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Room M1.06  
Scottish Parliament  
Holyrood, Edinburgh  
EH99 1SP, Scotland

December 10th, 2012



## **Consultation: Criminalisation of the Purchase of Sex (Scotland) Bill (2)**

Dear Ms Grant,

I am a German researcher currently based in Berlin. I graduated with a B.A. in Korean Studies at the School of Oriental and African Studies, a college of the University of London, and an M.A. in International Relations at the Graduate Institute of Peace Studies at Kyung Hee University, recipient of the UNESCO Prize for Peace Education.

As part of a research project to investigate the impact of Korea's Anti-Sex Trade Law on sex workers' human rights, I recently concluded 12 months of data collection through interviews with sex workers as well as with representatives of governmental organisations and NGOs involved in the field of sex work. The project is an outgrowth of my graduate thesis which analysed comprehensive methods to prevent human trafficking in Thailand and discussed some of the negative side effects of anti-trafficking policies in general.

I previously conducted field research in Thailand and Laos over a period of eight months, and I worked at DEPDC/GMS, a Thai community-based non-governmental organisation working to prevent children and youth from entering exploitative labour conditions, where I led a multicultural group research project to investigate the situation that temporary and permanent migrants and their children face in northern Thailand, and the policies currently in place to assist them.

Through my extensive research, I became aware of the collateral damage caused not only by uneven anti-trafficking measures but also by anti-prostitution legislation, in particular where sex workers and migrants are concerned. While my ongoing research project aims to add to the knowledge about the situation faced by sex workers in South Korea, I am also observing the discourse about sex work legislation in the international context.

To that end, I participated as a delegate at the Sex Workers' Freedom Festival in Kolkata, the Official Hub of the International AIDS Conference 2012 in Washington, and more recently, I attended two panel discussions organised by the German Greens to evaluate the German prostitution law (ProstG).<sup>1</sup>

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<sup>1</sup> Research Project Korea "We still know very little." – 10 Years Prostitution Law (ProstG) in Germany" URL: <http://researchprojectkorea.wordpress.com/2012/11/06/10-years-prostitution-law-in-germany> (Accessed: November 30, 2012)

I am frequently in touch with sex workers from all walks of life, including those living and working in Great Britain. Thus, I learnt about your proposed bill, to which I hereby wish to submit my commentary for the consultation process. As per the definitions laid out in your document, I classify as a private individual since “Research Project Korea” is an independent project, unaffiliated to any university or organisation and funded exclusively by private means.

I consent to the full publication of all information provided in this document, including my name. All statements by third parties quoted in this letter were taken from publicly available sources as indicated in the footnotes. Should you wish to edit any part of this document, please contact me before doing so to avoid any distortions.

### **Introductory Remarks**

All human beings have the right to be treated with respect, regardless of their gender, race, religion or occupation. Therefore, I cannot support your proposed bill, as I believe it will negatively affect sex workers.

“The term ‘sex worker’ is used to refer to all adults who sell or exchange sex for money, goods or services (e.g., transport). It is used to refer to people who sell or exchange sex even if they do not identify as sex workers, or consider the activity to be ‘work’. The term is used to refer to sex workers including consenting female, male, and transgender people who receive money or goods in exchange for sexual services, either regularly or occasionally. Sex workers include consenting young people who are eighteen years or older. In circumstances where a person has been coerced into selling sex and is selling sex involuntarily, the preference is not to refer to the person as a ‘sex worker’. This avoids unnecessary conflation of sex work and trafficking, or confusion of sex workers with people trafficked for the purpose of sexual exploitation. ... Prostitution is a term that was commonly used in legislation enacted in the nineteenth and twentieth centuries to refer to sex work. The terms ‘prostitution’ and ‘prostitute’ have negative connotations and are considered by advocates of sex workers to be stigmatizing.”<sup>2</sup>

In your proposal, you provided an overview of your beliefs as well as references to support them. In my commentary, I will first outline the shortcomings I detected in your proposal in more general terms, before providing counterarguments and references to support them. In my view, they will raise reasonable doubts about your proposed bill and its effects.

However, before detailing where I disagree with your proposal, I would like to state that I agree that laws should address violent abuse, rape, gender inequality, and labour exploitation. I also agree that a societal change in attitude and perception of sex work is necessary, though I differ on the nature of the required change in attitude.

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<sup>2</sup> In this letter, I shall use the same terminology as used in the UN report “Sex Work and the Law in Asia and the Pacific”, compiled by UN agencies in cooperation with sex worker organisations. UNDP, UNAIDS, UNFPA “Sex Work and the Law in Asia and the Pacific”, URL: <http://www.snap-undp.org/elibrary/Publication.aspx?ID=699> (Accessed: November 30, 2012)

“[C]riminalization is criminalization and criminalized environments are criminalized environments.”  
- Esther Shannon<sup>3</sup>

Regardless if one agrees with the views you formulated in your proposal, I concur with Esther Shannon and believe that to reduce problems that do exist in the sex industry, the criminalisation of buyers of sexual services leaves sex workers no choice but to operate in criminalised environments, resulting in negative outcomes despite your declared aim not to criminalise sex workers themselves.

## Outline of key shortcomings

### 1. Exclusion of sex workers' voices

“I strongly believe that no human being should be reduced down to a commodity, to be bought and sold.”<sup>4</sup>

To portray consensual sexual acts in exchange for payment between adults in this fashion is misleading, because with the exception of human trafficking for the purpose of organ trading, even where forced prostitution occurs, no bodies are on sale, but the sexual exploitation of human beings. Even in the case of rape, it is offensive to refer to the rape victim as a commodity and adds to the dehumanising act committed by the perpetrator.

On the other hand, where consensual sexual acts in exchange for payment between adults occur, neither human beings nor sexual exploitation are being sold but sexual services.<sup>5</sup> To suggest otherwise is unhelpful. One may object to the purchase of sexual services on the grounds of moral, ethical, religious or otherwise subjective reasons, but the creation of laws should not be based on subjective beliefs but on evidence that suggests that their implementation can be expected to remedy the problems they are supposed to address.<sup>6</sup>

Exploitation is rampant in the construction industry, gastronomy or nursing, especially where migrant workers are concerned, but nobody suggests ending demand for houses, food or care. Instead, policies are discussed or put in place to improve labour conditions and inform workers

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<sup>3</sup> Esther Shannon is a feminist activist who has worked with community-based feminist organizations on a wide variety of women's issues and as a feminist journalist and researcher and as a communications specialist. She is a founding member of FIRST, a national coalition of feminists advocating for the decriminalization of sex work and for sex worker human and labour rights. This quote was taken from a public comment by Ms Shannon left on my website. URL: <http://researchprojectkorea.wordpress.com/2012/10/31/sex-lies-and-abolitionists/#comments> (Accessed: November 30, 2012)

<sup>4</sup> Criminalisation of the Purchase of Sex (Scotland) Bill (2), A proposal for a Bill to make it an offence to purchase sex, Consultation by Rhoda Grant MSP [*herafter: Proposal*] p. 3, URL: [http://www.scottish.parliament.uk/S4\\_MembersBills/Criminalisation\\_of\\_the\\_Purchase\\_of\\_Sex\\_%282%29\\_Consultation.pdf](http://www.scottish.parliament.uk/S4_MembersBills/Criminalisation_of_the_Purchase_of_Sex_%282%29_Consultation.pdf) (Accessed: November 30th, 2012)

<sup>5</sup> “When politicians, social service providers and celebrity philanthropists insist that sex workers are selling ourselves, they engage in the same kind of dehumanisation that they claim johns do to us. When they claim that men can buy us, they rob us of our power and our choices.” Melissa Gira Grant in “*Men buy girls, not sex' and other myths of anti-prostitution moralists*” *The Guardian*, Friday 23 September 2011, URL: <http://www.guardian.co.uk/commentisfree/cifamerica/2011/sep/23/prostitution-sex-trade-demand-myth> (Accessed: November 30, 2012)

<sup>6</sup> “Sex Trafficking and the Sex Industry - The Need for Evidence-Based Theory and Legislation” *The Journal of Criminal Law & Criminology*, Vol. 101, No. 4 pp. 1368-1369

about their rights. Interestingly, the media play a positive role here, as they report about unethical business practices, which in turn has made corporate social responsibility become a factor for businesses and consumers.

The same cannot be said for the sex industry. Here, prohibitionists expect improvements and a change in attitudes by means of criminalisation, and the media predominantly plays a negative role, “perpetuat[ing] stereotypes of sex workers, sensationalis[ing] the industry, often misrepresent[ing] the realities of the industry and ignor[ing] broader social issues”.<sup>7</sup> What is worse, by reporting in that fashion, the media crucially add to the stigmatisation and discrimination of migrants along the way.

Throughout your proposal, you provided no evidence to support your argument that the provision of sexual services amounts to the buying and selling of human beings and that prostitution is “inherently harmful and dehumanising”.<sup>8</sup> Where the evidence presented by you included the voices of sex workers, you limited your sources to victims of abuse and exploitation, which is the same as if one were to form an opinion about marriage based on consulting clients of divorce lawyers.

In my view, your deliberate exclusion of the voices of sex workers who disagree with your views is the root cause of your failure to form a proposal that would address the problems that do exist in the sex industry.

## 2. Gender Bias and Flawed Evidence

While you state that “the gender of the participants [in the purchase of sexual activities] is irrelevant to determining whether an offence has been committed”,<sup>9</sup> you introduce your proposal by stating that the “buying of sexual activity is sexual exploitation and is recognised as violence against *women*” [emphasis added].<sup>10</sup>

While I acknowledge that the majority of people working in the sex industry are female, I find that you fail to acknowledge violence against male and transgender people. The single source given on the page ‘Objective of the proposed Bill’ refers to research about “Men Who Bought Women in Prostitution”.<sup>11</sup> Among the authors of said research is Melissa Farley, whose credibility Judge Susan Himel of the Ontario Superior Court of Justice assessed as follows.

“Although Dr. Farley has conducted a great deal of research on prostitution, her advocacy appears to have permeated her opinions. For example, Dr. Farley’s unqualified assertion in her affidavit that prostitution is inherently violent appears to contradict her own findings that prostitutes who work from indoor locations generally experience less violence. ... Dr. Farley’s choice of language is at times inflammatory and detracts from her conclusions. ... Dr. Farley stated during cross-examination that some of her opinions on prostitution were formed prior to her research, including, ‘that prostitution is a terrible harm to women, that prostitution is abusive in its very nature, and that prostitution

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<sup>7</sup> Gillian Abel, Lisa Fitzgerald, Catherine Healy, Aline Taylor “Taking the Crime out of Sex Work - New Zealand Sex Workers' Fight for Decriminalisation”. The Policy Press (2010). p. 204

See also Ron Weitzer “Sex Trafficking and the Sex Industry - The Need for Evidence-Based Theory and Legislation” *The Journal of Criminal Law & Criminology*, Vol. 101, No. 4 pp. 1365-1366

<sup>8</sup> Proposal p. 8

<sup>9</sup> Proposal p. 21

<sup>10</sup> Proposal p. 8

<sup>11</sup> Proposal p. 8

amounts to men paying a woman for the right to rape her.’ Accordingly, for these reasons, I assign less weight to Dr. Farley’s evidence.”<sup>12</sup>

The credibility of Melissa Farley’s work has also been called into question by others, including Dr Callum Bennachie who found Farley to be in breach of the American Psychology Association’s Code of Ethics<sup>13</sup> as well as Dr Ronald Weitzer.

“It is ludicrous to conduct a study measuring the extent of violence suffered by prostitutes when one’s orienting framework equates prostitution with violence, and it is not surprising to find high levels of violence, in any prostitution sector, if one’s sampling and interviewing strategy is so transparently slanted.”<sup>14</sup>

I disagree with your notion that frames women as deserving protection equal to children, a notion you even highlighted by adding a quote from Gunilla Ekberg in bold italics at the bottom of the section ‘Terminology’.<sup>15</sup>

Your section ‘Definitions of payment and sexual activity’ were taken from a law addressing those “paying for sexual services of a *child*” [emphasis added].<sup>16</sup> Under ‘Definitions of sexual activity’ you quote the same law and you write that sexual activity is defined as an activity “that a reasonable person would, in all the circumstances, consider to be sexual” and add that a “reasonableness test is used in many Acts and is a widely recognised proposition”. In another context, Christine Grahame, MSP made the exact same statement but added that importantly, “unreasonableness can be challenged”.<sup>17</sup>

Due to the limitations of the evidence presented, I challenge the terminology and definitions used in your proposal and find them as not satisfying the test of reasonableness. Your proposal reveals a gender bias and uses evidence from a source that has been called into question by experts in the field and the Ontario Superior Court of Justice.

### **3. Conflation of Sex Work and Human Trafficking for the Purpose of Sexual Exploitation**

Under the heading ‘Objective of the proposed Bill’ you state that human trafficking “is not the focus of this proposed legislation” but that “by tackling demand for the purpose of prostitution, these

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<sup>12</sup> Ontario Superior Court of Justice “Bedford v. Canada, 2010 ONSC 4264 (CanLII)” URL: <http://www.canlii.org/en/on/onsc/doc/2010/2010onsc4264/2010onsc4264.html> (Accessed: November 30, 2012)

<sup>13</sup> Callum Bennachie “Complaint to the American Psychology Association (APA) lodged against Melissa Farley” URL: <http://cybersolidaires.typepad.com/files/complaint-to-apa-against-mfarley.pdf> (Accessed: November 30, 2012)

<sup>14</sup> Ronald Weitzer “Flawed Theory and Method in Studies of Prostitution” in *Violence Against Women*, Vol. 11 No. 7, July 2005 pp. 934-949 URL: <http://web.archive.org/web/20060111065947/http://www.woodhullfoundation.org/content/otherpublications/WeitzerVAW-1.pdf>

<sup>15</sup> “Any society that claims to defend principles of legal, political, economic, and social equality for women and girl must reject the idea that women and children, mostly girls, are commodities that can be bought, sold and sexually exploited by men.” Proposal p. 7

<sup>16</sup> Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005, Sexual services of children and child pornography, Section 9. URL: <http://www.legislation.gov.uk/asp/2005/9/section/9> (Accessed: November 30, 2012)

<sup>17</sup> Scottish Parliament “Local Government and Communities Committee Official Report 24 March 2010”, URL: <http://archive.scottish.parliament.uk/s3/committees/lgc/or-10/lg10-0902.htm> (Accessed: November 30, 2012)

activities will be disrupted”<sup>18</sup> since, you state later, “the sex industry and human trafficking are ‘fundamentally linked’”.<sup>19</sup>

You dedicate over three pages in your proposal to the subject of human trafficking and assume that sexual activities between adults, if occurring in exchange for payment, represent sexual exploitation, and in turn, you claim, are responsible for “a market where vulnerable individuals are compelled and/or forced into a cycle of exploitation that places them, and their families, at risk.”<sup>20</sup>

By doing so, you disregard consensual sexual acts in exchange for payment between adults and instead equate all sexual acts in exchange for payment with violence, which, as Ron Weitzer put it, represents a “transparently slanted” strategy.

In the 2011 report into Human Trafficking in Scotland by the Equality and Human Rights Commission, Baroness Kennedy QC stated that the elements of “[c]oercion and deception are central to the UN’s definition of trafficking in the Palermo Protocol and central to the Inquiry’s recommendations.”<sup>21</sup> You, however, fail to acknowledge the difference between consensual sexual acts and coerced prostitution and you also fail to explain why “[p]rostitution acts as a serious barrier to equality and dignity”.

Baroness Kennedy QC also stated that banning prostitution “was both unworkable in law and in practice.”<sup>22</sup> Besides being unworkable, laws that conflate sex work and trafficking negatively affect actual victims of human trafficking and sex workers, both of whom require appropriate assistance instead of measures that fight violence and exploitation in name only.

“The End Demand movement makes assumptions about sex buyers, characterizing them as deviants and the root of the trafficking problem. Legal frameworks and programs designed to punish and shame these buyers divert what scarce resources exist into unproven methods. Despite a lack of reduction in either trafficking or sex work, abolitionists have continued to push End Demand strategies, leading to changes in federal and state law which will continue to at best maintain the status quo and at worst harm sex workers by making their conditions worse.”<sup>23</sup>

#### **4. Soundness of Consultation Process**

Finally, before I will reply to the questions laid out in your proposal, I would like to state that I cannot help but to find your consultation process deeply unconvincing. You state that the views and opinions expressed “are important to this consultation process”<sup>24</sup>, and the outlined questions ask whether or not one supports the “general aim of the proposed Bill”.

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<sup>18</sup> Proposal p. 8

<sup>19</sup> Proposal pp. 16-17

<sup>20</sup> Proposal p. 8

<sup>21</sup> Inquiry into Human Trafficking in Scotland. Report of the Equality and Human Rights Commission. URL: [http://www.equalityhumanrights.com/uploaded\\_files/Scotland/Human\\_Trafficking\\_in\\_Scotland\\_inquiry\\_into\\_human\\_trafficking\\_in\\_scotland-full-report\\_pdf.pdf](http://www.equalityhumanrights.com/uploaded_files/Scotland/Human_Trafficking_in_Scotland_inquiry_into_human_trafficking_in_scotland-full-report_pdf.pdf) (Accessed: November 30, 2012)

<sup>22</sup> Ibid.

<sup>23</sup> Stephanie M. Berger “No End in Sight: Why the 'End Demand' Movement is the Wrong Focus for Efforts to Eliminate Human Trafficking” *Harvard Journal of Law and Gender*, Vol. 35, 2012. URL: <http://ssrn.com/abstract=2172526> (Accessed: November 30, 2012)

<sup>24</sup> Proposal p. 3

However, you also state that you do not seek “views on the decriminalisation of those involved in prostitution” as you already concluded that this course of action is not one you wish to advocate.<sup>25</sup> Together with the fact that you previously attempted to lodge a proposal where you deemed that “further consultation was unnecessary”, this process appears as one in which opposition is being disqualified from the onset.

Considering that you spent additional months to prepare this consultation, it doesn't bode well that you failed to include important research published in 2012 that contains crucial information, which I will provide in my replies below, and instead cited sources such as the report by Macleod, Farley, Anderson & Goulding, which was already rejected during the consultation process on Trish Godman's proposal, as documented on your own website.<sup>26</sup>

I felt compelled to not even bother responding to your proposal, but it is my sincere belief that if your bill were to be adopted, victims of human trafficking as well as sex workers would be negatively affected. Thus, I urge you, even if you are not inclined to listen to me, to listen to them.

### Questions

**Q1: Do you support the general aim of the proposed Bill? Please indicate “yes/no/undecided” and explain the reasons for your response.**

Answer: No.

After carefully reading your proposal, I conclude, as outlined above, that it is based on the wrong assumption that all purchases of sexual activities amount to sexual exploitation, including those that occur between consenting adults. In addition, your proposal contains an unacceptable gender bias that focuses on the exploitation of women but disregards male and transgender people.

While you acknowledge the existence of “stereotypical ideas”, you go on to perpetuate them when you claim that prostitution is inherently harmful and a form of violence against women. You also follow the logical fallacy typically employed by advocates wishing to prohibit sex work that the provision of sexual services equates to the commodification of bodies, for which you provide neither reasons nor evidence.<sup>27</sup>

Where you provide evidence, you refer to work of questionable credibility (see above comments about Melissa Farley) or to work that even official government figures show to be incorrect.

Whereas you state, according to a report by Cho, Dreher and Neumayer, that “countries with legalized prostitution experience a larger degree of human trafficking inflows”, annual reports compiled by the German Federal Office of Criminal Investigation since the adoption of Germany's

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<sup>25</sup> Proposal pp. 7-8

<sup>26</sup> “This document, if such it can be called, is comprehensively demolished by “A Commentary on 'Challenging Men's Demand for Prostitution in Scotland...” prepared by Dr Teela' Sanders of the University of Leeds and 17 distinguished collaborators.” Letter from Richard Spencer, URL: <http://www.rhodagrants.org.uk/consultation2012/63.pdf> (Accessed: December 9th, 2012) [Sanders et al's critique can be accessed at <http://tinyurl.com/c4d2xs2>]

<sup>27</sup> Proposal pp. 7-8

prostitution law in 2002 state consistently that no significant changes could be detected where the overall situation in Germany is concerned with regards to completed investigations of cases of human trafficking for the purpose of sexual exploitation. The reports of the years 2010 and 2011 explicitly mentioned that the risk potential stemming from this area of crime remains limited.<sup>28</sup>

To name a second example to call Cho, Dreher and Neumayer's report into question, I would like to cite a report from New South Wales (NSW), where sex work is either legalised or largely decriminalised.

"NSW men are infrequent consumers of commercial sexual services, with only 2.3% purchasing sexual services in any one year, similar to the Australian average. The number of sex workers in Sydney brothels was similar to estimates from 20 years ago. These data confirm that the removal of most criminal sanctions did not increase the incidence of commercial sex in NSW."<sup>29</sup>

As Basil Donovan, the report's lead author, states, "any moves to reintroduce bans or licensing of sex work would be a backward step."

"Jurisdictions that try to ban or license sex work always lose track as most of the industry slides into the shadows. Prostitution laws are the greatest allies of the exploiters. In NSW, by contrast, health and community workers have comprehensive access to and surveillance of the sex industry. That access has resulted in the healthiest sex industry ever documented."<sup>30</sup>

The proposal you presented shows a lack of such comprehensive access to people working in the sex industry, and a law that criminalises sex work will not only diminish the opportunity for others to engage with sex workers, it will also have a negative impact on an already marginalised population, as my response to the following question will show.

**Q2: What do you believe would be the effects of legislating to criminalise the purchase of sex (as outlined above)? Please provide evidence to support your answer.**

Answer: I believe such legislation to negatively affect the health and safety of sex workers.

Going back to the above mentioned quote of Esther Shannon and based on research about prostitution laws, I conclude that criminalised environments are counterproductive to harm reduction and effective measures to reduce human trafficking for the purpose of sexual exploitation. In the following, I will quote passages from reports released over the last year that support this conclusion.

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<sup>28</sup> Bundeskriminalamt "Lagebilder Menschenhandel" 2005-2011, URL: [http://www.bka.de/DE/Publikationen/JahresberichteUndLagebilder/Menschenhandel/menschenhandel\\_nod\\_e.html?\\_\\_nnn=true](http://www.bka.de/DE/Publikationen/JahresberichteUndLagebilder/Menschenhandel/menschenhandel_nod_e.html?__nnn=true) (Accessed: November 30, 2012)

<sup>29</sup> Donovan, B., Harcourt, C., Egger, S., Watchirs Smith, L., Schneider, K., Kaldor, J.M., Chen, M.Y., Fairley, C.K., Tabrizi, S., (2012). "The Sex Industry in New South Wales: a Report to the NSW Ministry of Health." Sydney: Kirby Institute, University of New South Wales. URL: [http://www.med.unsw.edu.au/NCHECRweb.nsf/resources/SHPReport/\\$file/NSWSexIndustryReportV4.pdf](http://www.med.unsw.edu.au/NCHECRweb.nsf/resources/SHPReport/$file/NSWSexIndustryReportV4.pdf) (Accessed: November 30, 2012)

<sup>30</sup> University of New South Wales "Sex work in NSW: healthiest in the world" URL: <https://newsroom.unsw.edu.au/news/health/sex-work-nsw-healthiest-world> (Accessed: November 30, 2012)



## **1. Report of the UNAIDS Advisory Group on HIV and Sex Work**

“When it decriminalised sex work and sex work-related activities in 2005, the government of New Zealand undertook a study of the impact of this change on the lives of sex workers. The study found that post-decriminalisation many sex workers felt more empowered to refuse difficult clients and more able to seek help from the police when they were the victims of crime or violence.”

“Criminalisation of sex work and the application of non-criminal laws to sex work exacerbate the stigma and moral judgementalism experienced by sex workers. Law and law enforcement practices often open sex workers to extra-legal abuses, including sexual and physical abuse by police and violations of due process. In many ways, including by undermining sex workers’ ability to organise to help each other, these violations of sex workers’ rights are barriers to their access to comprehensive HIV services.”<sup>31</sup>

## **2. UNDP, UNAIDS, UNFPA - Sex Work and the Law in Asia and the Pacific**

“Criminalization increases vulnerability to HIV by fuelling stigma and discrimination, limiting access to HIV and sexual health services, condoms and harm reduction services, and adversely affecting the self esteem of sex workers and their ability to make informed choices about their health.”

“Criminalization legitimizes violence and discrimination against sex workers (particularly from law enforcement officers and health care providers) and makes authorities reluctant to offer protection or support to sex workers. Criminalization reinforces stigma and discrimination, and perpetuates judgmental attitudes and myths about sex workers. Criminalization contributes to the vulnerability of sex workers to human rights violations, such as public disclosure and shaming of people for engaging in sex work. In communities where sex work is criminalized, sex workers are often reluctant to report sexual assaults to police for fear of further abuse by the police or prosecution for sex work.”

“Punitive laws and police practices form barriers to sex workers’ access to services and can result in sex work being conducted in venues and localities that are hidden, unsafe and without access to HIV services. Reports from sex worker organizations show that where sex workers are regularly targeted for arrest and prosecution, sex workers are less likely to access health services. In some countries, health service providers and outreach workers are harassed or jailed when reaching out to sex workers (e.g., India, Indonesia and Nepal).”

“Some countries have opted to criminalize clients of sex workers, rather than or in addition to sex workers. For example, Nepal criminalizes clients but not sex workers. A similar approach has been proposed in India. Laws have been enacted that criminalize clients in American Samoa, Bhutan, Cambodia, China, Fiji, Guam, Republic of Korea, Palau, and Taiwan. The UNAIDS Advisory Group on Sex Work has noted that there is no evidence that ‘end demand’ initiatives reduce sex work or HIV transmission, or improve the quality of life of sex workers. Efforts targeting clients sometimes encourage law enforcement officials to use condoms as evidence of involvement in sex work.”

“In decriminalized contexts, the sex industry can be subject to the same general laws related to workplace health and safety and anti-discrimination protections as other industries. Legally

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<sup>31</sup> UNAIDS “Report of the UNAIDS Advisory Group on HIV and Sex Work” p.8, URL: <http://www.uknswp.org/wp-content/uploads/unaidoadvisorygrouponsexworkandHIVDec2011.pdf> (Accessed: November 30, 2012)

enforceable workplace standards developed by the sex industry can contribute to a reduction in HIV transmission and improvements in overall working conditions.”<sup>32</sup>

### **3. UNDP - HIV and the Law: Risks, Rights & Health**

“Norway and Sweden arrest the clients of sex workers but not the workers themselves. This so-called ‘Swedish approach’ is seen as more just to sex workers, who are perceived as victims by its proponents. This approach has been applied in other countries and has actually resulted in grave consequences for the workers.”

“For sex workers, especially those who are gender-nonconforming, the threat of violence - from both clients and police - is a daily reality. Criminalisation, in collusion with social stigma makes sex workers’ lives more unstable, less safe and far riskier in terms of HIV. There is no legal protection from discrimination and abuse where sex work is criminalised.”<sup>33</sup>

Finally, as early as on the occasion of World AIDS Day in 2009, UN Secretary General Ban Ki-Moon stated that the “discrimination against sex workers, drug users and men who have sex with men only fuels the epidemic and prevents cost-effective interventions” and urged “all countries to remove punitive laws, policies and practices that hamper the AIDS response”.<sup>34</sup>

As evident from the reports quoted above, legal frameworks that target the buyers of sexual services have been found to add to the discrimination of sex workers and negatively impact their health and safety. Further evidence to support this notion can be found in my answer to the following question.

#### **Q3: Are you aware of any unintended consequences or loopholes caused by the offence? Please provide evidence to support your answer.**

Answer: Criminalising the act of purchasing sexual services reduces the avenues available to law enforcement to detect actual cases of human trafficking for the purpose of sexual exploitation since both clients and sex workers are far less likely to report possible suspicions or assist as witnesses for the prosecution.

Susanne Dodillet and Petra Östergren investigated the claimed success and documented effects of the Swedish Sex Purchase Act, which, like your proposed bill, “targets purchasers rather than prostitutes”.<sup>35</sup>

“When it comes to clients, it seems they are less willing to assist as witnesses in cases in which profiteers who exploit the sexual labor of others are prosecuted, since they now find themselves

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<sup>32</sup> UNDP, UNAIDS, UNFPA “Sex Work and the Law in Asia and the Pacific” pp. 1; 21-23; 29. URL: <http://www.snap-undp.org/elibrary/Publication.aspx?ID=699> (Accessed November 30, 2012)

<sup>33</sup> UNDP, Global Commission on HIV and the Law “HIV and the Law: Risks, Rights & Health”, URL: <http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/hiv-and-the-law--risks--rights---health/> (Accessed: November 30, 2012)

<sup>34</sup> Ban Ki-Moon “Secretary-General's message on World AIDS Day”, URL: <http://www.un.org/sg/statements/?nid=4266> (Accessed: November 30, 2012)

<sup>35</sup> Proposal pp. 20

guilty of a crime. Clients are exposed to blackmail and robbery, and the stigma associated with buying sex means people often have to leave their jobs and positions, even on a mere suspicion.”

“The National Board of Health and Welfare report that due to the ban sex workers feel less trust in social authorities, police and the legal system, and half of the respondents in the RFSL 22 study say that the current legislation prevents people seeking help. Instead of the police being a source of protection, sex workers feel hunted by them, and are subjected to invasive searches and questioning.”<sup>36</sup>

Pye Jacobsson, a sex worker and spokesperson for Rose Alliance, an organisation by and for sex and erotic workers in Sweden, states the following about the impact of the Swedish Sex Purchase Act.

“Especially for the women in the street this has been very, very bad because before they had this classic thing, hanging into the car window, having the discussion 'this is what I'm willing to sell, this is what I'm willing to do'. They don't have that time anymore because their clients are so jumpy, so they have to get into the car, drive off, and then negotiate. And then they are already in the car.

Also, the good clients, which means the safe clients, the non-dangerous clients, they think - which is true - the risk of getting caught is bigger in the streets, which means that they turn in to indoor workers, even if they prefer buying sex from outdoor workers, which left the outdoor workers with the bad clients, the dangerous clients, which they before had the opportunity to turn down. But now they can't afford to, because many of the good clients are gone.

In the sex industry there are people that are being abused, that are suffering, that are trafficking victims etc. But the normal way for the police to find out is not from sex workers, it's from clients. Because there are clients who are actually not assholes, they will say 'this doesn't look good', they will call the police. And of course now they don't call the police anymore, because if they call the police they will be accused of a crime.”<sup>37</sup>

It is this type of information that your proposal fails to present. Instead, you brush aside concerns already raised in responses to Trish Godman's consultation, namely, that “legislating on the criminalisation of the purchase of sex would push prostitution activities ‘underground’”, to which you respond that there is “no substantive evidence to suggest that criminalisation of those who purchase sex would have this effect.”

Above, I quoted excerpts from two sources that have both investigated and experienced the impact of a law that criminalises clients of sex workers. Alongside the reports quoted in the previous answer, they thoroughly refute your claim that no substantive evidence exists that the criminalisation of clients of sex workers would push sex work underground. Not only does it exist, but since you stated your knowledge of these concerns, it also appears that you deliberately turned a blind eye to them.

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<sup>36</sup> Susanne Dodillet, Petra Östergren “The Swedish Sex Purchase Act: Claimed Success and Documented Effects”, Conference paper presented at the International Workshop: Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges. The Hague, March 3 and 4, 2011. URL: <http://gup.ub.gu.se/records/fulltext/140671.pdf> (Accessed: November 30, 2012)

<sup>37</sup> Hungarian Civil Liberties Union “We want to save you! And if you don't appreciate it, you will be punished!” (2009). URL: <http://tasz.hu/en/hclu-film/we-want-save-you-and-if-you-dont-appreciate-it-you-will-be-punished> (Accessed: November 30, 2012)

Legal frameworks that target the buyers of sexual services thus not only negatively impact the health and safety of sex workers, they also hamper the work of law enforcement agencies to detect and prosecute actual cases of human trafficking for the purpose of sexual exploitation.

**Q4: What are the advantages or disadvantages in using the definitions outlined above?**

Answer: In addition to my concerns expressed above, I find it highly problematic to avoid the “problem having to specify every type of sexual activity” and leave it up to “law enforcement agencies (and ultimately, the courts) whether a reasonable person would conclude that an activity is of a sexual nature.”<sup>38</sup> Legal frameworks that aim to punish sexual offenders but omit to define the nature of the actual offence are neither a useful tool for law enforcement nor for the courts. Rather, they have been shown to expose sex workers to human rights abuses.

**Q5: What do you think the appropriate penalty should be for the offence? Please provide reasons for your answer.**

Answer: Above, I provided ample reasons about the harm caused by penalising clients of sex workers. I find no penalty appropriate or necessary for consensual sexual acts in exchange for payment between adults. Where consent of either party is absent, criminal law already provides penalties, such as for rape or sexual assault, and the element of consent has been adequately defined in the Sexual Offences (Scotland) Act of 2009.<sup>39</sup>

**Q6: How should a new offence provision be enforced? Are there any techniques which might be used or obstacles which might need to be overcome?**

Answer: As explained above, if the proposed bill were to pass, the obscurity of the definitions used in it would prove an obstacle to law enforcement. The ‘technique’ to overcome such obstacles is, frankly, to draft legal frameworks that do not avoid specifying what exactly represents the offence in question.

**Q7: What is your assessment of the likely financial implications of the proposed Bill to you or your organisation; if possible please provide evidence to support your view? What (if any) other significant financial implications are likely to arise?**

Answer: Since I am a private individual, the proposed bill would have no financial implications for me personally. Due to its shortcomings outlined in this letter, it would, however, drive up costs for police training, the court system, the supervision of sex offenders, and operational

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<sup>38</sup> Proposal pp. 22

<sup>39</sup> Sexual Offences (Scotland) Act 2009 “Part 2, Consent”, URL: <http://www.legislation.gov.uk/asp/2009/9/part/2/crossheading/consent> (Accessed: November 30, 2012)

costs for prisons, if custodial sentences were to be included in the penalties, which you listed as a possibility under 'Penalties'.<sup>40</sup>

**Q8: Is the proposed Bill likely to have any substantial positive or negative implications for equality? If it is likely to have a substantial negative implication, how might this be minimised or avoided?**

Answer: As stated above, I acknowledge that the majority of people working in the sex industry are female. That doesn't justify, however, that you fail to acknowledge sexual offences committed on male and transgender people. Although I disagree with the objective of your proposal, any law aiming to address sexual offences must clearly indicate that the gender of the victims of such offences shall be irrelevant. Especially in light of the violence frequently faced by transgender sex workers, I find the gender bias in your proposal both negligent and offensive.

### **Conclusion**

Just as the proponents of legal initiatives such as your own might roll their eyes and feel their motivation drop to carry on reading once they see the very basis of their beliefs questioned, I'm afraid I have to admit that I had to fight the same fatigue while reading your proposal, as I have come across such a great variety of documents whose authors fail to acknowledge the diversity of sex workers and the situations they live and operate in.

I find your proposal to be based on a stereotypical understanding of the sex industry, resulting from a self-inflicted lack of information, as you excluded relevant research and the voices of sex workers in a transparent attempt to bolster the biased and escapist perception you aim to instil on the legislator and the public.

I agree that a societal change in attitude and perception of sex work is necessary and I find your proposal unfit to bring about that change. Instead, you perpetuate stereotypes about sex work, rendering you complicit in the stigmatisation and discrimination of sex workers, which reports from various agencies of the United Nations and even the UN Secretary General himself described as harmful to the health and safety of sex workers.

In addition, there is sufficient evidence available, which indicates that your proposed bill would seriously hamper efforts to curb human trafficking for the purpose of sexual exploitation, rather than disrupting such criminal activity, as you suggested.

Given the challenges faced both by sex workers in particular and society in general, it is disappointing that time, efforts and taxes were spent to form a proposal that fails to address problems that *do* exist in the sex industry.

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<sup>40</sup> Proposal pp. 23

Violent abuse or cases of human trafficking do occur in the sex industry, just as they do in any other industry.<sup>41</sup> Sex workers have a genuine interest to fight crime and reduce harm in their work environments. Due to the severe shortcomings in your proposal, I cannot help but to doubt the sincerity of your intentions.

I find your proposal to bear the hallmarks of the misguided policies I frequently encounter through my research. Based on my academic expertise and the evidence presented in this letter, I reject your proposal and expect the honourable members of the Scottish Parliament to come to the same conclusion.

Best Regards,



Berlin, December 10th, 2012

Matthias Lehmann

Independent Researcher

Research Project Korea

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[www.researchprojectkorea.wordpress.com](http://www.researchprojectkorea.wordpress.com)

*\*My signature and personal address have been garbled for this publication.*

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<sup>41</sup> "Of the total number of 20.9 million forced labourers, 18.7 million (90%) are exploited in the private economy, by individuals or enterprises. Out of these, 4.5 million (22%) are victims of forced sexual exploitation, and 14.2 million (68%) are victims of forced labour exploitation in economic activities, such as agriculture, construction, domestic work or manufacturing. The remaining 2.2 million (10%) are in state-imposed forms of forced labour, for example in prisons, or in work imposed by the state military or by rebel armed forces." International Labour Organisation "2012 Global estimate of forced labour. Executive summary." URL: [http://www.ilo.org/sapfl/Informationresources/ILOPublications/WCMS\\_181953/lang--en/index.htm](http://www.ilo.org/sapfl/Informationresources/ILOPublications/WCMS_181953/lang--en/index.htm) (Accessed: November 30, 2012)