

*A Critical Examination of
Responses to Prostitution in Four
Countries: Victoria, Australia;
Ireland; the Netherlands; and
Sweden*

For the Routes Out Partnership Board

Julie Bindel and Liz Kelly, Child and Woman
Abuse Studies Unit, London Metropolitan
University, 2003

1. Introduction	2
History of Prostitution Legislation	3
2. Aims and methods.....	5
3. Barriers to discussion/debate	6
4. What we know about the sex industry	7
Expansion and normalisation	7
Law enforcement approaches	9
The connection between prostitution and drugs.....	9
Impact on and responses of communities	9
Customers/Clients.....	10
Levels and experience of violence.....	10
5. Comparing Policy Regimes.....	11
Legalisation: The Netherlands and Victoria, Australia	12
Rationale	12
Operation in practice	13
Violence	16
Health	16
Public attitudes.....	17
Media Coverage	17
Evaluation	18
Policy change	18
Consequences for women in the sex industry	18
Implications for Routes Out SIP	18
Regulation: Republic of Ireland	19
Rationale	19
Operation in practice	20
Violence	21
Health	21
Public attitude	22
Media Coverage	22
Evaluation	22
Policy change	22
Consequences for women in the sex industry	23
Implications for Routes Out SIP	23
Implications for police and health services.....	23
Criminalising Demand: Sweden	23
Rationale	24
Operation in practice	25
Violence	26
Health	26
Public attitude	26
Media Coverage	26
Evaluation	26
Policy change	26
Implications for police and health services.....	27
Consequences for Women in the Sex Industry	27
6. Conclusions.....	28
Bibliography	31
Appendix 1 Current Situation UK.....	35
Appendix 2 Briefing on Current trends Victoria, Australia	37
Appendix 3 Briefing on Current trends Republic of Ireland.....	55
Appendix 4 Briefing on Current trends Netherlands.....	60
Appendix 5 Briefing on Current trends Sweden.....	72

Fiona Broadfoot, founder of Street Exit, 2003¹

One would have thought it self-evident that the best way to confront exploitation in the sex industry is to empower the women and men who work in it. Change happens when the oppressed say enough is enough. It was black people who confronted racism; gender inequality was fought first and foremost by women; dreadful working conditions by workers self organising through unions.

Ana Lopes and Callum Macrae, 2003

1. Introduction

Prostitution has proved a vexatious issue for politicians and policy makers. From the mid-nineteenth century to the late twentieth century there were two broad positions: the ‘abolitionist’ and the ‘regulatory’. More recently a third possibility has been explored - legalisation. Currently in the UK, after decades of neglect, a debate is emerging with respect to prostitution, in the wake of new research and widespread disquiet in relation to trafficking and sexual exploitation of children. Whilst there is widespread agreement that the current legal framework, and policy approaches (such as they are) are problematic, there is no consensus with respect to the available options, nor do any of them come without deeper implications and potential costs.

As will become clear, whilst the philosophical positions are incompatible, in reality many policy responses are pragmatic compromises or strategic amalgams of the available options. We are also increasingly convinced that there are layers of consensus, in research and practice that are too rarely acknowledged, in the frequently polarized discussions on this issue. We also explore the barriers to discussion and debate, including the resort to unhelpful and inaccurate clichés such as: ‘prostitution is the oldest profession’; ‘it has always, and will always be with us’.

Some of the questions about prostitution cannot be resolved by research, since they are fundamental questions about the kind of society one wishes to see, how one understands gender equality, and what it means to sell sex. For example, Julia O’Connell Davidson asks:

... do the body's sexual capacities constitute property in the person or is it impossible to detach sex from personhood without moral harm? Does prostitution law violate the prostitute's natural right to engage in voluntary transfers of her rightful property, or does the prostitution contract itself violate her natural right to dignity? (2002, p85)

¹ Personal communication, 2003

It doesn't matter what they try, whether it's legalising it, allowing 'tolerance zones', clamping down on street girls, having piecemeal name and shame campaigns against kerb crawlers, it never works. What we need is for the government to be brave enough to make some serious efforts to solve the problems of prostitution, such as tackling demand and helping women get out, rather than turning a blind eye.

What it is possible to do, however, is assess the rationale and claims made for different approaches, in terms of whether these are reflected in the subsequent outcomes, and also draw on research with respect to 'what works'.

There is no national policy on prostitution in Scotland, or England and Wales, although reviews are underway in both jurisdictions. Local responses, as a consequence, tend to be sporadic and complaint led, focused on street prostitution. Various single stranded interventions have been piloted - tolerance zones, kerb crawler re-education, media name and shame campaigns, road closures - but have either only had short term results, or not been sustained over time. Off street prostitution generally receives less attention from the police and general public simply because it is 'behind closed doors'. Alongside these interventions have been more health and support based services, often delivered by NGOs. From an initial limited focus on harm reduction, a number are moving into more advocacy-based approaches, and several now have a specific aim of enabling women to exit prostitution. Later this year the Home Office will publish findings from evaluation of 11 pilot projects, funded under the Crime Reduction Programme Violence Against Women Initiative, which will add to our knowledge of what does and does not work in relation to prostitution.

The main body of the report comprises of five sections: the introduction, including the history of prostitution legislation; the aims and methods used; barriers to discussion and debate; what we know about the sex industry; and conclusions. Appended are the four commissioned country reports on Victoria, Australia, Ireland, The Netherlands and Sweden.

History of Prostitution Legislation

In the early 19th century, women in street prostitution in England, Wales, and Scotland could be arrested under vagrancy legislation. In 1839 a clause in the Police Act introduced the notion of a 'common prostitute' who could be arrested for soliciting. This marks the beginning of women being classed as a particular 'kind of person' i.e. being labelled a prostitute (Walkowitz,1980).

During the 1830s and 1840s social reformers began to argue that women were victims, and develop a critique of men's presumed right to buy sexual services. Societies for the prevention of juvenile prostitution were also formed in London and Edinburgh in 1834.

In the mid century social investigators produced several detailed studies, and although these writers acknowledged that poverty drove many women into prostitution most also took a moral position. Some (see for example, Greg 1850, Acton, 1875) argued that men's sexual drives were such that they had to find release through the use of prostitutes, and advocated regulation of women to

minimise the 'unhealthy effect on society'. The notion of a 'necessary evil' was current, and apart from the early feminists few questions were asked about the principle of buying sex.

Sexually transmitted diseases became a public issue following the fiasco of the Crimean War where subsequent investigations revealed the poor health of many soldiers. The Contagious Diseases Acts (CDA) were passed in 1864 as a direct consequence. Police were given powers to identify a woman as a common prostitute and compel her to submit to a fortnightly internal examination; if she had either gonorrhoea or syphilis she could be forcibly detained in a locked hospital. The debate on, and passage of, the CDA assumed that men required access to prostituted women, and that the role of the government was to ensure that women were 'clean' and 'healthy'.

The Ladies' National Association was founded in 1869 to campaign against the Acts. Led by feminist Josephine Butler, they attacked the CDA's humiliation of women and termed the medical examinations 'instrumental rape'. Those spearheading the campaign argued that 'systemised prostitution will never be overthrown until it is attacked by women'. Butler maintained that many women had complained secretly of the sufferings of their own sex but 'the distinctive feature of our time is that they openly proclaim and pertinaciously assert their opposition to the slavery of their own sex in the interests of vice' (Cited in Jeffreys 1997). The campaign was remarkably successful and the CDAs were repealed in 1886. This was widely regarded as the foundation of the abolitionist movement, based on a conviction that the institution of prostitution demeans women.

For most of the 19th century prostitution in many countries had variations of regulated brothels and attempts to control street prostitution. In the early to mid 20th century the focus shifted to trafficking for sexual exploitation, resulting in the 1949 *UN Convention on the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others*. Towards the end of the 20th century, the combination of the women's liberation movement, sexual liberation and liberal individualism resulted in a new perspective being added to the debate – the case for legalisation.

Whilst significant feminist critiques of the sex industry, and the sexualisation of women's bodies through advertising were evident in the 1970s, the debate on prostitution and pornography became divisive and acrimonious in the 1980s, with much discussion about the issue of 'choice'. The deadlock shifted when attention focused in the early 1990s on the commercial sexual exploitation of children. This less complicated issue around choice and agency, engendered a significant response from the public. Children's charities such as Barnardos conducted research and awareness raising/prevention campaigns, as well as lobbying for changes in the law and policy. In 1998, Barnardos published the report *Whose Daughter Next? Children Abused through Prostitution* (Van Meeuwen, Swann and McNeish, Edwards), and argued that:

Men across the country are selling, controlling and abusing children without fear of prosecution. When that happens in the home, it is called

child abuse. When it happens in bed sits and flats and payment is involved, it is called prostitution. (p1)

The work of children's organisations succeeded in influencing government policy, including the recognition that men who buy and sell sex from children should be called into account for breaking the law, while children abused in this way should be treated as children in need. Whilst work of this kind undoubtedly contributed to the general public's wider understanding of child sexual exploitation, it did not shift the debate on adult prostitution. Revealingly, the two groups undertaking the Sex Offences Review for England and Wales were instructed by the then Minister of State, Paul Boateng, to include sexual exploitation of children but not adult prostitution or pornography.

FRANKI, a Manchester-based group that has worked with women in prostitution, has pointed out that adult women get very little support or public sympathy.

Because children, and to an extent, trafficked women are seen as prostitution's *real* victims, other adult women are automatically deprioritised. So long as people can say 'we're doing all we can to stamp out the *really* nasty side of the sex industry' meaning sex slavery and child abuse, they can ignore the ones they imagine must be choosing it.

2. Aims and methods

The tender for this project outlined that the review address the following issues with respect to Victoria, Australia, Ireland, the Netherlands and Sweden.

- The current approach to prostitution
- The previous approach
- The impetus/rationale for change from the previous position
- The long and short term aims of the approach
- The understanding in relation to the cause and effects of prostitution and to what extent this has influenced the approach
- The implementation of the approach and any issues that arose from this
- To describe the impact and implications for women involved in prostitution, police and health services
- To describe and analyse legal changes and highlight the impact on women involved in prostitution and the men who use them
- To draw out any implications of these legal changes for the Routes Out SIP

For a variety of reasons – the short time scale involved, and limited familiarity with the detail and background of approaches in the four countries – CWASU decided to use a strategy of commissioning country reports from individuals/groups based in each country (all are included in appendices to this report). The short turnaround time meant it was not possible to find anyone in Sweden who could undertake the task: the Swedish report has, therefore, been produced by CWASU, based on interviews with key players and other secondary data. The length and detail of the reports varies considerably, even though everyone was provided with the same template. Part of the reason for this is that the level of research, documentation and debate about prostitution is

significantly different across the four locations. We have also supplemented the reports by our own desk-based research.

To address some of the questions in the project brief we also conducted a research review on what we know about prostitution and responses to it. Our focus here was primarily on UK research, which has begun to emerge in the last decade.

The next sections of the report summarise the research data, explore the three regimes currently in operation – legalisation, regulation and criminalising demand – and draw together the findings into a concluding discussion. It has not been possible to address all the questions in the brief with respect to each country, since neither the country reports nor other documentation provided sufficient detail on some aspects: the most obvious example here is the short and longer term aims of approaches, since these are seldom articulated so clearly. The implications for Routes Out SIP of each of the approaches are discussed at the end of each sub-section.

3. Barriers to discussion/debate

Debate and discussion on prostitution is often fraught and frustrating, partly because people often rely on unhelpful and inaccurate clichés, which foreclose rather than open up dialogue. Below we list some of the most common and briefly outline why they are unconvincing and, in some instances, just plain wrong:

- Prostitution is the oldest profession.
Prostitution is not a profession. If there is such a thing, it is probably agriculture, which was also initially a female domain.
- Prostitution has always and will always be with us.
The first recorded forms of prostitution occur after human beings invented slavery (Lerner 1986).
- Prostitution helps maintain marriages and relationships.
Men use women in prostitution covertly, and most female partners, if they discover it, are hurt and distressed, rather than reassured².
- Prostitution prevents rape.
There is little evidence to support this, rather the opposite is the case, when the extent of rape of women, children and men in prostitution is recognised.
- Prostitution is caused by poverty.
Although many women in prostitution are poor, a significant proportion simply have the misfortune to meet a pimp, including when running away from a abuse in the home.
- Men will always buy sex to meet their sexual needs.

² Men's prostitute use can cause serious distress for the women involved with them. In 1991, the former Director of Public Prosecutions for England and Wales was caught kerb crawling. In 1992 his wife committed suicide.

There is no such thing as an innate 'need' for sex, nor is there a 'right' to it. If we are talking about physical release, masturbation could suffice. (O'Connell Davidson 2002)

- Men who use prostitutes are lonely/single.
Research shows that paying for sex is more common amongst men who have sexual partners (Mansson 1998).

4. What we know about the sex industry

Until relatively recently there has been limited contemporary research on prostitution, which partly accounts for the ideological nature of discussions and debates. During the 1990s, however, an increase in knowledge is evident, and most marked in relation to trafficking. There is also a welcome increase in evaluative work (see, for example, Kelly and Wingfield, 2003; May et al, 2001), including 11 pilot projects funded by the Home Office Crime Reduction Programme Violence Against Women Initiative³. We report here on research that has a bearing on the assessment of policy responses.

Several studies confirm that neither prostitution nor trafficking have been a policy priority for government or statutory agencies in the last decade (Benson and Matthews, 1995, Hubbard, 1997, Kelly and Regan, 2000). At local levels, with the exception of the Metropolitan Police Clubs and Vice Unit who operate a proactive response (Kelly and Regan, 2000), most initiatives are re-active, driven by complaints from the public, and almost entirely focused on street prostitution.

Expansion and normalisation

One of the features of the 1990s has been an expansion of the sex industry internationally, and in the UK. The growth in Scotland, England and Wales and Northern Ireland has not been as marked as in a number of other European countries, and one plausible explanation for this is that there is no clearly legalised sector. The most extensive sex industries in Europe are in countries where aspects of prostitution are legalised: Germany; the Netherlands; Denmark and Italy. Much of the growth in the early 1990s was invisible, since it involved the off street sector, which is rarely monitored or mapped (Kelly and Regan 2000). The Lillith Project is currently attempting to do this in London⁴. From the mid 1990s, however, the growth became more evident in the UK, and it was accompanied by marketing strategies that sought to create a new form of legitimacy. The relative success is evidenced by the acceptance of lap dancing amongst businesses⁵ and celebrities, and extensive coverage in television programmes across the terrestrial channels (see also Deans 2002). It is worth noting that normalisation has focused on the 'more acceptable' aspects: escort agencies; small brothels and lap dancing. Programmes addressing street prostitution and trafficking have seldom been able to represent these realities as anything other

³ At the time of writing the results are not available, but in some London boroughs over 200 locations have been identified.

⁴ A subsidiary of Eaves Housing, the Lillith Project is a pan-London agency committed to ending all violence against women, working towards creating better communication, promoting good practice and building multi-agency partnerships to improve services available to women who are experiencing violence.

⁵ For example, Nat West bank has a corporate membership of the Elephant Rhino club in London (personal communication, Denise Marshall, Director of Eaves Housing).

than gritty, seedy, dangerous, and in the case of trafficking always exploitative and criminal.

Some argue that a large proportion are 'migrant sex workers', who are forced to use traffickers, since there are no legal migration routes available. This argument neatly sidesteps the issue of demand: why are sex businesses choosing to recruit/use foreign women? Where we are talking about an industry, the obvious answer is that they are more profitable, and the most profitable are those who have been trafficked. Whilst in the UK trafficked women are rarely found in street prostitution, they are in countries with different legal regimes: for example, Germany; Italy; the Netherlands.

In many European countries the expansion of the sex industry is undoubtedly connected to the re-emergence of trafficking in women (Kelly and Regan, 2000; Kelly, 2002). In many countries of the world the proportion of non-nationals/foreign women in the sex industry has mushroomed, and this is not limited to the west (Kelly, 2002).

There has also been an increase in sex tourism, to both long and short haul destinations, involving use of both children and adult women (O'Connell Davidson, 2002). Countries that gained, and grudgingly accepted, such 'reputations' in the early 1990s, have found it difficult to pull back from them subsequently.⁶

Sex tourism is just one example of how the sex industry has globalised (Kelly, 2002), another is the increasing connections between traffickers and sex businesses in destination countries, a proportion of which are unquestionably connected to organised crime. A Europol assessment (2000) notes the limitations of national and cross-border responses, and makes clear that trafficking is connected to prostitution, since individuals are trafficked into existing sex industries, and sexually exploited within them. The limitations of prostitution policies, become in turn, a factor in the lack of response to trafficking.

The sex industry is notoriously difficult to regulate. In many Member States, it is largely illegal but it still thrives. Its 'underground' nature makes it largely unseen and unless an associated offence occurs it remains un-policed.
(op cit)

The 2002 Europol Organised Crime Report notes the increasing connections between organised crime groups, their involvement in a range of activities, and the increasing preference for high reward, low risk activities – both trafficking and the sex industry management feature here.

This is the current context within which decisions about policy regimes with respect to prostitution have been located. In the following sections we focus more directly on the most recent research on prostitution in the UK.

⁶ Two examples here are the Philippines and Thailand, where both countries were encouraged to promote the 'entertainment' as part of their tourist industries by the World Bank and IMF in the late 1980s. The resulting sexual exploitation of children has caused considerable re-thinking and both countries are now attempting to adjust both their policies, and external perceptions of the countries.

Law enforcement approaches

High profile 'clean up' or 'crack down' operations by police, focused either on prostitutes or kerb crawlers or both, do have short-term effects, but these tend to fade rather rapidly (May et al, 1999). There may also be unintended and unforeseen consequences, such as those documented in Liverpool (Campbell et al, 1996), where the 'beat' fanned out across a much wider area of the city. A number of studies and commentaries note that such strategies may also have the effect of increasing risks, especially by decreasing the possibilities for assessing 'dodgy' customers (McKeganey and Barnard, 1996). What is seldom noted in such discussions is the more limited control women have in brothels and the fact that so many women working on the street are driven by the need to earn money for drugs that safety is often not their first priority.

The connection between prostitution and drugs

A number of recent studies have documented the increasing connections between street prostitution and drugs, with one recently arguing that there is a substantial overlap between sex and drugs markets (May et al, 1999). Almost two thirds (63%) of women working in street prostitution across three cities (Church et al, 2001) reported their main reason for involvement in prostitution was to fund a drug habit, primarily heroin, with 92 per cent stating they had used drugs in the last three months. The same study found that women working indoors seldom gave this reason, although a third used alcohol whilst working.⁷ There is some evidence that use of crack is expanding amongst those involved in street prostitution (May et al, 2001), and that there are significant associations with homelessness. An increasing proportion of women in street prostitution are doing little more than funding their (and often their partners') drug habits, and may work daily and for very long hours in order to do so (McKeganey and Barnard, 1996).

Clearly arrest and/or cautions alone will have little if any impact on street prostitution, when the majority of income is spent on drugs. It merely serves to create a debt, which will be paid, if at all, from the proceeds of prostitution (McKeganey and Barnard, 1996). A recent innovation being piloted in several areas are arrest referral schemes (see, for example, May et al, 2001), alongside the more holistic support and exit projects funded by the Home Office. There are some indications from existing studies that effecting change in women's housing status (Stewart, 2000) and/or their sense of worth and future possibilities (Kelly and Wingfield, 2003) can act as catalysts to more fundamental changes, such as successful completion of drug rehab programmes and exiting prostitution.

Impact on and responses of communities

Whilst police and local policy responses have been 'nuisance' driven, relatively little research attention has sought to document impacts on the quality of life for those living in areas of street prostitution: often a mixture of negative attitudes to prostitutes⁸, rather than customers, and the material impacts on their everyday

⁷ This group had more clients, but worked less hours.

⁸ These have, on occasion, resulted in verbal, and even physical, attacks on women by individuals and groups.

life. The latter include female residents being propositioned by kerb crawlers, increased traffic, used condoms and needles in the street, and a general sense of fear and threat (Campbell et al, 1996). An incompatibility is apparent here, with those involved in street prostitution choosing residential areas, since it increases their sense of safety, whilst local community members resent the intrusion and disruption involved (May et al 2001; Campbell et al, 1996). Tolerance zones have been one attempt to address this conflict, but there is limited research on their success or limitations. Their location is always a subject of contention – either because those who live or work close to them object⁹, or those they are intended to benefit find them unsafe and unpleasant (op cit).

Customers/Clients

Whilst there is far less research on customers and sex businesses than on women and children, there is a slowly building knowledge base. It is also noticeable that cultural representations are also beginning to address the demand side of the equation.¹⁰ In his study of male customers of women in prostitution, Blanchard describes the ‘consumerist’ attitude to women displayed by many men.

According to one man interviewed, going to a prostitute is “like going to McDonald’s; most people are looking for a good quick cheap meal. It’s satisfying, it’s greasy, and then you get the hell out of there”. (Cited in Monto, 2,000).

Similarly, Sven-Axel Mansson argues that:

For many European and North American men, the extension of equal rights to women is experienced as a loss of male supremacy. Some react strongly to this development, showing strong regressive and anti-feminist attitudes. They cannot accept the changes; instead they cling to old notions of men’s dominance over women. (Unpublished paper 2003)

A study of 90 kerb crawlers¹¹ in the West Yorkshire area of England found that over 50 per cent of the men attending felt that their prostitute use had a direct bearing on their views of and relationships with women (Hanmer and Bindel, 2000). A number of men admitted that they thought of the women they accessed in prostitution as ‘objects to be used’. One remarked that having sex for money was “just like using a slot machine”, and another told how he used prostitutes in order to “satisfy a basic need. Just like eating”.

Levels and experience of violence

The discussion of whether prostitution should be regarded as a form of violence against women has moved on in the 1990s, to more detailed consideration of the levels of violence encountered by women involved in prostitution. A wide

⁹ The one in Edinburgh was relocated when the original area underwent redevelopment, and the objections from the community in the new location resulted in that too being abandoned.

¹⁰ For example, the film *Lilya 4-Ever*, Lukas Moodysson, Sweden 2003, and *Warte Mall Prostitution after the Velvet Revolution*, Ann-Sofi Siden, 2002, Hayward Gallery for the portrayal of customers

¹¹ The Kerb Crawlers Re-education Programme was a diversion from court scheme that was piloted in 1999 for one year. The 90 men who attended the monthly course completed questionnaires and 10 per cent were interviewed by the co-ordinators.

range of studies from the UK (see, for example, Church et al. 2001; May et al 1999; McKeganey and Barnard, 1996) and internationally (Farley et al, 1998) are documenting elevated levels of violence, when compared to community prevalence surveys.

A three-city comparison (Glasgow¹², Edinburgh and Leeds) involved 240 women working in indoor and street locations completing questionnaires (Church et al, 1991). Almost two thirds (63%) reported violence from customers, and over a third (37%) had been assaulted in the three months prior to the survey. Women working on the street reported higher levels of violence and injury. The researchers note, however, that the mere fact of working indoors does not protect women from violence – both rape and serious physical assaults occurred in off street locations. A London study tracing patterns of violence over 10 years found that as more women moved into call flat locations the incidence of violent robbery of women increased markedly (Da Silva 2000). Even higher levels of violence were reported in Melissa Farley's (1998) five country study, involving 475 women and men in South Africa, Thailand, Turkey, USA, and Zambia. Across the whole sample 73 per cent reported physical assault in prostitution, 62 per cent reported having been raped since entering prostitution; and for between a third and half of those who had been raped this involved more than five separate incidents. We can conclude, therefore, that the majority of those involved in prostitution experience violence at some point from customers. Additional layers of violence are perpetuated by boyfriends/pimps and for those involved in street prostitution, passers-by and local residents. There is also an elevated mortality rate for women in prostitution – through both murder and drug overdoses – both of which disproportionately affect those working on the street.

At the same time many are reluctant to report assaults to the police, and this is even more marked in off street contexts (Church et al, 2001). That said, however, reporting does increase where police demonstrate that they will investigate and prosecute offences. Various projects have experimented with 'dodgy punter' and 'ugly mug' schemes, as one strategy to enhance safety, but there have been no evaluations of their impact. London Centre for Personal Safety (LCPS) has evaluated their self-defence courses (Da Silva, 2000).

5. Comparing Policy Regimes

The different regimes examined in this report can be seen as a continuum in various ways: in terms of the legitimacy that is accorded to prostitution for men as customers on the one hand, and women as providers of sexual services on the other; in terms of how the sex industry is regarded – as a sector of the economy, through a 'necessary evil' to an institution which sustains women's equality.

To provide a context, the table below outlines some basic comparative data across the four countries. Both legalised contexts have higher numbers, and the

¹² Interestingly all the Glasgow participants were working on the street and all those from Edinburgh in indoor locations.

Victoria estimate is the highest, when linked to the population, which is a third of that of the Netherlands.

	Victoria, Australia	Ireland	Netherlands	Sweden
Population (in millions)	4.6	3.9	16	8.5
Current legal regime	Legalisation – brothels	Regulation	Legalisation – brothels	Criminalise buying Decriminalise selling
Estimated numbers involved in the sex industry	10,000*	600**	25,000	1,500

* There are no recent informed calculations of the number of prostitutes overall in Victoria. These figures are based on an estimate that there were 3 – 5,000 women working in brothels in 1994 when there were 40 brothels. By 2002 twice as many brothels were in operation, as well as over eighty escort agencies. A government review in 1994 estimated that there were 3000 prostitutes in illegal brothels and up to 5000 in unregulated escort agencies (TA 10 Apr 1994)

**The only available figures are from Dublin.

Drawing on the country reports, findings with respect to the three regimes – legalisation, regulation and criminalising demand - in operation in the countries in question are outlined below. We map out the rationale for the current policy, the legal framework, and addressing consequences for the women involved, wider society, police and other service providers.

Legalisation: The Netherlands and Victoria, Australia

The most important issue to note when discussing legalisation regimes is that there are currently none in which all forms of prostitution are legal. Victoria, Australia and the Netherlands reflect the predominant model, whereby mechanisms exist to licence brothels, but aspects of street prostitution are still illegal – in both cases relating to the actions of prostitutes themselves and elements of pimping and procuring.

Rationale

There are two layers in a rationale for legalisation - one based on a rights argument in relation to women, the other on the failure of other regimes to address the ‘nuisance’ aspects of prostitution. Primarily, it was argued that legalisation would break the links between prostitution and organised crime, and that levels of violence against women in prostitution would decrease, as women would be working in ‘controlled’ environments, and would find it easier to report attacks to the police if they were not involved in ‘illegal activities’ when assaults occur. Legalisation would improve sexual health of prostitutes, and by implication, their customers, because the activity would occur in a clean and safe environment.

The link between prostituted women and their pimps would be broken, as women would no longer be dependent on a pimp for 'protection' from the authorities. Also, legalisation would 'free up' time and resources for law enforcers to tackle the illegal sector, such as trafficking and child prostitution, thereby ensuring that priority was given to policing the 'nasty' elements of the trade.

It was envisaged that legalised brothels would improve the quality of life for people who live and work in areas currently affected by street prostitution, especially if they were located away from residential areas and schools.

Other justifications included that prostitution enables women to work flexible hours earning more than low paid part time work. The 'revolving door', where women are arrested, fined, and return to prostitution in order to pay them, would end, and women would have more control over if and when they 'worked'. Additionally, that taxing the earnings of women in prostitution would generate revenue.

Operation in practice

The connections between organised crime and the sex industry have not diminished. Country reports from Australia and the Netherlands highlight that legalisation has, in some respects, strengthened links. In October 2003 Amsterdam City Council took the decision to close down the street tolerance zone; Mayor Job Cohen noted that the situation was "a devil's dilemma" because "it appeared impossible to create a safe and controllable zone for women that was not open to abuse by organised crime" (Editorial, Het Parool, 2003).

Legalisation encourages the growth of the sex industry. There has been a significant increase in the number of brothels in Victoria, Australia, since legalisation, the number of legitimate brothels grew from 40 in 1989 to 94 in 1999 (Raymond 2002).

The difficulty of policing the industry, and the lack of support/resources given to local authorities to carry out licence checks and ensure that health and safety requirements are met has been cited as a main reason for the apparent failure of introducing legalisation as a method to eradicate trafficking. As Janice Raymond (2003) points out:

In New South Wales, brothels were decriminalized in 1995. In 1999, the numbers of brothels in Sydney had increased exponentially to 400-500. The vast majority have no licence to operate. To end endemic police corruption, control of illegal prostitution was taken out of the hands of the police and placed in the hands of local councils and planning regulators. The council has neither the money nor the personnel to put investigators into brothels to flush out and prosecute illegal operators.

Legalisation of brothels places a considerable administrative burden on local government, highlighted by the Queensland Prostitution Regulation Report, (Office of the Queensland Parliamentary Council, 2000). Local government is

required to develop detailed rules on the operation of the legal sector. Prior to the brothel opening, the licensing committee is responsible for the following:

- developing and administering planning policies for local sex industry
- accepting advertising and deciding on development applications from sex industry businesses
- administering food and health policies.

The committee, once the brothel is in operation, has a responsibility for overseeing the following: customers' car parking; external lighting; signs advertising the brothel; health and safety; entrances and exits; brothel sitting and design; noise and disturbance; litter from the premises; quality of condoms, lubricant and towels; and all financial interactions. Although it is a legal requirement that local authority inspectors regularly monitor brothels, evidence suggests that this does not always happen.

The inherent problem in the regimes examined is that only one sector is legalised, and as it expands, so does the illegal: both illegal brothels and street prostitution. Thus, legalisation of prostitution does not remove the street market, or the dangers associated with it. Similarly, legal brothels tend to be owned by sex business entrepreneurs and it is no easier for women themselves to establish and maintain collectives.

The authors of the Netherlands report point out: "Because of the more stringent police-control the new regulations also resulted in the relocation of activities within the prostitution sector: criminal forms of prostitution moved to places where there are fewer or less stringent checks."¹³ In other words, the criticism often levelled at those advocating removing prostitution from particular localities – that it will be displaced – seem to also apply to legalisation.

Nor does legalisation remove stigma as it often claimed. A woman in a registered brothel in Ankara, Turkey, commented: 'As soon as society realizes that you are a prostitute, society will have nothing to do with you. You are cut off completely, you are not treated as human, you are excommunicated from society.' (van der Gaag, 1994). In the Netherlands, prostitutes must register with the police to be legal. There, women in prostitution point out that legalisation does not erase the stigma of prostitution but, instead, makes women more vulnerable to abuse because they must lose anonymity. Thus, the majority of women in prostitution still choose to operate illegally and underground (Daley, 2001). Women have told Project Respect, an NGO in Melbourne, Australia that they do not want an official record of the fact that they are involved in prostitution (Australia Country Report). In a newspaper article on the current debate in Thailand on legalisation, one former prostitute argued that many women in the sex industry are opposed to an official registry, claiming: "it would stigmatise [prostitutes] permanently and prevent them ever moving into society's mainstream" (The New Zealand Herald, 2003).

¹³ WODC, Research and Documentation Centre of the Dutch Ministry of Justice

Although the issue of 'employment rights' for women in prostitution is often cited as a significant incentive for legalisation (Lopes and Macrae, 2003), many women do not register.

A report by the Platform Organisations Shelter for Prostitutes (POOP), due to be presented to Parliament on the 2nd December 2003, concludes that three quarters of prostitutes in the Netherlands wish to attend exit programmes to enable them to leave. The report is a response to an evaluation by the Scientific Research and Documentation Center (WODC) on the lifting of the brothel ban in October 2000, which claims that in the main, there have been few problems since the new laws. However, POOP argue that illegality and coercion still dominate the industry (Reformatorsch Dagblad, 2003).

Legalisation is a 'pull factor' for traffickers. Project Respect estimates, "at least seven licensed brothels in Victoria have used trafficked women in the last year". An Australian Institute of Criminology study estimated that Australian brothels earned \$1 million a week from illegal prostitution. Mary Sullivan and Sheila Jeffreys point out that, "Legalisation was intended to eliminate organised crime from the sex industry. In fact the reverse has happened. Legalisation has brought with it an explosion in the trafficking of women into prostitution by organised crime. Convicted criminals, fronted by supposedly more reputable people, remain in the business" (2000, p 12). In Victoria estimates from the police and the legal brothel industry put the number of illegal brothels at 400, four times more than the legal ones (Murphy 2002). In 1994, the International Organisation for Migration (IOM) stated that in the Netherlands alone: "nearly 70 per cent of trafficked women were from CEEC [Central and Eastern European Countries]" (IOM, 1995).

Child prostitution in the Netherlands has significantly increased during the last ten years. The ChildRight organisation in Amsterdam estimates that there are now more than 15,000 children (primarily girls) being prostituted, an increase of eleven thousand since 1996. Five thousand of these children are thought to be from other countries, mainly Nigeria (Tiggloven, 2001).

One of the most significant limitations of legalisation in the two countries examined is that it excludes street prostitution. In this sense, these regimes further marginalise the most vulnerable and exploited women, who certainly do not benefit from this approach. It serves as further legitimisation of targeted 'crackdowns', which criminalise them, and for many, result in deportation.

Furthermore, legalisation has not reduced street prostitution. There has been a significant increase in street prostitution in Victoria, especially in St Kilda, along with increased levels of rape and violence. Melbourne has an estimated 400 street sex workers. Local residents recently held a march to protest and called for prostitutes to be removed from their streets (Maxim Institute, 2003).

Many women in the sex industry are against legalisation, for example, in an article by COYOTE (Call Off Your Old Tired Ethics) (undated), a US based organisation lobbying for 'sex worker rights' the author explains why they do not support legalisation.

Government run brothels would be the prostitute's worse nightmare. I can think of nothing worse than having to work for a bureaucrat, especially in the sex industry, where there is already a long and well-documented history of a abuse by the police, and prior to the criminalisation of prostitution at the turn of the century, by the licensing bureaucrats and the police.

Although revenue from tax has been used as an incentive to legalise prostitution, tax evasion is commonplace and is thought to cost the government A\$100 million a year in lost revenue (Australia Country Report). In the Netherlands, only 5–10 per cent of the prostitutes pay taxes, according to the Prostitution Information Centre in Amsterdam (Knox, 2003).

Violence

At the most basic level an expansion of the sex industry in its current forms will be accompanied by increased incidence of violence. Violence against women in prostitution does not seem to have decreased in the Netherlands or Victoria since legalisation, and there are even suggestions that it has increased. (Jeffreys 1997, Daley 2001). A report by the Australian Institute of Criminology in 1990 found that many prostitutes in legal brothels were at a high risk of violence (TA, 1990, p 4). Research in 1994 by an NGO found that a significant percentage of women felt unsafe with customers most or some of the time (Pyett, Haste & Snow 1994: 13). The Prostitutes Collective of Victoria (PCV) was receiving up to 15 reports of rape and violence against prostitutes weekly. Also, many of these women in illegally run brothels in Victoria did not report to police, either for fear of being charged with a prostitution-related offence, or because they already had outstanding fines and were afraid of being jailed (Australia Country Report).

Although promised by the local municipalities, exit programs did not materialise, with the consequence that those involved in a cycle of drugs, prostitution, conviction and vulnerability were likely to be trapped within the industry (Gilbert, 1994).

In one Dutch study, 79 per cent of women in prostitution gave an indication that they were in prostitution due to some degree of force (The Dutch Institute of Social Sexological Research, 2000).

Health

Since changes to laws regulating the sex industry in Queensland in 1992, there have been increasing anecdotal reports that prostitution has become a more dangerous occupation (Banach, 1999).

In 1991 the PCV argued that the increased controls of the legal sector in Australia had pushed many women into the illegal sector, where there was an increased risk of HIV infection, and limited access to the PCV and peer support (Dobinson 1991: 118).

In 1994, PCV found that:

- Women take appropriate steps to avoid unsafe sexual practices

- The majority went frequently for sexual health checks; and
- There were still no reports of prostitutes with HIV.

But:

- 63 per cent of women worried about contracting an STD through prostitution; and 23 per cent had had an STD while involved in prostitution (Pyett, Haste & Snow 1994: pp 2, 4, 21, 22);

In Victoria between 2000 and 2002 there has been a 91 per cent increase in number of women presenting with HIV infections, within the general increase of 56 per cent (Altman 2002). A study in Melbourne, Victoria, found that 40 per cent of customers had used prostituted women without wearing condoms (Louie, 1998).

Public attitudes

According to one investigative journalist who spent some months researching the prostitution scene in Amsterdam, legalisation has done nothing to diminish the taboo associated with the sex trade. "Prostitutes who are trying to set themselves up as self-employed businesswomen are finding that accountants, banks and health insurance companies want nothing to do with them" (Daley, 2001). In the Netherlands, prostitution is tolerated by the majority of the Dutch population but not regarded as a desirable occupation (Netherlands Country Report). Thus it appears that the shift in opinion is about the industry, rather than the women within it.

In Australia, newspaper articles highlight the growing acceptance of the sex industry as entertainment with titles such as 'Surge in Sex Sales' and 'Sex in Our City? Plenty Apparently' (Australia Country Report). Tourist guides such as Melbourne's *This Week* usually have at least three pages of advertisements for prostitution services. Prostitution is also increasingly viewed as a legitimate expense for many business men. Bank managers can claim visits to a tabletop dancing club as a business expense. Also, tabletop dance venues had become popular venues for business meetings and many had boardrooms for corporate functions (*The Age* 1996).

The term 'sex work' is now often used in both media and popular conversation, and there appears to be hesitancy about being seen as being 'moralistic' and questioning prostitution (*TA* 14 Jun 2003: 10).

Media Coverage

A trawl of a web-based newspaper archive on media coverage in Australia since 1990 suggests a growing acceptance of prostitution.

According to a newspaper report in *The Age*, 1996 on the effects of legalisation: 'sexually explicit entertainment and prostitution are becoming just another service industry'. 'Like it or not, sex work is entering the mainstream'. Street prostitution was the most common form of prostitution discussed in the media (and addressed in research).

The media seem unconcerned, and pay little attention to the circumstances of women working in the illegal sex-industry, (Netherlands Country Report).

Evaluation

An evaluation of the effects of the Netherlands brothel ban, commissioned by Department of Justice, concluded that a rift seems to have been created between local levels of enforcement and regional, national and sometimes international levels at which prostitution is organised. Other findings included the fact that criminals look for ways to keep prostitutes at work outside of the licensed sector, for greater financial gain, and that this fragmentation of prostitution activities has caused significant problems for both enforcement and interventions such as medical aid and social work (Goderie, Spierings and ter Woerds, 2002). Furthermore, the evaluation found that a half of the registered sex establishments have disappeared, partly because they were not able to recruit women, but at the same time the street walking zones, where there are many illegal women, have flourished.

Policy change

After two decades of promoting legalisation and a freedom argument in the EU, the early 21st century has witnessed the first pulling back from previous positions in the Netherlands, as evidenced by the closure of the Amsterdam tolerance zone in 2002. This is a clear admittance that a legalised sector does not remove the illegal, not reduce the involvement of organised crime.

Consequences for women in the sex industry

There were more services for women in street prostitution than in other forms of prostitution (Australia Country Report). Women in street prostitution have experienced increased difficulty in exiting. The normalisation of prostitution leads to lack of support services, as these are often curtailed by brothel owners (Sullivan and Jeffreys 2000).

Implications for Routes Out SIP

There are strong links between drugs and street prostitution in Glasgow. Failure to curb street prostitution means that drugs and related problems will continue to grow. Under legalisation there is an inevitable increase in off street establishments, and a general increase in women entering prostitution.

Demand for sexual services has been significantly affected by legalisation - there are an estimated 60,000 visits to legal brothels in Victoria every week with spending averaging \$7 million (Benbow, 2002). In 1983, there were 149 known brothels in Victoria. Post legalisation, numbers rose steadily, and today police estimate 95 legal and 400 illegal brothels. There are also a growing number of escort agencies, with an estimated 5,000 women working for them (Australia Country Report).

Legalised brothels encourages sex tourism. Donna Hughes, in her study on pimping on the internet, states:

The Netherlands is the strongest international proponent for legalised prostitution. Amsterdam is the leading sex tourist centre in Europe. In 1997 the Netherlands legalized brothels. The result has been increased trafficking to Amsterdam from all over the world (Hughes 1998).

Legalisation expands the industry, with implications for state agencies and NGOs in any area. Given that there is always an illegal sector, the demands on police do not lessen, and as the illegal sector grows, this in fact increases, especially where trafficking also expands. Significant new demands are placed on local government, with respect to licensing and monitoring the legal sector – a task which few countries have undertaken with any degree of coherence and consistency. This is one reason why the illegal sector has been able to grow so significantly.

It is arguable that as legitimacy increases the support for exit programmes will decrease, and it is clear that few if any services are provided for women in the off street sector, despite over two thirds of it being illegal, and research revealing continued elements of coercion and control. The Australian country report reveals that the promised exit and support strategies never materialised, and Dutch research shows a strong desire for such programmes in the Netherlands.

Regulation: Republic of Ireland¹⁴

Regulation of prostitution tends to leave most people with an interest in the issues surrounding prostitution dissatisfied. The Home Office (England and Wales) is currently conducting a review of prostitution legislation, partly as a result of numerous requests from members of the public, as well as concern within the police service. What the regulation regime does alert us to are the potential consequences if prostitution laws only target the supply side. Although other elements of the Irish legislation could be applied to the regulation of street prostitution, it seems that this does not happen.

Rationale

Regulation is a 'half-way house' position, and consists of various regimes and approaches, ranging from a re-active 'nuisance' response, with police or resident clampdowns on women and customers, to a 'blind eye' approach, where an informal tolerance reigns. The laws on prostitution in Ireland are similar to those in the UK, in that they are inconsistent and thought to be ineffective, either in protecting the women, or assisting the police with detecting abuses within it (Brain 2003).

The "prostitution problem" as it is often defined is usually not about prostitution as such, but the increase of the street trade and related crimes. The laws governing prostitution in Ireland are primarily public order offences and are not designed to prevent prostitution as such. The rationale for a change in the law in 1993 was to give the Gardai (police) adequate powers to deal with public soliciting. The new law was extended to customers and third parties and it was framed to "protect the public against the unacceptable nuisance caused by soliciting" (Ireland Country Report).

¹⁴ Also drawing on examples from Scotland and England

Operation in practice

Regulation of prostitution in Ireland, and elsewhere, has not severed the links with organised crime. There are growing numbers of trafficked women in Ireland, and brothels are on the increase. In 2002, the Justice Minister announced that there will be an additional 200 officers assigned to a special police immigration bureau, mandated to counter-trafficking operations, making a total of 321. The move follows "increasing concern at the extent to which Ireland is being targeted by trans-national organised-crime gangs for the purposes of trafficking". The Humanitas Fellowship, Northern Ireland, argues that:

The Gardai cannot do their job, because there are no proper structures with which to challenge prostitution in Ireland, and the criminal gangs move women around with impunity. There are no vice squads, and policing prostitution is not a priority. It's only really the women who suffer as a result of the laws, not the pimps or customers¹⁵.

Lap dancing clubs are also being used to harbour trafficked women, women working illegally and organised criminals. In June 2003, police raided ten lap-dancing clubs across the country, and found that most of the ninety-three women interviewed were working illegally, with ten from Eastern Europe. Guns, cash, drugs and forged documents were also seized by Gardai. Ruhama¹⁶ called for the closure of all lap-dancing clubs and claimed that they all operated as fronts for prostitution.

In 1997 an Eastern Health Board study found that 57 boys and girls were working as prostitutes in Dublin. A 14-year-old child was found during a police raid of one of the brothels. Prostitutes as young as 14 are working in towns in Clare, Limerick and Tipperary. The majority of juveniles are based in Limerick, where around 20 are identified as being involved in the sex trade. The report notes that health professionals believe prostitution in some form exists in many other rural towns and villages. Police corruption linked to prostitution has been discovered (Reynolds, 2003). However, in terms of young prostitutes ranging from their teens to their early twenties, there are an estimated 200 recorded on the streets, according to a small scale survey by the Ruhama Women's Project¹⁷.

There are no definitive statistics on prostitution for Ireland, but it is estimated that the sex industry there is worth well over £100 million a year (Reynolds 2003).

Similar regimes are in place in the UK. However, this 'blind eye¹⁸' approach appears to do nothing to improve the negative attitude towards the women from the police and public. In England and Wales, and Scotland, members of

¹⁵ Personal communication, 2003

¹⁶ Ruhama is an NGO based in Dublin supporting women in prostitution through providing education and training programmes and befriending.

¹⁷ The survey was carried out in 2002 in partnership with other Irish NGOs and academics concerned with trafficking, and is as yet unpublished.

¹⁸ Rosemarie, an ex prostituted woman used this phrase to describe the lack of coordinated response during a talk at the Coalition for the Removal of Pimping, Leeds, July 2003

residents association's, and police officers often blame the disruption on the women themselves (Kinnell, 2000)¹⁹. In February 2003 in Glasgow, 31 police, provoked by angry residents, arrested women in a 48-hour anti-prostitution clampdown (Editorial, Daily Mail, 2003). No men were arrested - in Scotland, unlike the rest of Britain, kerb crawling is not an offence.

In Glasgow, police estimate that there are more than 1000 women involved in street prostitution, most of who are addicted to heroin, crack cocaine or both. The vast majority of prostitution in the city takes place 'outdoors' with a small 'indoor scene'²⁰. Women involved in street prostitution experience disproportionate levels of physical and sexual violence and there have been several murders and suspicious deaths. In recognition of the ineffectiveness of previous responses to prostitution in the city, the multi-agency Routes Out Partnership was established in 1999. Routes Out, funded by the Scottish Executive aims to prevent women becoming involved in prostitution and support them to exit.

Violence

In Ireland, prostitutes are sometimes charged with soliciting when reporting attacks to the police. A survey carried out in 1996 (O'Connor et al), found that one in five prostitutes had been attacked by customers, and that 11 per cent had been raped. Furthermore, the often negative experiences the women had had with Gardai had not surprisingly influenced their willingness to report assaults: only three women said they definitely would.

EUROPAP (1996) surveyed 84 women in prostitution in Ireland. Almost half of the women felt that violence towards women in prostitution had increased. A number related this to the increase in young drug addicts working on the streets. Another aspect, pointed out by some women, was the perception that it was no longer easy to report attacks to the police because now 'you could be charged'. One woman commented, 'it has always been dangerous, but it has increased. Clients are aware the law has changed and are aware that the women don't want to go to the police'. Negative experiences with individual Gardai coupled with the change in legislation had a major impact on women's willingness to report violence. Over two thirds (69%) of women said they would not report an attack.

Health

Research has shown that street prostitution in Ireland is linked to homelessness, and that homelessness leads to significant health problems. The Eastern Health Board (EHB) published a Working Group Report in September of 1997. Fifty-seven people from the ages of 11 to 18 were reported to have been homeless and involved in prostitution. There are limited services to address health issues, partly accounted for by the ambivalent response to prostitution in Ireland.

¹⁹ Also the Derby Evening Telegraph, September 25, 2003

²⁰ Routes Out Partnership 2003

Public attitude

The context for public attitudes to prostitution in Ireland is a complex one, combining centuries of Catholicism and notions of 'fallen women', with the Celtic Tiger modernised economy, most evident in young people's education and in the city of Dublin. It is noteworthy, for example, that the only project providing support to women in prostitution – Ruhama - is funded, and overseen, by an order of nuns. At the same time a recent study of young people's understandings of violence against women revealed that the vast majority of young men had accessed pornography, primarily via the Internet, and regarded it as 'sex education' (Regan and Kelly, 2001). The Catholic context historically placed limits on the development of the sex industry in Ireland, but these limits are no longer as strong, as the influence of, and respect for, the church diminishes. In this context an emerging sex industry – especially the more 'legitimate' area such as lap dancing clubs - is seen by many as a sign of a secularising and liberalising of the Irish state. At the same time residues of the past remain, alongside critical commentaries by Irish feminists about the normalization of the sex industry and the emergence of trafficking. It is not the policy regime as such which accounts for public attitudes in Ireland, but its particular history within which all issues related to sex and sexuality were controlled and repressed. In this context any debate where the issue of 'censorship' is raised tends to become charged and polarised.

Media Coverage

Media coverage of prostitution in Ireland tends to be either 'sensationalist' or 'moralistic' (Reynolds 2003). For example, a report in the *News of the World* newspaper in October 2003 headlined *Dublin Students Forced Into Vice To Pay The Bills* focused on students at Trinity University 'topping up' grant money by working in the evenings as prostitutes, resulted in calls from senior church officials to 'return to the values of family and decency'²¹. Working as a prostitute has become more and more accepted as a choice of 'profession' for women, and is seen less as an abuse than before (Ireland Country Report).

Some media discussions have raised the issue of legalisation, but there has been a lack of clarity about the difference between decriminalising women and legalising brothel prostitution. The same arguments as elsewhere of safety, health and control have all been used, as well as the negative history and impact of censorship in Ireland (Country Report).

Evaluation

There has been no evaluation of the current laws on prostitution to date. However, Ruhama has conducted a small-scale survey and found that trafficking of women has significantly increased since 1993, as have the numbers of off street sex establishments and escort agencies (Ruhama, 2002).

Policy change

The minor change in the law clearly had a negative impact on women. Although the legal reforms were wider than simply allowing police to arrest women for solicitation, police tend to use it in a narrow way against the women.

²¹ Letters in NOTW, October 2003

Consequences for women in the sex industry

The 1993 legislation has caused problems for women in prostitution, in that many say they are experiencing a greater level of harassment from the Gardai, resulting in them feeling like criminals. There is limited evidence of the Gardai shifting their policy in recognition of the violence women in prostitution suffer, as been seen in some areas of the UK (EUROPAP, 1996).

Implications for Routes Out SIP

Regulatory regimes are interesting in their variability and flexibility, depending on the national and local laws under which they function. It is, for example, possible to develop forms of decriminalisation at a *policy* level without changing the statute. This is what has happened with respect to children in England and Wales, with the policy response directing police and other agencies to respond to them as 'children in need' and to target exploiters and customers through the criminal law. Whilst it is not possible to transfer this model to adult prostitution (and certainly not where there is no 'kerb crawling' legislation) there are possibilities which have not been systematically explored. For example, if law enforcement focussed on a pro-active approach to identifying crimes *against* women in prostitution.

The Irish experience highlights two issues: the importance of any statute reform not making the position of women more insecure; and the significance of the cultural context underpinning public opinion and media reporting. Both are significant in setting the context in which policy develops and is implemented.

Implications for police and health services

Police are in a position of working with 'toothless' legislation that discriminates against the women involved and does nothing about the demand. For police and health services it is far more difficult to adopt a range of strategies in responding to public complaints about street prostitution if police are limited to arresting the women.

From a Garda point of view it has provided for a greater degree of public order. However, because terms are ill defined, it is open to interpretation and thus its enforcement, to some extent, is open to the discretion of the individual Garda.

Investigation into violent assaults and murders of women in prostitution will be hindered by the 'blind eye' approach – especially towards customers. The approach taken by police in Edinburgh, i.e. licensing certain brothels and 'turning a blind eye' to street prostitution so long as it was in a designated zone, has been used as a good practice example. Tolerance zones were abandoned in late 2001 in Edinburgh.

Criminalising Demand: Sweden

Since January 1999 it has been a punishable offence in Sweden to buy or attempt to buy sexual services. The penalty is a fine or imprisonment for up to six months. The offence covers all forms of sexual services, whether they are purchased on the street, in brothels, or in saunas/massage parlours.

The Swedish legislation is currently unique, but demand has been tackled in a variety of ways in other countries. Re-education courses for men who buy, or attempt to buy sex have been set up in the UK, Canada and US, following the lead of the San Franciscan women's NGO, Standing Against Global Exploitation (SAGE), which established the First Offenders Programme in 1995²².

Rationale

In Sweden prostitution is regarded as an aspect of male violence against women and children. The underlying rationale to reverse a legalisation approach was that prostitution, like all forms of violence against women, constitutes a barrier to gender equality. Since moving towards gender equality is a fundamental priority for Sweden, logically its policy must be based on an approach that seeks to end prostitution, rather than manage/legitimise it. The fact sheet produced by the Swedish government outlines its philosophy.

It [prostitution] is officially acknowledged as a form of exploitation of women and children and constitutes a significant social problem, which is harmful not only to the individual prostituted person but also to society at large... This objective is central to Sweden's goal of achieving equality between women and men at the national level as well as the international. However, gender equality will remain unattainable so long as men buy, sell and exploit women and children by prostituting them... Prostituted persons are considered as the weaker party, exploited by both the procurers and the buyers. It is important to motivate persons in prostitution to attempt to exit without risk of punishment. By adopting the legislation Sweden has given notice to the world that it regards prostitution as a serious form of oppression of women and children and that efforts must be made to combat it. (Ministry of Industry, Employment and Communications, 2003, p1)

Therefore, the government believes that prostitution is an institution arising out of the status of women and children in relation to men. Prostitution depends upon a certain group and class of persons that can be used, willing or unwilling, for another's personal gain.

This legislation also reflects the Swedish interventionist social welfare approach to social problems, in that monies have been made available for exit strategies, including drug and alcohol treatment, for women wishing to leave the industry.

During the 20 years of lobbying for a recognition of prostitution as abusive towards women, feminists and some female politicians argued that young men growing up in a culture where prostitution is acceptable will often form detrimental views of women and sexual relationships, which in turn can become a barrier to equality between men and women. (Winberg, 2003)

²² See SAGE website: <http://www.sageprojectinc.org/> for further information

Operation in practice

The Swedish regime is not simply a piece of ideological legislation, but a holistic approach to the problems of prostitution. There is as much emphasis on raising awareness about the realities and consequences of prostitution as there is on enforcing the criminal law. When the Act entered into force seven million Swedish Crowns (EU 782,000) were allotted to the four largest police districts in the country to implement the law. The police and prosecutors have been educated on all aspects of the law, which is considered vital for achieving effective enforcement. The government also recognised that criminalising demand without support for the women themselves, would be not only ineffective but also unfair, therefore monies were made available to NGOs and statutory agencies for drug rehabilitation programmes, exit strategies and longer term reintegration.

To date, 500 men have been charged under the legislation, with a 300% increase from 2002. Because of a major investigation into a trafficking gang that advertised on the Internet, a further 575 men have been charged with the offence in 2003. Since 1999 street prostitution in Stockholm has dropped by more than two-thirds. Before the law, between 350 and 400 prostituted women were working the streets in Stockholm.

There were some problems initially in terms of police response to and implementation of the law, particularly with concerns about trafficking investigations being compromised by customers being criminalised, and therefore being reluctant to provide supportive evidence.

Today both police and prosecutors believe that the regime deters traffickers, and that the customers provide valuable evidence corroborating the story of the victim. Numbers of women trafficked into Sweden are low compared with neighbouring countries. For example, between two and five hundred women are trafficked into Sweden each year, compared with an estimated 17,000 to Finland (Sweden Country Report). Ingela Klinteberg, Deputy Chief District Prosecutor, District of Malmö, explained:

Police were initially concerned about the new legislation, but soon realised that it could help them gather evidence against traffickers. Because they were able to arrest and question the customers of trafficked women, they could build a better picture of the crimes committed that could corroborate the victim's story.

One important aspect of the new legislation, which is seldom recognised outside Sweden, is that the women and children in prostitution are not criminalised; rather they are viewed as victims of a crime. This not only changes their legal status, but how they are seen and treated by others.

Sweden's laws are extraterritorial, which means that men who buy or attempt to buy sex in other countries with similar laws can be charged with those offences.

Violence

No increase in violence against women since the law was implemented has been reported from a majority of the police districts. Malmö, in the south of Sweden, is the exception and the reason for this is unclear.

Health

There is no information regarding the impact the current regime has on women's health. However, there is significant evidence that women engaged in prostitution can suffer from a variety of mental and physical health problems (Farley et al, 2000). If the numbers of women involved in prostitution has declined, this has direct implications in terms of lowering the numbers for whom health risks are a concern.

Public attitude

The prohibition against men buying sex has strong support in Sweden. Several opinion polls, conducted in 2000 and 2001, show that approximately 80 per cent of the Swedish population supports the law. Of those who want to repeal it, the majority are men, with only seven per cent of women in support²³.

Media Coverage

Since the new law came into force the quality of media reporting on prostitution and trafficking has improved. It is no longer as sensationalised. Instead, it usually focuses on the legislation and the men who are now seen as perpetrating these crimes (Sweden Country Report).

Evaluation

Opinion polls are one way of measuring the impact of the legislation, however, the Swedish government see this regime as a long-term project. The Swedish approach to legislation is to measure its effectiveness not only by numbers of arrests and convictions, but also by the impact on the whole society. For example, in 1979, Sweden became the first country in the world to prohibit all corporal punishment of children. Although there have been relatively few convictions, the introduction of the law was a catalyst for changes in attitudes and behaviour towards the disciplining of children. Ten other countries have since followed suit. The Swedish view on the role and function of the law is not simply that of detection and enforcement, but also one of education, awareness raising and prevention.

Legal reform in Sweden is often linked to the establishment of new and desired norms: in this case women's equality, which prostitution undermines.

Policy change

There has been no policy change, if anything Sweden has become more committed to its position. It promotes the law internationally, and takes a strong position against legalisation with the EU and other international bodies.

²³ Annika Engström and Lova Olsson, "Starkt stöd för skärpt sexlag" Svenska Dagbladet (7 February 2001).

Implications for police and health services

There has been a shift of policing the women and men in prostitution, to targeting demand. It has taken time to establish this in a large institution used to non-intervention. Many critics of the law have drawn on the early years of implementation where uncertainty and ambivalence was evident in police and prosecutors. Few note the extensive training programme, nor the emerging new consensus and implementation.

It has also been a lesson in terms of investment in support services, where this was not just a promise – as in Victoria, Australia – but a reality.

Consequences for Women in the Sex Industry

Although it is often argued that restrictions on street prostitution results in poor and drug addicted women losing their only source of income, there has been very little protest regarding this issue from opponents of the legislation. However, the Swedish government investment in drug and alcohol rehabilitation programmes and other exit strategies has undoubtedly enabled more women to leave prostitution. Some of the NGOs argue that a number of women have been inspired to leave by the new legislation.

Decriminalising the selling of sex has meant those in prostitution do not have to contend with harassment and arrest from police, which can enable the women to feel less stigmatised. Furthermore, this system serves to prevent the ‘revolving door’, and means that services can be explicitly directed at assisting women to leave prostitution, and with reintegration into society.

Implications for Routes Out SIP

The Swedish model offers an opportunity to tackle prostitution and its associated problems at the root, rather than relying on piecemeal initiatives. The Swedish model offers a consistency in approach and is internally coherent.

Resources are required, however, to ensure effective implementation.

The law has had a major impact on street prostitution. While no one claims it has eliminated prostitution, it has certainly stemmed its growth and acts as a deterrent to traffickers. The law would send out a clear message to boys and men that prostitution use is unacceptable.

Evidence from NGOs has shown that the new law and resources provided to those in prostitution has served as an incentive for some to exit.

6. Conclusions

Both sides of the debate use rights based arguments. Abolitionists argue that the act of prostitution itself is detrimental to the well being of the prostituted woman, and also to the community, because an acceptance of prostitution means that the buying and selling of women's bodies is state sanctioned. Those who support legalisation argue that women have the right to choose whether they work in prostitution, and not be seen as passive victims in need of rescuing.

However, despite protestations to the contrary, there are areas of agreement between the contrasting philosophical and policy approaches. All concur on the following issues:

- Total legalisation is not a viable option.
- Criminalising women is both discriminatory and ineffective.
- Re-active, short-lived interventions achieve little if anything.
- The links between sex markets, drugs markets and organised crime are expanding.
- Legalisation has not limited trafficking, and there is some evidence that it has resulted in increased flows.
- Tolerance zones in both the legalised and regulatory regimes have failed to deliver the hoped for benefits.
- Street prostitution is both dangerous for women and unpleasant and disruptive for local communities.
- As increased numbers, including trafficked women, enter the sex industry, prices automatically fall, resulting in many feeling more pressurised to offer 'services' such as unprotected and anal sex in order to compete, which has serious implications for health and safety of prostitutes.
- Whilst off-street prostitution involves less violence, levels are still high, and when it is subject to limited control more likely to involve minors and trafficked women.
- Only coherent, co-ordinated, multi-stranded and well-resourced interventions, linked to a clear longer-term policy direction make a positive difference.

It is also worth noting that in the few surveys which ask the opinion of those currently involved in prostitution, few support legalisation. The extent to which they also view violence as an 'occupational hazard', raises serious questions, on this ground alone, whether prostitution can ever be considered as 'just another form of employment'.

There are few legalisation or regulation regimes that extend to street prostitution, and recent experiments with tolerance zones, including in Edinburgh and Amsterdam, have failed to deliver the hoped for benefits. Arguments about legalisation for off street venues are based on a presumption that such a move would shift the sex industry off the street. This is more a hope than a reality. As the experience of Victoria, Australia demonstrates an expanding legal sector is accompanied by a similar increase in the illegal. This is for two reasons: some sex businesses seek to evade the demands of regulation; and women who are serious drug users are seldom able to comply with the rules and requirements of

legal brothels. It is also possible that a proportion of customers prefer the street prostitution scene. It is clear from research that the majority of those in street prostitution have serious drug problems. A legalisation strategy therefore serves to further criminalise and marginalise them.

On the basis of the materials examined, the case for legalisation is weak and unsubstantiated. The rationale behind both the law in the Netherlands and Victoria, Australia was to “provide more control over criminal behaviour and to ensure women were protected from violence and exploitation”. Neither of these aims seem to have been achieved, with organised crime, including trafficking, flourishing in both localities, and the illegal layers of the industry continuing to accommodate women who are funding drug addiction. As Anne-Marie Lizin, a member of the Belgium parliament commented: “You cannot say you're fighting the trafficking of people and at the same time legalise (brothels) because you open the market” (Noelle Knox, 2003).

A crucial component of the Swedish model is the decriminalisation of those selling sex – usually women. They are neither ‘regulated’ nor criminalised, and can remain free from police harassment and control from bosses and the state. Most UK projects currently working with women in prostitution prioritise ‘harm reduction’ interventions, rather than focusing primarily on exit strategies, although some combine both, to varying degrees. The coordinator of the Maze Marigold project in East London believes that the two strategies work best when applied together – that harm reduction without exit strategies simply serves as a ‘band aid’²⁴.

One pro-legalisation argument, which appeals to professionals, governments and activists, is that it will reduce trafficking. The evidence in the country reports, however, suggests that trafficking into countries/locations where aspects of prostitution are legal *increases*. The authors of the Australian report estimate that there are up to 200 women under ‘contract’ in Victoria at any one time, and that at least seven licensed brothels in Victoria have used trafficked women in the last year. Gunilla Ekberg from the Swedish ministry states that, as a result of the legislation criminalising buyers, Sweden has become less attractive for traffickers. Ingela Klinteberg, Deputy Chief District Prosecutor in Malmo comments:

The new law has had an effect on trafficking. The trafficked women have sometimes said to police that they overheard traffickers say that Sweden is a very unfriendly country to operate in, and that they should take them elsewhere, such as the Netherlands, where the traffickers can operate with impunity (Interview, 2003).

Legislation of prostitution carries costs. It is the responsibility of governments and citizens to decide who should meet those costs. Sweden has decided that those creating the demand – the traffickers, pimps and customers should bear these costs.

²⁴ Personal communication, July 2003. See also Kelly and Wingfield (2003)

What emerged strongly from this review, even with the limitations of time and resources, is that most approaches to prostitution lack a coherent philosophical underpinning, from which specific short and longer term aims and objectives could be drawn out and evaluated. Virtually no evaluation of overall approaches has been undertaken, and until recently relatively little was done on localised experiments and pilots. As a consequence, much discussion and debate reverts to rhetoric and anecdote, rather than being informed by a strong evidence base. We acknowledge that the evidence base, to date, is still weak, but the little that does exist does not commend a legalisation approach. Anyone contemplating such a move has to accept that it means an expansion of the sex industry – both the legal and illegal sectors - and does nothing to address the key issue of street prostitution. If implemented properly it places significant burdens on police and local authorities to enforce regulations and control the illegal sectors. If the outcome is a rapid expansion of both legal and illegal provision, it follows that this results in an increase of all of the harmful and anti-social elements of prostitution. There is probably more room for development in regulatory regimes than is currently the case, but for this to emerge law and policy needs to focus more on sex businesses and customers, rather than targeting women. To be more innovative and effective regulatory approaches need a stronger underpinning, in which the potential harms and costs of prostitution – to those within it and to local communities – are acknowledged and addressed. In this way the rationale, and targets, for regulation would be more transparent. They also need a coherent basket of measures, linked to a sense of desired outcomes, rather than patchy, re-active and unsustainable measures that tend to be associated with this model. The most coherent approach in terms of philosophy and implementation is that adopted by Sweden, and interestingly it is the only one where no one who sells sex is subject to the criminal law.

Bibliography

- Acton, W, 1875 'The Functions and Disorders of the Reproductive Organs' in S. Jeffreys, 1987, *The Sexuality Debates*, Spinifex
- Alcorn, G and Minchin, L, 2003, '*A red light on trafficking*', *The Age*, October 25
- Altman, L, *The New York Times*, Nov 27, 2002
- Anti-Slavery International, 1993, *Forced Prostitution in Turkey*, London, ASI
- Banach, L, 1999, Sex Work and the Official Neglect of Occupational Health and Safety: The Queensland Experience, in 18:3
- Bell, S, 1994, *Reading Writing and Rewriting the Prostitute Body*, Bloomington, Indiana University Press, p. 135
- Benbow, H, Billboard sex? No way. Street prostitution? No worries, *The Age*, June 20 2002
- Bennetto, J, 2001, 'Licensed brothels created problems for Dutch officials', *The Independent*, 9 April
- Benson, C and Matthews, R, 1995, 'Street prostitution: ten facts in search of a policy', *International Journal of Sociology of Law*, 23: 395-415
- Brain, T, 2003, speech to Police National Vice Conference, Gloucester
- CEDAW Report, 2000, The Dutch Institute of Social Sexological Research, The Netherlands, July p. 226-227
- Church, S et al, 2001, 'Violence by clients towards female prostitutes in different work settings: questionnaire survey', *British Medical Journal*, 332:524-5.
- Suzanne Daley, 2001 New Rights for Dutch Prostitutes, but No Gain, *The New York Times*, August 12
- COYOTE, undated, *Prostitution- Decriminalization vs. Legalization- What's the Difference?* International Sex Worker Foundation for Art, Culture and Education
- Da Silva, C, 2000, *Prostitution in the Nineties: Changing Working Practices, Changing Violence*, MA dissertation, Middlesex University
- Deans, J, 2002, '*There's more sex on Channel 4*', *The Guardian* January 29

- Europol, 2000, *Crime Assessment - Trafficking of Human Beings into the European Union*
[http://www.europol.eu.int/index.asp?page=publ_crimeassessmentTHB]
- Europol, 2002, *2002 Organised Crime Report*
[<http://www.europol.eu.int/index.asp?page=EUOrganisedCrimeSitRep2002>]
- Farley, M et al, 1998, 'Prostitution in five countries: violence and Post-Traumatic Stress Disorder', *Feminism & Psychology*, 8:4, 405-426
- Farley, M and Kelly, V, 'Prostitution: a critical review of the medical and social sciences literature' in *Women in Criminal Justice*, Vol 11 (4): 29-64
- Jeffreys, S, 1997, *The Idea of Prostitution*, Spinifex
- Gilbert, K, 1994, "Law 'reforms' leaving sex workers at risk," *The Age*, 7th April.
- Ginn, K, 2003, 'Would You Tolerate It?' *Daily Mail*, February 27
- Goderie, M, Spierings, F and ter Woerds, S, 2002, *Illegality, involuntary prostitution and prostitution by minors a year after lifting the brothel ban*, Verwey- Jonker Institute
- Greg, W, 'Prostitution', *Westminster Review*, 53 1850, 448 - 506 Report from the Royal Commission on the Contagious Diseases Acts, 1871
- Halmer, J, and Bindel, J, 2000, *Report on the Kerb Crawlers Re-education Programme*, West Yorkshire
- Editorial, *Het Parool*, Netherlands, 2003).
- Hoening, H, 2003, 'Legalised prostitution plan divides Thais', *The New Zealand Herald*, November 25
- Hubbard, P, 1997, 'Red-light districts and Toleration Zones: geographies of female street prostitution in England and Wales', *Area*, 29:2, 129-140
- Hughes, D, 1998, 'Mensexploitation.com' *Trouble & Strife*, Winter 1998, 21-27
- Hughes, D, 2002, The Corruption of Civil Society: Maintaining the Flow of Women to the Sex Industries. Paper given at *Encuentro Internacional Sobre Trafico De Mujeres Y Explotacion Andalusian Women's Institute*, Malaga, Spain 23 September
- Editorial, 'Drugs and poverty fuel young prostitution' *Irish Examiner*, June 12 1999
- Kelly, L, 2002, *Journeys of Jeopardy: A Review of Research on Trafficking of Women and Children in Europe*, Geneva, IOM

- Kelly, L, Regan L and Wingfield R, 2003, *Worth Less or Worth More? An Evaluation of The MAZE Marigold Project*, London, YWCA and Child and Woman Abuse Studies Unit
- Kinnell, H, 1999 'Survey of Sex Work Characteristics and Policies in the UK', Netherlands, Belgium, France, Ireland & Luxembourg, EUROPAP
- Knox, N, 2003 'Brothels are Big Business in Belgium', *USA Today*, November
- Lerner, G, 1986, *The Creation of Patriarchy*, Oxford University Press
- Lopes, A, and Macrae, C, 'The oldest profession', *The Guardian*, July 25, 2003
- Mansson, S-A, 1998 'Commercial Sexuality'. In B. Lewin (ed.), *Sex in Sweden. On the Swedish Sexual Life*, Stockholm: The National Institute of Public Health
- Mansson, S-A, and Hedin, U, 1999, Breaking the Matthew Effect - On Women Leaving Prostitution, *International Journal of Social Work* *[issue pages?]
- Mansson S-A, 2003, Men's practices in prostitution and their implications for social work
- May, T, Edmunds, M, Hough, M, 1999 *Street Business: The Links between Sex and Drug Markets*. Home Office Policing and Reducing Crime Unit, London
- May, T, et al, 2001, *Selling Sex in the City: An Evaluation of a Targeted Arrest Referral Scheme for Sex Workers in Kings Cross*, Social Science Research Papers, No 14. London, Criminal Policy Research Unit, South Bank University
- Maxim Institute, June 2003, Brothel bill "pill" will have nasty side-effects, Scoop, <http://www.scoop.co.nz/mason/stories>
- McKeganey, N and Barnard, M, 1996, *Sex Work on the Streets: Prostitutes and their Clients*, Buckingham, Open University Press
- McMullan, P, 2003 'Blackpool', *Sunday Express* June 8
- Ministry of Industry, Employment and Communications, 2003
- Murphy, P, 2002, Licensed brothels call for blitz on illegal sex shops, *The Age*, 3 June
- Louie, R, 1998, Project Client Call, Melbourne, Macfarlane Burnett Centre for Medical Research
- Miller, J, and Schwartz, M, 1995, 'Rape myths and violence against street prostitutes', *Deviant Behavior*, 16: 1-23.
- O'Connell Davidson, J, 2001, 'The sex tourist, the expatriate, his ex-wife and her 'Other': The politics of loss, difference and desire', *Sexualities*, 4:1, 5-24.

- O'Connell Davidson, J, 2002 'The Rights and Wrongs of Prostitution' *Hypatia* 17
- O'Connor, A, O'Neill, M, Foran, D, 1996, *Women Working in Prostitution: Towards a Healthier Future*, Report prepared for EUROPAP and the Eastern Health Board Women's Health Project.
- Perigo, L, 2003, 'Left + Right = Wrong', *Free Radical*, Issue 58
- Platform Organizations Shelters for Prostitutes, (Reformatorisch Dagblad), 2003 *Three Quarters of Prostitutes want to Stop*, The Hague, POOP.
- Raymond, J, 2003, *Ten Reasons for Not Legalizing Prostitution*, Coalition Against Trafficking in Women International,
http://action.web.ca/home/catw/readingroom.shtml?sh_item=67c1e4787e78ffa49d3d92987aee66d&AA_EX_Session=624cc9c34ee22bfa612682083ff8417
- Reynolds, P, 2003, *Sex in the City: The Prostitution Racket in Ireland*, Pan Macmillan
- Regan, L and Kelly, L, 2001, *Teenage Tolerance: Exploring Young People's Experience and Responses to Violence and Abuse*, Dublin, Dublin Women's Aid
- Self, H, 2003, *Prostitution, Women and Misuse of the Law: The Fallen Daughters of Eve*, Frank Cass
- Stewart, A, 2000, *Where is she tonight? Women, Street Prostitution and Homelessness in Glasgow*, Glasgow: Sleeping Rough Initiative
- Sullivan, M and Jeffreys, S, 2000, *Legalising Prostitution is Not the Answer: The Example of Victoria, Australia, Melbourne, CATW*
- Tiggeloven, C, 2001, *Child Prostitution in the Netherlands*
<http://www.prostitutionresearch.com/www.nw.nl/hotspots/html/netherlands>
- van der Gaag, N, 1994, Soliciting for change, *New Internationalist* issue 252
- Van Meeuwen, A, Swann, S, McNeish, D, Edwards, S, 1998, *Whose Daughter Next? Children abused through Prostitution*, Ilford Barnardos
- Walkowitz, J, 1980, *Prostitution and Victorian Society: Women, Class and the State*. New York: Cambridge University Press
- Winberg, M, 'Pathbreaking Strategies in the Global Fight Against Sex Trafficking' delivered at the *US State Department Conference on Trafficking*, February, 2003, Washington D.C., USA

Appendix 1

Current situation U.K.

England and Wales

The main legislation relating to Prostitution in England and Wales is contained in the Sexual Offences Act 1956, the Street Offences Act 1959 and the Sexual Offences Act 1985. The 1956 Act relates mainly to off street Prostitution, the 1959 and 1985 Acts relate mostly to street Prostitution and 'kerb crawling'.

Although prostitution is not in itself an offence in England and Wales there are a wide range of sanctions available to deal with those who seek to encourage or exploit prostitution. The principle aim of the criminal law in this area is to deal with the serious nuisance and distress caused to the public when prostitutes ply their trade in the streets and to penalise those who seek to encourage, control or exploit the prostitution of others.

Off-Street Prostitution

As detailed above, the main legislation referring to off-street prostitution is contained in the Sexual Offences Act 1956. If a woman sells sex from her own home she does not necessarily commit an offence. However, if the premises can be categorised as a brothel, the offences of keeping or managing a brothel or allowing premises to be used as a brothel will be committed under section 33 to 36 of the Sexual Offences Act 1956. A premises is considered to be a brothel, if more than one woman resorts to the premises for the purpose of prostitution – the premises are not precluded from being a brothel by the fact that, on any one day only one prostitute is present. Where there is joint use of the premises by a team of women (albeit involving only one of them using the premises on any particular day) for the purposes of prostitution, the premises constitute a brothel. This means that women are unable to share premises as one of them could be prosecuted as the brothel keeper.

Some police areas will not police off-street prostitution unless there is a complaint from a member of the public. Saunas and escort agencies are required to state that they are not offering sexual services in order to obtain a licence. In some areas surveillance operations may be mounted to obtain evidence of any unlawful activity. Health projects suggest that organised crime is associated with some saunas and massage parlours, and that in some cases migrant workers may be held in very poor conditions.

It is an offence for a man knowingly to live wholly or in part on the earnings of prostitution. For this, a person who lives with or is habitually in the company of a prostitute, or exercises control, direction or influence over a prostitute's movements in a way which shows he is aiding, abetting or compelling her prostitution with others, shall be presumed to be knowingly living on the earnings of prostitution – a person can be found guilty of living off immoral earnings under the Sexual Offences Act (SOA) 1956.

Street Prostitution

Women in street sex prostitution are very vulnerable to police intervention. It is an offence for a prostituted woman to loiter or solicit for the purposes of prostitution. A third offence of soliciting will result in the person being labelled a 'common prostitute' and subject to higher fines. Soliciting is described as 'loitering in a street or public place for the purposes of prostitution' under the Street Offences Act 1959. A public place may include a balcony, a doorway or window, and no verbal exchange or disturbance is necessary for the prosecution to stand.

Under the Sexual Offences Act 1985 an offence is committed if a man persistently solicits women for the purposes of prostitution – known as kerb crawling. Soliciting need not be in words or action but the customer must indicate that he requires the services of a prostitute. Kerb Crawling became an arrestable offence on 1 October 2001. Some police areas have resorted to sending letters to the customers home warning him of his actions.

Scotland

Prostitution itself is not illegal. However most activities relating to it, such as soliciting, importuning, loitering for the purpose of prostitution, running a brothel and living off immoral earnings are criminal offences. In Scotland street prostitution is dealt with under the Civic Government (Scotland) Act 1982, section 46 (1) of which states that: "a prostitute (whether male or female) who for the purposes of prostitution a) loiters in a public place, b) solicits in a public place or in any other place so as to be seen from a public place or c) importunes any person in a public place, shall be guilty of an offence." These offences are not imprisonable but are instead subject to a fine (ranging from £50-£500, averaging £150). However, many women end up in prison for non-payment of fines. Prostitution is classed as a 'crime of indecency', a sex-offence in the same category as sexual assault. As such it must be disclosed to potential employers and can act as a barrier to employment, particularly in the childcare and related sectors. The same legislation (Civic Government (Scotland) Act 1982) gives local councils the power to issue licences to premises for public entertainment. This has been used by some local authorities (particularly Edinburgh) to issue licences for 'saunas' (many of which are, unreality, brothels). However running brothels and 'living off immoral earnings' remain criminal offences. A major difference between Scotland and England/Wales is that there is no specific legislation directed at customers in Scotland in contrast to the 'kerb crawling' offence in the Sexual Offences (England and Wales) Act 1985. A customer may be charged with a 'breach of the peace' although, in practice, this seldom happens.

Appendix 2

Briefing on current trends within the sex industry in Victoria, Australia

By Rose Kitchin and Kathleen Maltzahn, Project Respect, Victoria, Australia

Previous Approach: Prostitution Laws Prior to 1984

Australian laws on prostitution were based originally on an English model that distinguished between the act of prostitution, which was not illegal, and prostitution-related activities such as brothel keeping, procuring, and living on the earnings of prostitution, which were illegal (Neave 1988: 202). Until the 1980s there was no specific legislation addressing prostitution, but it was dealt with under laws relating to vagrancy, town planning, contagious diseases and criminal offences (Hancock 1991: 166; Neave 1984: 2). In Victoria, in 1975, the town planning law was amended so that permits could be granted to 'massage parlours', but criminal penalties for prostitution-related activities remained in force (Neave 1988: 203). In practice, police enforced the criminal law selectively, tending to target street prostitutes and the 'public nuisance' aspect of prostitution, while ignoring prostitution in the parlours. Customers throughout the period were largely ignored (Neave 1988; Hancock 1991: 165-66).

Laws on prostitution, 1975-1984²⁵

Brothels

- Massage parlours were allowed in certain planning zones determined by councils, but it was not openly acknowledged that the parlours were actually brothels.

Operators

It was an offence to:

- keep or manage a brothel or allow a premises to be used for prostitution (this included home residences);
- live on the earnings of prostitution (this included partners);
- persuade or encourage someone to become a prostitute (procuring);
- advertise employment in a brothel (this did not apply to escort 'work').

Women in Prostitution

- Street prostitution (soliciting and loitering) was an offence.
- Escort prostitution was not an offence.

'Customers'

- Customers who used street prostitutes or prostitutes in public places guilty of an offence.
- Customers of women in brothels or escort agencies not subject to criminal penalties.

²⁵ The information given here on changes to legislation refers only to that concerning adult women, and prostitution that was considered to be 'chosen'. Penalties targeting child prostitution and prostitution involving force/coercion were never subject to debate, except as to their level of harshness.

Legalisation Take 1: Brothels (Planning) Act 1984

Labor came to government in Victoria in 1982 and in 1983 a report on prostitution recommended legalising 'massage parlours' and decriminalising the prostitution within them. Eighty submissions were received on community views on this proposal and, as a result, Labor set about decriminalising prostitution (TA 6 & 26 Mar 1984: 5, 6).

The impetus for reform came from views that criminal laws on prostitution:

- were not in keeping with the more liberal attitudes of the community at the time;
- were difficult to police and in a practical sense unworkable;
- encouraged crime and official corruption;
- targeted women/prostitutes while leaving men/'customers' alone.

The aims of the Labor-initiated Planning (Brothels) Bill, therefore, were to:

- recognise the reality of prostitution and deal with it sensibly (whilst not condoning it);
- provide more control over criminal behaviour and illegal activities; and
- ensure women were protected from violence and exploitation. (TA 26 & 27 Mar, 4 & 28 Apr 1984, 19 Jun 1985: 5, 1 & 3, 1, 12 & 13, 15).

However, this was to be achieved by using planning laws and permits, rather than criminal laws.

In the discussions at the time the causes of prostitution were not analysed. It was generally assumed that prostitution was a reality that should be openly acknowledged in a sexually liberal society, and that the best way of dealing with it was to try to control its worst aspects: drugs, crime, exploitation of the young, corruption, etc. Labor ministers, though, and the Prostitutes Collective of Victoria (PCV), a lobby group for women in prostitution, saw a clear distinction between decriminalisation and legalisation, viewing the latter as institutionalising, rather than controlling, prostitution (TA 23 & 26 Mar 1984: 2, 5).²⁶

Sectors of the community and the conservative Opposition Parties were worried by the changes to the prostitution laws. The Opposition wanted more controls (e.g. heavier fines for offenders and prohibitions against multiple brothel ownership), and together with the church, councils and PCV successfully pushed for an inquiry into prostitution. Not all of the Planning (Brothels) Bill was proclaimed, therefore, but put on hold while the inquiry took place (TA 4 May 1984: 1).

The main changes that were enacted by the half-proclaimed *Brothels (Planning) Act 1984* were as follows:

²⁶ Often, though, as time went on, the media, parliamentarians, church representatives, councils, members of the public and the Prostitutes Collective of Victoria used the terms legalisation and decriminalisation interchangeably.

- Prostitution-related activities were no longer criminal in premises with a valid planning permit; the criminal law still applied, though, outside legal brothels.
- Each local government had to amend its planning scheme to incorporate a brothel zone.
- Escort agencies did not come under regulation.

Brothels

- Required a town-planning permit to be legal (this applied to women using their home premises).
- Greater penalties and enforcement against brothels without permits (police and councils had greater power to enter brothels and close illegal ones).

Operators

- Anyone convicted of a serious indictable offence in the previous five years not eligible for a planning permit.
- Brothel operators were themselves not licensed.²⁷

Women in Prostitution and 'Customers'

No major changes.

Legalisation Take 2: Prostitution Regulation Act 1986

The Inquiry into Prostitution, known as the Neave Report, looked into the 'social, economic, legal and health aspects of prostitution in all its forms'. It received over 171 submissions (including representatives of the police, councils, religious groups and community workers), consulted with over 200 prostitutes, mostly women, interviewed 18 brothel and escort owners and managers, visited 30 brothels and held consultations in three provincial cities. The final report was almost 500 pages (Victoria 1985a).

The Neave Report recommended a combination of decriminalisation and legalisation of prostitution, namely:

- the 'repeal of criminal penalties for most prostitution-related offences',
- the continued 'regulation of location of brothels by town planning controls', and
- the 'licensing of brothel operators to exclude people with serious criminal offences', to protect women from exploitation and the community from 'nuisance' (Victoria 1985b: 8-10).

The removal of criminal penalties extended, controversially, to recommendations that:

- premises occupied by an individual prostitute used for prostitution should be exempt from planning permit requirements to encourage small, women-controlled, rather than large, brothels (Neave 1985b: 17);
- areas be designated where street prostitutes could operate lawfully (Neave 1985b: 12);

²⁷ It was still an offence to live on the earnings of street prostitution, persuade/encourage someone to prostitute, and advertise employment in a brothel (even those with permits).

The reasons given for the repeal of criminal penalties were:

- ‘The trend towards abolition of criminal penalties covering adult sexual activities’;
- ‘The discriminatory impact of the law’ (punishing street prostitutes rather than those in brothels, and prostitutes rather than customers and operators);
- The costs associated with enforcing criminal laws where there are no ‘identifiable victims’;
- ‘The inability of criminal penalties to eliminate the harmful aspects of prostitution’ (Victoria 1985b: 8-10); and

Neave also said that laws ‘should be designed to empower prostitutes so they can exercise greater control’ over the ‘work’ and ‘resist coercion by employers and customers’ (Neave 1988: 208).

In some ways contradicting the view of prostitution as an ‘adult sexual activity’ with no victims, though, Neave also stressed the importance of feminist principles, saying that:

- ‘the prime cause of prostitution is the economic and sexual inequality of women’;
- ‘we must abandon idea that prostitution is inevitable’;
- we must adopt ‘policies that reduce economic and sexual inequality’ and allow women to leave prostitution (Neave 1988: 207-9).

Neave predicted that decriminalisation would *not* lead to greater public acceptance of prostitution or an increase in the number of prostitutes, but instead hoped for the opposite effect (Victoria 1985b: 10).

The Victorian Labor government accepted most of the recommendations of the Neave report, but rejected red light zones for street prostitutes (TA 1 Jul & 24 Oct 1986: 1, 12). The bill passed through the lower house, but the conservative Opposition parties had control of the upper house, and used this to make 55 amendments to the bill. The most significant of these was to make it illegal for women to work on their own or in pairs without a licence (TA 18 May 1987: 16). Though the Bill was passed in the upper house, it was not proclaimed because, according to the Labor Attorney-General, ‘‘We sought to license the owners and operators ..., not individuals’’ (TA 18 May 1987: 16). After much deliberation, in July 1987 Labor decided to proclaim less than half of the Bill. The result was that *all* of the licensing provisions that would have screened brothel operators were dropped, not only those that the Opposition had made applicable to women working alone or in pairs (TA 22 Jul 1987: 3). According to *The Age* newspaper, prostitution in Victoria ended up ‘midway between legality and illegality, trapped in a murky greyness of planning and criminal laws’ (28 Jul 1987: 11).

In effect then, little changed under the half-proclaimed *Prostitution Regulation Act* (PRA):

- Brothel permits were still controlled by local councils under town planning guidelines; brothels were legal if they had a planning permit.

- However, council officers had more restricted access to brothels, and police could now only enter brothels at the invitation of a council officer or after obtaining a warrant (*TA* 29 Feb 1988; 16 Sep 1991: 1, 1).
- Procuring was now only an offence where it involved force or a child.

Impact of the Planning (Brothels) Act and Prostitution Regulation Act on Women (1984-1994)

Apart from newspaper reports, the only major research of this period was a survey conducted by the PCV in 1994, which analysed '321 valid responses', mainly from women in legal brothels (Pyett, Haste & Snow).

Routes in and out of prostitution

In 1985 the Neave Report found that 43% of women entered prostitution to pay for basic necessities (3). The PCV argued that one of the causes of prostitution was society's sexual commodification of women. Both pushed for social change generally, as well as for specific assistance for women to leave prostitution (*TA* 8 Sep 1984, 22 Feb 1985: 19, 12). In 1987 the PCV received a grant from the Victorian government to provide support to prostitutes in the areas of education, child care, health and drugs, but also, according to the Minister for Community Services, 'in the hope that some may move towards alternatives [to prostitution]' (*TA* 8 Jan 1987: 3). However, almost ten years later, the PCV research found that:

- 86 per cent of women still entered prostitution for financial reasons;
- few saw prostitution as an option in the long term;
- 45 per cent would leave prostitution if they could (Pyett, Haste & Snow 1994: 2, 24).

There is little evidence of further discussion of the 'sexual commodification of women' or ways to address this.

Health/HIV/STDs

In 1985 the Neave Report discussed prostitutes' risk of contracting STDs mainly in relation to how this impacted on customers and the community (i.e. their role in spreading STDs). It did not comment on the rate of infection amongst prostitutes (except to say that there had been no reports of prostitutes with HIV) but said the level of risk was 'high' (4). It found a high use of condoms (*TA* 13 Dec 1985: 18).

In 1987, though, the PCV reported that it was receiving complaints that prostitutes were being threatened with the sack if they refused to service men who would not wear condoms in legal brothels (*TA* 13 Feb 1987: 13). And three years later, according to a report by the Australian Institute of Criminology, women in legal brothels were deemed to be at high risk of contracting AIDS, because of the pressure by customers and operators to have unprotected sex (*TA* 22 May & 17 Nov 1990: 4, 13).

In 1991 the PCV said that the increased controls of the legal sector had pushed many women into the illegal sector, where there was an increased risk of HIV infection, and limited access to the PCV and peer support (Dobinson 1991: 118).

In 1994, the PCV research found that:

- Women take appropriate steps to avoid unsafe sexual practices with customers;
- The majority went frequently for sexual health checks; and
- There were still no reports of prostitutes with HIV;

But:

- 63% worried about contracting an STD through prostitution; and
- 23% had had an STD while prostituting (Pyett, Haste & Snow 1994: 2, 4, 21, 22).

Quality of life

The Neave report did not really comment on the quality of life of women in prostitution. According to women in the PCV research:

- The best things about 'working' in the sex industry were money (76%), freedom and the flexible work environment (20%), and independence (15%).
- The worst things were the customers (45%) (especially those who were difficult, demanding, drunk, dirty, ugly or old), and the toll it took on their personal life and self-esteem (because of the stigma, stress and not being able to tell family) (27%).
- 1/3 of the women were married or in de facto relationships. This was much lower than general population, where approximately 2/3 of women were in relationships (Pyett, Haste & Snow 1994: 23, 5).

Violence and assault

There is little research available that looks at the incidence and prevalence of physical and sexual violence in the sex industry. The Neave report did not look into this issue. One of the aims, though, of decriminalisation was to reduce violence against prostitutes. There were reports of assaults and murders of prostitutes during the first ten years, but quantitative data on this is difficult to obtain. The limited information accessible is as follows:

- A report by the Australian Institute of Criminology in 1990 found that many prostitutes in legal brothels were at a high risk of violence (TA 22 May 1990: 4).
- According to the PCV research in 1994, a significant percentage of women felt unsafe with customers most of some of the time (Pyett, Haste & Snow 1994: 13)
- In 1994 the PCV said that it was receiving up to 15 reports of rape and violence against prostitutes weekly. Many of these women did not report to police, either for fear of being charged with a prostitution-related offence, or because they already had outstanding fines and were afraid of being jailed (TA 7 Apr 1994: 16).

Street prostitution

The Neave report found that the health and safety of women in street prostitution was much worse than that of other women in prostitution (Victoria 1985a: 49-50). This continued to be the case throughout this period. Problems included the following:

- A high rate of arrest and imprisonment. (TA 8 Jan & 2 Apr 1987: 3, 11). In 1990, the ratio of prostitutes to customers charged was about 4.5 to one and in 1993 almost 7 to 1 (TA 21 Nov 1994: 2).

- When the planning laws were proclaimed, many women in the newly regulated brothels were forced on to the street because of their drug addiction (*TA* 2 Apr 1987: 11).
- PCV research said that every day a street prostitute was attacked by a customer or prospective customer (*TA* 21 Nov 1994: 2).
- Research in 1994 showed that 80% of St Kilda's street 'workers' were drug addicted, 70% homeless, 25% had psychiatric disability, 10% had an intellectual disability and 20% alcohol addicted (*TA* 21 Nov 1994: 2).

Control over 'work'/conditions

- Quotes in *The Age* newspaper from Neave and the PCV suggest that the PRA had either pushed women into large brothels where they had little control over their conditions and few 'workers' rights', or escort agencies and street prostitution, where they had more control but were at greater risk.
- The Neave report stated that the PRA had 'institutionalised prostitution, reinforced male dominance and diminished the power of prostitutes'. She said that the distinction made in her report between large and small-scale prostitution had been removed, so that measures to control large operators applied equally to women working alone or with one or two others (*TA* 13 Sep & 26 Oct 1988, 5, 10). In 1995 she criticised the fact that women working alone or in small brothels without planning permits were subject to prosecution while large operators/businessmen could buy premises in suitable areas and with permits and employ up to 70 women (*TA* 4 Jun 1995: 26).
- According to women in prostitution and the PCV, brothel culture had changed since legalisation, while the pay had not risen in ten years. In particular women commented on the bolder behaviour of men. Instead of phoning in advance, as they did before, men now came to the door, many just for a 'perv', and women had to parade in front of them. The women also felt that customers had become more demanding (*TA* 13 Feb 1987:13).
- In 1990, according to a report by the Australian Institute of Criminology, women in legal brothels had to submit to house rules such as fines for misdemeanours (e.g. lateness and not shaving their legs) while operators took up to 60% of customer fees (*TA* 17 Nov 1990: 13).
- In comments in the media, and in articles and research, the PCV criticised the 'working' conditions of prostitutes in brothels and lobbied for improvements. Brothel owners resisted, arguing that prostitutes were not workers, but self-employed contractors. The PCV pointed out that women in brothels:
 - were not normally eligible for holidays, sick leave or maternity leave;
 - received no industrial or occupational health and safety protection;
 - were often asked to sign contracts waiving certain 'worker' rights;
 - in some cases were expected to perform services without pay (e.g. cleaning the brothel and socialising with waiting customers);
 - were still subject to bonds and fines;
 - could not refuse to perform sexual services displayed on the 'menus';

- were not represented by a union (TA 7 Jan 1987, 3 Feb 1991: 3, Agenda 2; Dobinson 1991).

Impact of the Planning (Brothels) Act and Prostitution Regulation Act (1984-1994) on Crime/Policing

Policing of brothels

In 1986 police, local councils and The Age newspaper investigation said the PRA was a 'shambles' because:

- Operators with criminal records were using people without criminal records to apply for permits.
- Police were no longer entering brothels, did not have up-to-date list of legal brothels and were seldom notified by councils if brothels changed hands.
- Laws had left responsibility of policing brothels on local councils, but because brothel operators did not necessarily put down their own names on permits, did not tell councils of changes of ownership, and did not have to tell them of changes to leasehold arrangements, councils could not police brothels properly. Councils said their officers lacked the training and resources to properly police brothels.
- Though the law prohibited multiple ownership, it seemed to be occurring.
- There was no system of review once a building permit was issued (TA 29 Feb & 1 Mar 1988: 1, 6).

Trafficking of women

- Two trafficked Thai women were found in a legal brothel in 1987. One woman was deported; the other left voluntarily. No action was taken against the brothel owner (TA 17 Nov 1990: Extra 3).
- Six Thai women were detained in 1988 in a legal brothel and deported. There is no evidence of action taken against the operator (TA 16 Jul & 9 Aug 1988: 3, 5).
- One man was charged with 'illegally making earnings from prostitution'. Seven trafficked women were arrested in his North Melbourne brothel, to be deported. The brothel was not closed (TA 9 Aug 1988: 5).
- At the time there was no legislation to specifically address trafficking, so it is likely that there were more cases than those discovered by police.

Underage girls

- In 1987 an underage girl was found in a legal brothel. A man was charged but later acquitted (TA 17 Nov 1990: Extra 3).
- Prostitutes as young as 14 had been found at some illegal brothels (TA 16 Sep 1991: 1).

Bribes and standover tactics

- In 1987 a brothel owner was charged with offering a bribe to a policeman but was fined only \$300 (TA 17 Nov 1990: Extra 3).
- Council officers were offered cash bribes and other incentives by several brothel operators in return for favourable recommendations on licence applications and/or to ignore the presence of illegal brothels, according to police. No charges had been laid, though this had been going on for years.

Standover tactics were also used by operators to prevent councils closing down illegal brothels (TA 16 & 17 Sep 1991: 1, 4).

Drugs, illegal gambling, pornography, stolen goods, and illegal fire arms

- The head of the vice squad suspected that large amounts of criminal money was being laundered through brothels and that leading criminals connected to prostitution were also dealing in illicit drugs, pornography, stolen goods and illegal fire arms (TA 16 Sep 1991: 1).
- Police were worried that the sex industry had reverted to 'bad old days' before legalisation, with groups of criminals fighting to control the market (TA 28 Jul 1991: 1).

Illegal brothels

- Police said that illegal brothels that were closed down simply reopened elsewhere (TA 16 Sep 1991: 1).
- In 1991, an Intergovernmental Committee on AIDS estimated the value of the illegal sex industry at \$75 million a year (TA 28 Jul 1991: 1).
- In 1994, a government review said that the partial legalisation of prostitution had resulted in a dramatic expansion of illegal prostitution with at least 2/3 of the industry illegal (TA 10 Apr 1994: 1).

Illegal prostitution

- The PRA had forced many prostitutes to work illegally, according to report by Australian Institute of Criminology (TA 22 May 1990: 4).
- A government review in 1994 estimated that there were 3000 prostitutes in illegal brothels and up to 5000 in unregulated escort agencies (TA 10 Apr 1994: 1).

Lack of deterrents/prosecutions

- A man found to be involved with trafficking, underage prostitution and bribing police retained his status as brothel permit holder. *The Age* said that 'Legal brothel owners can do pretty much what they like and not lose their permits.' (TA 17 Nov 1990: Extra 3)

Current approach to prostitution

Legalisation Take 3: Prostitution Control Act 1994

Concerns about the upsurge of crime and illegality associated with prostitution, the potential spread of AIDs in the unregulated sector, and the murders of two street prostitutes in 1994 led to renewed calls for urgent reform to prostitution laws in the early 1990s. In 1990, the Australian Institute of Criminology said that the failure to fully implement the PRA had created 'confusion and contradiction' (TA 22 May 1990: 4). In 1991, the Inter-government Committee on AIDS called for complete decriminalisation to give public health educators access to all brothels (TA 28 Jul 1991: 1). And 'crime experts' argued that prostitution 'would lose its seedy connotations and consequences' if it were properly regulated (TA 16 Sep 1991: 1). The Labor Party had lost power in 1992, but in 1994 the Coalition government established a working party to review prostitution laws (TA 10 Apr 1994: 1).

Following the review of prostitution laws, the *Prostitution Control Act* (PCA) was introduced in October 1994 (TA 22 Oct 1994: 1). The aims of the PCA were to:

- tackle the growth of criminal activity in brothels and the illegal sex industry;
- ensure that no one could have an interest in more than one brothel;
- promote small rather than large brothels;
- address the health and safety aspects of prostitution; and
- lessen the 'nuisance' aspect of prostitution and its impact on the community (PCA 1994).

Attorney-General Jan Wade stated while the government was opposed to prostitution 'in all its forms', 'prostitution [would] continue, whatever the law, as long as there [was] a demand'. Despite this explicit acknowledgement of male demand as the cause of prostitution, she called for programs and education to discourage potential prostitutes, rather than potential customers. She discussed effects primarily in terms of offence to the community, the impact on children, and the possible impact of organised crime (Wade 1994).

The establishment of new brothels was illegal for over two years while the review was carried out. A PCA Advisory Committee was formed to advise the government on issues related to the control of prostitution and to assist prostitutes to leave the 'profession' (TA 22 Oct 1994: 1; PCAAC: viii)

The main legal changes that were enacted by the Prostitution Control Act were as follows:

Brothels/escort agencies

- One or two-person brothels in non-residential areas were exempt from the licensing requirements of the newly established licensing board. They still needed planning permits, though.
- Escort agencies were legalised.
- Brothels were required to display signs indicating that only safe sex was provided.
- Police gained increased access into legal and illegal brothels.
- Limits were placed on the size of new brothels (maximum size: 6 rooms).

Operators

- A licensing board was established to regulate 'prostitution service providers' and managers and ensure they did not have criminal convictions or an interest in more than one brothel.

Women in prostitution

- Higher penalties were introduced for street prostitution.
- A communications system for escort workers was introduced to increase safety.
- Prostitutes who operated knowing they had an STI were subject to fines.

'Customers'

- Using women in street prostitution and 'gutter crawling' was still illegal.

Impact and implication for women involved in prostitution, police and health services

Impact of the Prostitution Control Act on Women (1994-2003)

There was very little research done on women in prostitution during this period, and research that was carried out tended to have smaller sample groups than previously (Murray 2001: 6). The main two studies referred to here are the PCA Advisory Committee report, which drew on extensive submissions and interviews, and research conducted by the PCV in 1999, which analysed 24 in-depth interviews with women in the sex industry (Pyett & Warr).

Routes in and out of prostitution

- Most women still entered prostitution for financial reasons, according the PCV (TA 28 Feb 1999: 19).
- Research in 1996 of women in brothel and street prostitution found that 64 per cent wanted to leave the sex industry, and 57 per cent were actively looking for other work. All the women in street prostitution surveyed wanted to leave, but faced great barriers: homelessness, drug addiction, and a cycle of being fined for prostitution, doing prostitution to pay for the fines, and imprisonment (Noske & Deacon 1996).

Health/HIV/STDs

- The criminalisation of spreading STDs under the PCA led to compulsory STI testing (Arnot 2002: 10).
- A telephone survey in 1997 with 328 Victorian men who had paid for sex with a female prostitute in the previous year found that the men did not always use condoms, and that those who did not use condoms tended to be older and less likely to have regular sexual health checks. Unprotected sex was more likely to occur where:
 - the women were working from either their own or their customer's home;
 - the women were street prostitutes;
 - the customer was a 'regular';
 - the woman was younger than 18 (TA 29 Nov 1998: 2).
- According to the PCV, while women in the sex industry consistently asserted to customers that condoms were essential, one in five customers still requested unsafe sex. Not all legal brothels insisted on condom use (TA 28 Feb 1999: 19).
- The PCV research found that youth, inexperience and drug use made it more difficult for women to enforce condom use, even in legal brothels (Pyett & Warr 1999: 183).
- In 2000, WorkCover and police began raiding brothels because of complaints about women being forced to have unprotected sex. It was discovered that women were being pressured to have full sex without condoms in unhygienic and often unsafe conditions (TA 13 Aug 2000: 3).
- Though research on the health of women in the sex industry has tended to focus on STDs and condom use, none of the research in this period assessed

actual rates of STDs among women in the sex industry (Pyett & Warr 1999: 189).

- '[F]ew studies have examined other health and safety risks faced by women' (Pyett & Warr 1999: 189).

Quality of life

- The 'difficulties associated with maintaining a private sexual relationship while engaging in sex work' continued to be noted by women. The PCV interview with 24 prostitutes found that only five were in live-in relationships (Pyett & Warr 1999: 184)
- Women in brothels reported limited support from other workers, while street workers reported an almost total absence of support from other workers and nominated a health or welfare service provider as the only person to whom they could turn for support (Pyett & Warr 1999: 187-9).

Violence and assault

According to the PCV, one of the worst aspects of prostitution in brothels was the violence of customers (*TA* 28 Feb 1999: 19). Violence continued to be little researched.²⁸

Street prostitution

- Street prostitution was the most common form of prostitution discussed in the media and research. There were more services for women in street prostitution than in other forms of prostitution.
- Research in 1996 with 23 women found that all had been raped, bashed or robbed by a customer and all had been forced to have sex without a condom (*TA* 4 Sep 1996: 5). Women tended to blame themselves for violence and did not report it to police (Pyett & Warr 1999: 188)
- In 1997, the PCA Advisory Committee found that women in street prostitution 'often remain on the streets for ten to fifteen years, or more, becoming firmly entrenched in a life cycle of prostitution, drugs and prison', almost half were mothers who had lost custody of their children, and violence was common (PCAAC 1997: 28).
- Prisons had inadequate services to assist with post-release drug use, and a number of women died from overdoses shortly after leaving prison (Noske & Deacon 1996).
- 2001 research of 65 homeless women, including 34 in prostitution, found high levels of past and ongoing abuse (by fathers and boyfriends), mental illness, drug addiction and homelessness (*TA* 24 Feb 2001: 1).
- At least four female street prostitutes were killed between 1997 and 2003 (*TA* 6 Jun 2000, 1 Jan, 25 Feb, 12 & 29 Aug, 6 Sep 2003: 4, 5, 13, 3, 3).

²⁸ In 2000 a state Liberal MP claimed that patrons leaving tabletop dance venues were harassing women in the street. She called for government regulations to tighten control of the industry and prohibit 'lewd billboards' advertising venues. Legislative changes made in 1999 gave the government powers to crack down on tabletop dancing, but the change of government (from a Liberal-National Coalition to Labor) had put the process on hold (*HS* 18 Mar 2000: 17).

Control over 'work'/conditions

- Half of the women interviewed in 1999 research said the PCA had improved their 'workplace'; half said it had not. According to the PCV, 'When [the women were] questioned about the best and worst aspects of the work, the worst far outweighed the best' (TA 28 Feb 1999: 19).
- Though there had been much interest from women about one or two-women brothels (those exempt from operator licensing requirements), they were difficult to establish because planning permits were still required, and the restriction on brothel location worked against the idea of women using their own homes (TA 8 Nov 1998: 5).
- It was reported that prostitution was taking place in tabletop venues (PC AAC 1997: ch 1; TA 18 Sep & 4 Dec 1997, 3 Mar 1999: 6, 3, 3).

Impact of the Prostitution Control Act on Crime/Policing (1994-2003)

Policing of brothels

- The gaming and vice squad was disbanded in mid-1999 (TA 22 May 2003: 2). This meant there was no specialist police squad focusing on the sex industry (TA 26 May 1999: 1).
- Since the disbanding of the vice squad, local police had referred most complaints about illegal brothels to local councils, who continued to argue that they did not have the resources to police brothels (TA 22 May 2003: 2).
- Multiple brothel ownership and large brothels were still a problem (TA 2 Mar & 28 Feb 1999: 1, 1). Police said that one operator of six brothels has made up to \$8 million three years (TA 3 Jun 2002: 3).

Trafficking

- One man trafficked between 40 and 100 Thai women into Victoria in 1997/98. Because there was no trafficking legislation at the time, he was charged with offences under the PCA and received a minimal sentence. All but one of the women left the country, many deported by immigration authorities (Ford 2001: 17-24).
- In 1999, *The Age* was 'aware of three [Melbourne] brothels where "contract girls" repaying a \$40,000 debt [were] working ... seven days a week and some do not use condoms.' (TA 1 Mar 1999: 1). According to police they had to 'sleep with 700 customers without payment to meet their contract terms' (TA 6 Jun 2001: 12).
- Project Respect estimates that there are up to 200 women under 'contract' in Victoria at any one time, and that at least seven licensed brothels in Victoria have used trafficked women in the last year. Trafficked women commonly pay off debts between \$30,000 and \$50,000, experience significant physical and sexual violence, and are frequently deported. Project Respect is the only specialist organisation offering support to trafficked women; the state government provides no funding for this work (Project Respect et al. forthcoming).
- There is no centralised police system for collecting, assessing or acting on trafficking-related information, and, according to council, state and federal officials that are in a position to tackle trafficking, there is inadequate coordination between them (Project Respect et al. forthcoming).

- There have been no successful prosecutions under the 1999 federal sexual slavery. In July 2003, four people in Victoria were charged with sexual slavery (TA 12 Jul 2003: 3).

Prostitution of girls

- Research in 1996 found that state wards, homeless youth and those too young for unemployment benefits were engaging in high-risk street prostitution (TA 4 Sep 1996: 5).
- In 1997 the PCAAC found that there were 20 to 50 'hard core' Melbourne street children between 13 and 18 years old involved in prostitution (32).
- In 1999, an investigation by *The Age* newspaper found that a man 'twice convicted on child prostitution charges, [was] running a string of young prostitutes' out of a Melbourne brothel (TA 1 Mar 1999: 1).
- 'Girls as young as 12 are working as prostitutes on St Kilda's streets in Victoria's burgeoning illegal sex trade.' 'A study run by the support group Child Wise found 1205 children under 18 involved in commercial sex in Victoria'. 'The study of agencies working with children in every state and territory found Victoria had the highest number of child prostitutes.' (HS 11 Aug 2002: 9)

Illegal brothels

- Illegal brothels closed by the police reopen elsewhere, as the deterrents are minimal (TA 7 Dec 1997: 8).
- In 1998 there were 40 to 50 illegal brothels in Melbourne (TA 8 Nov 1998: 5. In 2002, police estimated that there were more than 400 illegal brothels in Melbourne (TA 3 Jun 2002: 3).
- There have been no prosecutions of illegal brothel operators under the PCA (TA 4 Sep 2003: 3).

Illegal Prostitution

- In 1997 the PCA Advisory Committee found that street prostitution was rife in St Kilda, and the growth of tabletop dance venues was a concern (PCAAC 1997). Illegal prostitution was occurring in tabletop dance venues, according to the PCA Advisory Committee and the Coalition government (prostitution in private 'fantasy rooms', physical contact with customers, customers masturbating and expecting women to masturbate them) (TA 4 Dec 1997, 3 Mar 1999: 3, 3).
- In March 1999, the Attorney General said that street prostitution was flourishing (TA 2 Mar 1999: 12).

Tabletop dance venues

- In 1994 sexually explicit entertainment at licensed premises in Victoria 'got the go-ahead from the Liquor Licensing Commission' (TA 16 Jul 1994: 3).
- By 1997, there were 'fears about attempted criminal infiltration of the [tabletop dance] industry'. An *Age* investigation found:
 - police and licensing authorities were being misled about true owners of clubs, and owners were backed by 'shadowy figures';
 - vandalism of clubs, thought to be because of competition between venues;
 - directors being prosecuted for alleged underworld connections (TA 30 Mar 1997: 1).

- The Liquor Licensing Commission had ‘neither the resources nor the powers’ to police [tabletop dance] venues or investigate their true ownership. The Prostitution Control Board had ‘no jurisdiction’ over tabletop dancing (TA 30 Mar 1997: 16).
- ‘A Liquor Licensing Commission hearing found that violence and standover tactics were used by underworld figures to grab control of a city nightclub and turn it into a nude table-dancing venue.’ (TA 8 Jun 1997: 5)

Police behaviour

- Police regularly gained free entry into tabletop dance venues and discounts at some brothels, according to *The Age*, in breach of police guidelines (TA 5 Jul 2001: 1).

Other Aspects of 20 Years of Legalisation

Impact on demand

‘On 1 July 1983, there were 149 brothels known to the police’ (Neave 1985b: 7). This was before legalisation in 1984. After an initial drop in numbers when permits were first required, numbers since have steadily risen, till in June 2003 there were 95 legal brothels in Victoria (TA 8 Jun 2003). Combined with the 400 illegal brothels known to police, this is an increase of 246 (TA 7 Sep 2003). Despite the problems experienced by women in making use of the exemption for one or two-women brothels introduced in 1994 by the PCA, by July 2003 there were 1688 exempt brothels registered with the Business Licensing Authority (BLA).²⁹

In 1985 there were 37 escort agencies in Victoria. As the number of brothels initially dropped, the number of escort agencies ‘mushroomed’ (TA 13 Feb 1987: 13). Because of concern about the growth of escort agencies, the PCA legalised them and introduced licensing requirements. According to the BLA, there were 39 licensed escort agencies in July 2003, and a further 91 where the service providers were licensed for both brothels and escort agencies. This means that the number of escort agencies, too, has risen since 1985.

In 1985, the Neave Report estimated that there were between 3000 and 4000 prostitutes in Victoria (1995: 1). This number had risen in 1991 to 6000, according to an Inter-Governmental Committee on Aids report; 2000 of these were in illegal brothels (TA 28 Jul 1991: 1). In 1994, a government review of prostitution laws estimated that there were 3000 prostitutes in illegal brothels alone (TA 10 Apr 1994: 1). There are no recent informed estimates of the number of prostitutes overall in Victoria. The number of women in escort agencies rose from 300-500 in 1985 to 5000 in 1994 (TA 13 Dec 1985, 10 Apr 1994: 19, 1). Since their regulation under the PCA numbers have not been estimated. The number of street prostitutes, though, has risen from 200 in 1985 to 400 in 2003 (Victoria 1985b: 2; TA 7 Sep 2003: Agenda 2)

In 1985, the Neave Report estimated that there were ‘at least 45,000 male visits to prostitutes each week in Victoria’ (4). In 1999, The Age reported that

²⁹ Though it is likely that not all of these are in operation.

conservative figures showed that 61,000 customers visit prostitutes each week (28 Feb 1999: 1).

In 1988, The Age reported that 'the overall value of the [Victorian brothel] industry' (property plus turnover) 'is conservatively put at \$100 million' (29 Feb 1988: 1). In January 2000 the Herald Sun reported that 'Some estimates put the [Victorian] sex industry's annual turnover at more than \$350 million a year' (19 Jan 2000: 4). The tabletop dance industry, which began in 1994, had an estimated total annual turnover of \$20 million in 1997 (TA 30 Mar 1997: 1).

Tax for legal brothels and escort agencies

Fees

Brothels and escort agencies in Victoria pay a fee of A\$200 when they apply for a Prostitution Service Provider licence. They then pay annual licence fees of A\$400 for the first year, and \$167 subsequently per room (for brothels) or per telephone number (for escort agencies) and/or business name.

Tax

Both legal brothels/escort agencies and women doing prostitution are obliged to pay tax. However, it is widely accepted that tax evasion is widespread in the sex industry, reportedly costing the federal government A\$100 million per year in lost revenue (TA, 28 Feb 1999):

- while there are an estimated 22,500 'sex workers' nationally, only 3,699 submitted tax returns as sex workers (TA Business, 15 Feb 2002)*
- The Age reported that 'of the 30 women working in one [legal] brothel, only one requested a group certificate³⁰ last year. Asked how much income the brothel declared, the owner replied: "As much as we have to show we are covering costs, about half of what we earn."' (TA, 14 Feb 2002)*
- Illegal brothels do not pay tax, nor do women doing street prostitution (both illegal).*

In addition, recent research by Dr Linda Hancock found that some legal brothels deduct women's tax, but do not provide women group certificates (HS 27 Sept 2003). One inference is that the brothels keep the money themselves.

Women have told Project Respect that they are unwilling to submit tax for earnings from prostitution because they do not want an official register of the fact they are doing prostitution (i.e. their name on a federal government database linked to prostitution).

³⁰ 'Group certificates' were documents provided by employers stating how much tax employees have paid in a financial year. These are then submitted to the tax department for them to calculate how much tax should have been paid and if tax paid should be reimbursed (the system is organised so that most ordinary workers get a refund). The tax office now has another term for group certificates, but people continue to use the term.

Changes in Community Attitudes

While there are no formal studies of changes in community attitudes since legalisation, newspaper headlines such as 'Surge in Sex Sales' and 'Sex in Our City? Plenty Apparently' suggest mainstream acceptance of and participation in the sex industry.

- According to *The Age* in 1996: 'sexually explicit entertainment and prostitution are becoming just another service industry'. 'Like it or not, sex work is entering the mainstream'. 'In January's edition of the tourist guide *This Week in Melbourne* ... there were ... three pages of advertisements for prostitution services. Bank managers can claim visits to a table-top dancing club as a business expense.' (3 Feb 1996: 1)
- Tabletop dance venues had become popular venues for business meetings and many had boardrooms for corporate functions (*TA* 21 Feb 1991: 3).
- 'The owners of two of Melbourne's biggest table-top dancing clubs were negotiating with Crown Casino's operators to ferry high-rollers from the gambling tables to their men's clubs' (*TA* 21 Feb 1997: 3).
- 'Melbourne businesses are rewarding staff and customers with Christmas bonus sex jaunts. Brothels ... were flat out meeting business customer demands in the lead-up to the festive season' (*HS* 19 Dec 2001: 2).
- Sexpo, 'the sex industry's annual exhibition, attracted 60,000 people in 1999, second only to the Victorian Homeshow' (*HS* 17 Nov 2000).
- In 2002 a Melbourne brothel was accepting casino chips to pay the room rental fee to visit prostitutes (*HS* 11 Oct 2002: 9).
- In May 2003, a Melbourne brothel became the world's first brothel to list on a stock exchange, and was considering offering discounts to shareholders (*TA* 2 May 2003: 5).
- The term 'sex work' is now often used in both media and popular conversation, and there appears to be hesitancy about being seen as being 'moralistic' and questioning prostitution (*TA* 14 Jun 2003: 10).

Bibliography

- Arnot, A. (2001), *Legalisation of the Sex Industry in the State of Victoria: The Impact of Prostitution Law Reform on the Working and Private Lives of Women in the Legal Victorian Sex Industry*, unpublished MA thesis, Criminology Department, University of Melbourne.
- Dobinson, S. (1991) (*Safehouse Worker, Prostitutes' Collective of Victoria*), 'Victorian Situation with Legislation', paper presented at the AIC Sex Industry and Public Policy Conference. Available at www.aic.gov.au (accessed 3 Sept 2003).
- Ford, M. (2001), 'Sex Slaves and Legal Loopholes', Project Respect, unpublished paper, Melbourne. Available at www.vicnet.net.au/~prespect (accessed September 2003).
- Hancock, L. (1991), 'Legal Regulation of Prostitution: What or Who is Being Controlled?', paper presented at the AIC Sex Industry and Public Policy Conference. Available at www.aic.gov.au (accessed 3 Sept 2003).
- Murray, K. (2001), *Sex Work as Work: Labor Regulation in the Legal Sex Industry in Victoria*, unpublished MA thesis, University of Melbourne.
- Neave, M. (1988), 'The Failure of Prostitution Law Reform', *Australian and New Zealand Journal of Criminology*, vol. 21, pp. 202-13.
- Noske, H & Deacon, S. (1996), *Off Our Backs: A Report into the Exit and Retraining Needs of Victorian Sex Workers*, *Prostitutes Collective of Victoria, 10 Inkerman St, St Kilda, 3182, Victoria, Australia*.
- PCAAC (Prostitution Control Act Advisory Committee) (1997), *Final Report*, Victorian Department of Justice, Melbourne.
- Project Respect, Good Shepherd Youth and Family Services, International Social Service (forthcoming) Report on Trafficking for Prostitution, Melbourne, Australia (see www.vicnet.net.au/~prespect).
- Pyett, P. & Warr, D. (1999), 'Women at Risk in Sex Work: Strategies for Survival', *Journal of Sociology*, vol. 35, no. 12, p. 183.
- Pyett, P., Haste, B. & Snow, J. (1994), *Profile of Workers in the Sex Industry, Melbourne*, Report Prepared for the Prostitutes Collective of Victoria, Faculty of Health Sciences, La Trobe University, Bundoora.
- Victoria (1985a), *Inquiry into Prostitution: Final Report [the Neave Report]*, vol. 1, Government Printer, Melbourne
- Victoria (1985b), *Inquiry into Prostitution: Summary of the Final Report [the Neave Report]*, Government Printer, Melbourne.
- Wade, J. (1994), Prostitution Control Bill (Second Reading), *Hansard*, Assembly, 21 Oct. Available at www.parliament.vic.gov.au/hans.html (accessed 23 September 2003).

TA = The Age newspaper

HS = the Herald Sun newspaper

Appendix 3

Briefing on current trends within the sex industry in the Republic of Ireland

By Grainne Healy and Monica O'Connor

The current approach to prostitution

The law on prostitution was updated relatively recently in the Criminal Law (Sexual Offences) Act, 1993. The primary purpose of the Act was the decriminalisation of homosexuality, following the European Court ruling on this matter, so the laws in relation to prostitution were in fact a secondary part of the Act. Because of this the major part of the public debate was focussed on the issue of homosexuality.

The 1993 Act made effective the laws on public soliciting that had become inoperative due to the Supreme Court decision in the case of King v. Attorney General [1981] IR 233. Until then a Garda was only required to testify in court that a woman was a 'common prostitute' i.e. was known to him, he was not required to testify that the person was loitering for the purposes of prostitution. In 1983, the term 'common prostitute' was ruled unconstitutional in that it prejudiced the individual concerned, before their case had even been heard. Following the ruling prostitution convictions fell rapidly over the following years. Gardai had to rely on such unsuitable provisions as breach of the peace to deal with the public manifestations of soliciting for the purpose of prostitution. For example in 1981 there were 621 convictions and in 1984 there were none recorded. This trend continued until the 1993 Act.

The rationale given for the need to change the law seemed to be that it gave the Gardai adequate powers to deal with public soliciting, it extended the law to customers and third parties and it was framed to "protect the public against the unacceptable nuisance caused by soliciting".(1)

Under the 1993 Act, prostitution itself is not an offence. What the law seeks to do is to protect society from the more intrusive aspects of prostitution, such as soliciting in the streets and to protect prostitutes from exploitation by persons such as pimps living on the earnings of prostitutes. The laws governing prostitution are, therefore, primarily public order offences and are not designed to prevent sexual contact. A wide range of offences are involved of which the following are the more important.

Under section 7 of the Criminal Law (Sexual Offences) Act, 1993, it is an offence to solicit or importune another person in a street or public place for the purposes of prostitution. That offence applies to everyone, whether male or female, prostitute or client, or a third party, such as a pimp. Under section 8 of the 1993 Act, a member of the Garda Síochána may direct a person in a street or public place to leave the vicinity if he or she has reasonable cause to suspect that the person is loitering, in order to solicit or importune another person for the purposes of prostitution. It is an offence for a person without reasonable cause to fail to comply with such a direction.

Any person involved in the organisation of prostitution is liable to be penalised under a number of offence headings: for example, organising prostitution (section 9), coercing or compelling a person to be a prostitute (section 10), or keeping or managing a brothel (section 11).

In addition, section 23 of the Criminal Justice (Public Order) Act, 1994 makes it an offence to publish or distribute an advertisement, which advertises a brothel or the services of a prostitute.

Has the current approach altered the tone and content of national media coverage?

Regarding the public perception of prostitution and the media response it is impossible to cover in this document. What is clear is an increasing tolerance in Ireland by the public and the media of the so-called softer side of prostitution as in the huge increase in lap dancing clubs. The government discussion document and some media discussion have raised the issue of legalisation and there has been a lack of clarity about the difference between decriminalising women and legalising. The same arguments as elsewhere of safety, health and control have all been used and unique, negative history and impact of censorship in Ireland. Despite this our opinion would be that people in Ireland would not be in favour of legalising for moral reasons despite increasing acceptance of a growing presence of the sex-industry here.

Impact and implications for women involved in prostitution, police and health services

The government discussion paper dismisses claims that the new legislation had had negative impacts on women working in prostitution. In relation to the issue of the Act leaving women open to a greater likelihood of assault and further manipulation by pimps because reporting could now result in a charge of soliciting, the government paper says that "there is no evidence to support their fear of prosecution when reporting assaults" and that "prostitutes are treated by the Gardai in the same way as any other person reporting an assault".

There is no national research on women in Ireland working in prostitution. However in reports and research commissioned by the Women's Health Project (O'Connor, A.M 1995) since the introduction of the legislation there is increasing evidence of the negative consequences for women and a acknowledgement by some Gardai themselves of the difficulties arising for them in enforcement³¹.

In the 1995 research interviews with 18 women and the Gardai, all of the members of the Garda Síochána who were interviewed accepted that the new law had already created difficulties for women working in prostitution, particularly those working on the street. Whereas previously the women had been allowed to operate without excessive interference and the Gardai, in many cases, were attempting to build a better relationship with the women,

³¹ It is acknowledged that these pieces of research are mainly focused on women with drug addiction issues working as prostitutes so they are not a representative sample of all women.

the new legislation has produced a necessarily more confrontational relationship between the women and the Gardai.

Whilst the report recognizes that the new legislation is technically gender neutral in that it allows for the arrest of both prostitutes (male and female) and customers soliciting for prostitutes (either from the street or a car) it illustrates how that works differently in action. A member of the Gardai who observes someone on the street loitering with the intention of prostitution can direct that person to leave that place immediately. If the person refuses to leave that place immediately the Garda can arrest. As with prostitutes, a client also gets the opportunity to move on when directed by a Garda, before being arrested. In most cases the client in his car, will leave immediately. While the woman will usually leave also, she will often return to her place of work after a period of time, thus breaking the law. Problems arise in relation to where the woman moves on to, and after what duration she returns to her original position. If for example the woman leaves the street and returns some time later, it is questionable as to whether she has broken the law.

While the law clearly allows for the arrest of customers as well as prostitutes, the majority of Gardai interviewed did not see the problem as lying with the customers and showed more sympathy for the customers' point of view. Thus, although the law is gender neutral in concept, for the most part 'men seeking the services of women are not charged', as one Garda put it.

Furthermore, the often negative experiences the women had had with Gardai had not surprisingly influenced their willingness to go to the Gardai if attacked by a client or pimp. Only 3 (17%) of women said they definitely would. And the change in the legislation was another factor given as contributing to women's reluctance to report attacks. Two (11%) of those who would not go to the Gardai said that they would have previously, but since the change in the law they were afraid that they might be charged.

In the second report in 1996 (3), (a survey of 84 women) although some of the women interviewed had not noticed any increase in the level of violence recently, almost 60% (48) of the women felt that this was the case. A number of women (14) related this to an increasing number of young drug addicts working on the streets. Another aspect of the increase in violence, pointed out by some women, was the perception that it was no longer easy to report attacks to the police because now 'you could be charged'. One woman commented, 'it has always been dangerous, but it has increased. Customers are aware the law has changed and are aware that the women don't want to go to the police'. Negative abusive experiences with individual Gardai coupled with the change in Legislation had a major impact on women's willingness to report violence. 69% of women said they would not report an attack.

Other impacts of the change in the law were given as:

- having to work more nights and longer hours to make the same amount of money because of being moved on
- getting into cars more quickly without time to assess risk or danger

- taking more risks in relation to HIV/AIDS as less time to determine customers
- pushing women into more covert forms of prostitution i.e.: parlours
- forcing women to using their own home
- women in parlours being raided.

In the most recent research 1999 (4), (a survey of 77), almost half (48%-37) of the women interviewed stated that they had been physically assaulted by customers and 24%- 19 women reported having been forced to have sex with customers against their will. This is over double the proportion of women who stated that they had been assaulted in the 1996 research. This was perhaps due both to the generally increasing levels of violence seen on Dublin's streets, as reported by women themselves and by the Outreach staff, and the fact that most of the women in the research this year worked on the streets, where they are more vulnerable. An interesting finding of this research is that 65% of the women who had been attacked had reported the attacks to the Gardai. This may be as a result of the work done by the WHP project to develop close liaison with the Gardai, the service providers and women working in prostitution.

The increased vigilance of the Gardai in implementing the existing legislation, particularly with regard to women working on the streets, is highlighted in the responses of the women. 52% of all the women in this study had been charged with soliciting. This had resulted in 20% of those women being imprisoned, 12% fined and 18% being held in custody. The added trauma of prison on women and on women's capacity to parent is also highlighted in the report.

In the final summary the authors state that the new legislation has had an impact on the working lives of most of the women interviewed. Its implementation has resulted in many women 'going underground' i.e. working indoors which has implications for public health policy. Over half of the women had been charged and 20% of those had been imprisoned.

Have the rates of HIV and other STDs increased or decreased since this approach was adopted?

It is not possible from present data to draw conclusions about a relationship between any increase in HIV/STDs and the legislation. There is a great deal on the health needs of women in the 3 reports but not any direct relationship to the change in law.

Trafficking

The issue of trafficking in persons for the purpose of prostitution is recognised under different international documents to which Ireland is a signatory. The EU Joint Action on Trafficking in Human Beings and the Sexual Exploitation of Children calls on EU Member States to review their laws on trafficking. 'Trafficking' is defined in the Joint Action as any behaviour which facilitates the entry into, transit through, residence in or exit from the territories of a Member State, in the case of persons other than children (trafficking in children is dealt with under a separate piece of legislation, the Child

trafficking and Pornography Bill) for gainful purposes with a view to their sexual exploitation or abuse.

Final Notes

In relation to other questions not covered above:

- Additional references are included below. The task force on VAW unfortunately did not deal with prostitution. However there is a reference to the needs of women accessing services who suffer additional discrimination and this includes prostitution.
- The Framework document, which was commissioned by the regional Planning Committee on VAW did cover service provision to women in prostitution and also has a recommendation for research.

Bibliography

1. THE LAW ON SEXUAL OFFENCES: A DISCUSSION PAPER. Department of Justice, Equality and Law Reform, May 1998.

2. HEALTH NEEDS OF WOMEN WORKING IN PROSTITUTION IN THE REPUBLIC OF IRELAND
A Report prepared for EUROPAP and the Eastern Health Board Women's Health Project.
O'Connor, A.M., WEERC, University College Dublin, 1995

3. WOMEN WORKING IN PROSTITUTION: TOWARDS A HEALTHIER FUTURE, 1996.
Report prepared for EUROPAP and the Eastern Health Board Women's Health Project.
O'Connor, A.M., O'Neill, M., Foran, D.

4. DRUG USING WOMEN WORKING IN PROSTITUTION, The Women's Health Project, Eastern Health Board, Dublin Ireland and European Intervention Project, Aids Prevention for Prostitutes, Supported by the EU DGV under its programme 'Europe against Aids' 1999

5. Report on the Task Force on Violence against Women, Oifig an Tanaiste, April 1997.

6. A FRAMEWORK FOR DEVELOPING AN EFFECTIVE RESPONSE TO WOMEN AND CHILDREN WHO EXPERIENCE MALE VIOLENCE IN THE EASTERN REGION. Kelleher & associates, April 2001.

Appendix 4

Briefing on current trends within the sex industry in the Netherlands

By Rita Nalooop, Platform of the Organisation of Black, Migrant and Refugee Women and Marianne Dauvallier, Remedie

Edited for English by Liz Kelly

Amsterdam has always been known for its prostitution scene--so much so that it has become one of the main tourist attractions. In step with the overall changes taking place in Amsterdam, the prostitution scene has also undergone major changes, becoming more globalised.

It is a major destination country in Western Europe, with 2000 brothels and numerous escort services, using an estimated 30,000 women (Benneto, 2001). Prostitution and related forms of sexual exploitation is a US\$ 1 billion a year industry making up five percent of the Dutch economy. Sixty to 70 percent of the women in prostitution in the Netherlands are not citizens of the Netherlands or other European Union countries. In one study, 79 percent of women in prostitution gave an indication that they were in prostitution due to some degree of force³².

The previous approach to prostitution

In the past centuries prostitution was more or less tolerated in the Netherlands. From 1911 legislation on a general ban on brothels (WvS, art. 250bis) came into force. According to this law it was prohibited to run a brothel in order to profit from women working as prostitutes. The next article of the law mentions the other forms in which sexual exploitation of human beings is punishable: in short, article 250ter of the Criminal Code related to the punishment of trafficking in persons women and/or forcing persons (adults and minors) to prostitution.

The current approach to prostitution

On 1 October 2000 the general ban on brothels was lifted. The articles 250bis and 250ter of the Criminal Code were replaced by a new article 250a. It is no longer an offence to operate brothels in which adult prostitutes work of their own accord. At the same time, the fight against unacceptable forms of prostitution was intensified, including the fight against forms such as forced prostitution or prostitution of minors. The Criminal Code has raised the punishments for these illegal forms of prostitution (forced or under-age) to 6 years.

In the last decades of the 20th century street prostitution increased, due to the growing number of drug-addicted women that had to (or were forced to) work in the streets in order to fund their addiction. Local authorities had to cope with complaints from the neighbourhoods where this 'streetwalking' was based. In most major cities a tolerance-zone was appointed where street prostitution was

³² The Dutch Institute of Social Sexological Research, cited in The Netherlands Report to CEDAW, July 2000, p. 226-227.

allowed (most in the industrial areas of a town). The hours of business for this zone are during the evening and night, depending on the local situation, but every night: 365 days a year. On the zone a shelter is situated with the same opening hours. Here the women can have a break, drink a cup of coffee, eat something, talk with their colleagues (for instance exchange the numbers of the cars of dangerous clients), talk to the staff and buy or get condoms for free. On a number of nights a medical doctor can be consulted on STD's and on general health issues. Medical examinations for STD's are voluntary. (1) The estimated number of prostitutes in the Netherlands is 25.000. These are prostitutes working:

- Sex clubs/homes: 11,500
- Windows: 5,000
- Escort services: 3,500
- On the streets: 1,250
- From their own home: 1,250
- Other: 2,500

Two thirds of these women have foreign backgrounds, and more than 50 percent come from outside Europe. Many are illegal. They work in the grey market or with a false passport and often are forced to do this.

The new policy measures

In the new article 250a of the Penal Code only forced prostitution and trafficking are mentioned. Thus local governments are free to develop systems to regulate brothels. But in order to create the desired uniformity and integration of local policy, the national government has issued guidelines and suggestions for community and regional levels. They have been published in the Handbook Local Prostitution Policy.

The most important elements are:

1. A "contract of control" with a set of agreements between local government, the police and the public prosecution on the correlation of administrative and punitive measures.
2. Local government can organise a licensing system in order to regulate the prostitution sector on the basis of a model published by the Association of Dutch Municipalities.
3. For the Public Prosecutors guidelines specifically on how to proceed in cases of trafficking in persons and forced prostitution.
4. A special guideline is written on how to deal with victims of trafficking in the legal procedures.
5. A code of conduct for civil servants and policemen on how to behave in the prostitution milieu.
6. Mayors (who are responsible for the issuing of licenses) will have access to criminal records in order to check the background of owners and managers of brothels.
7. Prostitutes must identify themselves to the police to be legal. (1)

In the new article concerning 'trafficking in persons' different forms of limitation of the freedom of choice in prostitution are brought together:

- 'force' through violence or other facts, or through threatening with violence or with others facts'
- 'force' through a abuse from relations resulting power or through deception'

Factors that may indicate compulsion or exploitation are contained in the Prosecutor Generals manual 'Approach of Human Trafficking':

- not made visa and travel arrangement themselves;
- removal of passport and/or travel documents;
- fear of being arrested and sent back as illegal migrant;
- having to pay an exorbitant percentage of the money earned through prostitution to others;
- having to pay a minimum sum to brothel owners per day;
- limitation of freedom of movement (for instance not being permitted to stay away long, accompaniment and guarding);
- blackmail of family in the country of origin;
- exorbitant working hours and forced to work under all circumstances.

It is not relevant that:

- the woman worked in prostitution before;
- if the woman knew she was coming to work as a prostitute;
- the woman's image does not conform that of the traditional victim of human trafficking;
- the woman - after the discovery may work in prostitution in the future.

The impetus/rationale for change from the previous position

After the sexual revolution in the sixties and seventies prostitutes were not necessarily seen as victims. Women are entitled to control over their own bodies and this also gives the right to sell sex. A prostitutes' union (Red Thread) was founded in 1985 that campaigned for recognition of prostitution as a job and for protection through labour laws.

On the other hand the women's movement drew attention to the exploitation of migrant prostitutes who were working under slave like conditions and called for harsher penalties for trafficking in human beings (Foundation against Trafficking in Women). Under-age, single asylum seekers are a particularly vulnerable group: they enter the Netherlands on the pretext of requesting asylum and then disappear into prostitution shortly after registering at a refugee centre. In practice, the Dutch Immigration and Naturalisation Service and the Ministry of Justice appeared to be unable to effectively protect these women and young girls against this form of trafficking in women.

The new legislation should support 'voluntary' prostitution and protect against involuntary prostitution. 'Voluntary' prostitutes should be able to work under improved conditions and have the same rights as any worker has. But if someone is forced to work as a prostitute the law should protect him or her.

The long and short term aims of the approach

The long and short-term aims are to legalise the exploitation of voluntary prostitution and at the same time diminish involuntary prostitution by increasing the punishment.

The six main objectives of the Ministry of Justice (5) in changing legislation were:

- the control and regulation of operations within the prostitution sector;
- the intensification of the fight against exploiting forced prostitution;
- the protection of minors from sexual abuse;
- the protection of the position of prostitutes;
- the disentanglement of prostitution from marginal crime;
- the reduction of prostitution by illegal aliens.

The implementation of the approach and any issues that arose from this

According to Article 151a of the Municipality Law a City Council can introduce a regulation specifying conditions in relation to the use of premises to perform sexual acts with a third person for payment. All City councils have to regulate and inspect sex businesses through a licensing system.

This licensing system has to set minimum standards for sex businesses (about working conditions, namely health and safety) and include regulations to combat forced/exploitative prostitution.

From the day the new legislation was implemented legal prostitutes were regarded as self-employed, and have to register at the Chamber of Commerce. If they are working on a regular basis in a brothel or sex-club - they could be considered employed by the owner.

A year after the implementation Goderie, Spierings and Woerds (6) investigated the nature and size of forced prostitution, prostitution by minors and illegal prostitution. Their report concerns the part of prostitution in difficult accessible sectors as street prostitution, home prostitution, escort service and prostitution on the Internet. They conclude that criminal forms of prostitution have not decreased, tending to move to municipalities where the control is less. Also the local approach to illegal forms of prostitution seems insufficient considering the regional, rural and sometimes international level on which prostitution is organized.

A press release issued by the Vereniging Nederlandse Gemeenten (VNG, Association of Municipalities) states that two years after the lifting of the brothel ban it still is difficult to implement the new regulations. One of their arguments is that the new law is vague in a number of areas:

- the identification issue; the administrative court has ruled where authorities have concrete indications of illegality identification papers can only be requested;

- the impossibility of refusing to license any brothels (zero-policy); a judge has ruled that a municipality cannot opt out of the legislation;
- the lack of clarity about the employment relation between the brothel holder and prostitute, discussion ongoing in relation to employment and tax legislation;
- the application of the law; permission for prostitutes from the so-called Association countries investigation on the spot is necessary to decide if a Dutch interest is at stake by letting the prostitute work in as self-employed person in the municipality.

The new legislation was supposed to lead to a comparable legal position of prostitutes with employees in other sectors, through turning the brothel businesses into a recognised economic sector. This will take time both for the local government and a change in public opinion.

Almost all municipalities have chosen the VNG-model for regulation of the sex industry and adapted their development plans in order to make the establishment or legalization of brothels possible. This demanded a enormous effort of municipalities.

On the other hand a number of municipalities that did not want (and did not have) brothels within their municipality borders, now can be confronted with such a request. The VNG organizes meetings for municipalities and police on enforcement.

Has the current approach altered attitudes amongst the general public towards prostitution?

The discussion in the decades before the change did alter attitudes towards prostitution. Working as a prostitute was more and more accepted as a choice that women could make.

In 2002 Veldkamp conducted an opinion poll. Approximately two thirds of the population supports the government's objective to make prostitution a legal economic sector and to improve the position of prostitutes. The majority of the public think most prostitutes are originating from foreign countries and that illegal migrants should have the same rights and duties as other women. In the eye of the average Dutchman being a prostitute is not easy; they have a hard life and do difficult work. Summarized in one term they have a 'pitiful victim'-image. The image of the proprietor is quite the opposite of that of prostitutes. Dutch people view proprietors as criminals who do illegal things, and an unreliable employer who takes advantage of others. The overall image can be characterized as very negative (11).

The tone and content of national media coverage on the issues

The opinion of the public and the media has not changed. Prostitution is tolerated by the majority of the Dutch population but certainly not accepted as a worthwhile profession. The media in fact hardly pay attention to the circumstances of women working in the (illegal) sex-industry.

Has the new approach affected routes in and out of prostitution, and the numbers of women involved?

Due to the complex regulations (licenses, taxes, health services, social security, police etc) a significant number of the entrepreneurs in the sex-industry did have to close their doors. This means that not only illegal but also the legal sex-workers relocated their activities to the informal sector.

One interesting development appears directly connected with enforcement of the new legislation is that a section of the exploiters sold or rented their business to others because they were not able to get a permit. These new proprietors can get a license because they are not 'known by the police' to have a criminal record. According to the police, however, these 'clean' new owners let illegal women work in their business.

Health and social workers in Rotterdam noticed a decrease from approximately two hundred to one hundred clubs and other addresses in the first year. After an inquiry by the municipality it appeared that 87 businesses did get a licence. But this is not the whole picture. It is suspected that more women operate in the shadow circuit and moved to street prostitution, escort services, or sex-services through mobile phone; since a permit is not required in Rotterdam.(6)

According to the spokesman of the VER, the Association of Entrepreneurs of Relax-businesses (VER)- in the first year after the lifting of the brothel ban, 50 per cent less women worked in the brothels, because entrepreneurs may not employ anyone without a work license. Health workers report the same trend. It also appears that the number of Dutch women, who want to work in legal prostitution is limited. (6)

In October 2003 Amsterdam City Council resolved to close the street prostitution zone in the Westelijk Havengebied due to ongoing problems with illegal prostitution and women trading. The street prostitution zone was set up in 1997 to give prostituted women an area away from the city centre where they could offer their services without causing disturbances. However, the area was primarily occupied by trafficked women increasingly controlled by Eastern European crime gangs. The council accepted that street prostitution and associated problems could spread to other city districts, newspaper Het Parool reported in October, 2003. Police have pledged to take action if street prostitution emerges elsewhere. Amsterdam Mayor Job Cohen argued that the situation was "a devils dilemma" because it "appeared impossible to create a safe and controllable

zone for women that was not open to abuse by organised crime", but that it was still a possibility that unmanageable street prostitution could spread again across the city.

The municipal council must still approve the decision taken by the executive — made up of the city's mayor and aldermen and women. But a Labour, Liberal and Socialist Party majority on the council urged the zone's closure 12 months ago, claiming that the situation had gotten out of control. PVDA Chairman Tjalling Halbertsma said "The council must seriously ask itself if it still feels called upon to practise the trade of brothel manager."

Links to organised crime

There still are links with organised crime, but of course no reliable figures or detailed information are available, either for the situation before or after the change of legislation.

For example it seems the number of female juveniles in forced prostitution has increased, but no systematic research has been done to confirm this. Bullens and Van Horn (2002) analysed police records of 16 young prostitutes. Results show that the girls were recruited by so-called 'lover boys' who applied various seduction techniques to make the girls fall in love with the pimps. In general, the girls were procured into prostitution by means of physical violence. To protect and secure their income and organisation, the pimps used a wide range of techniques of which the use of physical violence can be considered the most effective.

Other forms of organised crime involve trafficking in women.

For instance women are recruited under false pretexts in discothèques in Eastern Europe and travel the West with false passports. At the moment of their arrival the real intentions of the organizers become clear. The women are intimidated by a large debt for travel and accommodation expenses and are forced to work as prostitutes. These women work approximately 18 hours a day, and are threatened and abused. The estimated number Eastern-European women each year that are forced into prostitution in the Netherlands is 2,000. Also African girls are the victim of trafficking. The perpetrators (the organised networks) almost always come from the same country or region as the girls.

The PBAM, a working group of police and justice concluded that criminal organizations are behind this migration stream. But also that if one 'route' is detected by the police normally a new one is opened.

In the Netherlands, human trafficking is defined as exploitation in the sex industry. Exploitation under duress or exploitation. It is also prohibited to recruit or to bring someone across the border with a view to sex work. To profit from all this is also punishable. The task of an 'independent' national rapporteur is to inform the Dutch government with respect to human trafficking in the Netherlands, to make trends visible and to make recommendations to improve the fight against

trafficking. The first report was published in May 2002. The second report in January 2003. Prostitution is the only kind of work for which it is categorically and legally impossible to acquire a work permit in the Netherlands. This means that women of non-EU origin who work in prostitution will be pushed still further into illegality which will in turn make them more vulnerable to coercion and exploitation. (4)

In September 2002 the police arrested and deported nearly one hundred illegal prostitutes from the streetwalkers' district in Amsterdam. Most of them were from Balkan and Eastern European countries. They were labelled criminal illegal immigrants. (3)

A prostitute who (presumably) is a victim of women trafficking is entitled to a period of three months, to decide whether or not she wants to report her situation to the police. If she does she has the right to obtain a temporary residence visa for the duration of the of the investigation and prosecution of the suspects, because she is a victim-witness in the juridical process. The scheme also offers facilities such as reception, accommodation and maintenance facilities. One of the reasons that hardly any women who are arrested use this regulation is fear. When the criminal procedure against the suspects has been finished, the witness has to go back to her country of origin, where she is not protected against the perpetrators at all (and often –being known as a prostitute is not accepted in the community).

According to the National Rapporteur one-third of the police investigations commenced with the victim reporting to the police. However, it is estimated that no more than 5% of the victims actually report to the police. In 2001, the number applications amounted to 147, a considerable increase compared to previous years (99 in 1999 and 72 in 2000). A temporary residence permit (B9) was granted in 83% of the cases. Most victims are female. Only one of the 111 human-trafficking police investigations completed in the period 1997-2001 also involved boys. In 2001, the number of investigations completed by the police had increased from 25 in 2000 to 48: 75 percent of these were connected with cross-border human trafficking. Overall, 224 persons were regarded as suspects, 179 of whom were arrested.

According to the National Rapporteur on human trafficking almost half of the suspects arrested in 2001 for trafficking offences have Dutch nationality. The other suspects, in particular, come from the former Yugoslavia, Nigeria, Turkey, Albania, Bulgaria and the former Soviet Union. Two-thirds of the suspects without the Dutch nationality were legally residents in the Netherlands, one-third were illegally residents. The majority of the suspects (75%) arrested in 2001 formed part of a criminal network.

These criminal networks are often large-scale and extensive and they force their victims into prostitution in various EU countries. Several means of coercion are thereby used (such as the threat of violence, violence, confinement, confiscation of passports and imposing fictitious debts). A considerable number

of suspects also commit other offences, either or not related to human trafficking. Offences against property, drugs trade, violence and participation in a criminal organization are high on the list. (11)

The Clara Wichmann Institute and the Mr. De Graaf Foundation share the opinion that the way trafficking in women is handled is very problematic. It is unclear (and cannot be checked) if the sometimes large numbers of women identified in recent 'raids' on the tolerance zone have been informed about the reflection period and temporary visas. Lawyers complain that they are denied the opportunity to speak with the women. Some news articles go so far as to suggest that the reasons behind these actions was to fill seats on an airplane returning illegal migrants¹³).

Rates of HIV and other STDs since the adoption of the new approach

The figures for 2001-2003 are not yet available. In the Netherlands, nobody is compelled to take a HIV-test. As for prostitutes themselves: only a small percentage regularly get tested (approximately 6%).

The new approach, either positively or negatively, the quality of life of women in the sex industry

A year after the change of legislation Vanwesenbeeck, Höing and Vennix investigated the social position of prostitutes in the regulated sex-circuit (the Ministry of Justice). They conclude that changes in the social position of prostitutes are limited, but that the movement is strong. The physical working conditions in the regulated circuit appear to have improved (in the sense of environmental facilities e.g.). As for the terms of employment as well as the social working conditions (autonomy of the prostitutes) they note that actual changes are less evident than a 'politically correct' policy. Often a prostituted woman's position is described as independent, while in fact there is a relation of dependency between the women and the employer. Although the autonomy of prostitutes regarding her work might be reasonably large, it is certainly not equivalent to that of an independent. Misunderstanding and lack of knowledge regarding rights and duties are numerous. It remains unclear if there is a decline in forced prostitution, of working without residence license, of minors, and in violence from customers.

There is no agreement across research and commentary: some argue progress, others deterioration and many no changes at all. It is too early to conclude about changes in respect of the emotional well being of prostitutes, but accessibility of primary health care appears, especially for foreign prostitutes limited due to lack of health insurance.

Vanwesenbeeck, Höing and Vennix conclude that changes in behaviour, such as as paying taxes and informing about rights and duties, are more strongly established among prostitutes than negative changes, as the shift to work in the illegal sector.

Limited independent behaviour towards proprietors is noted due to lack of organisation and the absence of a trade union. Initiatives of the FNV and the Red Thread in this respect could improve this situation. (12)

It is also evident that women themselves find it very hard to become entrepreneurs, due to the fact that:

- banks will not give a start loan to them entrepreneurs;
- insurance companies are not enthusiastic, and often refuse, women in the sex industry, so if they are ill, they have no income;
- the legal requirements means that the woman's name, her occupation and income will be publicly known.

These difficulties are one reason for prostitutes to avoid the legalised sector. Their quality of life has been negatively affected. The absence of research on this before and after 2000 means little more can be said.

At this point it appears that instead of the current legislation protecting the rights and improving the working circumstances of prostitutes, the opposite becomes the case.

Violence against women in prostitution, and other members of the public living and working in prostitution vicinities

There are no exact figures available, but there is no evidence that assaults against prostitutes, domestic violence or other forms of abuse have decreased. The women working on the streets are especially vulnerable to excessive violence of clients and pimps, and this situation is not changed after the new approach. *In their research the Clara Wichmann Instituut and the Mr. A. de Graaf Stichting concluded that an analysis of the tension between the different objectives of the new legislation, the fight against prostitution of minors and forced prostitution (aimed at protection of prostitutes) on the one hand and the fight against illegality (aimed at the protection of the state) on the other hand, is missing. The increase of the fight against illegality will enlarge the vulnerability of foreign prostitutes to human trafficking and other forms of exploitation and violence, because these groups have to operate deeper in the illegal circuit. This is specifically the case for prostitutes from outside the EU who are categorically excluded from working legally in the sex industry. [CUT?]*

Her demand for prostitution been affected by the new regulation?

No relationship is known between demand and new regulation at this moment. However, numbers of sex tourists have significantly increased during the last five years (Hughes)

Affects on the criminal justice system

As described the local authorities and the police had (or still have) to develop the tools to control and regulate brothels and other sex-businesses and to combat forced prostitution and trafficking. There are also within police regions

considerable differences in the enforcement practice. The local police corps and civil servants have to perform much more work to control the sex-businesses and even to find new businesses and locations.

Final remarks

According to the Red Thread (3) a great deal of the regulation has yet to be developed and because of this each concerned authority determines its own rules or interpretation of the law. Contradictory guidelines and demands result in prostitutes and proprietors arguing that they do not know what their position is. Resentment over the arbitrariness of enforcement grows partly because of the sometimes discriminating and disparaging behaviour of individual civil servants.

Utrecht, October 2003

Rita Nalooop /Tiye International

Marianne Dauvellier/ Remedie

Annex 1.

Bibliography:

- 1) Stichting tegen Vrouwenhandel (Foundation against Trafficking in Women)
The foundation defends and promotes the rights of (im)migrant women working under conditions of coercion and violence in prostitution and related sectors.
- 2) De Rode Draad (the Red Thread Prostitutes Rights Association)
De Rode Draad is an organization from and for prostitutes. Established in 1985 with the objective to stand up for the rights of prostitutes at the national conferences preparing the Dutch NGOs contribution to the Womens world conference in Nairobi.
- 3) NGO-Shadow report CEDAW: Defective Acceleration: the Dutch Emancipation Policy. The Implementation of the UN Women's Convention in the Netherlands. NGO Shadow report based on the Second and Third Government Reports (November 1998 and September 2000) and prepared on behalf of the 25th session of CEDAW in New York, mr. Rikki Holtmaat, June/July 2001
- 4) Illegaliteit, onvrijwilligheid en minderjarigheid in de prostitutie een jaar na de opheffing van het Bordeelverbod, Drs. Marjolein Goderie, Dr. Frans Spierings, Drs. Sandra ter Woerds, Juli 2002, Verwey-Jonker Instituut / WODC, ministerie van Justitie, Utrecht / Den Haag
- 5) Opheffing bordeelverbod jaagt prostituees zwarte circuit in, Het keurslijf van legale lichtkooien, Mariël Croon in: NRC Handelsblad, 26 september 2001
- 6) Lege ramen. Legalisering prostitutie faalt, Femke van Zeijl In: Vrij Nederland, 12 oktober 2002.

7) Forced prostitution of girls, R.A.R. Bullens and J.E. van Horn, Jeugd en seksueel misbruik, Justitiële verkenningen, vol. 26, no. 6, August 2000

8) Second Report of the National Rapporteur on Human Trafficking, The Hague, 21 January 2003

9) Investigation to the creation of an image regarding the prostitution branch hold under the Dutch population, Veldkamp for the WODC, Amsterdam, 2002

10) The social position of prostitutes in the regulated circuit a year after the change, Ine Vanwesenbeeck, Mechtild Höing, Paul Vennix, Maart 2002 Utrecht/Den Haag: Rutgers Nisso Groep/WODC, Ministerie van Justitie

11) Commentaar kabinetsstandpunt inzake wijziging wetboek van strafrecht, enige andere wetboeken en enige wetten (opheffing algemeen bordeelverbod) TK 25 437, nr. 30 Clara Wichmann Instituut & Mr. A. de Graaf Stichting, Amsterdam, May 2003

12) Guide to the new Un Trafficking Protocol by the European Women's Lobby, AFEM and others, 2001

Labour of love: Female juvenile prostitution in the Netherlands Ruud A. R. Bullens and Joan E. van Horn 43 Using context and differences in sex offender treatment: An integrated systemic approach Susan E. Vivian-Byrne 59

1) The Mr A. de Graaf Foundation Dutch national centre for research, documentation, public information, policy development and advice on the issue of prostitution and related phenomena.

5) WODC, Research and Documentation Centre of the Dutch Ministry of Justice This centre aims to make a professional contribution to development and evaluation of justice policy set by the Netherlands Ministry of Justice. Its major output is knowledge for the benefit of policy development.

Appendix 5

Briefing on current trends within the sex industry in Sweden

This report was put together by Julie Bindel from interviews with Gunilla Ekberg, Special Adviser to the Swedish government, Ingela Klinteberg, Deputy Chief District Prosecutor and Louise Eek, journalist and prostitution survivor.

The previous approach to prostitution

Prostitution was regulated in Sweden between 1847 and 1918. Women were required to submit to medical examinations and carry cards that certified they were in good health. In the 1970s, reflecting the liberal climate of the time, Sweden proposed the legalisation of aspects of prostitution. At this time, one in eight Swedish males were thought to be buying such services. The drug trade also expanded. It is frequently argued that women become prostituted because they are economically disadvantaged. However, in Sweden, with its cradle-to-grave social welfare policies, this is harder to argue.

Swedish feminists have campaigned against prostitution for over two decades, and a considerable number of research studies and three parliamentary commissions have investigated it. The first indication of a shift in policy away from the liberal position was Sweden's response to the issue of sexual exploitation of children, culminating in hosting the first World Congress in Stockholm in 1996.

The current approach to prostitution

Sweden became the first country in the world to make the purchase of sexual services a criminal offence on 1 January 1999. This was one element in a comprehensive Violence Against Women Bill (Swedish Government Offices, 1998), introduced as part of Sweden's attempt to fulfil the requirements of the Beijing Platform For Action – the outcome document from the Fourth UN Conference for Women in 1995. Prostitution is, therefore, defined as a form of male violence against women.

The Act Prohibiting the Purchase of Sexual Services (1998:408) makes it a punishable offence in Sweden to obtain casual sexual relations in exchange for payment. The penalty is a fine or imprisonment for up to six months. Attempted purchase is also punishable. The offence comprises all forms of sexual services, whether they are purchased on the street, in brothels, or in massage parlours. As later sections will illustrate the law also allocated resources for training police, prosecutors and judges and to further enhance services that support and enable women to exit prostitution. Since Under Swedish law (see next section) anyone prostituted is now regarded as a victim of crime, it also became the first country where no prostituted woman, man or child is subject to criminal charges.

The legislation is currently being revised by the Sexual Crime Committee, since a number of anomalies have become evident: it does not cover those who

purchase sexual services on behalf someone else; men paying regularly for sex from the same woman are also exempt. Amendments will be drafted to close these loopholes. One outcome may be that corporations can be prosecuted for providing escorts. In taking this approach Sweden makes demand the central focus of its policy approach. In so doing it is one of the few signatories to the *UN Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (2001) supplementing the *UN Convention Against Transnational Organized Crime* to fulfil Article 9.5. This is an obligatory article and states that signatories must put into place measures to discourage demand:

That this Protocol is the first UN instrument to address the demand which results in women and children being trafficked, calling upon countries to take or strengthen legislative or other measures to discourage this demand that fosters all forms of exploitation of women and children.

Further legislation on trafficking was introduced in July 2002 imposing criminal penalties for anyone trafficking in human beings for sexual purposes, drawing on the definition of trafficking in the UN Optional Protocol. Penalties range from two to 10 years imprisonment. A government committee has also recommended adapting immigration law, in line with EU policy, to provide temporary residence permits for victims of trafficking detected in Sweden, and for the law to specify the legal and social rights of such victims. The National Action Plan against Prostitution and Trafficking in Human Beings, especially in Women and Children will be presented to parliament in 2005.

The impetus/rationale for change from the previous position

In 1986 the National Organisation for Women's Shelters and Young Women's Shelters in Sweden (ROKS)³³ made criminalizing demand part of its official plan of action, which it presents to female parliamentarians every year. Continual pressure and lobbying from ROKS and other feminists resulted in re-examination of prostitution and during the 1990s a number of female politicians across party lines supported this approach.

In its Factsheet on Prostitution and Trafficking in women (2003) the Swedish governments position is explained:

In Sweden prostitution is regarded as an aspect of male violence against women and children. It is officially acknowledged as a form of exploitation of women and children and constitutes a significant social problem, which is harmful not only to the individual prostituted person but also to society at large... This objective is central to Sweden's goal of achieving equality between women and men at the national level as well as the international. However, gender equality will remain unattainable

³³ Similar to the Women's Aid Federations in the UK, but the centres are not always a shelter, and many work across forms of violence against women.

so long as men buy, sell and exploit women and children by prostituting them... Prostituted persons are considered as the weaker party, exploited by both the procurers and the buyers. It is important to motivate persons in prostitution to attempt to exit without risk of punishment. By adopting the legislation Sweden has given notice to the world that it regards prostitution as a serious form of oppression of women and children and that efforts must be made to combat it. (Ministry of Industry, Employment and Communications, 2003, p1)

The underlying rationale for change was that prostitution, like all forms of male violence against women, constitutes a barrier to gender equality. Since moving towards gender equality is a fundamental priority for Sweden, logically its policy must be based on an approach that seeks to end prostitution, rather than manage/legitimise it.

It also reflects the Swedish interventionist social welfare approach to social problems.

This is a compassionate, social interventionist legal response to the cruelty of prostitution.” (Mansson, S and Hedin, U, 1999).

Sweden is also distinguished from many other countries in the explicit way it views law as a way to set positive normative standards. A previous example of this is the way Sweden was the first country to make corporal punishment of children by parents (and others) illegal in the 1979. At the time many commentators regarded the law as unenforceable, not to mention an invasion of privacy. Twenty years later attitudes and practice in Sweden, and many other countries, have shifted to recognising children’s rights. This is not to say that the law has stopped all violence to children in families, but it has set a new normative framework, which the vast majority of Swedes support and attempt to live by.

The long and short term aims of the approach

The clear long-term aim of the Swedish law is to end prostitution within its national borders, and to promote a contemporary abolitionist approach internationally. In the shorter term emphasis has been placed on: training professionals to understand and implement this new approach; increasing resources to enable women to exit prostitution; and re-educating the public about the realities of prostitution, locating it within a framework of violence against women, and re-defining men’s purchase of an exploitation of persons in prostitution as no longer acceptable.

All policy, therefore, seeks to move in a single direction towards the eradication of prostitution. Swedish government representatives argue that this means no

longer compromising through 'harm reduction' measures³⁴ such as tolerance zones. At the same time it is not the intention of the government to prove the effectiveness of the new law through primarily through the number of convictions; rather it seeks to challenge the normalisation of prostitution.

The understanding in relation to the cause and effects of prostitution and to what extent this has influenced the approach

The Swedish approach locates the cause of prostitution in the arena of demand – whatever women's social circumstances they would not and could not sell sex if there were no one willing to pay for it. This in turn is linked to the underlying cause, continued inequality between women and men, and men's sense of entitlement to sex.

The effects of prostitution are seen in two dimensions – on those involved in it and on the social fabric more broadly. The effects on those in prostitution are viewed as linked to the impacts and consequences of other forms of male violence against women, since prostitution is officially acknowledged as a form of sexual violence, and ample research evidence is drawn on to support this. In terms of the wider social effects prostitution contributes to the inferior status of all women and girls, and reinforces views of masculinity that are based on myths about men's need for sexual release.

The implementation of the approach and any issues that arose from this

Implementation of the law is as important as the statute itself, and demonstrates the level of commitment within government to the issue in question. Resources were allocated to implementation: seven million Swedish crowns (EU 782,000) was allocated to the four largest police districts for training and enforcement; resources to enhance the skills and methods used by health and social services when working with persons in prostitution; and general resources to address overall prevention.

Understandably there was resistance initially amongst law enforcers, at such a major reversal of approach. Some of this was articulated by police officers who argued that criminalizing men would undermine investigations of trafficking, since they had obtained important intelligence from buyers. They feared that the legislative change would mean men would refuse to help, since they would be implicating themselves in a crime. Such misgivings appear to have been overcome through training, and finding ways to work in practice in cooperation with prosecutors; in fact the dilemma is only the reversal of that under the previous regime, where the burden of incrimination fell on women. The training programme also exposed the extent to which some – but by no means all – police officers and prosecutors identified with male buyers.

³⁴ It is unclear whether any of the support organisations continue to use strategies that have been termed 'harm reduction' (such as condom distribution, as needle exchange is illegal in Sweden) in their approaches to enabling women to exit.

Early implementation was mixed, with relatively few arrests and prosecutions. As the training programme rolled out, combined with the public debate however, and police and prosecutors entered into constructive dialogue the picture has changed. To date, 500 men have been charged under the legislation, and figures for the first nine months of 2003 are 300% above those for 2002; two thirds of charges result in a conviction. In addition as a result of a major investigation into a trafficking ring that advertised on the Internet, a further 575 men will be charged with this offence in 2003 (Ekberg, 2003).

Extraterritorial Jurisdiction

All Swedish legislation is extraterritorial, meaning that if a Swedish citizen commits a crime in another country with a similar criminal code regarding that offence, they can be convicted under Swedish law. For example, three Swedish military officers serving in Bosnia were caught visiting a brothel in the Balkans. They were returned home, charged with attempting to purchase sexual services, and subsequently dismissed from their posts.

Has the current approach altered attitudes amongst the general public towards prostitution?

Public authority Sifo has conducted two opinion polls, in 1999 and 2001. Support for the law was very high in the first round at 76 per cent, but rose to 81 per cent in 2001. A third survey in 2002 confirmed that the vast majority of Swedes support the legal reform and the policies that flow from it (Ministry of Industry, Employment and Communications, 2003).

One can argue, therefore, that the culmination of the campaign for the criminalisation of demand, and its actual passage into law, has resulted in a significant change in attitudes towards prostitution. It is no longer regarded as an inevitability in Sweden, but something that can be addressed in a long term and coherent approach, which seeks to make it unacceptable for men to buy sex.

Has the current approach altered the tone and content of national media coverage on the issues?

Since the new law came into force the quality of media reporting on prostitution and trafficking has shifted in tone and content. It is now less sensationalised. Instead, it usually focuses on the legislation, and on the men who are still seeking to purchase sexual services, and the pimps and traffickers. This is also evidence of how the public debate has shifted in Sweden.

The impact and implications for women involved in prostitution, police and health services, including routes in and out of prostitution, and the numbers of women involved

Police, social workers and anti prostitution groups report that there has been a considerable decrease in street prostitution across the whole country – both in terms of buyers and the recruitment of new women into prostitution. Gunilla Ekberg states that ‘The number of street prostituted persons has been halved, the number of buyers has been reduced by almost 80 per cent and foreign women have virtually disappeared from the streets altogether’. Ingela Klinteberg, Deputy Chief District Prosecutor, in the district of Malmo, also commented that: ‘There has been a dramatic drop of women in prostitution according to information provided by the police and social services’.

Police now have responsibility for monitoring areas where street prostitution takes place, and they report it is now very rare to encounter a foreign woman. The Stockholm-based social service unit Pros-Centrum, that works with persons in prostitution estimate that up to 60 per cent of Swedish women in street prostitution have left the industry.

The Swedish government consider that prostitution per se is violence against women. Therefore, the less street prostitution there is, the lower levels of violence there will be, since research shows the highest levels of violence here. Decreasing prostitution also decreases demands on police, health and social services. The support project in Malmo confirm some of the women talk about the new laws being an incentive to exit the industry.

Evidence from women victims of trafficking who are willing to talk to police in Sweden, and authorised wiretaps by police as part of a criminal investigation suggest that Sweden has become less attractive for traffickers. One indication of this is that it is estimated that between 200 and 500 women are trafficked into Sweden in recent years compared to an estimated 10,000 to 15,000 in Finland.

Are there links to organised crime?

The links between organised crime, prostitution and trafficking are well established. The traffickers are often highly organised, entrepreneurs that earn huge profits from the exploitation of women and children. But international trafficking in women and children cannot flourish without the local prostitution markets. If a local prostitution market decreases substantially, organised crime networks are likely to relocate to a more profitable location. The ongoing Nordic-Baltic counter-trafficking co-operation suggests this is increasingly recognised by trafficking networks, with Sweden the least preferred destination. (Nordic Baltic report).

Have rates of HIV and other STDs increased or decreased since this approach was adopted?

Rates of HIV/Aids infection are relatively low in Sweden. According to the National Institute of Public Health, no increase or decrease has been noted since 1999³⁵.

Is there evidence that the approach has affected, either positively or negatively, the quality of life of women in the sex industry?

One extremely important aspect of the new legislation, which is seldom recognised outside Sweden, is that the women and children in prostitution are not criminalised for solicitation; rather they are viewed as victims of a crime. This not only changes their legal status, but how they are seen and treated by others. The new law has also invested resources in exit programmes, including fast track access to drug rehabilitation schemes, and also focuses on longer-term reintegration. There is no 'revolving door' in Sweden – whereby women are arrested for offences, fined and then return to prostitution to pay this off.

Support groups working with women in prostitution report that the new law has provided many women with the impetus to leave.

Have assaults against women in prostitution, and other members of the public living and working in prostitution vicinities, increased or decreased?

No increase in violence against women has been reported from a majority of the police districts. Only one reports an increase and that is Malmö (south of Sweden, close to Copenhagen). The explanation for this anomaly is a concentration of buyers close to the border with Denmark, and the initial reluctance of the police in that district to intervene in assaults on prostituted women when the law was first introduced (Ekberg, 2003).

The decrease in street prostitution and removal of tolerance zones has had a positive impact on the lives of those who live in those neighbourhoods.

Has demand for prostitution been affected?

Since 1999 street prostitution in Stockholm has dropped by more than two-thirds. Before the law, between 350 and 400 prostituted women were working the streets in Stockholm. In Malmö there is currently hardly any street prostitution, whereas in Copenhagen, 20 minutes drive away, there are significantly more.

It is as yet unclear how much of the previous street prostitution has been displaced to other areas immediately outside Sweden, resulting in more Swedish men becoming prostitution tourists in neighbouring countries. However, travelling for these purposes requires more time, money and effort, and not all previous or potential buyers will be prepared to invest this. However, this is an indication that

³⁵ In 1999 there were 3,000 people living with HIV/AIDS. These are the latest official figures, with no indication that they have increased since. (Source: www.nationmaster.com/country/sw/Health).

if other countries nearby implemented the Swedish law, demand would further decrease, as it would become more and more difficult for them to access prostituted women.

What effects have there been on the criminal justice system?

The initial implementation requires considerable investment of time in training, and in implementing the law. Resources are constantly needed, as is training, and much more emphasis has been placed on pro-active work on trafficking. It is necessary to develop strong working relationships between police and prosecutors, since in Sweden the latter lead the pre-trial investigation, and have a range of powers, such as being able to mount surveillance exercises and tap telephone calls where legal grounds exist to do so.

However, the act has provided additional benefits to investigators and prosecutors, as statements from the buyers can be used as corroboration to the woman's statement in court if she is trafficked and/or pimped.

References

Ekberg, G, 2003, Presentation to Law Enforcement representatives, Glasgow, October 2003

Klinterburg, 2003, Presentation to Law Enforcement representatives, Glasgow, October 2003

Mansson, S and Hedin, U, 1999, 'Breaking the Matthew Effect - On Women Leaving Prostitution', *International Journal of Social Work*

Ministry of Industry, Employment and Communications, April 2003, *Fact sheet on Prostitution and Trafficking in Women*, Stockholm.

Swedish Government Offices, 1998, *Violence Against Women: Government Bill 1997/98:55*, Stockholm.