

Research Findings:

Legalisation/decriminalization of prostitution promotes human trafficking for sexual exploitation.

A note from Justice [ACTs]:

We have been asked to share our research findings concerning any links between human trafficking and the legalisation/decriminalization of sex work. The following is what our team uncovered as a collective effort to educate ourselves on the issue facing South Africa today. We feel this is extremely important information to share with those fighting human trafficking battle. And, remember, this is only a portion of the research we have read.

Its been rightly suggested that this research can be interpreted in two different ways.

- 1) The legalization/decriminalization effectively highlights those parts of the sex industry that are breaking the law and allows law enforcement to shut offending establishments down.
- 2) Or, the legalisation or decriminalization of sex work causes the increase of the underground sex industry, whilst failing to regulate the industry that has come above ground.

In compiling this research, Justice [ACTs] has come to believe that the second above-mentioned interpretation of the research is prevailingly true. For example, the Tolerance Zones and Tipplezone, in Amsterdam were established once sex work had been deemed legal, and have failed as an attempt to regulate the industry, adding to trafficking, abuse against women and drugs. As you read this research, please read with a discerning eye. Ask yourself, "Have the very establishments and regulations created to oversee the sex industry and prevent human trafficking succeeded, or have they been turned into opportunities by the criminal sector?"

Our research spans across several countries in which different approaches to the legislation of sex work have been implemented. Whilst we believe South Africa can learn and make considerations based on the outcomes of other nations, we also acknowledge that South Africa's cultural and economic structures differ greatly from those studied; therefore, a unique strategy in response to sex work must be implemented. It should be one that aggressively lobbies for sex workers' human rights to be upheld; however, it also must give consideration to the effects sex work has on the wider society, especially human trafficking.

Our research in this paper is limited to the sex industry's effects on human trafficking, but Justice [ACTs] suggestions for law reform concerning the sex industry follow. We have filed for and have been granted an extension while we work on a submission to parliament.

1) Research shows that illegal industries (such as human trafficking) increase with the legalisation of sex work. The following excerpts are taken from studies in countries where sex work has been decriminalised and legalised.

- Tolerance zones set up for street prostitution have also proved a failure. In 2003, the Central Amsterdam Tipplezone (pick up area), established for street prostitutes in 1995 as a way to control the problems associated with prostitution, such as drug-dealing, trafficking, and violence was closed. The Mayor admitted that it has become a haven for traffickers, drug dealers and unsafe for women. The Tipplezone in Rotterdam was closed for similar reasons. (IOM Eye on Human Trafficking, Issue 13/7.)
- There are indications that some red light businesses serve as a cover for organised crime, including drugs and the trafficking of women. "Money laundering, extortion and human trafficking are things you do not see on the surface but they are hurting people and the city. We want to fight this," said Deputy Mayor of Amsterdam, Lodewijk Asscher. (BBC)
- An estimated 50 to 90 percent of (women working in the red light district) are actually sex slaves... Dutch politicians argue that it cannot be established whether or not a prostitute works voluntarily. ("Does Legalising Prostitution Work?" Helen Mees – Dutch Economist and Lawyer)

- In Victoria, Australia illegal brothels outnumber legal 3:1. Many legal brothels reportedly are involved in the establishing and profiting from illegal brothels. Victoria, the first state to legalise prostitution, has the highest rates of child prostitution. (Sullivan: 2005). Legal brothels, child prostitution and trafficking have all increased and authorities concede that the illegal sex trade is out of control. (Daily Telegraph: 2006)
- In Australia, both the policy of legislation (Vic) and decriminalisation (NSW) of the sex trade have been adopted. The daily telegraphy (June 2006) reported that despite decriminalisation, the number of illegal brothels had skyrocketed and that many operators trafficked women from Thailand, Korea and China.
- In Australia, 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 organized crime. Convicted criminals, fronted by supposedly more reputable people, remain in the business. (COALITION AGAINST TRAFFICKING IN WOMEN (AUSTRALIA) by Mary Sullivan and Sheila Jeffreys)
- Considering that legalisation of prostitution in Victoria has created so many problems, it is alarming that it is being held up as a model of the way to go. In New South Wales (NSW), brothels were decriminalised in 1995. Control of illegal prostitution was taken out of the hands of the police, to end endemic police corruption, and placed in the hands of local councils and planning regulations. The councils have neither money nor personnel to put private investigators into brothels who can seek to prosecute those operating illegally. Brothel owners are now calling for Victorian style controls because the industry is expanding so fast, and with so little regulation, that there is much less profit available. COALITION AGAINST TRAFFICKING IN WOMEN (AUSTRALIA) by Mary Sullivan and Sheila Jeffreys)
- The link between organised crime and prostitution has not been broken by legalisation. In New Zealand, strip club owners complain of unfair price competition from illegal operators using Asian women. In South Auckland, police are battling against gangs that control underage teenage prostitution. (Melissa Farley Ph D Prostitution, research and Education San Francisco)
- New Zealand has internal trafficking of women and children for commercial sexual exploitation, and there are instances of debt bondage and document confiscations, women from Asia, the Czech Republic, and Brazil working illegally as prostitutes. (One News NZ 2008)
- “The fact is decriminalisation of prostitution in Australia and New Zealand has resulted in an *increase* in illegal, hidden, and street prostitution. Decriminalisation promotes sex trafficking. Decriminalisation increases child prostitution. This has been well documented in the Netherlands, since brothel prostitution was instituted. Pimps – owners of brothels, escort agencies, and massage parlours – want to make money. They don’t care if someone is illegal, a child, or trafficked. Pimps, traffickers, procurers, and especially johns flock to wherever a thriving prostitution industry exists.” (Myths and Facts about Decriminalization of Prostitution, Measure Q, November ballot initiative, Berkeley, California)

2) **Trafficking increases as visas for sex workers are made readily available, and secured for women by traffickers.**

- The sheer volume of foreign women in the German prostitution industry suggests that these women were trafficked into Germany, a process euphemistically described as facilitated migration. **It is almost impossible for poor women to facilitate their own migration, underwrite the costs of travel and travel documents, and set themselves up in “business” without intervention.** (IOM Eye on Human Trafficking, Issue 13/7.)
- Dutch ministry of Justice was in favour of a legal quota of foreign sex workers to be brought into the country because the Dutch prostitution market demands a variety of bodies. (IOM Eye on Human Trafficking, Issue 13/7.)
- In South Africa, it appears visas are already being exploited by traffickers. This is a quote from a letter to the Minister of Home Affairs from a former Public Prosecutor and Senior State Advocate:
 “It appears that work permits and visas are being issued by the Department of Home Affairs to the owners of strip/lap dancing establishments to bring foreign women, particularly from Eastern Europe, but also Asia and South America, for use in their clubs.
 I respectfully request that the Minister, as a matter of urgency, ensure that this practice is brought to an immediate end and that no further work permits of any kind, or indeed interview visas, be granted for any foreign women or men for employment as ‘Showgirls’ or exotic dancers in the lap dancing clubs, and for the following reasons:
 It has become clear that this system is being abused by the aforementioned club owners to traffic and exploit women brought to the country in this way...”

- There is no evidence that legalisation in any country has reduced the number of trafficking victims, and NGOs working in the field note that the number of trafficking victims often increase. Legalised prostitution is a trafficker's best shield, allowing him to legitimise his trade in sex slaves and making it more difficult to identify trafficking victims. (U.S. Department of State, Trafficking in Persons Report, 2004)

3) South Africa is a gateway to the rest of Africa, and with this comes heightened responsibility. Africa is renowned for its corruptible officials and exploitable borders, which add to the risk of human trafficking. By legalising the sex industry, it will be increasingly difficult to monitor the purposes for which humans are taken across the borders.

- 80% of women in the brothels of the Netherlands were trafficked from other countries. IOM stated that in the Netherlands alone 'nearly 70% of trafficked women are from CEEC (Central and Eastern European countries.) (UNESCO, 2004)
- Non-governmental organizations in Europe report that traffickers use the work permits to bring foreign women into the Dutch prostitution industry, masking the fact that women have been trafficked by coaching them to describe themselves as independent "migrant sex workers".
- By 1993, it was widely recognized that 75% of the women in Germany's prostitution industry were foreigners from Uruguay, Argentina, Paraguay and other countries in South America. (UNESCO, 2004)
- Germany's legalized prostitution system has become a magnet for sexual exploiters, so much so that Germany has become the destination of choice in Europe for traffickers. (Professor Janice Raymond, 2007 www.humantrafficking.org)
- Sex trafficking would not exist without the demand for commercial sex flourishing around the world. The U.S. Government adopted a strong position against prostitution in a December 2002 policy decision, which states that prostitution is inherently harmful and dehumanizing and fuels trafficking in persons.

Prostitution and related activities—including pimping and patronizing or maintaining brothels—encourage the growth of modern-day slavery by providing a façade behind which traffickers for sexual exploitation operate. *Where prostitution is tolerated, there is a greater demand for human trafficking victims and nearly always an increase in the number of women and children trafficked into commercial sex slavery.* Few women seek out or choose to be in prostitution, and most are desperate to leave it. A 2003 scientific study in the Journal of Trauma Practice found that 89 percent of women in prostitution want to escape prostitution but had no other options for survival." (U.S. Dept of State, TIP Report, 2007)

4) The legalisation of sex work makes it more difficult to find and rescue victims of human trafficking

- NZ law enforcement now have difficulties entering brothels looking for women who are being held involuntarily. Less and less is known about the trade, enabling various exploiters to operate unhindered. (Melissa Farley Ph D Prostitution, research and Education San Francisco)
- *"I believe that we will never succeed in combating trafficking in women if we do not simultaneously work to abolish prostitution and the sexual exploitation of women and children. Particularly in light of the fact that many women in prostitution, in countries that have legalised prostitution, are originally victims of trafficking in women."* (Margareta Winberg, Former Deputy Prime Minister of Sweden, 2002)
- *"...What we have found is that legalization has caused an increase in the trafficking into the area where the legalization exists. The state then becomes the pimp... Legalizing prostitution creates more demand and mainstreams abuse of women and children... [I]t also makes it difficult to hold traffickers accountable."* (Christine Stark, MFA, author and activist on "Justice Talking" on National Public Radio (NPR) on Mar. 4, 2002)

In conclusion, this research strongly indicates that the legalisation and decriminalisation of the sex industry has been detrimental for societies, by actually causing an increase in human trafficking, organised crime, illegal brothels, abuse against sex workers (see following) and an increase in gang and drug activity. Whilst we strongly acknowledge the need for strategies to enforce the human rights of sex workers in South Africa, we do not believe the decriminalisation, nor the legalisation of sex work will be a positive step for either the nation or the sex worker. It does not appear that the governments of fully developed nations, with strong law enforcement, massive funding and long standing equal rights between males have

females have been successful in regulating the sex industry. Rather we opt for sex work to remain illegal, and we would push for various rights for sex workers, such as the right to sue and pursue judicial action for human right violations (see more below). We also recommend, an aggressive strategy to end police brutality, as well as an exit strategy for sex workers who wish to leave the industry, with the development of safe houses and rehabilitation centres.

Justice [ACTs] – Insights and Recommendations Concerning Law Reform of Legislation on Prostitution

We are in the process of drafting a submission to parliament with a qualified team. The following is not our submission, but rather our logic after researching and holding discussions with those of differing view points. It's important that all view points are considered. This is an attempt to share an alternate view from the ones you may have previously heard.

Much evidence does not support the notion that the legalisation of sex work increases the safety or improves the rights of sex workers

- Women consistently indicate in research that prostitution establishments did little to protect them, regardless of whether the establishments were legal or illegal. In the Netherlands where prostitution is legal, 60% of prostituted women suffered physical assaults, 70% experienced verbal threats of physical assaults, 40% experienced sexual violence, and 40% had been forced into prostitution or sexual abuse by acquaintances. (Vanwesenbeek, 1994)
- “There is no evidence that legalization of prostitution makes things better for women in prostitution. It certainly makes things better for governments who legalize prostitution and of course, for the sex industry, both of whom enjoy increased revenues.” (Prof. Janice Raymond, 2007, www.humantrafficking.org)

Concerns:

We do not believe that the regulation of prostitution in any form (legalisation, partial or full decriminalisation) can be accomplished successfully. We believe research indicates, “Where the sex industry is legalised, women suffer.”

Many of the sex work sectors documented in this research where, in fact, set up by the government or brought “above ground” and complying to the regulations given to them, only to later become corrupted by drugs, trafficking or organized crime. Or, organised crime was always involved, but not detected by the very regulations set up to deter it. Either case shows that regulating the sex work industry has not been accomplished with success in the developed nations that tried it.

In addition, evidence shows that the “underground sex industry” increases when the prostitution is tolerated, regulated or legalised. Traffickers use legal brothels, massage parlours, escort services and strip clubs to get legal visas and then traffick women and girls into the “underground” sex industry.

We believe uniquely South African factors have not been addressed properly in respect to the reform on law surrounding prostitution. South Africa is the gateway to Africa, already a transit and destination point for traffickers. It is also the destination of choice for the refugees of Africa. By legalising or decriminalising the sex industry, we are further putting at risk women, desperate to come to this nation, with no means of getting here without assistance. Legitimising the sex industry in South Africa, will cause a huge increase in the trafficking of refugees and disenfranchised immigrants, who often are the most exploited of South African society, with little understanding of their personal rights and no knowledge of where to turn for help in this nation.

In South Africa, where internal trafficking is as much of an issue as international trafficking, our population of potential sex workers fit the profile of the most easily exploited in all societies. (Female, poor, lower education, broken homes, background of sexual abuse.) Therefore, we believe human trafficking will increase, not decline, among South African women. The majority of people trafficked internally are black or coloured females, under the age of 30 (IOM's 2008 report on Internal Trafficking). While regulating the industry of prostitution is supposed to empower these women, we believe only those who find themselves lucky enough to be in a regulated brothel, owned by ethical pimps and madams will actually find themselves empowered to demand their rights and liaison with the police. We believe most girls will not push for the new sex worker rights, and many will be tricked into the expanding “underground sex industry”.

In a survey of 2000 sex workers around Cape Town, SWEAT, found 6 sex workers that fit the classic definition of human trafficking. As an entity that works with human trafficking, we find this number high, because we understand it is very unlikely that trafficked women under any circumstances will admit they have been trafficked. SWEAT was

also alarmed by the level of exploitation these sex workers endure, showing that sex work is an industry run by those who have no qualms with exploiting its work force and are unlikely to embrace human rights and regulation.

Another area of concern that is unique to South Africa in this debate is the simple fact that it is still a developing nation. Our research shows that the developed nations that have attempted to regulate prostitution have, overall, have failed or are hitting considerable obstacles. Those were countries starting with large funds, largely uncorrupted police, judges and border officials, stronger border control, efficient immigration departments, strong zoning laws and societies where gender equality is foundational in the citizens of those nations. Even a cursory look at the condition of South Africa in those categories shows that we would have a far greater challenge than any other nation in attempting to regulate the sex industry.

The one exception to the rule of thumb, “trafficking increases where prostitution is tolerated”, is Sweden. Sweden made the selling of sex legal, but the buying of sex illegal. They have enforced this law with vigour, criminalising the demand rather than the supply. The study “Does Supply Generate Demand?” by IOM has suggested just that, “...supply generates demand.” This study infers that governments have great power in telling the consumer what is acceptable to want. In Sweden, the demand has been diminished and as a result, human trafficking has been diminished in great proportions and the sex industry has shrunk considerably.

Justice [ACTs] feels that criminalising the buyers of sex is an incredibly important and necessary step for South Africa to curb human trafficking. However, it is not enough, because the human rights violations of those who remained in prostitution have increased exponentially. So, while this law has worked to decrease human trafficking, it has been a failure in protecting women who find they have little alternative to sex work.

Suggestions:

In finding a way forward, three truths must be considered:

The Liberal Truth: “My Body. My Rights.”

The Feminist Truth: “Prostitution in itself is a violation of human rights and a step back for women.”

The Moral Truth: “Prostitution is against family values and inseparable from organized crime and drugs.”

The sex industry will always be among us to some degree. But, how we take those three valid points of view into account and put their truths into practice will affect an entire nation.

There is truth in all three points. A woman does have the right to govern her own body. And, the sex industry does objectify women and legalise men to exploit the most desperate of society. South Africans do have the right to say, “I believe prostitution is morally wrong,” and expect certain boundaries to be honoured by their government. One must address the prostitution question from every angle to develop a comprehensive answer.

Sex work is not simply about an individual woman’s rights. The right to get paid for sex and human rights are two different things. A sex worker is a human being, with intrinsic human rights that should not be violated, even if she is violating the law. She represents the most easily exploitable and, sometimes, desperate of society. Her rights must be vigorously upheld. This is the truth of, “My body. My Rights.” However, an individual’s perceived right to get paid for sex, cannot trump the good of womankind. Over 90% of sex workers want to quit their vocation. Over 70% live with symptoms similar to Post Traumatic Stress Disorder, comparable to combat veterans. Sex work is not our first option for our daughters. Most often, it’s not even our last. The sex industry is, in many ways, a human rights violation and a step back for womankind.

Does the right to buy sex or sell sex, trump the moral truth? Research indicates that prostitution is linked with organised crime and drugs; therefore, the establishment of a legal sex industry will most likely cause moral decline in South Africa in other areas as well. We cannot ignore this moral reality. Should religious South Africans have to pay for the regulation of legalised prostitution with their taxes? Is this a violation of freedom of religion? Are we prepared to put the right to sex on par with freedom of religion? And, do families in South Africa have the right to say they do not want a brothel on the same street as their child’s crèche? Decriminalisation strips South Africans of this right. South Africa needs to create boundaries that respect and give room for the morals of its families.

And, to this we must add the argument of globalisation. Because prostitution has become a global market, we cannot take human trafficking out of the equation. What South Africa does regarding this law reform will effect the

women and children of the rest of Africa, Thailand, Nepal, Eastern Europe, etc. (1/2 of all children trafficked are African. 70% of Trafficking victims are between the ages of 5 and 15.) Therefore the individual, societal and global perspectives must be taken when addressing this issue. We cannot afford to narrow our minds down to just one perspective.

Justice [ACTs] suggests the following response takes into account all perspectives: A renewed enforcement of the criminalisation of the sex industry, with emphasis on the buyer of sex. This is a step forward for womankind as a whole, an equalizer between male and female, good for the South African society and good for the nations connected with us. But we must not stop there. For that is only a part of the answer. We must create law reform that upholds, redefines and vigorously advocates for the humane treatment and rights of sex workers as individual human beings. The violence and abuse that women with little alternative to prostitution endure must come to an end. For women who electively stay in prostitution for the money, criminalisation is a daunting push factor for her to develop other options. To this end, we recommend taking the *same* tremendous effort and funding that regulating legalised prostitution would take, and instead use those funds and efforts to develop exit strategies and viable job creation alternatives to sex work for South Africa's women. We must live in reality. Prostitution, at some level, will always be with us. We must address it comprehensively, justly, and mercifully. We must commit to the hard work, as there is no simple solution.

We therefore declare that women in conditions of sex trafficking and prostitution be accorded the following rights: (Taken from DECLARATION OF RIGHTS FOR WOMEN IN CONDITIONS OF SEX TRAFFICKING AND PROSTITUTION, 29 January 1999; The Coalition Against Trafficking in Women.)

- * That governments protect and promote women's rights while they are still in conditions of sex trafficking and prostitution, and at the same time aggressively eliminate the causes of prostitution.
- * That governments reject any policy or law that legitimates sex trafficking or prostitution or that legalizes or regulates prostitution in any way including as a profession, occupation, as entertainment, or an economic sector.
- * That governments adopt legislative and other measures to prohibit sex tourism and to penalise those who organise and advertise tourism for the purpose of sexual exploitation as practices of the procuring and promoting of prostitution. Such measures shall be adopted and implemented in both the countries from which the sex tourists come and the countries to which they go.
- * That women in conditions of sex trafficking and prostitution have the right to sexual integrity and sexual autonomy and therefore can sue for sexual harassment, assault and rape. That consent of the woman procured for sex trafficking and prostitution not be recognised as a defence for pimps, procurers and buyers, nor as a rationale for state sanctioned institutionalisation of prostitution as work.
- * That women receive fair, sustainable, and/or legally mandated compensation as waitresses, receptionists, dancers, singers, bar workers, entertainers, artists, or guest relations officers but not as sex workers so that the economic pressure to engage in the prostitution often cloaked by these terms be reduced.
- * That women have the right to keep and control any money they receive.
- * That no third parties profit from the earnings of women in conditions of sex trafficking and prostitution.
- * That women in prostitution be able to form associations to lessen their conditions of sexual and economic exploitation, while at the same time not formalising these groups or collectives as labour unions which institutionalize prostitution as work. (SWEAT suggested peer groups, educating each other on their rights and options – a great idea.)
- * That governments and non governmental organisation put resources at women's disposal such as credit, micro lending programs, enterprise training, and other needed services.
- * That governments and non governmental organisations provide voluntary medical care, shelter, voluntary counselling, and educational programs for women who have been harmed by sex trafficking and prostitution.
- * That specially trained police officers be responsive to women in conditions of sex trafficking and prostitution.
- * That women in conditions of sex trafficking and prostitution have the right to sue for harm and for civil remedies for sexual exploitation.
- * That governments recognise that there are certain types of work in the immigration process, such as domestic labour and entertainment, that are conducive to sexual exploitation and may lead to prostitution.