwalking prostitutes throughout the community; nowhere in Amsterdam, for example, can large concentrations of streetwalking be found.¹¹² The problem with a lack of uniformity between larger cities and smaller locales has been properly addressed and reduced because almost

¹⁰⁸ *Id.* at 1209.

¹⁰⁹ *Prostitution in Amsterdam*, *supra* note 96.

¹¹⁰ See DAALDER, *supra* note 81, at 48, 51 for a discussion of how a great deal of legislation targets business owners as opposed to individual sex workers. For example, the Netherlands' prostitution policy makes establishment owners solely responsible for any form of prohibited prostitution occurring within the business; and also noting that a large proportion of the municipalities where sex businesses exist distribute information about the laws affecting sex business owners and the rights and obligations placed upon the owners due to these laws.

¹¹¹ Drexler, *supra* note 8, at 202–03.

¹¹² See DAALDER, *supra* note 81, at 30–31 (recounting the crackdown on streetwalking zones and their elimination in the Netherlands, and the imposition of fines on clients trying to participate in streetwalking prostitution in prohibited areas).

every municipality in the country has enacted some form of health inspection requirement and finished the issuing of licenses.¹¹³

However, human trafficking probably faces more stringent challenges because of increased regulation enforcement.¹¹⁴ For instance, after the initial brothel ban in 2000, the number of identified victims of trafficking into the Netherlands significantly dropped in the ensuing three years.¹¹⁵ The spike in detected victims only occurred after the 2005 amendment to the DPC that broadened the crime of human trafficking to include non-sexual labor and the human organ trade.¹¹⁶ Prior to the amendment, however, trafficking solely referred to sex trafficking.¹¹⁷ Similarly, the implementation of a uniform age requirement has almost eradicated underage prostitution in both the licensed and non-licensed sectors.¹¹⁸ Moreover, prostitutes' and business owners' awareness with regard to the need to prevent exploitation and involuntary sex work has grown.¹¹⁹ Researchers observed during a survey by the Dutch National Rapporteur on Trafficking in Human Beings that only eight percent of interviewed prostitutes who work in the licensed area of prostitution entered into the realm of sex work through coercion or force.¹²⁰ The majority of business owners supports the stricter amendment to the law and strives to abide by the regulations and requirements primarily for a business justification: business owners believe compliance with the rules may attract a larger client base because of an attractive and respectable business reputation

¹¹³ *Id.* at 11.

¹¹⁴ See Wendy Lyon, *Sex Trafficking in the Netherlands: Should We Believe the Hype?*, FEMINIST IRE (Mar. 18, 2012), <http://feministire.wordpress.com/2012/03/18/sex-trafficking-in-the-netherlands-should-we-believe-the-hype/> (suggesting that, while prohibitionist supporters claim that human trafficking for sexual activity has dramatically amplified in the Netherlands, other factors such as the amendment's broad scope penalizing human trafficking for purposes other than prostitution, the ability for basically anyone to report a purported victim of trafficking and have that number included in the data, and a more attractive destination in terms of climate and locale have actually skewed data upwards); see also DAALDER, *supra* note 81, at 81 (emphasizing the number of prostitutes working in the Netherlands hailing from European countries and, thus, working legally under the legal residence requirement has increased, replacing prostitutes coming from Russia and other countries who are generally working illegally).

¹¹⁵ Lyon, *supra* note 114.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ See DAALDER, *supra* note 81, at 14 (noting that while estimating the precise number of underage minors involved in the industry is difficult, the study under analysis did not encounter any underage working prostitutes).

¹¹⁹ *Id.* at 81.

¹²⁰ *Id.* at 86.

within the community.¹²¹ In regard to individual prostitutes, some sex workers have even experienced an increase in income since the legalization of prostitution because prostitutes do not need to be as competitive as was necessary when trying to obtain a portion of that illegal economy.¹²² Additionally, the paid-for “support” and “protection” provided by pimps is no longer essential to work in the sex business safely.¹²³ Furthermore, Dutch sex workers are afforded the opportunity to participate as members of committees to advance local policy concerning prostitution and influence the enactment of legislation that will be beneficial to sex workers’ rights because of the sex worker’s legitimization as a working citizen.¹²⁴

Although the system of legalization operating in the Netherlands is not perfect, the overall perceived and actual benefits realized by sex workers in this structure are prominent. The positive consequences of legalization outweigh the negative effects by far, stemming from the increased regulations and enforcement of those laws as well as the increased rights granted to those in the profession. Prostitutes in this country generally make more money than sex workers in jurisdictions criminalizing prostitution, can more readily avoid abuse and exploitation, can actively take part in the decision-making process that will inevitably control how sex workers will function in society, and have more opportunities to learn about the rights they possess under the law.¹²⁵ In addition, the local governments have the ability to more closely monitor the profession, impose safety standards, and collect taxes on the income. All-in-all, this approach seems to be working as well as any system can for both prostitutes and the community at large.

IV. A DRASTIC RECONFIGURING OF SOUTH SUDANESE LAW TO FACILITATE CHANGE

A. Implementation of a Legalization Scheme in South Sudan

Instead of continuing down a destructive path with a hybrid system of decriminalization and prohibition, the South Sudanese legislature should amend its penal code to remove all provisions punishing individuals for

¹²¹ See *id.* at 52–53 (illustrating that 84% of the interviewed sex business owners in the licensed sector approved of the amendment).

¹²² KAREN HINDLE ET AL., LIBRARY OF PARLIAMENT, PROSTITUTION: A REVIEW OF LEGISLATION IN SELECTED COUNTRIES 17–18 (2003).

¹²³ *Id.*

¹²⁴ *Id.* at 18.

¹²⁵ See Part III.B.4 (laying out these benefits in the Netherlands).

involvement in prostitution generally and model these amendments after the applicable provisions of the DPC. Imitating the Netherlands and transforming to a country rooted in a legalization approach to sex work may better address some of the pressing issues attacking South Sudan economically, politically, and even socially. South Sudan faces many of the same concerns presented in the Netherlands prior to legalization such as poverty, human trafficking, and child prostitution;¹²⁶ therefore, applying a similar approach to the new country will be directly in line with the goals of the government and the community in South Sudan.

The first step in making this policy change needs to occur in South Sudan's legislative sector. The Legislative Assembly should repeal sections 252 through 256, which criminalize certain aspects of prostitution.¹²⁷ The country should continue to deem human trafficking a crime, but those current provisions that make benefitting economically from prostitution illegal should be removed; in effect, only portions of sections 255, 256, and 258 would remain.¹²⁸

Because South Sudan operates as a democracy, the Legislative Assembly would need to vote to rescind these sections of the Penal Code.¹²⁹ Additionally, even though the Legislative Assembly clearly expressed the people's abhorrence of the involvement of children and minors in prostitution through the passage of the Child Act, the Legislative Assembly

¹²⁶ FLORIS NOORDHOFF, PERSISTENT POVERTY IN THE NETHERLANDS 11 (2008), *available at* <http://books.google.com/books?id=j41GoCk7-ykC&pg=PA12&lpg=PA12&dq=poverty+trends+in+the+netherlands+in+2000&source=bl&ots=LBr8Td7Noc&sig=M7Qn0SDJS8dVfEnIcazXHtgS7fU&hl=en&sa=X&ei=uBBOUeeHBYmA9gTP0YDwBQ&ved=0CGQQ6AEwBw#v=onepage&q=poverty%20trends%20in%20the%20netherlands%20in%202000&f=false>; DAALDER, *supra* note 81, at 17; MELISSA FARLEY, PROSTITUTION, TRAFFICKING, AND TRAUMATIC STRESS 321 (2003), *available at* http://books.google.com/books?id=e7qyVMwVL_MC&pg=PA321&lpg=PA321&dq=prostitution+in+the+netherlands+in+the+1990s&source=bl&ots=k340Z_ZCRb&sig=7IJ0vOETqrxeHo2ANTvgIID04pM&hl=en&sa=X&ei=Kw9OUdvILYjm9ASL3oC4BQ&ved=0CEIQ6AEwAw#v=onepage&q=prostitution%20in%20the%20netherlands%20in%20the%201990s&f=false.

¹²⁷ See PENAL CODE ACT, *supra* note 4, §§ 252–256 (punishing solicitation; profiting, managing, or facilitating brothels; and procuring others for sex work).

¹²⁸ See *id.* §§ 255, 256, 258 (penalizing human trafficking; coercing and detaining others for prostitution against their will; and thrusting children into sex work).

¹²⁹ See *National Legislative Assembly*, GOVERNMENT OF THE REPUBLIC OF SOUTH SUDAN (Aug. 7, 2011), <http://www.goss.org/> (follow the “Legislative Assembly” hyperlink) (describing the duties of the National Legislative Assembly of the Republic of South Sudan, including the ability to “adopt[] resolutions on matters of public concern”); see also Chapter IX Legislation § 69, <http://www.goss.org/> (follow the “Legislative Assembly” hyperlink; then follow the “Procedures” hyperlink; finally, follow the “Download” hyperlink under “Legislation”) (outlining, generally, the legislative procedure for enacting laws).

should proceed even further by amending the Penal Code to expressly indicate that only those individuals aged eighteen and older are allowed to enter into the sex business as either workers or clients.¹³⁰ While the Child Act is clear that no one may exploit underage persons, including using them for motives relating to prostitution,¹³¹ adding a provision in the general Penal Code setting forth the age requirement to legally participate in the sex trade will be necessary to decrease confusion and increase compliance with this facet of the law. The national and state governments should also be encouraged to implement laws allowing taxation on income earned from prostitution through separate legislation.

Following the removal of these provisions and the addition of others, the individual state and local governments should then enact local laws and regulations that allow for greater local monitoring over the profession. Similar to the wide latitude of authority granted to municipalities in the Netherlands, the states in South Sudan would need to be afforded a broad freedom to decide which type of regulations and policy decisions would best address the needs of a particular community. However, to promote unity throughout the nation, the Legislative Assembly should impose a bare minimum set of requirements, similar to those in the Netherlands, for such regulation in regards to residential permit requirements, mandatory working conditions for sex businesses, and routine health screenings.

The Legislative Assembly should also consider revising the Penal Code to more severely punish violators of the few remaining provisions governing the sex business. In order to deter such violations and foster a stable, safe, and successful sex industry, a five-year maximum detainment sentence seems entirely too short to ensure long-term change in the prostitution scheme in South Sudan, which is already replete with illegal activity. South Sudan should increase the penalties for such crimes to prison terms similar to those in the Netherlands: a maximum sentence of fifteen years.¹³²

Furthermore, the creation of local agencies tasked with various enforcement responsibilities is key to the success of a legalization scheme in South Sudan. For instance, the Ministry of Health should work to develop agencies and medical programs, establish a base set of health requirements for prostitutes and establishments, develop resource plans for the administration of such health care, and work with local governments to

¹³⁰ See Child Act §§ 5, 22(3) (criminalizing exploitation of children under the age of eighteen).

¹³¹ *Id.* § 22(3).

¹³² DUTCH PENAL CODE § 273(f).

implement these policies.¹³³ Also, the smaller state governments should strive to create resource agencies, such as those created under the BIBOB in the Netherlands, to provide outlets for prostitutes to report abuse.¹³⁴ State governments would undoubtedly also need to allocate more time, attention, and funds to police forces and other organizations to allow for greater supervision of the sex industry and to ensure abidance by the local regulations. To spread awareness of the change in the law and to alert those involved in the sex business of their newfound rights and obligations, informational material should be distributed throughout the communities either by local agencies or police forces.

B. Challenges Facing the Infant Country

However, even in a perfect world with ideal circumstances to implement legalization, South Sudan will undeniably face challenges and barriers when making such a change. A growing concern in the African communities is that legalizing sex work would even further attract a greater number of sex workers from all across the world to certain African countries, and, consequently, turn Africa into a “destination for sex tourism.”¹³⁵ This is a compelling concern when considering South Sudan because, as the data demonstrates,¹³⁶ this country is already on the path to becoming a prostitution hot spot for numerous reasons.¹³⁷ However, its current regime has not helped South Sudan decrease the negative consequences that can flow from illegal prostitution.¹³⁸ Criminalizing certain aspects of the industry and burdening those involved with a heavy, negative, social stigma obviously has not achieved a deterrent effect, however desirable this effect may be.

Arguably, one of the most pressing difficulties South Sudan will face in implementing these regulatory laws is the cost of developing the various

¹³³ See *Health*, GOVERNMENT OF THE REPUBLIC OF SOUTH SUDAN (Aug. 29, 2011), <http://www.goss.org/> (follow the “Ministries” hyperlink; then follow the “Ministry of Health” hyperlink) (detailing the duties and programs of South Sudan’s Ministry of Health).

¹³⁴ See DAALDER, *supra* note 81, at 15 (discussing the authority conferred under BIBOB to create outlets for prostitutes to report violence and other abuse).

¹³⁵ See Mgbako & Smith, *supra* note 42, at 1210 (expressing this issue in the context of Ghana).

¹³⁶ See *supra* Part II.A (describing the increase in the number of prostitutes in Juba over the past few years).

¹³⁷ See *supra* Part II.A (setting forth the multiple causes for South Sudan’s prostitution boom).

¹³⁸ See *supra* Part II.A (describing the current crisis of illegal prostitution in South Sudan).

agencies critical to achieving the desired results of a legalization scheme.¹³⁹ The argument suggests that the governments in these African countries lack sufficient resources to provide medical services and fund the agencies.¹⁴⁰ Admittedly, South Sudan currently ranks relatively low on the ‘international scale of wealth.’¹⁴¹ Nevertheless, during its journey to democracy and independence, South Sudan has requested international assistance and relied on U.S. support, particularly, to make this transition possible.¹⁴² Thus, in the meantime, to become a self-sustaining country, South Sudan should continue to reach out to other nations sharing similar policy goals in order to fund the formation of much-needed medical institutions and enforcement agencies. Also, because the country is brimming with natural resources such as oil, uranium, gold, and fertile soil, South Sudan theoretically maintains leverage to borrow money to invest in a host of community and infrastructure projects, such as the creation of agencies to facilitate legalization.¹⁴³

Another challenging concern South Sudan will likely encounter is pressure from surrounding African countries to continue to stigmatize prostitution and declare the institution incompatible with African values.¹⁴⁴ However, many African countries have taken the leap to adopt at least a decriminalization scheme despite a purported overall African sentiment against prostitution based on immorality.¹⁴⁵ For example, Ethiopia and the Central African Republic, which partially border South Sudan, do not consider prostitution illegal in and of itself, notwithstanding the fact that other African countries that repute the business completely surround these countries.¹⁴⁶ This situation suggests the age-old moral justification for policies against prostitution are eroding, and an even larger step towards legalizing sex work may not, in fact, offend the current African morale and system of values.

¹³⁹ Mgbako & Smith, *supra* note 42, at 1210.

¹⁴⁰ *Id.*

¹⁴¹ See Hollenbach, *supra* note 1 (declaring South Sudan one of the world’s poorest countries).

¹⁴² *Id.*

¹⁴³ See Lina Hoffman, *Poor Despite Oil – Independent South Sudan*, DW (Sept. 7, 2012), <http://www.dw.de/poor-despite-oil-independent-south-sudan/a-16082565> (describing the bleak economic situation in South Sudan currently but maintaining hope for future improvement).

¹⁴⁴ See Mgbako & Smith, *supra* note 42, at 1189–91 (summarizing the anti-prostitution camp in Africa).

¹⁴⁵ See *The Legal Status of Prostitution by Country*, CHARTSBIN, <http://chartsbin.com/view/snb> (last visited Nov. 12, 2012) (charting the status of prostitution legalization throughout the world but not distinguishing between complete legalization and decriminalization).

¹⁴⁶ *Id.*

C. Benefits of Departing from a Hybrid System of Decriminalization and Prohibitionism

Legalizing sex work in South Sudan would result in a plethora of advantages for the country's citizens, the government, the economic situation, the medical crisis, and the prevalence of crime associated with prostitution. For example, the reduction in criminal sanctions for seemingly legitimate sex work activity may actually send the message to sex workers and society that prostitution is less of a negative institution, thereby reducing the stigma imposed upon those in the industry. Lifting this stigma might, consequently, encourage sex workers to take full advantage of police authorities and other resources to report and prevent unlawful activity connected to prostitution with less fear of being shunned by the community.

Legalization could also further a deep-rooted underlying goal of the South Sudanese government and people: to escape the harsh, rigid control of Islam in the North.¹⁴⁷ Making this transformation will help to enhance freedom of personal choice and liberty within the community of South Sudan, which is directly in line with the ideology the new country has chosen to adopt.¹⁴⁸

Moreover, in a time where the country is frantic for revenue and in dire need of establishing economic stability, legalizing prostitution could easily aid in this momentous task.¹⁴⁹ South Sudan desperately needs to bring revenue into the country, and allowing foreigners into the country to spend money in the booming sex industry, and imposing taxes on such monies, contains potential to place the country in a better financial position. Of course, this reform would have to be a work in progress. South Sudan would have to employ a system of borrowing money from other governments, raising enough revenue to sustain the country more independently, and eventually repaying its debts in order to make this shift to legalization successful in the long run. Nevertheless, with money already being exchanged in the country for sex work, the government could very well prosper from recognizing prostitution as a profession and taxing the practice.

¹⁴⁷ See *Politics*, GOVERNMENT OF THE REPUBLIC OF SOUTH SUDAN, Oct. 25, 2009, <http://www.goss.org/> (follow the "About South Sudan" hyperlink; then follow the "Politics" hyperlink) (noting that one of the reasons for South Sudan's move for independence was to escape the selfish, personal interests of Islam practiced in the North).

¹⁴⁸ See Drexler, *supra* note 8, at 210 (describing freedom of choice as a vital benefit deriving from such a reform).

¹⁴⁹ See Manyang David Mayar, *Involve Poor in Poverty Fight, World Bank Tells Juba*, VOICE OF AMERICA (Feb. 22, 2013), <http://www.voanews.com/content/involve-poor-in-poverty-fight-world-bank-tells-juba/1608885.html> (recounting a World Bank economist's advice to South Sudan in order to eradicate the growing problem of poverty in the new country).

Legalization can also address the spread of HIV/AIDS throughout South Sudan. Once the government of South Sudan has borrowed enough money, and the Ministry of Health has developed institutions and medical facilities, the mandatory health screenings and the imposition of safety precautions while participating in sex work can begin.

V. CONCLUSION

The intricate question as to the appropriate and most beneficial approach to address prostitution has been tackled in a variety of ways throughout different regions of the world. This concern has recently fallen on the newly-formed decision-makers in the African country of South Sudan. The rapid growth of prostitution is a cause for concern, and reformation of South Sudan's current attitudes and policy towards sex work is necessary.

One group of theorists, legislators, and politicians advocate for a scheme termed 'prohibitionism' or 'criminalization.' This regime does not acknowledge prostitution as an individual career choice, and, instead, criminalizes and punishes all forms of prostitution and activities related to sex work.¹⁵⁰ This approach is extremely harsh, especially towards the sex worker, and even punishes the sex workers' clientele.¹⁵¹ A heavy social stigma is placed upon prostitutes working under this regime and does not afford sex workers many opportunities to escape criminal activity associated with prostitution or take full advantage of the freedom to make choices regarding one's own body.

A somewhat similar approach that has been applied in a multitude of jurisdictions is 'decriminalization.' Jurisdictions employing this scheme choose to remove any provisions criminalizing or even addressing the outright act of prostitution. These jurisdictions adopt more of a detached approach and have decided to let the sex industry sort itself out without much help from the penal system. Many decriminalization schemes fail to achieve desired results, however, because social stigma is still attached to the industry, and prostitutes are not afforded many rights in regard to their work. In summation, the social stigma is still present in areas adopting decriminalization; prostitutes still have little recourse to be treated fairly by clients, police officers, and employers; and many areas are still in debt regardless of the large amounts of money brought into the jurisdiction by foreigners for prostitution.

¹⁵⁰ See *supra* Part III.A.

¹⁵¹ Mgbako & Smith, *supra* note 42, at 1206.

Some governments have attempted to combine these two schemes and implement a hybrid decriminalization/prohibition approach to sex work. This approach does not explicitly criminalize individualized acts of prostitution, but this hybrid does embody the social stigma, reluctance to the practice in general, and highly penalized nature that accompanies criminalization schemes. South Sudan and Nigeria, for example, both currently implement such a strategy, not by plainly denouncing prostitution in the penal codes, but by propelling negative sentiment towards sex work visible in society. While some very influential leaders have supported such a stigma and have publicly advanced prohibition, other leaders, such as Ike Ekweremadu of Nigeria, have expressed concern with the current system and acknowledge the need for reform. Demonstrative of this sort of combination approach, the criminal codes of Nigeria and South Sudan also contain certain provisions that make specific acts relating to prostitution illegal, such as pimping or brothel-owning.

On the opposite side of the spectrum, some countries and other locales choose to recognize prostitution as a legal and legitimate form of work. These “legalization” jurisdictions penalize only a select few activities associated with prostitution, such as human trafficking, coercion, detainment, or influencing underage participation in sex work.¹⁵² Legalization allows for broad authority to affect regulations, taxation, registration requirements, and health and safety inspections.¹⁵³ The Netherlands, for example, lifted its bans on brothels and pimping in 2000, and formally acknowledged prostitution as legal.¹⁵⁴

In order to curb the rapidly growing illegal sex market in South Sudan, the Legislative Assembly should adopt a new approach to prostitution to replace its system of decriminalization and prohibition. The South Sudanese government should opt for a more accepting view of sex work by legalizing the profession, similar to the prostitution scheme in the Netherlands. In doing so, South Sudan should implement regulations, requirements, and greater monitoring systems in order to facilitate the success of this system.

By employing a legalization scheme, South Sudan may actually be able to address many of the social, political, and economic problems bombarding the new country. Legalization could help reduce the negative stigma felt by some sex workers in South Sudan, reduce the amount of violence and crime associated with sex work, improve the financial situations of sex workers as

¹⁵² DUTCH PENAL CODE, art. 273(f).

¹⁵³ Mgbako & Smith, *supra* note 42, at 1207.

¹⁵⁴ DAALDER, *supra* note 81, at 11–12.

well as the country as a whole, and even impede the spread of sexually transmitted diseases throughout the country.

South Sudan's current approach to prostitution seems to be propelling the country to a bleak future, filled with prostitution-related crime, poverty, and social unrest. However, this path towards failure can be rerouted through an acceptance of prostitution as legitimate work and an abandonment of the current system of decriminalization/prohibition. South Sudan should make haste in addressing the prostitution boom throughout the country before the opportunity for reform passes.