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"WHOSE BODY IS IT ?"

COMMERCIAL SEX WORK AND THE LAW IN NAMIBIA

2002

FUNDED BY AUSTRIAN DEVELOPMENT COOPERATION
THROUGH THE NORTH-SOUTH INSTITUTE

Austrian
Development Cooperation

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OVERVIEW AND ACKNOWLEDGEMENTS

"Prostitution", or "sex work", is an issue which is likely to arouse strong feelings in Namibia. This report is not intended to provide moral approval or condemnation of sex work – it does not attempt to say whether prostitution or sex work is "right" or "wrong".

The objective of this report is to provide information which can produce a more informed debate about sex work in Namibia, with an emphasis on the human rights aspects of the issue:

- Chapter 1 explains **basic terms and concepts** and gives an **overview of the topic**. This chapter was drafted by Dianne Hubbard of the Legal Assistance Centre.

- Chapter 2 reviews the **relevant international documents**, such as the Beijing Platform for Action and the UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and summarises **Namibia's international obligations** in this area. This chapter was drafted by Leigh-Anne Agnew and Dianne Hubbard of the Legal Assistance Centre.

- Chapter 3 presents an **historical look at sex work in Namibia.** This chapter was drafted by Dr Rob Gordon, a Namibian-born anthropologist based at the University of Vermont who has done extensive research and writing on various aspects of Namibian history. Casper Eriksen gave valuable help as a research assistant in respect of this chapter.

- Chapter 4 explains the **current legal position of sex work in Namibia**. This chapter was drafted by Leigh-Anne Agnew and Dianne Hubbard of the Legal Assistance Centre.

- Chapter 5 presents **recent research on sex work in Namibia**. This chapter was drafted by Erna Keulder of Research Facilitation Services, and is based on research commissioned for this report by the Legal Assistance Centre. The framework for the field research was mapped out in consultation with representatives of interested organisations at a "brainstorming session" held in March 2001. The research team for this portion of the project was as follows:

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- Chapter 6 explores a variety of **legal approaches which have been taken in other countries**. This chapter was drafted by CLAIHR interns Susan Taylor and Heather Sherdahl with assistance from Leigh-Anne Agnew and Dianne Hubbard of the Legal Assistance Centre.

- Chapter 7 discusses **sex work and HIV/AIDS**. It was drafted by Michaela Figueira of the Legal Assistance Centre.

- Chapter 8 makes **recommendations** and highlights certain issues for further discussion. This chapter was drafted by Dianne Hubbard of the Legal Assistance Centre.

Legal Assistance Centre staff members Willem Odendaal and Evelyn Zimba also made contributions to the report. Special assistance was also received from Collette Campher, Naomi Kisting, Rudolf Gawaseb and Joseph Kahuika of the Legal Assistance Centre.

Quiet Storm Film Productions has produced a documentary on sex work to accompany the report, and portions of the interviews filmed for that purpose have been quoted in the report. Dudley Viall provided key assistance with this aspect of the research.

The report was edited by Dianne Hubbard of the Legal Assistance Centre.

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SUMMARY OF REPORT

CHAPTER 1 - INTRODUCTION

1.1 WHAT IS PROSTITUTION?

Definition of prostitution: Many definitions of prostitution focus on the seller of sex rather than on the entire transaction. An example of a more inclusive definition of prostitution is '*an institution which allows certain powers of command over one person's body to be exercised by another'.*

The continuum of sex for material gain: Defining prostitution is problematic because there are other sexual relationships in society which involve at least some element of material exchange. In some cultures and some periods of history, even marriage has been viewed primarily as a property arrangement. In Namibia, there are ambiguous relationships where young women have 'boyfriends' who provide cash or gifts in exchange for sexual favours – the 'sugar daddy' phenomenon.

Focus of this study: This study focuses on commercial sex work, meaning situations where there is active solicitation of money for sexual favours. This is the type of prostitution which is covered by existing criminal laws in Namibia. Prostitution is a transaction involving two people – the seller and the buyer. Any genuine understanding of prostitution must examine the relationship between the two players. However it has proved to be harder to obtain information about clients.

1.2 THE CONCEPT OF SEX WORK

Many people prefer the term sex work to prostitution because it focuses on the act as a form of labour which is, like other forms of labour, subject to exploitation. This term turns attention away from moral judgements and towards practical problems like unsafe and unfair working conditions. It also emphasises the fact that sex work is an activity and not an identity. It has been argued that sex work is not so different from other kinds of work, since all work involves the sale of mental or manual labour involving different parts of the body.

Other people object to the term sex work because it 'normalises' prostitution. Another argument here is that the inequality inherent in the relation between prostitute and client prevents this transaction from being "work" in the normal sense of the word. A related argument is that, because a person's sexuality is so closely bound up with personal identity, the sale of sexual activity turns the prostitute into an object. This theory holds that prostitution (like the sale of human organs) is fundamentally wrong because it makes a commodity of human beings.

1.3 SEX WORKERS

Although both men and women engage in sex work, most sex workers are women, meaning that sex work is often discussed as a women's issue. Children, both boys and girls, are increasingly engaging in sex work -- particularly in developing countries and

usually as a result of extreme poverty. Sex work is often associated with physical violence and abuse, and is thus sometimes discussed in tandem with the overarching issue of violence against women. People who engage in commercial sex work are often particularly vulnerable to exploitation or abuse because they are viewed as social outcasts. Some people view prostitutes as undeserving of care or protection on the grounds that they engage in an "immoral" activity – although the same people sometimes excuse the behaviour of male clients on the grounds that they are simply responding to their "natural" male sex drive.

1.4 CLIENTS

Regardless of the sex of the sex worker, the customer is almost always male. Thus, prostitution exists primarily to satisfy the desires of men. This fact leads many analysts to conclude that prostitution has arisen from power differences between men and women. But there is less international research and commentary about buyers than about sellers. Why do men seek commercial sex? The most likely explanation seems to be that men are attracted by the commercial, impersonal nature of the transaction because this gives them complete control over the woman and eliminates any need for emotional reciprocity. Sex which is paid for is free of all social obligations and responsibilities.

1.5 THIRD PARTIES

There are many third parties who profit from prostitution – "pimps"; the owners and managers of brothels, bars and clubs used for prostitution; tourism operators; and newspapers which run advertisements for brothels or escort services. Sex work can also be used as a basis for various forms of blackmail. Other third parties are involved as knowing or unknowing beneficiaries of the income from sex work, such as children, spouses and extended family members.

1.6 OPPOSING INTERNATIONAL VIEWS

Abolish all prostitution: Some people argue that all prostitution constitutes a human rights violation, on the grounds that it contradicts the rights to dignity and equality. These people advocate the abolition of all prostitution. People who identify all prostitution as oppression against women reject the idea that it is possible for some women to "choose" prostitution. They draw analogies between prostitution and slavery, arguing that even a perception of "choice" or "consent" to these practices does not remove their oppressive character or make them justifiable.

Free versus forced prostitution: Some people make a distinction between forced prostitution and prostitution which is freely chosen as an occupation. These people argue that the right of all persons to self-determination must be respected. Because people (particularly women) are often faced with limited opportunities to provide for themselves and their families, sex work may be their best available option. This view holds that forced prostitution should be prohibited, while people who freely choose prostitution should receive the same kinds of protection as other workers.

Human rights for all prostitutes: There is a middle ground which emphasises the need to consider human rights issues over all other considerations. This view holds that

prostitution does not readily fit into popularly understood categories of 'slavery' or 'sex' or 'work', but must be treated as a unique activity. At the international level, the dichotomy between free and forced prostitution often leads to an emphasis on protecting those who are forced into prostitution while neglecting the rights of those who have entered prostitution voluntarily, or been 'forced' into it by poverty. A human rights approach would focus on protecting all sex workers from human rights abuses.

1.7 SEX WORKER SUPPORT GROUPS

In recent years, there have been moves in many countries to establish organisations to advocate for protection and support for sex workers. One example is the South African group SWEAT (Sex Workers Advocacy and Education Taskforce). This group's activities include HIV education, condom distribution, a monthly newsletter for sex workers, legal advice and training in marketable skills which can provide alternatives to sex work.

1.8 TRAFFICKING

"Trafficking" is essentially the illegal movement of persons for work elsewhere. It involves the transport or trade of humans, usually women or children, for economic gain by means of force or deception. Although there is no evidence that trafficking for the purposes of prostitution is a widespread problem in respect of Namibia, there has been at least one case involving the transport of young Namibian women to South Africa for the purposes of sexual exploitation. Because this is a problem which may develop in future, it should be kept in mind while formulating policy on sex work. Namibia must also give attention to its international obligations to combat trafficking.

1.9 SEX TOURISM

When clients are foreign visitors or tourists to developing countries, the disparity between sex worker and client in terms of economics and power is unusually wide, thus increasing the vulnerability of the sex worker. Supply usually outstrips demand in such situations, which depresses prices and reduces the bargaining powers of the sex worker. Namibia is not yet being actively marketed by tour operators or through the Internet as a destination for those interested in tourism for purposes of sex, but this could be an unwelcome future development.

1.10 CONCLUSION

This brief overview of concepts is intended to assist the reader's understanding of the information presented in the following chapters.

CHAPTER 2 – INTERNATIONAL OBLIGATIONS

2.1 INTRODUCTION

Because Namibia is a party to many international conventions which are recognised by our Constitution as forming part of the law of Namibia, the international stance on sex work is important to a debate of Namibian law and policy on sex work.

2.2 EARLY INTERNATIONAL ACTION ON SEX WORK

Between 1895 and 1949 there were a total of seven different international agreements on prostitution, each carrying with it a different definition. However, all the agreements shared the common theme of protecting women and children against prostitution.

2.3 THE 1949 CONVENTION

In 1949, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others was approved by the United Nations General Assembly. In line with abolitionist thinking, the 1949 Convention does not require the criminalisation of prostitution itself, but seeks to criminalize acts of third parties associated with prostitution. States parties also agree to make it an extraditable offence to kidnap or entice a person out of his or her own country for the purpose of prostitution. With regard to prostitutes themselves, the1949 Convention forbids states from enacting any system which would require registration, focusing instead on prevention and rehabilitation. This Convention has been widely criticised. Most countries agree that there is a need to reformulate international standards on prostitution and trafficking. Namibia has neither signed nor ratified the 1949 Convention.

2.4 WORLD CONFERENCES ON WOMEN

Since the 1970's there has been a global movement towards recognising the rights of sex workers as workers engaged in a legitimate form of employment, and there has been a very active campaign by sex workers who have formed groups to press for recognition of their rights as workers. This has resulted in a greater international emphasis on protection against *forced* prostitution and trafficking, with no current consensus on prostitution in general. In recent years, international recommendations on trafficking have become more detailed and specific, reflecting the high level of international concern about this practice.

2.5 CEDAW

Article 6 of CEDAW says that "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women." However, a broader wording which would have called for the suppression of prostitution in general was specifically rejected during the drafting process, indicating that CEDAW does not take a stand against all prostitution. The Committee which monitors CEDAW has issued General Recommendations on Article 6 which emphasise trafficking, sexual exploitation and the linkages between prostitution, poverty and unemployment. These recommendations note that economic hardship can 'force' women and girls into prostitution. The emphasis is on the *protection* of women engaged in prostitution, not on their punishment.

2.6 TRAFFICKING PROTOCOL 2000

A Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, has been adopted under the Convention Against Transnational Organised Crime. The Trafficking Protocol is oriented around crime control. It provides for international cooperation on trafficking, which is defined to include trafficking for "the

exploitation of the prostitution of others" as well as for a number of other purposes. The Protocol requires states to criminalise trafficking, and suggests certain protections for the victims of trafficking, primarily for persons who are prepared to be witnesses in criminal proceedings. Namibia has signed this Protocol, which will enter into force once it has been ratified by 40 countries.

2.7 RELATED INTERNATIONAL ISSUES

Sex work and slavery: Where sex work is carried out in conditions of slavery, the international conventions on slavery would be applicable.

Sex work and violence against women and children: International law recognises the link between sex work, trafficking in women and children and violence against women and children. For example, the 1993 Declaration on the Elimination of Violence against Women adopted by the UN General Assembly makes specific reference to "violence related to exploitation" and "trafficking in women and forced prostitution" as forms of violence.

The right to free choice of employment: If sex work is considered as a form of work, then international statements and agreements on labour become relevant, as well as domestic labour laws.

Sex work and discrimination: Because sex work is primarily a female activity, penalising the sale of sexual service by females but not the purchase of sex work by clients is a form of sex discrimination. The provisions of international conventions pertaining to sex discrimination are thus relevant to this dimension of sex work.

2.8 CHILD PROSTITUTION

In terms of international doctrine, child prostitution is not committed by the child, but by the other persons who are involved. The effects of prostitution on children tend to be more severe than on adults, and children are more likely to contract HIV from sex work. Increased attention has been devoted to the problem of child prostitution at the international level during the last decade, and there are several new international agreements which deal with the sexual exploitation of children.

UN Convention on the Rights of the Child: Parties to this Convention agree to take measures-

- to protect children from **exploitation, including sexual abuse**
- to prevent the exploitative use of children in **prostitution or other unlawful sexual practices**
- to prevent the abduction, sale and trafficking in children for any purpose and
- to promote the physical and psychological recovery and social reintegration of child victims of abuse and exploitation.

Namibia has signed and ratified this Convention.

Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography: The UN Convention on the Rights of the Child was supplemented in the year 2000 by an Optional Protocol on the Sale of Children, Child Prostitution and Child

Pornography, which Namibia has signed. States parties to the Optional Protocol undertake

- to criminalise offering, delivering or accepting a child for prostitution or sexual exploitation
- to protect the rights and interests of child victims at all stage of the criminal justice system
- to take preventative action and
- to raise public awareness about the harmful effects of child prostitution.

Namibia has signed the Optional Protocol, but the process of ratification is not yet complete. Convention.

ILO Convention on the Worst Forms of Child Labour: This Convention was adopted in 1999 and has already been ratified by a total of 93 countries -- making it the most quickly adopted convention in ILO history. Countries which ratify it are expected

- to adopt a National Action Plan to end the worst forms of child labour
- to adopt criminal sanctions or other appropriate sanctions in respect of the worst forms of child labour
- to adopt measures aimed at prevention
- to offer direct assistance to remove children from the worst forms of labour and rehabilitate them
- to ensure access to education for such children
- to "identify and reach out to children at special risk", and
- to "take account of the special situation of girls".

Namibia has already ratified this Convention.

2.9 AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

The African Charter does not mention prostitution specifically, but the Additional Protocol on Women's Rights drafted to accompany the Charter includes commitments

- to prohibit any exploitation and degradation of women and girls
- "to prevent and prosecute perpetrators of trafficking in women and girls and protect those women and girls most at risk of such trafficking"
- to prohibit, combat and punish all forms of exploitation of children, especially the girl-child.

Once the draft of the Additional Protocol is finalised, it must be ratified by fifteen members of the African Union before it will become binding.

2.10 SADC COMMITMENTS

In 1998 SADC member states signed an Addendum on the Prevention and Eradication of Violence against Women and Children supplementing a SADC Declaration on Gender and Development. This document recognises "trafficking in women and children" and "forced prostitution" as forms of violence against women and calls on member states to implement legislation to combat them. The SADC documents are statements of commitment, but are not legally binding.

2.11 OTHER SETS OF INTERNATIONAL PRINCIPLES

There are a number of other international sets of principles and recommendations which have been put forward by various groups. These documents have no official status, but may provide useful reference points for policy-makers:

- **World Charter for Prostitutes' Rights**, a manifesto drafted in 1985 by prostitutes from a range of Western countries and used as a guideline by a number of prostitutes' rights groups and sex worker support groups in different parts of the world, which advocates decriminalisation
- **Proposed United Nations Convention Against Sexual Exploitation**, promoted by the Coalition Against Trafficking in Women, which takes an abolitionist approach to prostitution
- **Dhaka Declaration II**, a statement from a 1995 conference organised by the Coalition Against Trafficking in Women and attended by 400 participants from around the world, which elaborates on the abolitionist approach
- **Human Rights Standards for the Treatment of Trafficked Persons and Recommendations**, a document promoted by the Global Alliance Against Traffic in Women, which collects standards from international human rights law and focuses on their application to the issue of trafficking.

CHAPTER 3 – PROSTITUTION IN NAMIBIA IN COLONIAL TIMES

3.1 INTRODUCTION

The historical evidence suggests that some women have been adept at using their sexuality as a survival mechanism. The historical record demonstrates the impact of colonialism on prostitution, although it is of course necessary to be wary of cultural stereotypes about sexuality embedded in information from the colonial era.

3.2 THE IMPACT OF DEMOGRAPHICS

There was a massive gender imbalance during colonial times -- not only among the colonisers but later, because of the policy of segregation and apartheid, also amongst Africans. Because of an extreme shortage of European women during the German colonial period, many European males engaged in sex with indigenous women, and even lived in stable relationships with them or married them. In 1905 Namibia banned "mixed marriages" because of concerns about the legal status of "*Mischlingen*" (children of mixed ancestry). There were a number of efforts by the administration to prevent cross-racial sexual liaisons, and some groups even imported single white women from Germany. However, white use of African prostitutes was consciously tolerated by the Administration right until the end of the German era.

3.3 CHANGING GENDER ROLES, FEMALE AUTONOMY & PROSTITUTION

Another factor which influenced the historical development of prostitution in Namibia was the changing gender roles which resulted from the colonial influence. Socio-economic conditions during the early colonial era increased certain opportunities for female autonomy within the framework of male decision-making. Furthermore, sex was a

commodity which was sometimes used in complex systems of social exchanges. For example, some local women became concubines of European traders, with the active involvement of their kin, to facilitate access to goods and services.

After the 1904-7 war, it is claimed that some Herero women were forced to work in a house of prostitution opened by the German military in Windhoek. With few cash-paying jobs available for females, some indigenous women voluntarily entered prostitution, as a source of independent income. Another factor was the provision of accommodation for male African workers, while no such accommodation was available for females.

A global history of prostitution shows that it has a propensity to expand dramatically during situations of rapid socio-cultural change and upheaval, and the situation in Namibia was duplicated in many parts of Africa.

3.4 WHITE PROSTITUTES

The first reports of informal white prostitution are found in Swakopmund in 1899. Regulations to control brothels staffed by white women were enacted in Swakopmund in 1904, and served as a model for other towns. It is likely that the women brought to these brothels were part of the emerging international traffic in women which inspired an international treaty on trafficking in 1904. The administration encouraged white prostitution, as part of its efforts to discourage sexual relations between white men and African women.

Colonial officials believed that black prostitution was disrupting the labour supply, on the basis that some African families were reluctant to engage in wage labour, preferring to live off the earnings of a few prostitutes in the family. Unregulated African prostitution was believed by colonial authorities to be the leading cause of a massive increase in venereal disease. The colonial powers also believed that sexual involvement with black women was damaging to the prestige of white men. These considerations led to the sanctioned creation of brothels staffed by white women, where a degree of medical and legal control could be exercised, in Swakopmund, Okahandja, Karibib, Windhoek, Keetmanshoop, Luderitz, Tsumeb and even Seeheim.

3.5 THE SOUTH AFRICAN ERA

One of the first Proclamations the South Africans issued in 1919 was one prohibiting Europeans from entering Native Locations without a permit between Dusk and Dawn (**Proc 6/1919**), another effort at reducing inter-racial sex. Prostitution was not criminalized *per se,* but European infringements were policed through the **Undesirables Removal Proclamation** (50/1920) which was the basis for the repatriation of most European prostitutes and brotheleers to Germany. A third control measure was the **Police Offences Proclamation** (20/1920) which criminalised loitering and solicitation for the purposes of prostitution. The fourth piece of controlling legislation was the **Girls' and Mentally Defective Women's Protection Proclamation** (28/1921), which made unlawful carnal connection with a girl under 16 or an idiot an offence, along with the detention of any girl or woman against her will in a brothel.

Officials cited prostitution as a prime motive for African female migration to urban areas, and there were periodic requests to the Administration to control "Native women". In 1934, the **Immorality Proclamation 19 of 1934** applied the main provisions of the

South African Immorality Act (1927) to South West Africa, expressly prohibiting carnal knowledge between European males and black females. In 1938, a new regulation required every "native female" in Windhoek between the ages of 18 and 60 (except legally married woman living with their husbands) to undergo a compulsory medical examination every six months. About 100 Herero women staged a violent protest against this new regulation in March 1939, with the result that mass examinations were discontinued.

Looking at the general social context, contemporary sources suggest that this was an era earmarked by an increase in marital infidelity and venereal disease. Concerns were also expressed in the 1930s about child marriage and child prostitution. By the 1950s, the line between casual relationships and professional prostitution had reportedly become blurred.

3.6 CONCLUSION

As several studies have shown, prostitution was quite widespread in traditional societies in Africa. The colonial state's major concern was with inter-racial sex. Prostitution among Africans was tolerated, indeed informally encouraged. The demographic gender imbalance created by the labour policies of the State further promoted the profession. Moreover, the colonial state probably lacked the resources to police and control prostitution. Also, sex was believed to placate labourers and prevent the rape of white women.

Prostitution was one of the few entrepreneurial niches, along with shebeens, open to women who needed cash. While some women were forced into prostitution, some bartered sex for reward, in the context of a general increase in women's autonomy and a looser attitude towards martial fidelity.

Prostitution in Namibia is best viewed as part of a range of coping strategies and social support networks people use to deal with their day-to-day survival. While the influences of colonialism and consumerism have created the context for prostitution in Namibia in the past, the influence of globalisation will be a key factor in shaping sexual behaviour in Namibia in the future.

CHAPTER 4 – CURRENT LAW ON SEX WORK IN NAMIBIA

4.1 INTRODUCTION

Prostitution was never an offence in terms of the common law, and the act of engaging in sexual intercourse for reward has not been made into an offence in terms of any Namibian statute. However, various other aspects of sex work are currently criminalized by several statutes and municipal regulations. Several policy-makers have recently suggested that Namibia’s legal approach to sex work should be re-examined. A High Court judgement on the question of whether some of the current laws on sex work are unconstitutional in a case which is currently pending may force Parliament to reconsider the issue.

4.2 COMBATING OF IMMORAL PRACTICES ACT (ACT 21 OF 1980)

Prostitution is currently covered in Namibia primarily by the Combating of Immoral Practices Act (Act 21 of 1980). The statute does not criminalise the actual act of engaging in sex for reward. Instead, it criminalises a number of the surrounding activities. It is illegal under the act -

- **to solicit** or "make any proposals to any other person for immoral purposes" **in a public street or place**
- **to exhibit oneself in an indecent dress or manner in public view, or in any place which is open to the public**
- **to commit "any immoral act" with another person in public** (but not in private)
- **to keep a brothel**
- **to "procure" any female to have unlawful carnal intercourse with another person**, **to become a prostitute**, or **to "become an inmate of a brothel"**
- **to entice a female to a brothel** for the purpose of prostitution, or to conceal a female who has been enticed to a brothel
- **to furnish information,** or **to perform any other act,** aimed at **assisting a male to have unlawful carnal intercourse with a female**
- **to knowingly live wholly or in part on the earnings of prostitution**
- **to assist** in bringing about **"the commission by any person of any immoral act with another person"** , or to receive any money for the commission of such an act
- **to detain a female against her will in a brothel**, or to otherwise detain her for the purposes of unlawful carnal intercourse with a male.

The Act is aimed primarily at third parties ("pimps" and brothel-owners) and at public manifestations of prostitution (such as public solicitation).

The law is biased in gender terms. There are a number of offences which can be committed by prostitutes, but few which could possibly be applied to clients – and clients are never charged under the act in practice. At the same time, other provisions of the act provide a range of *protections* for females but not for males. The law seems designed to protect "good" women who may be weak and vulnerable, while punishing those "bad" women who solicit paid sex.

Some provisions of the law are so overbroad as to be ridiculous. For example, if an unmarried couple buy or rent a home to share, then this home would be a brothel in terms of the act. The offence of knowingly living off of the earnings of prostitution could also lead to absurdities, as it is not limited to persons who actively seek to control or encourage prostitution for their own profit, but would apply equally to a child who knows what his mother or father or sibling does to get money for the groceries.

The Act contains a large number of presumptions which are intended to facilitate proof, some of which may violate the constitutional principle that a person accused of a crime is innocent until proved guilty by the state.

Current constitutional challenge to the Act: In 2000, the case of *Hendricks and Others v Attorney General and Others* was heard by the High Court. As of mid-2002, no judgement has yet been handed down. The applicants are seeking an order declaring

sections 1(1), 2, 10 and 12 of the Combating of Immoral Practices Act unconstitutional, on the grounds that these sections are an "unreasonable and unjustifiable violation of the Applicants' right of freedom of association, practising any profession or carrying on any occupation, trade or business." Other constitutional rights which may be implicated include the right to equality, freedom from discrimination and the right to privacy. The applicants argue that their right to be presumed innocent is unreasonably and unjustifiably violated by the presumptions in the law. Some of the sections of the Act are also being challenged on the grounds that they are unconstitutionally overbroad.

4.3 CHILDREN'S ACT (ACT 33 OF 1960)

This Act makes it an offence for the parent, guardian or custodian of a child to "cause or conduce" to the child's prostitution, or to allow the child to reside in a brothel, but it is seldom, if ever, utilised in practice.

A child "who frequents the company of any immoral or vicious person, or is otherwise living in circumstances calculated to cause or conduce to his seduction, corruption or prostitution" can be declared to be a child in need of care, which could be grounds for removing the child from his or her usual home and placing him or her in foster care or a children's home.

4.4 COMBATING OF RAPE ACT (ACT 8 OF 2000)

Most of the Combating of Rape Act deals with overt forms of force or coercion. However, this Act and the Combating of Immoral Practices Act protect children under the ages of 14 and 16, respectively, against sexual acts with persons who are more than three years older. Even if the sexual act was consensual, or took place as paid sex, it is still a crime. In theory, these provisions could be used as tools to combat the demand for child prostitutes. However, they are unlikely to be very effective for this purpose as there is unlikely to be a complainant when a sexual act takes place between a willing child prostitute and a willing client.

4.5 SODOMY AND UNNATURAL SEXUAL OFFENCES

The common law crime of "sodomy" criminalises anal intercourse between males, while the common-law crime of "unnatural sexual offences" covers mutual masturbation, "sexual gratification obtained by friction between the legs of another person" and other unspecified sexual activity between men. These crimes are now relevant primarily as they apply to consenting adults – such as male sex workers with male clients. They are seldom enforced with respect to consenting adults, but the fact that they exist adds to the stigma experienced by male sex workers and thus increases their vulnerability.

4.6 MUNICIPAL REGULATIONS

Since the beginning of 2002, a number of persons have been arrested in Windhoek and charged with contravention of Municipal Street and Traffic Regulations which forbid "loitering" and "soliciting". The Legal Assistance Centre was approached on 28 March 2002 by 16 persons arrested on this basis, including three teenagers, three men and a 48-year-old nurse. Some of the members of this group may have been sex workers, but some are adamant that they are not. Another 17 people were arrested on similar

charges in Windhoek on 25 January 2002. There may be other local authorities in Namibia which have similar regulations on loitering or solicitation.

4.7 CASE LAW

No reported cases concerning the Combating of Immoral Practices Act have been located, but cases on older laws and on similar South African legislation provide guides to the possible interpretation of the current Namibian law. Past court cases concerning prostitution illustrate the difficulties of proof.

There are also a few cases which help to shed light on the offence of "soliciting". Although this could in theory be carried out by sex worker or client, there appears to be a bias in the law on this point, based on the assumption that it will almost always be the sex worker who does the soliciting.

There have been several court cases on the offence of "keeping a brothel" which have made it clear that a single sex worker who maintains control of premises which he or she habitually uses for prostitution can commit the offence of "keeping a brothel".

Turning to the provision which makes it an offence for "any person" to "knowingly live wholly or in part on the earnings of prostitution", the courts have held that this offence is not directed at prostitutes living on their own earnings:

Several court cases involving a range of issues also indicate that prostitutes are not always considered to be equal to other people in the eyes of the law, but are treated as persons of suspect character and honesty.

CHAPTER 5 – SEX WORK IN NAMIBIA TODAY

5.1 INTRODUCTION

Previous studies: There have been few previous studies of commercial sex work in Namibia, with the exception of small-scale studies of sex workers in Windhoek and Walvis Bay conducted by the Ministry of Youth and Sport and the Gender Research and Training Programme at the University of Namibia.

Current study: The Legal Assistance Centre commissioned a Namibian research group, Research Facilitation Services, to conduct a survey on the topic of adult commercial sex work in Namibia. The main aim of the survey was to compile a profile of sex work in Namibia on the basis of personal interviews with sex workers, key informants and clients, and to ascertain the feelings of the general public towards the practice.

5.2 METHODOLOGY

Sex worker study: The study combined qualitative, quantitative, explorative and descriptive techniques, with a structured questionnaire containing both closed-ended and open-ended questions. Commercial sex workers were interviewed anonymously, along with a few key informants knowledgeable about sex work.

Client study: We intended to use the same methodology for clients as for sex workers, but the few clients who consented to interviews were prepared to answer only very brief questions.

Telephone survey: A telephone survey was conducted in order to attain the feelings of the general public towards sex work. Structured questionnaires were administered by telephone to respondents aged 18 or older. Telephone surveys in a country like Namibia are not representative of the entire population, but were reasonably representative of urban areas where commercial sex workers tend to be most active.

5.3 SAMPLE

Sex workers study: The sample was designed to include five towns from different geographical areas of the country -- Central Namibia (**Windhoek**), Northern Namibia (**Grootfontein**), Southern Namibia (**Keetmanshoop**), and the Coast (**Swakopmund** and **Walvis Bay**). Plans to include **Rundu** and **Oshakati** in the sample for Northern Namibia had to be abandoned because the fieldworkers were unable to find willing interviewees in these locations. The initial plan was to interview 100 sex workers and 100 clients. In the end, a total of **148 sex workers were interviewed**.

Client study: Because of the general reluctance of clients to give interviews, it was not possible to meet the planned target of 100 client interviews. **Only two clients agreed to individual, face-to-face interviews.** A few additional clients were willing to be interviewed in groups, to talk about "what they have heard or observed".

Telephone survey: The areas for the telephone survey were selected to include a fair spread of different geographical areas. The telephone numbers were drawn in a systematic, random fashion from the Namibian telephone directory. **The total sample comprised 315 persons from six different regions**.

5.4 FIELDWORK

Dates: The field research took place from June to August 2001.

Training of fieldworkers: In addition to general training on how to administer the questionnaire and how to record background observations in the form of field notes, fieldworkers also received training on relevant health issues that might come up during an interview. Fieldworkers were also provided with information about appropriate support services to share with respondents.

Fieldwork problems: Many respondents were reluctant to be interviewed because of the stigma of sex work, while others were eager to talk since they felt that they could not normally discuss what they do for a living. In many cases, it took time to establish trust before the interviews could be conducted.

5.5 FINDINGS OF THE SEX WORKER STUDY

Biographical profile of respondents: The vast majority of sex workers in the sample were **female** (94%). The majority (92%) regarded themselves as "**straight**", as opposed to gay, lesbian or transgendered. About 81% of the respondents were single.

Almost 47% of respondents speak **Nama/Damara**, and 34% **Afrikaans** as their first language. However it must be noted that this is a result of the availability and willingness of certain sex workers to grant interviews rather than a reflection of the language groups of sex workers in general.

The majority of respondents (81%) have **some secondary school training**, but not a single one had any tertiary education. Whilst this gives the impression of respondents having attained reasonable levels of education, it is not enough to secure proper fulltime employment at reasonable remuneration. For additional income, sex workers rely mostly on unskilled labour, such as domestic work or waitressing.

Many respondents appear to maintain **reasonable living standards**, with only one third living in informal housing, although living conditions observed by the field researchers were often grim.

The majority of respondents (78%) have **dependents**, the numbers ranging from one or two to entire families. Many sex workers form economic networks of support with each other, as was especially evident in the coastal areas.

Childhood: Many respondents were brought up by family members other than their own parents, or by a single parent. Neglect and abuse formed the core of many a childhood. More than half of the respondents reported suffering some form of abuse as a child.

First sexual experience: Most respondents could not really remember at what age they first had sex. Those who were raped remembered it best. The age of first sexual experience ranged from 4 years old upwards. A large number (26%) said that their first sexual experience was not out of free will. Of these, 10% mentioned a member of an extended family and 2% mentioned an immediate family member such as his or her own father. It is possible that sexual abuse contributes significantly to the perception that the body and sex are commodities to be sold.

Job profile: Interviewees had been operating as sex workers for periods averaging somewhere between two to ten years. The majority of respondents (84%) are full-time sex workers with no other sources of income. Those who do have supplementary sources of income aside from sex work obtain such income from a variety of lowly paid and unstable jobs. The absence of stability formed a pattern in many of their lives, in the form of events with economic as well as emotional consequences, such as the death of parents or lost jobs.

The role of partners: Almost half of the respondents (45%) have regular partners although they do not necessarily live with them. However, only 16% said that their partners knew and approved of what they do for a living. Many sex workers (16%) reported abuse by their partners.

Entry into sex work: Reasons for going into sex work are varied but the most important considerations are financial, whether they were stated as such or described as having to support children, having to support other family members or simply that the person could not find another job. Some drifted into sex work out of necessity. Some were introduced to it by other sex workers or by their friends, who are likely to be sex workers themselves. Very few of the sex workers interviewed (less than 2%) described sex work as being their own idea, uninfluenced by other people or by example. Sex work was the last and often desperate choice for most of the respondents to earn money.

There is a strong connection between sex work and the problem of maintenance. Adult sex workers who were interviewed repeatedly emphasised the need to support children or other family members. Young people sometimes enter sex work because absent fathers do not pay for their support, because the relatives whom they depended on died, or because their parents were simply unable to earn enough money to support their children. Teenage pregnancy also appears to be a factor in driving young women onto the streets – when an extra responsibility is added to a family situation which is already precarious, this can be the factor that tips the balance.

Problems facing sex workers: Health issues and abuse are the two main problems facing sex workers. Clients are the primary source of problems for sex workers, including clients who don't pay, abusive clients and clients who refuse to wear condoms. Police and Special Field Force members were also mentioned as the source of problems.

Abuse: When questioned specifically about abuse, fewer than one third (28%) of respondents replied that they have not yet experienced any abuse. The remainder of the sample mentioned partner abuse (16.3%), beatings and abuse by clients (17.7%), and abuse at the hands of police and Special Field Force members (9.2%).

Issues pertaining to children: Most respondents (73%) look after children of their own. or someone else's children. The need for money for child support is a big problem. As one interviewee said, *"I just got so sick and tired of seeing my children hungry...".*

Where clients are contacted: Alcohol and places where it is sold play an important role in the world of paid sex. Most clients are contacted in institutions that serve alcohol such as bars, hotels, shebeens and clubs. There appears to be a certain status ascribed to sex workers on the grounds of where they operate, with operating on the streets being seen as less preferable than indoor sex work.

Working arrangements: About half of the respondents (47%) work alone, and the rest work in a group or with a friend. Only 13% split their earnings with someone else. Traditional "pimps" do not appear to play a large role in Namibian sex work.

Where it happens: Almost a quarter of paid sex takes place in the *veld.* In addition to the obvious economic reasons behind this, there appear to be more sinister motives as well. Apart from the fact that someone is unlikely to be discovered and recognised by anybody in this type of location, it is easier to rape or abuse someone in a distant lonely area such as a field. This seems to happen on an alarmingly regular basis. Cars, houses and hotels are other common venues. Quite a number of respondents operate

from houses where a few of them live together and someone "supervises" them although nobody admitted to having or being a "pimp" as such.

Sex acts and prices: The sex acts vary as much as the prices charged for them. Those who replied to questions on this topic described acts ranging from "normal" (penis to vagina) sex, to anal sex, oral sex ("blowjobs") or masturbation. Prices charged range anywhere between N$20 to N$300 per sex act. Sex without a condom is generally more expensive than sex with a condom, and disturbingly, this depends on the demand by the client for unprotected sex. Sex workers in Walvis Bay described more unusual sex acts than sex workers anywhere else. The more unusual acts are more expensive.

The typical client: There is no such thing as a typical client. As one sex worker said, *"Anyone with money is a client".* Although clients are guilty of abusing sex workers in many cases, this is not always the case, and not all clients can be portrayed as cruel and abusive. Some sex workers have called their typical clients "gentle", "understanding" and so forth. The majority of respondents (70%) have some regular clients. Clients come from all walks of life and all sectors of society, and are of all age groups. Although there are clients of every variety, white and foreign men were frequently mentioned.

Why clients use services of sex workers: When sex workers were asked why they think clients use their services, they came up with a wide variety of reasons. Many thought that it was their superior sexual performance that attracted clients, while sexual problems experienced by clients in their romantic relationships were also mentioned frequently. Some thought that clients were motivated by a need for sex or entertainment, or by a desire for “easy sex” or sexual variety.

Perceptions of children working on the streets: About one third of respondents (30%) see children regularly on the street and even at some clubs. It is clear that a new generation of sex workers is already being established on the streets.

Attitudes towards Namibian laws on sex work: The majority of sex workers (67%) would like to see the laws in Namibia changed to legalise sex work. (This is in direct contrast to the general population where almost 70% felt that sex work should be illegal for both client and sex worker.) Only 8% of sex workers wanted the laws to stay as they are now, and about 25% did not know which answer they preferred. Some of those who felt that the laws should stay the same were worried about increased competition or the stigma of being officially known as a sex worker. Almost half of the respondents felt that they needed protection and security, which one-third of respondents feel would require some sort of official recognition. The majority were opposed to having to register as taxpayers, and to any requirement that they possess a certificate proving that they are legal sex workers.

Interaction with different groups in society: Most of the sex workers interviewed experience officers of the law in a rather negative light, but social workers and the church in a more positive way. More than half of the respondents noted a positive interaction with the church. Almost 45% of respondents feel that they have no support systems, and less than 10% of respondents noted family as a support system. The lack of family support throughout the lives of the majority of respondents may be a key factor to their choice of work. Almost half of the sex workers interviewed have, or feel that they

have, nowhere to go to get assistance with their problems, partly because of their fear of arrest.

Health concerns: HIV/AIDS is the biggest health concern of sex workers. Other health problems mentioned were other STDs and vaginal injuries. Many clients are rough during sex, and sex workers are often raped in the course of their work, so this is not surprising. Condoms pose two problems: the fact that clients do not always want to wear them and accidents such as breaking or leaking. Not all respondents use condoms during sex with clients: 67% of the sex workers interviewed said that they always use condoms, and 24% said that it depends on the client. Almost 10% did not reply to this question. Furthermore, less than a third (28%) use condoms during intercourse with their regular partners in their private lives. The method used by the majority of sex workers to prevent pregnancy is the contraceptive injection (used by 64% of respondents), while only 18% of respondents rely solely on condoms for this purpose. Condoms are not used one hundred percent of the time, which reduces their effectiveness, both as protection against HIV and STDs, and a contraceptive.

Substance use: Most respondents (78%) use alcohol on a regular basis. Drugs and painkillers are used to a lesser degree. About a quarter of respondents admitted that they used some substance on a regular basis, but did not specify what. Sex workers' reluctance to discuss this issue makes it impossible to come to any conclusion about the presence or absence of connection between sex work and trade in illegal drugs.

Definition of sex work by sex workers: More than half of the respondents (53%) defined sex work as sex that is paid for, and another 14% defined it as selling one's body or sexual organs. Most of the respondents (63%) said that they would not recommend sex work to anyone.

5.6 FINDINGS OF THE CLIENT STUDY

There was a high refusal rate amongst clients approached for interviews, meaning that a profile of clients had to be built around a few interviews only, combined with sex workers' perceptions and the observations of fieldworkers.

There is no such thing as a typical client. The two clients interviewed said that they buy sex because they have a need for it at times when they cannot find it anywhere else, such as between relationships. Both of these clients bought sex for the first time out of curiosity at a young age. Many clients tell sex workers that their own wives or partners do not understand them. Then there are those who lead double lives by having paid sex with male homosexual sex workers while being married to women. Although there are some clients who clearly abuse sex workers, not all clients are abusive or violent.

Clients do not only differ in personality -- geographically there appear to be some differences in the trade. In Swakopmund and Walvis Bay, clients appear to be mostly tourists and men working on ships, both groups being willing and able to spend money. In these areas particularly, many sex workers have entered into relationships with the seamen. Long-term commitments are also the order of the day in Grootfontein and Keetmanshoop, with sex workers having regular clients whom they will accommodate at varying prices, depending on the availability of cash at that moment.

Most men interviewed at truck ports did not admit to being clients of sex workers, although they were clearly entering into transactions with them at the time. Most of them had a rather flippant air about why sex is bought: "snacks", "lunch boxes", or "something to nibble on during a long trip" were some descriptions of sex workers. Most of them appeared to regard sex workers as entertainment and distraction from the long trips they have to make.

Finally it is important to remember that what is being bought and sold is the human body as a commodity. It de-personalises the human being and makes control over "it" easier: buy something and it's yours, to treat as you wish and to dispose of as you wish.

5.7 FINDINGS OF THE TELEPHONE SURVEY

Biographical profile of respondents: The sample consisted of 42.1% female and 57.9% male respondents. Their ages ranged from 18 to 85. The marital status of respondents was spread across a wide spectrum. The majority of respondents were Afrikaans or Oshivambo speaking. About half of the respondents completed Grade 12 and about 20% have post-school qualifications. Respondents came from different income categories, starting from no income to more than N$10 000 per month. The average respondent in the sample was fairly well educated and with a reasonable income.

Definition of sex work: Respondents were asked for a definition of sex work in their own words. Most respondents defined sex work as the exchange of sex for money. It is interesting to note that most of the responses focused only on the sale of sex, without mentioning the purchase of sex for money, which is the other side of the coin. .

Attitudes towards sex work in general: Respondents were asked about their feelings towards sex work in general. This question elicited mostly negative responses, although some (12%) said that although they were against it they did not condemn it and another 7% felt that sex workers have no other options.

Attitudes towards Namibian laws on sex work: Almost 70% of respondents felt that the laws should be changed to make sex work *illegal for both the client and the sex worker*. About 21% of respondents thought that the law should be changed to make sex work legal.

Attitudes towards sex and sexual relations in general: More generally, the Namibian population is strongly against homosexual relationships, then brothels and other institutions selling sex, and then casual sex and pornography. More tolerance is revealed towards sex before marriage, live-in relations outside of marriage, and interracial sex and marriage – although there is still some social disapproval of these activities. This shows that Namibian society is essentially very conservative when it comes to matters sexual, and that public disapproval of sex work must be understood in this context.

Preferences for future policy on sex workers: More than 75% or respondents agreed with the following three statements:

Sex workers should be required to go for regular STD and HIV testing.

Sex workers have the right to insist on the use of condoms or other protective devices.

Sex workers have the right to protection from abuse.

An important conclusion from these findings is that although most of the general public is against legalisation of sex work, the measures that they support can only be enforced in an environment where sex work is decriminalised.

Conclusions from telephone survey: Namibians are generally quite conservative when it comes to sex and sexual relations in general. This should be seen as the general backdrop against which policy reforms (if any) will be debated and implemented. Yet there is a significant component of the Namibian society who, despite their overall conservative value system, are prepared to see greater rights granted to sex workers.

SEX WORK IN NAMIBIA IN BRIEF

The following is a brief profile of sex work based on the information obtained from the field research.

The sample included a fair spread of different sexual orientations among respondents, from "straight" to "transgendered" and "gay". The majority of respondents were single females. Most respondents had some secondary school education. Whilst this gives the impression of respondents having attained reasonable levels of education, it is not enough to secure proper fulltime employment at reasonable remuneration. Sex workers do mostly unskilled labour such as being domestic workers or waitressing to secure an extra income. Many uphold reasonable living standards, with only one third living in informal housing and a small percentage owning their own property. The majority of respondents have dependents, the numbers ranging from one or two to entire families. These numbers change from time to time depending on circumstances. Most respondents also have children of their own or someone else's to look after.

The majority of respondents are full-time sex workers with no other sources of income. Those who do have other sources of income obtain them from a variety of lowly paid and unstable jobs to supplement their income from sex work. Many sex workers have had other jobs in the past, but those were mostly casual jobs with no security or stability, earning low salaries, such as domestic work or working in bars and pubs.

Reasons for going into sex work were varied but the most important considerations were financial, whether they were stated as such or described as having to support children, other family members or simply not being able to find another job. About one third of respondents regularly see young children suspected of doing sex work on the street and even at some clubs.

Most sex workers experienced verbal, physical or sexual abuse during childhood. Many also experienced extreme poverty. The age of first sexual experiences ranged from four years old upwards. Sadly, about one quarter of the sample said that their first sexual experience was not out of free will.

The two main problems facing sex workers are health issues, such as HIV/AIDS and Sexually Transmitted Diseases (STDs), and abuse from various sources such as partners, clients, the general public, and officers of the law.

Most sex workers are contacted on the street or at a hotel or pub, where the venue for the sex act is negotiated. Almost a quarter of this takes place in the field, and in addition to the obvious economic reasons behind this, there appear to be more sinister motives behind this too. Apart from the fact that someone is unlikely to be discovered and recognised by anybody, it is easier to rape or abuse someone in a distant lonely area such as a field.

The relationship between sex workers and their clients appears to be a complex one. Although clients are guilty of abusing sex workers in many cases, this is not always the case, and not all clients can be portrayed as being cruel or heartless. Many appear to have a good understanding with especially their regular clients. Some have entered into long-term relationships with clients and built up positions of trust with them. The majority of respondents have some regular clients. Clients generally come from all walks of life and all sectors of society, and are of all age groups. It is obvious, when considering the high incidence of sex work in this country, that there are many clients around.

The majority of sex workers would like to see the laws in Namibia changed to legalise sex work. This is in direct contrast to the general population where the majority felt that sex work should be illegal for both client and sex worker, although a significant minority -- more than one-fifth of those surveyed -- supported legalisation.

The telephone survey amongst the general population highlighted two important factors. Firstly, it appeared that Namibians are generally quite conservative when it comes to sex and sexual relations. Secondly, there is a significant component of the Namibian society who, despite their overall conservative value system, believe that sex workers need more rights and a greater degree of protection. The irony behind this is that the rights they feel that sex workers should have cannot be granted to them whilst they operate illegally.

There is a high demand for sexual services. This demand has not diminished in the past because of sex work being illegal, and will certainly not diminish in the future by keeping it illegal.

CHAPTER 6- LEGAL APPROACHES TO SEX WORK IN OTHER COUNTRIES

6.1 INTRODUCTION

There are four basic legal approaches to prostitution -- prohibition, abolition, regulation and decriminalization.

Prohibition punishes all persons involved in prostitution, including the sex worker, the client and any third parties involved. All prostitution is considered unacceptable, and most or all aspects of prostitution are **criminalised**. South Africa is the best example of this approach. Namibia, Canada, England & Wales are also essentially prohibitionist.

Problems: In practice, it is usually the female prostitute who is targeted for punishment, with laws against clients and traffickers being rarely

enforced. The illegality of prostitution under this system can encourage corruption and blackmail, and makes prostitutes more vulnerable to abuse.

Abolition punishes third parties such as pimps, brothel-keepers and traffickers, but does not criminalise the transaction between the sex worker and the client. The prostitute is not criminalised directly because she is seen as being a victim. Many European countries, including Sweden, take this approach.

Problems: Because this view makes no distinction between forced and voluntary prostitution, it sees all prostitutes as passive victims who need to be rescued. This negates the idea of individual choice.

Regulation tolerates prostitution, but seeks to control it by means of regulatory schemes such as licensing of brothels, registration of sex workers or identification of "red light zones" where sex workers may solicit. Sometimes mandatory health checks are part of the regulatory system. This approach is also referred to as **legalisation**. Germany has a regulatory system, with rules about the times and places that prostitution is allowed being left to local authorities. The Netherlands has a new regulatory system for brothels.

Problems: This system creates a distinction between 'legal' and 'illegal' prostitution, and thus can create a particularly vulnerable underclass of sex workers who are working outside the regulatory system.

Decriminalisation views sex work as a legitimate form of work, to be approached through labour laws which address working conditions and the rights of prostitutes. Laws on sex work focus on combating coercion and violence, rather than on prostitution itself. This approach has been used in New South Wales, Australia and is being considered for New Zealand.

Problems: Although this approach is gaining increasing international support, some find it unacceptable for the state to condone a practice which they find immoral or unacceptable. It is also argued that prostitution is inherently degrading and should never be accepted as a legitimate profession. Decriminalisation may also identify a country as a destination for trafficked women and children or for sex tourism.

The report examines a few examples of the four different legal frameworks for purposes of contrast and comparison.

6.2 SOUTH AFRICA *(prohibition; law reform underway)*

South African legislation makes sex work illegal, although the topic of sex work is currently under consideration by the South African Law Commission. Various aspects of the South African legislation are also currently being challenged in court on Constitutional grounds.

For example, in the case of S v *Jordan and Others*, the Pretoria High Court recently ruled that the legal provision which criminalises sex for reward is an unconstitutional violation of the right to equality, because it criminalises the actions of sex workers but not their clients. The court also found that the right of privacy was implicated, thus holding that the provisions of the act on brothel-keeping can withstand Constitutional scrutiny as they form part of the public face of prostitution. This decision must still be

confirmed by the Constitutional Court, which has not at the time of writing (July 2002) released its decision.

The South African Law Commission has already made very specific suggestions on how to deal with the commercial sexual exploitation of children and trafficking.

6.3 GERMANY *(regulation)*

Germany is an example of a regulatory approach to prostitution. Prostitution itself is not currently illegal. However, a prostitute can be prosecuted for participating in an exchange for sexual services outside of designated times and places. There are also prohibitions on the public advertisement of sexual services and on soliciting in the vicinity of schools or other places where children frequent.

In 2001, a new law was enacted, allowing prostitution to be recognized as a legitimate form of employment. This means that sex workers are now eligible for the same range of social security benefits as other workers, including health insurance, pensions and unemployment benefits. No regular health checks are required for prostitutes, although health checks are offered by street social workers and health centres. Prostitutes are not generally required to register, but they must sign up for any social benefits they wish to receive. The new law also makes changes to contract law, so that sex workers will be able to sue clients who fail to pay for their services.

Some prostitutes' groups welcomed the new law, saying that it would be a first step in removing the stigma surrounding the profession, thus allowing for greater protections. However, others were concerned that the new law might create a two-tier market of legal prostitutes and an illegal underclass of illegal immigrants and drug addicts. The legal change reflects public attitudes, as surveys show that most Germans find prostitution normal and believe that it should be recognized as a job.

6.4 THE NETHERLANDS *(regulation)*

The Netherlands is internationally known for its red light districts, and yet it is only recently that brothels were technically legalised. Prostitution itself has never been illegal in the Netherlands. Sex workers can unionise, and they have had to pay taxes since 1996. However, brothel-keeping was until recently technically illegal, even though it was widely tolerated. In October 2000, brothels were formally legalised and placed on the same footing as any other business. They have been made subject to a range of regulatory mechanisms, aimed mainly at providing greater protection for sex workers.

There are now legal safeguards against long working hours and unsanitary working conditions, sex workers can refuse customers, and they have the right to go to the police if they have a complaint. But many of the new health and safety regulations have been criticised as being inappropriate to sex work. Many prostitutes are also opposed to the new requirement that they register with their local chambers of commerce, as there is still a public stigma attached to sex work.

The new legal regime has led to a reduction in sex work in the Netherlands, as the new approach has begun to weed out child prostitutes and illegal migrant workers. An estimated 35% of brothels and clubs have closed because they do not want to pay taxes or adhere to the new regulations. While sex workers in legitimate businesses now have

better access to health care and promotion, there are fears that a large proportion of illegal sex workers will work 'underground' to avoid regulation or prosecution.

A recent case involving The Netherlands in the European Court of Justice held that self-employed sex work must be treated like any other business, with respect to the rights of citizens of countries outside the EU to establish businesses inside European Union nations.

6.5 SWEDEN *(abolition by means of client criminalisation)*

Sweden has recently taken a unique and controversial legal approach to sex work, by making the purchase of sexual services -- but not the sale of such services -- a crime. In other words, only the actions of the client are criminalized.

Prior to 1999, Swedish legislation on prostitution penalised pimping and pandering activities, while decriminalising the prostitute-client transaction. An increase in migrant prostitutes from developing countries provided the impetus for Sweden to reconsider its approach to sex workers in the nineties. The Swedish legislation now prohibits prostitution, but without punishing the prostitutes who are viewed as the victims. Thus, Sweden can be viewed as taking a form of an abolitionist approach, in attempting to combine moral disapproval of prostitution with sympathy for the plight of the prostitutes themselves.

The following are some of the impacts of the new law:

- Prosecutors, police, and government officials say that the law is difficult to enforce, but there have been a few arrests and convictions of clients.
- Visible sex work on the streets has decreased in the larger cities, but much prostitution has simply become more hidden because of the new law.
- Some sex workers say that they must work later and more irregular hours to contact clients without the scrutiny of police. Others may become dependent on intermediaries to locate clients.
- The focus on sex workers as victims means that they now feel more comfortable about reporting crimes to the police.
- Prostitutes are still not protected by Swedish labour legislation.

6.6 NEW ZEALAND *(bill to decriminalise sex work under consideration)*

New Zealand is currently in the process of considering a bill which would decriminalise prostitution. The proposed bill currently has five major aims:

- to decriminalise prostitution
- to safeguard the human rights of workers in the sex industry and protect them from exploitation
- to promote the welfare and occupational health and safety of sex workers
- to create an environment which is conducive to public health, and
- to protect children from exploitation in relation to prostitution.

For example, the bill would make it a crime to "coerce or attempt to coerce any person into providing commercial sexual services" or "surrendering the proceeds of commercial sexual services". The bill also proposes some unusual regulations for brothels, aimed at the promotion of safer sex practices. Anyone who operates a brothel or who otherwise has effective control of a business of prostitution would be required to

- take all practical steps to ensure that clients use condoms
- provide information to sex workers and clients on safe sex practices and
- display information on safe sex practices prominently.

Brothels would be also explicitly prohibited from implying that a sex worker is free of sexually transmitted diseases on the basis that the sex worker has received a medical examination.

This Bill has inspired a great deal of debate. As of April 2002, it was still being considered by a Parliamentary Select Committee.

6.7 AUSTRALIA

In Australia, there are different laws governing prostitution in different states. Some of Australia's states were world leaders in the move to legalise or decriminalise sex work.

6.7.1 Victoria *(legalisation of brothels, street solicitation criminalized)*
In 1984, the Australian state of Victoria legalised prostitution in brothels, provided a valid permit was obtained, while leaving street prostitution illegal. It is a criminal offence to use offensive behaviour towards a prostitute in a public place. It is also an offence to permit a prostitute infected with an STD to work in a brothel, or for a prostitute to work while knowingly infected with an STD. Notably, there is no similar offence applicable to clients who obtain sexual services when they know that they are infected with an STD.

The law sets forth a detailed system for the licensing of brothels. The Victorian government received almost 1 million Australian dollars in licensing fees from legalised prostitution between 1995 and 1998. Brothels must also pay tax on their earnings.

Sex work has increased in Victoria since the legalisation of brothels, although the main increase has been in the number of *illegal* brothels in operation. The sex industry in Victoria is also reportedly expanding into new areas – such as tabletop dancing, peep shows, phone sex and pornography. The sex industry operates so openly that there is an annual "SEXPO" which showcases various services.

One positive impact of legalisation has been the fact that it has opened the door to unionisation, which helps to ensure that the laws on basic working conditions are applied in brothels. But there are many criticisms. The new approach has not succeeded in eliminating the involvement of organised crime in the sex industry, and international trafficking in sex workers appears to have increased. Studies show that condom use by clients remains low in the legalised system, despite the introduction of a 1990 law giving sex workers a right to refuse clients and requiring brothel owners to supply free condoms, lubricants and educational material. Illegal sex workers who remain outside of the legal system appear to be even more vulnerable than before.

6.7.2 New South Wales *(decriminalisation with business regulation of brothels)*
In New South Wales, sex work itself is legal. Any person over the age of 18 may provide sexual services in exchange for money, goods or favour, without violating any law. Sex work businesses such as brothels, however, are subject to a regulatory framework similar to that applied to other types of businesses.

A number of offences relating to child prostitution remain in place. Streetwalking continues to be criminalised if it occurs within certain areas, such as near a dwelling, school, church, or hospital. Both clients and sex workers can be charged in such a case. Prostitutes soliciting on the street can also be fined for loitering. It is also still illegal for someone to live off the earnings of prostitution, except in the context of a legal brothel. Advertising in connection with prostitution is forbidden, as well as influencing someone to become a prostitute.

Brothels are licensed by local councils, and must (like other businesses) obey local zoning laws. The health and safety requirements applicable to brothels include provisions aimed at the promotion of safe sex, such as the provision of free condoms to brothel employees and the dissemination of safe sex information to clients. The laws regulating basic working conditions and workers' compensation apply to licensed brothels.

Most sex workers in New South Wales (about 90%) choose to work in brothels or similar places rather than on the street. The number of brothels in operation has not changed substantially since the introduction of the new laws. It has been reported that there is "an almost universal use of condoms and safe sex practices among sex workers", and that condom use is enforced by management in brothels. However, the public stigma around sex work continues to prevent sex workers from reporting abuse to the police, despite their legal status. It is also asserted that the new approach has reduced the involvement of organised crime and pimps, as well as reducing police corruption. Some local councils have made it difficult for brothels to obtain licences, which has in some cases stimulated the continued operation of illegal establishments. On the other hand, some local councils have worked together with communities and sex workers to formulate brothel polices which have been successful in striking a balance between the needs of all parties concerned.

6.7.3 Federal laws in Australia *(sexual slavery and child sex tourism)*
A 1999 law applicable throughout Australia establishes new offences for slavery, sexual servitude and deceptive recruiting, with heavy penalties attached. The law is designed to catch trafficking both into and out of Australia, and persons who are neither Australian citizens nor residents can be prosecuted.

A 1994 law aimed at child sex tourism makes it a criminal offence in Australia for an Australian citizen or resident to engage in sexual activity with a child under the age of 16 in another country. It is also an offence to encourage or profit from any activity that promotes sexual activity with children. The penalties are stiff, and the law applies to companies as well as individuals. There have been a number of convictions under this law, which has been used as a model in some 20 other countries.

6.8 ENGLAND & WALES *(regulatory approach which is essentially prohibitionist)*

England and Wales have a regulatory approach which essentially constitutes prohibition. The act of sex in exchange for money is not illegal, but many acts incidental to this transaction are prohibited. For example, brothel-keeping, solicitation or loitering in a public place for the purpose of prostitution, and the advertisement of sex work services are all criminal offences.

There is also an offence of “kerb crawling” (driving slowly in a car in a sex work area to attract the attention of sex workers) which is aimed towards the client. This law is enforced very seriously, but one negative effect is that clients want sex workers to get into their cars more quickly, giving the sex worker less time to evaluate the client and assess risk factors.

A number of cities have taken unique approaches to sex work in their areas. For example, one municipality has “tolerance zones” where sex work can take place without fear of prosecution, while another offers ”exit strategies” to assist prostitutes who want to leave the work. One city has a Kerb Crawler Rehabilitation programme, where clients who are arrested must attend a seminar on the social ills of prostitution. Another has an “ugly mugs” initiative where sex workers are warned about clients with abusive reputations.

The government has recently issued new guidelines for assisting children involved in child prostitution, although children as young as eleven can still be prosecuted for soliciting.

A current concern is the widespread practise of "carding", which is the advertisement of sex work services by placing cards in public places (most often phone booths). Because of concerns about exposing children to sexual imagery, it is now a criminal offence to place such cards in public places. Critics argue that this new law may force ‘indoor’ sex workers back onto the streets, where the work is more dangerous.

In general, many feel that the British legal approach is not working. Even though many of the offences are aimed at third parties who control and manage sex work, in practice individual sex workers who are visible on the street are the ones most often arrested. This drives sex work underground, making it harder for sex workers to access health services and harder for police to target problems such as abuse and child prostitution.

6.9 CANADA *(regulatory approach which is essentially prohibitionist)*

Canada is another example of a regulatory approach which is essentially prohibitionist. Although sex work itself is not illegal, there are a range of offences relating to prostitution which can be divided into three broad categories: (1) “communicating” (which is essentially soliciting), (2) “bawdy-houses” (brothels) and (3) procuring (including pimping, enticing someone to enter or leave Canada for purposes of prostitution and living off the earnings of prostitution). The offences relating to “communication” apply to both sex workers and their clients, and are enforced in practise about equally with respect to both (although the women selling sex tend to receive heavier sentences than the men who are buying it). In 1990, the Canadian Supreme Court upheld the constitutionality of the provisions on communicating and the keeping of bawdy-houses.

Despite these laws, there is still an abundance of street prostitution and bawdy-houses, mainly in the larger cities. Some cities have tried their own approaches to the issue. For example, in Vancouver police have decided to stop arresting street prostitutes and to focus their energy on arresting clients. A few areas have decided to experiment with “diversion programmes” for clients of sex workers – so-called “john schools”. Some provinces are focussing on child prostitution, with new laws aimed at helping children to leave this line of work.

Critics of the Canadian scheme argue that the communication offences worsen working conditions for sex workers because of their fear of arrest. The law forces sex workers to work in dark and isolated places where they are more vulnerable to attack. And, when sex workers have less control over the situation, they become more vulnerable to being forced into sexual interaction without a condom. Furthermore, because arrest and conviction are easy, almost everyone who practises street prostitution ends up with a criminal record, which narrows the options for leaving sex work.

Violence and exploitation are problems. The legal regime creates a perception that sex workers are second-class citizens outside the normal scope of society, who are less worthy of protection by the police. Research shows that prostitutes are 60-120 times more likely to be murdered than the general public. Since both street soliciting and "bawdy houses" are illegal, sex workers sometimes work indoors but pay substantial amounts to club owners and hotel managers. Or, they may meet with their clients on the client's turf (such as his home or hotel), which can be potentially dangerous.

One Canadian expert has suggested that a better system would be sex-worker self-employment or cooperatives in appropriate locations.

6.10 ASIAN EXAMPLES

6.10.1 Thailand *(sex work as big business)*
The Thai government has criminalised prostitution and provided severe penalties for child prostitution. Yet, at the same time, the government is capitalizing on discreet adult prostitution and sex tourism, and the sex industry has become a vital part of the country's economy. It has been estimated that close to US$300 million is transferred annually to rural families from women working in the sex industry in urban areas. The revenues generated by the "sex sector" are crucial to the livelihoods of millions of people, not just the sex workers themselves. Because the sex sector is such a highly-organised and well-entrenched industry, addressing it adequately will require far more than legal responses alone. The ILO suggests that official recognition of sex work would facilitate more useful policies on this sector of the economy.

6.10.1 Nepal and India *(problems of trafficking)*
The laws relating to sex work in Nepal and India deal with trafficking, rather than prostitution itself. The situation of trafficking between these countries has remained a persistent problem for decades, and there are still enormous numbers of Nepalese women working in Indian brothels. The key problem seems to be that top politicians and police officials are reportedly in league with the mafia who control the sex industry, exchanging protection for cash payoffs and donations to party campaign funds.

6.11 AFRICAN EXAMPLES

6.11.1 Zimbabwe *(strengthened provisions on international issues and child prostitution)*
Prostitution is on the increase in Zimbabwe in the wake of the current drought and food shortages. Zimbabwe takes an approach to sex work similar to that taken under the current law in Namibia, but with strengthened provisions aimed at international manifestations of sex work and child prostitution. It is an offence for any person *outside Zimbabwe* to conspire with another person to commit a sexual offence against young persons or intellectually handicapped persons *in Zimbabwe*, as well as making it an

offence for a person who is a *citizen or resident of Zimbabwe* to commit, incite or conspire to commit sexual offences against such vulnerable persons *in other countries*. Extra protection for children is provided by a provision which makes it a serious offence for the owner of a place to knowingly allow a young person under the age of 16 to enter or be in that place for the purpose of extra-marital sexual intercourse.

6.11.2 Zambia *(the problem of police corruption)*
Prostitution is a criminal offence in Zambia, where sex workers complain that police sometimes abuse their powers. For example, five police officers recently faced dismissal after prostitutes accused them of raping them as a bribe for their release from custody. It seems that prostitutes regularly befriend police with sex or money, in exchange for police providing protection against violent or non-paying clients and for declining to make arrests. One policeman admits that it is more worthwhile to accept bribes from the sex workers than to go to the trouble of instituting legal proceedings. The problem of police corruption has sparked a debate on legal approaches to sex work in Zambia.

6.11.3 Malawi *(gender discrimination in enforcement outlawed; law reform considered)*
In Malawi, a 1999 court case held that it is unconstitutional gender discrimination to arrest women on prostitution-related charges while leaving their male companions free. Attitudes about prostitution in Malawi are in a state of transition. In the year 2000, there was a drive to clear prostitutes and their clients off the streets. However, the government is now reportedly contemplating legalisation in a bid to discourage the culture of secrecy that enhances the prevalence of AIDS.

6.11.4 Senegal *(registration requirements and mandatory health checks widely ignored)*
According to Senegalese law, prostitution is legal only for those who are registered with the state. Prostitutes must undergo regular health examinations and carry special health cards which identify them as prostitutes. The registration of sex workers was instituted back in 1969, long before the first case of HIV, in an effort to control sexually–transmitted diseases. However, it is estimated that 50% to 90% of all prostitutes ignore the registration requirement. And in Dakar, studies show that the prevalence of HIV infection amongst registered and unregistered prostitutes is about the same. Senegal has a very low rate of HIV infection nationally, but it is clear that this must be attributed to education and awareness campaigns and not to the registration requirements for sex workers. However, it appears that the greater openness brought about by the legalisation of sex work has made it possible to target sex workers more effectively for health campaigns. Condoms have been promoted amongst sex workers and amongst certain client pools (such as migrant workers and truck drivers), and condom use in prostitution is reportedly very high (97-99%).

6.12 CONCLUSIONS

There do not seem to be any ideal solutions to the issue of sex work. It exists in every country studied, and no legal regime seems to have succeeded in eliminating all of the problems which can be associated with it, for sex workers or for the communities where they live and work. However, some legal approaches are more sensitive than others to the human rights of sex work.

CHAPTER 7- COMMERCIAL SEX WORK AND HIV/AIDS

7.1 INTRODUCTION

Namibia ranks as one of the six countries in the world most affected by HIV/AIDS with an overall prevalence of 20% among sexually active adults. The actual number of Namibians living with HIV/AIDS at the end of 1999 was estimated at 160 000 out of a population of 1.6 million – one-tenth of the population. Women account for 56% of all reported new HIV cases. HIV prevalence is on the increase, as are the number of deaths attributed to HIV/AIDS, in the economically active age group of 15-49 years, meaning that HIV/AIDS is having a severe impact on Namibia's overall development.

7.2 THE NATIONAL RESPONSE TO HIV/AIDS

Namibian policies relating to HIV/AIDS have recognised that people living with HIV/AIDS have constitutional rights to dignity, equality, privacy, freedom from discrimination and to carry on any occupation or trade. Namibian policies on HIV/AIDS have also recognised that the promotion and protection of human rights are essential in preventing the transmission of HIV and reducing the impact of HIV/AIDS. The protection and promotion of human rights are necessary both to the preservation of the inherent dignity of persons affected by HIV/AIDS and to the achievement of public health goals of reducing vulnerability to HIV infection, lessening the adverse impact of HIV/AIDS on those affected and empowering individuals and communities to respond to HIV/AIDS.

7.3 AN UNDENIABLE LINK BETWEEN HUMAN RIGHTS AND HEALTH

Promoting and protecting human rights in respect of HIV/AIDS will have a range of public health benefits. Individuals are more likely to go for counseling and testing and to access information and education on HIV prevention if their right to freedom from discrimination is protected and upheld. Attention to human rights may also address underlying social, cultural and economic conditions that make people vulnerable to HIV infection. For example, women are more vulnerable to HIV infection as they often do not have equality of power within relationships to enforce safer sex decisions or to refuse unwanted sex. Poverty forces both women and men into economic or social lifestyles that increase their vulnerability to HIV infection. For example, women's lack of access to economic resources may force them to trade sex for survival in the form of commercial sex work or more informal bartering of sex for various advantages. Sex workers are more vulnerable to HIV infection as their illegal status places them in a weak bargaining position *vis a vis* their clients in respect of enforcing the use of a condom and also makes it difficult for them to access health services and information and education on HIV prevention.

7.4 THE TRANSMISSION OF HIV THROUGH SEX WORK

The scapegoating of commercial sex workers as transmitters of HIV continues worldwide, despite facts to the contrary.

> **1. Sex workers in Namibia are mostly women, and women are at a higher risk of contracting HIV from men than vice versa.** According to UNAIDS, research shows that the risk of becoming infected with HIV during vaginal

intercourse without a condom is as much as 2-4 times higher for women than men because of their biological differences. This means that, instead of posing a health risk *to* their clients, sex workers are at more risk of contracting HIV *from* their clients.

2. Studies in other countries in Africa and other parts of the world have produced widely-varying evidence on the percentage of sex workers infected with HIV. This means that there is no reliable evidence that sex workers are any more likely to be infected with HIV than other segments of the population.

3. Studies in other countries have shown that sex workers use condoms more consistently than other groups similar in age, race and sex. Furthermore, sex workers in Namibia are more likely to use condoms with clients than during intercourse with their regular partners in their private lives. Other studies have produced similar findings. This indicates that sexual relationships outside of the context of sex work are likely to involve much higher risks of HIV transmission than sex work.

7.5 THE DANGERS OF MANDATORY TESTING

It has been suggested that Namibia should consider a system of registering all sex workers so that they could be counselled and regularly tested for HIV. But such a system would actually be more likely to increase the risk of HIV transmission through sex work.

1. Mandatory testing unfairly discriminates against sex workers. This adds to the disempowerment and stigmatisation of sex work.

2. Laws requiring mandatory HIV testing of sex workers would drive sex work deeper underground and discourage sex workers from seeking HIV testing. Punitive approaches are counterproductive, as they would inspire sex workers to avoid HIV tests at all costs. Public health officials would be perceived in a policing role, which would discourage sex workers from voluntarily seeking information about HIV or other STDs.

3. Meaningful enforcement would be impossible. Sex workers on the street and in recognized brothels would be targeting for mandatory testing, but it would be all but impossible to enforce mandatory testing for those engaged in more secretive or informal forms of sex work. Attempts at widespread enforcement would also require an intense commitment of police and prosecutorial services, thus deflecting state resources from other, more serious crimes.

4. Mandatory testing of sex workers would do nothing to reduce the risk of HIV transmission, but would actually increase the risk of HIV transmission by discouraging safer sex practices. Under such a system, a negative HIV test would in effect give a sex workers a clean bill of health which would allow him or her to continue sex work until the appointed time for the next test. This would ignore the following factors:

- tests might be conducted during the “window periods” in which the HIV virus is present but undetectable

- single HIV tests can produce false negatives
- sex workers might contract HIV subsequent to the test
- negative test certificates might be forged.

Thus, clients might be lulled into a false sense of security which would make them more likely to pressure sex workers to forego condoms, thus posing an increased health risk to both client and sex worker.

5. Sex workers who failed to comply with a mandatory testing requirement would be operating illegally and thus would be more vulnerable to abuse and exploitation. This would place them in an even weaker bargaining position with respect to safer sex practices.

6. Other countries have found information and education programmes to be more effective than punitive measures in reducing transmission of HIV and STDs amongst sex workers.

These factors all mitigate against mandatory testing and certification of sex workers as a means of reducing HIV transmission through sex work.

7.6 LAWS ON SEX WORK AND THEIR IMPACT ON HIV TRANSMISSION

Current law: The current illegal status of sex work makes sex workers vulnerable to abuse, makes it harder for them to insist upon condom use with clients, makes it difficult for them to access appropriate health services and information about HIV and may give them a criminal record which will make it harder for them to find alternative forms of employment. Current laws regulating sex work thus substantially contribute to the vulnerability of sex workers to HIV and thus to the spread of HIV.

Alternative legal approaches: The reduction of the vulnerability of sex workers to HIV will only be achieved in an environment where sex workers are empowered to take more effective control over the terms and conditions on which they trade in sex. Decriminalisation (the complete repeal of laws on adult sex work) and legalisation (allowing sex work under certain conditions, typically only in licensed premises) would both have advantages for sex workers in terms of their vulnerability to HIV. However, licensing schemes often create a two-tier system of 'legal' and 'illegal' sex workers, which greatly increases the vulnerability of the latter to HIV transmission. Mandatory health checks for HIV and other STDs as part of a regulatory system would be particularly unwise as this would lead clients to assume there is no longer a risk of HIV infection, which in turn would probably lead to an increase in the demands of clients for unsafe sex.

Recommendation: On a balance then, decriminalisation as opposed to legalisation of sex work is the preferred strategy insofar as it may impact on reducing the vulnerability of sex workers to HIV and creating an environment in which HIV prevention interventions will prove more effective.

CHAPTER 8- RECOMMENDATIONS FOR NAMIBIA

8.1 INTRODUCTION

There is no perfect solution to the problem of prostitution. Any option which is proposed will be controversial, and any option will have some pros and cons.

Namibia's existing approach is simply insincere. Sex work itself is not illegal, but almost every action related to it is against the law. At the same time, sex work takes place openly in many of Namibia's major urban centres and is seemingly tolerated.

There seem to be almost no sex workers in Namibia who have chosen the job freely. Most seem to have turned to sex work out of necessity – because of poverty, lack of support structures, sudden twists of fate (such as a death in the family or the loss of another job), or the absence of maintenance from their own fathers or the fathers of their children. Many are supporting a range of dependents, both older and younger than themselves.

Sex workers suffer abuse, violence and exploitation at the hands of clients and law enforcement officers. The existing situation undermines safer sex practices, as sex workers who are forced by clients to have unprotected sex have no legal recourse. Child prostitution, at least in major urban centres, appears to be an enormous problem. Trafficking has fortunately not yet become a widespread problem in Namibia, but this could change in future.

Sex work is widely condemned by the public, although most public criticism focuses on those who sell sex and says little or nothing about the clients who are the other half of the transaction. Clients are never arrested, and the current law means that sex workers who are abused by clients seldom feel that they can turn to the police for help. The current imbalance of power between sex worker and client also encourages situations where clients try to pressure sex workers to agree to unsafe sex practices. And yet the clients escape both public condemnation and arrest.

The interviews with sex workers reveal a high level of hypocrisy, with tales of law enforcement officers who "had sex with us yesterday" and then "come today and arrest us". The current situation also encourages corruption, giving police an opportunity to exchange "free sex" for protection. Many sex workers also seem to have experienced arrest without ever being informed of the charges against them, and often without ever appearing in court.

Only a tiny handful of individuals have made any effort to help the many sex workers who have turned to prostitution because of a desperate lack of other options. Little has been done to assist the burgeoning number of child prostitutes, despite the fact that almost everyone would agree that such children deserve help as the innocent victims of circumstance.

Thus, the current approach is an ineffective system of condemnation without compassion. It has done little in practice to discourage sex work or to advance the prevention of sexually-transmitted diseases. It has not helped to get children off the

streets, nor has it provided any protection against abuse for sex workers of any age. Law reform is clearly needed.

8.2 CONSTITUTIONAL ISSUES

Aspects of the current law on prostitution are almost certainly unconstitutional. In a new law on sex work, a number of Constitutional rights might be implicated:

- respect for human dignity (Article 8)
- the right to freedom from sex discrimination (Article 10)
- the right to privacy of the home and communications (Article 13)
- freedom of speech and expression (Article 21)
- freedom of association (Article 21)
- freedom to practise any profession or carry on any occupation, trade or business (Article 21).

None of these rights are absolute. It would be difficult to be sure in advance where our courts would draw the line between permissible regulation of sex work and impermissible interference with the constitutional rights of sex workers. But it seems clear that any new law on sex work in Namibia will have to be narrowly tailored to its objectives in order to withstand constitutional scrutiny.

8.3 POSSIBLE LEGAL APPROACHES FOR NAMIBIA

The following are options for dealing with sex for reward between consenting adults.

OPTION A: DECRIMINALISATION

Repeal the provisions relating to sex work in the Combating of Immoral Practices Act and all similar municipal regulations. Enact a new law to deal with the problems of child prostitution and trafficking. Provide no special regulations for street solicitation and brothels, but regulate and limit these activities in a reasonable way under general laws relating to business activities, nuisances and loitering within local authorities.

Consequences

►Sex workers employed in brothels would be employees subject to labour laws and eligible to register with the Social Security Commission. Self-employed sex workers would have the option of registering with social security schemes if they wish.

►Any sex workers who earned sufficient income would be liable to pay taxes, although this would be difficult to enforce. Similarly, VAT might be technically applicable, but would probably be unrealistic to apply in practice. Even in a climate of full decriminalisation, sex work is unlikely to lend itself to receipt books and financial records on the part of individual sex workers. However, brothels would be expected to run on the lines of any other business.

►Current laws on advertising and pornography would need to be re-examined to see if they are sufficient to prevent offensive or obscene advertisements of sex work, like the "cards" which are placed in telephone boxes in England. New prohibitions to cover obscene advertisements could be enacted if necessary.

►Zoning laws of local authorities would apply to brothels in the same way as any other businesses. Laws on nuisance and noise would also be applied as necessary, to prevent public disturbances from brothels. Small local authorities might find it inappropriate to allow any brothels within their boundaries, if the nuisance value to the community would outweigh other considerations.

►Contracts between sex workers and clients, or between sex workers and their employers would be enforceable in court, unless some limitation was placed upon this by a new law.

Pros

►This is considered to be the best approach for preventing the spread of HIV, because it brings sex work out in the open. Sex workers and their clients can be identified for education initiatives around STDs, including HIV, and they will feel more free to access health care services.

►Similarly, sex workers with alcohol or drug problems will be more free to seek help if they do not have to worry about the illegality of their work.

►State resources are freed up to concentrate on other priorities, such as abuse and violence against women and children.

►The possibilities for corruption are greatly reduced. Police would not be tempted to suggest sex in exchange for freedom from arrest, as has happened in Zambia.

►Sex workers would have greater protection against abuse and violence, because they would not have to be afraid to report crimes to the police.

►Decriminalisation would make it possible for safer working environments to be created – such as clubs and brothels – thus meeting one of the needs articulated by many sex workers who are currently on the streets.

►Decriminalisation would facilitate access to vocational training programmes and transitions to other jobs.

Cons

►Complete absence of regulation is likely to make sex work more visible, which may offend members of the community who view this activity as an immoral one.

►It is possible that decriminalisation might increase the number of persons involved in sex work, particularly given the high rate of unemployment and poverty levels in Namibia. This is not certain, however. Decriminalisation could open up opportunities for assisting sex workers to find other alternatives, if there is a political will to do so.

►Tourism is a significant part of Namibia's economy. Many of those who are interested in sex tourism share detailed information about the legal position of sex work in various countries on the Internet. Complete decriminalisation might identify Namibia as a sex tourism destination. This could, in turn, lead to problems involving trafficking. However, strong laws on these aspects of commercial sex work could prevent such problems.

►The removal of legal restrictions on sex work will not fully remove the stigma attached to sex work in Namibia. The fact that many will continue to condemn prostitutes could undermine some of the advantages of the approach.

►Local authorities may apply regulations to street solicitation and brothels in a manner which defeats the objective of decriminalisation. For example, as has already happened in Windhoek, sex workers could be targeted for arrest on charges such as loitering. To avoid this problem, decriminalisation would have to be accompanied by policy guidelines about a national approach to sex work.

OPTION B: REGULATION

Repeal the provisions relating to sex work in the Combating of Immoral Practices Act and all similar municipal regulations. Place national restrictions on the times and/or places for public solicitation, or allow local authorities to do this within certain parameters. Regulate brothels, but do not forbid brothels altogether as many sex workers say that they would be safer if they had a place to work "indoors" instead of in the veld or at a place chosen by the client. Consider requirements about the availability of condoms and the provision of information about safer sex practices to sex workers and clients in brothels. Formal registration should not be contemplated as part of a regulatory system. Some Namibian sex workers are opposed to identifying themselves in this way, and such a requirement is likely to be unenforceable.

Consequences

►The consequences would be essentially the same as those listed under 'Decriminalisation'.

Pros

►The introduction of some regulatory controls would probably make a decriminalisation option more popularly acceptable, and would help to allay fears about an explosion of sex work in Namibia.

►Some direct regulation could help to prevent sex work from becoming so open that it had a negative impact on residents and visitors alike. No one is likely to want Namibia to turn into a place where sex workers pursue their trade aggressively, as has happened in some other developing countries.

►Thoughtful regulations could be used to enhance working conditions for sex workers, such as regulations about the availability of condoms in brothels.

Cons

►Most of the "cons" which apply to a pure system of decriminalisation are equally applicable to a system which applies some limited regulation.

►The possibility of police corruption would appear again in the enforcement of regulations.

►Regulations about acceptable times and places for solicitation are likely to force some street sex workers back into the shadows, thus creating a two-tier system of legal and illegal workers. The advantages of decriminalisation would then be undercut for the illegal underclass of sex workers.

►Laws aimed at general issues such as zoning laws, nuisance offences and loitering offences could accomplish many of the goals of regulation with fewer disadvantages.

OPTION C: ABOLITION

Acknowledge that most sex workers in Namibia are driven into the trade by necessity, and are thus victims of circumstance and poverty. Remove the prohibitions on individual solicitation in the existing law, and criminalise the purchase of sex but not the sale of sex (as in Sweden). Retain and perhaps strengthen the provisions on the involvement of third parties, and on brothels. Such a law would target demand instead of the supply of sex work by individual sex workers. It would also make the involvement of third parties illegal.

Consequences

►Most of the existing problems experienced by sex workers would continue, although they would in theory be more free to approach police for protection and easier to target for appropriate support services since they would no longer be committing crimes through their work.

Pros

►The approach would allow the government to condemn sex work through the law without penalising the sex worker directly. It has little else to recommend it.

Cons

►Abolition does not work. There appears to be no society in the world which has eliminated prostitution.

►Existing laws criminalising the involvement of third parties are seldom invoked. Meaningful enforcement of offences such as “pimping” and living off the earnings of prostitution is not likely to take place without an intense commitment of resources. In practise, such an approach is likely to be only a symbolic one.

►If clients were criminalised as part of an abolitionist approach, as in Sweden, this would drive sex work underground just as if sex work were illegal for the prostitute. This would make sex workers more vulnerable to exploitation and abuse, and cut them off from needed services. It would make it harder to target sex workers and clients for HIV education and advocacy. Also, in a hidden industry, it is harder to protect children and to take action against other problems such as illegal immigrants and illegal drug traffic.

► “Indoor” sex work in an environment such as a club or a brothel can be safer for the sex worker than “outdoor” work on the streets. Many sex workers interviewed in Windhoek expressed a desire for a safe place to carry out their work. Abolition would

make it impossible to meet this need, as all of those who support or organise prostitution would be criminalized.

►Sex for reward between consenting adults is a victimless crime. It has been argued that the sale of sex commodifies sexuality and is thus bad for society. This is probably true, but that does not make criminal law an appropriate or effective vehicle for dealing with the problem.

►This approach is likely to be unpopular with the public, because of the strong moral disapproval of sex work. The public is unlikely to be receptive to the idea that the client can be committing a crime, but not the sex worker.

OPTION D: PROHIBITION

Make sex work illegal for everyone involved. Namibia's existing approach to sex work is essentially prohibitionist, but it could be improved. Remove gender bias and make sex work equally illegal for both sex workers and clients, instead of just for sex workers and third parties. Tailor offences more narrowly to avoid constitutional problems.

Consequences

►The existing problems experienced by sex workers would continue.

Pros

►This option seems to be a popular one with the general public, and would probably be a reflection of the prevailing moral view in Namibia.

►Criminalising all parties involved would at least remove the present gender bias, and remind the public that both supply and demand are required to sustain sex work. It would also avoid the possibility of the law being struck down on the grounds of sex discrimination.

►Criminalising both sex worker and client would bring the law on sex work in line with laws on other illegal buying and selling, such as trade in diamonds or illegal drugs.

Cons

►Like abolition, prohibition does not work. Sex work is here to stay, regardless of how severe the laws are.

►Real enforcement of prohibition is very difficult. The actual act of prostitution will almost always take place in private, meaning that convictions will be difficult to obtain without entrapment. Even prohibitions on solicitation are difficult to enforce. Namibia's existing law on sex work is hardly ever invoked in practice, but its existence makes sex workers vulnerable.

►Enforcement would be likely to be selective, targeting (mostly female) sex workers rather than (male) clients. For example, a sex worker standing on the street looking for business is an easier target than a passing client in a car. Criminalising sex work for

clients would thus be likely to create an illusion of gender neutrality which would not be realised in practice.

►Most sex workers in Namibia say that they are driven by necessity rather than by choice. Who amongst us can really say for certain that we would not engage in sex work if our circumstances were sufficiently dire and our options sufficiently few? Sex workers driven to sell sex for survival deserve assistance and compassion rather than punishment.

►As in the case of abolition, prohibition would simply drive sex work underground, thus making it harder to engage in positive interventions.

8.4 RECOMMENDATION FOR NAMIBIA: DECRIMINALISATION & DISCOURAGEMENT

We recommend DECRIMINALISATION combined with a policy of compassionate DISCOURAGEMENT as the best option for Namibia. Decriminalising sex work does not have to mean the approval of sex work by Namibian society. There is probably no one who would like to encourage young women in Namibia to consider sex work as a career option. None of us would probably like to see the streets lined with scantily-clad sex workers harassing visitors at Namibia's premier tourist destinations. Namibian society would undoubtedly disapprove of showy "red light" districts packed with topless bars. *But decriminalisation does not have to mean any of these things.*

DECRIMINALISATION is most consistent with a respect for the human rights of sex workers. Many members of the public who strongly disapprove of sex work believe that there is a need to protect sex workers from harm. The recommended option is the best framework for accomplishing this.

Decriminalisation will advance the goal of HIV prevention. It would mean that sex workers can openly access health services. They and their clients can be openly targeted for safer sex campaigns. Decriminalisation will place sex workers in a stronger position to resist demands that they engage in unsafe sex for a higher price, or to avoid violence.

Decriminalisation should also reduce the general level of violence in sex work, because it will mean that sex workers can report abuse and coercion to the police, without being afraid that they will end up being the ones who are arrested. It will also re-focus law enforcement energies on problems such as child prostitution and exploitation.

It is undeniable that most members of the Namibian public do not approve of sex work. This is why we recommend a policy of compassionate **DISCOURAGEMENT** to go hand-in-hand with decriminalisation. The number of brothels and similar establishments could be limited by local authorities in the same way that they already limit the number of bars and clubs in their jurisdictions. Existing laws on public nuisances and loitering could be invoked to regulate sex work in a reasonable fashion, without unfairly targeting sex workers for harassment. In the context of decriminalisation, sex workers can be enrolled in training programmes which will help them to move into other lines of work. They can be assisted to utilise the maintenance courts, or to access state grants where necessary,

to provide them with alternative means of supporting themselves or their dependents. **Namibia can reduce sex work by helping sex workers rather than by arresting them.**

Decriminalisation would be criticised on moral grounds from some quarters. However, it need not imply approval of sex work. For example, adultery is forbidden by Christian religions, but it is not a crime in Namibia. Another example is gambling. Many people disapprove of this activity, but Namibia has nevertheless licensed a number of legal gambling establishments. All laws reflect some moral or ethical vision of the world, but not all aspects of morality can or should be enforced by law. Prostitution could be discouraged with positive, compassionate assistance rather than through the threat of criminal punishment.

8.5 NO MANDATORY HEALTH TESTING FOR HIV AND STDS

No legal regime chosen by Namibia should include any mandatory testing of sex workers for HIV, for the simple reason that it does not work. As the situation in Senegal shows, sex workers (who are used to working in secret) can avoid registration and testing very effectively. Meaningful enforcement of a registration and testing requirement would be unrealistic. Furthermore, such requirements have the effect of giving clients a false sense of security and so can actually decrease safer sex practices.

What about mandatory testing with the goal of making it illegal for a sex worker who is infected with HIV to engage in sex work? This requirement would simply mean that all sex workers would avoid voluntary testing, or try even harder to evade mandatory testing.

Such requirements would also increase the scapegoating of sex workers as vectors of HIV transmission, when in fact sexual biology results in female sex workers being at far more risk of acquiring HIV from their male clients (or their husbands or boyfriends) than their clients are at risk from them.

As the experience of other countries shows, education about HIV/AIDS and other STDs and the promotion of safer sex practices amongst sex workers *and their clients* is a far more effective approach to reducing HIV transmission through sex work.

8.6 CHILD PROSTITUTION AND CHILD SEX TOURISM

Child prostitution and child sex tourism should be dealt with in a way which recognises the child as a victim and not a criminal. All forms of involvement in sex for reward with children below age 18 should be criminalised for clients and third parties, but not for the child in question. To combat international child sex tourism, Namibia should have extra-territorial jurisdiction in respect of these offences. We also recommend that it should continue to be an offence, as it is now, for a parent, guardian or other primary caretaker to allow, encourage, or facilitate the prostitution of a child in his or her care.

A child who is found in child prostitution should be dealt with as a child in need of care in terms of the general law on children. In other words, what the child needs is not punishment but assistance. Arresting a child who is on the streets is not going to do anything to stop child prostitution – it is probably just going to make that child feel even

more helpless and desperate. A social worker should investigate the child's situation to see if the child should be removed from the home environment, or if the entire family is in need of social assistance to deal with the factors which have led to the prostitution of the child -- such as hunger or other hardship.

8.7 ADULT SEX TOURISM

Following on the example of offences aimed at child sex tourism, we recommend further that **adult sex tourism should also be prohibited**. It should be an offence for any person to make or organise any travel arrangements for or on behalf of any other person, whether that other person is resident inside or outside Namibia, with the intention of promoting adult prostitution. Such a provision would be aimed at organized sex tourism, which would be likely to increase sex work in Namibia by artificially expanding the "local demand". Discouraging international sex tourism with Namibia as a destination would discourage sex work in Namibia without penalising sex workers driven to the job by poverty.

8.8 TRAFFICKING

Any person who traffics in persons (men, women or children) for the purposes of sexual exploitation should be guilty of an offence, with serious penalties attached. Such a criminal offence should be based on the definitions of trafficking and exploitation in the relevant international conventions. Offences on trafficking should not be limited to trafficking which crosses international borders, but should also apply to situations where a person is trafficked from one part of Namibia to another.

8.9 EXPLOITATION AND MISTREATMENT

We suggest that there should be provisions which prohibit exploitation and mistreatment of persons engaged in sex work.

It should be a criminal offence to coerce or attempt to coerce any person to provide commercial sexual services, or to force someone to surrender money obtained through sex work to another person. This would target abusive "pimping", without making it impossible for sex workers to work together or under the protection of a third party in a non-exploitative situation for their own safety.

Contracts for the provision of commercial sexual services should be enforceable, and not void on the grounds of public policy, provided that they do not encompass any child prostitution offences. This would give sex workers legal recourse against clients who do not pay, or against clients who try to dispense with an agreed-upon condom at the last minute. We are unlikely to see a flood of court cases against clients, because of the social stigma which will undoubtedly continue to exist for some time. But such a provision would increase the power of sex workers to negotiate safer sex and to protect themselves against unfair treatment by clients. Clients could also invoke contract law if they wished, in a case where a sex worker "took the money and ran". **But such a law should specifically state that a sex worker has the right at any time to refuse to provide a particular commercial sexual service or to discontinue a sexual service. No one should be allowed to enter into an enforceable contract which takes away the right to bodily integrity and safety.**

8.10 PROMOTING SAFER SEX

Brothels which operate legally could be required to adhere to a national code of practice that covers hygiene, the provision of condoms and Femidoms, the distribution of educational material on sexually-transmitted diseases and the promotion of safer sex practices. Such a promotional and cooperative approach is likely to be more effective than criminal sanction in this area.

In some countries, it has been proposed that it should be a criminal offence to provide or receive commercial sexual services of a penetrative variety without using a prophylactic. However, such a provision would be unlikely to be enforceable because of the problem of lack of evidence. (There are unlikely to be witnesses to the moment of penetration, and there will be no complainant if the parties have agreed to have unsafe sex.) The provision on coercion proposed in the section above would be a better way to protect sex workers against clients who try to insist on unsafe practices.

8.11 CONCLUSION

No law has ever succeeded in stopping prostitution. Namibia could stick with the current approach, which allows the country to legally 'disapprove' of prostitution without really doing anything meaningful about it. Or it could take a stand on health issues and the human rights of sex workers by *decriminalising* sex work while at the same time *discouraging* it with policies aimed at getting children out of prostitution altogether and helping adults to find better alternatives. Decriminalisation would also set the stage for more effective HIV/AIDS campaigns targeting sex workers and clients, and would thus be the most effective way to reduce HIV transmission in this area. **Choosing the option of decriminalisation will take a great deal of political courage in a socially conservative country like Namibia, but we believe that it is the only sensible and compassionate choice.**

CHAPTER 1-INTRODUCTION

1.1 WHAT IS PROSTITUTION?

> **prostitute** ● **(noun) 1 a** a woman who engages in sexual activity for payment. **b** (usually **male prostitute**) a man or boy who engages in sexual activity, especially with homosexual men, for payment. **2** a person who debases himself or herself for gain. ● **(verb) 1** make a prostitute of (especially oneself). **2 a** misuse (one's talents, skills, etc) for money. **b** offer (oneself, one's honour, etc) for unworthy ends, especially for money. □ **prostitution** (noun) **prostitutor** (noun)
>
> *The Concise Oxford Dictionary* (1995)

Definitions of prostitution

The term "prostitution" comes from the Latin term for "stand" (*statuere*, 'to cause to stand', 'to set up or place'), which refers to the practice of standing in public to solicit clients. [1] This is tied to the Latin word *prostitut*, which means 'to offer for sale'. [2]

There is no single internationally-accepted definition of prostitution.

One of the earliest texts on prostitution defined it as being characterised by three elements -- barter, promiscuity and emotional indifference:

> *Any person is a prostitute who habitually or intermittently has sexual relations more or less promiscuously for money or other mercenary considerations.* [3]

One critic notes that a definition such as this omits the purchaser of sex entirely, suggesting that the customer could be labelled as a "prostitution abuser" who "for the purposes of his sexual satisfaction, habitually or intermittently reduces another human being to a sexual object by the use of money or other mercenary considerations". [4]

One current definition is

> *the use of a woman's body as a commodity to be bought, sold, exchanged, not always for money.* [5]

Another modern definition is the following:

> *Prostitution consists of any sexual acts, including that which do not actually involve copulation, habitually performed by individuals with other individuals of their own or the opposite sex, for a consideration which is non-sexual*. [6]

One academic who has done extensive research on prostitution in a number of countries points out that definitions which focus on prostitution as the sale of sex or sexual services are inadequate, as the sex act cannot be separated from the individual who is performing it. She argues that a better definition of prostitution is

> *an institution which allows certain powers of command over one person's body to be exercised by another. The client parts with money and/or other material benefits in order to secure powers over the prostitute's person which he (or more rarely she) could not otherwise exercise.* [7]

History of prostitution

Prostitution is said to be "the world's oldest profession". Its origins are believed to lie in 'temple prostitution', a religious practice in ancient Semitic civilisations where young women at temples had sexual intercourse for money with men who came to the temple, in what seems to have been a fertility rite. The rise of more general commercial prostitution coincided with the emergence of urban civilisations. Prostitution was prevalent in ancient Greece, where it was tolerated. It was associated with slavery in the time of the Roman empire, which gave it the stigma of a degrading occupation. Prostitutes in Rome were required to register and to wear distinctive clothes to identify themselves.

The early Christian church condemned prostitution on the grounds that sexual intercourse should take place only within marriage. However, many early Christian leaders felt that prostitution was a necessary evil, as a channel for human lusts. Prostitution was generally tolerated in Europe from the Middle Ages onward, until the Reformation when Protestant reformers began to take a stricter view calling for criminalisation of the practise. [8]

> *"What can be called more sordid, more void of modesty, more full of shame than prostitutes, brothels and every evil of hits kind? Yet remove prostitution from human affairs, and you will pollute all things with lust… "*
>
> St Augustine, 4th century, De Ordine II 4 (12)

In modern times, prostitution is a significant feature of economic life in many nations. For example, in London it has been estimated that prostitution generates about Ł200 million annually, while in Thailand, the Philippines, Malaysia and Indonesia the sex sector supplies between 2 and 14 percent of the gross domestic product. In 1975, a World Bank report estimated that sex tourism was already generating US$4 billion annually for airlines, tour operators and other businesses. Prostitution must be viewed in the context of globalisation and overall economic development, particularly in developing countries. [9]

The continuum of sex for material gain

Defining prostitution is problematic because there are other sexual relationships in society which involve at least some element of material exchange. For example, it has been observed that the act of prostitution is "intrinsically equal to that of a man or woman who contracts a marriage for economical reasons". [10]

Eunice Ipinge and Debie LeBeau distinguish two kinds of prostitution in Namibia: "classic prostitution where a person actively solicits money for sexual favours" and a second, more common, type of prostitution which is "the act of engaging in sex in exchange for material rewards" – the "sugar daddy" phenomenon. [11] This is known to occur amongst young girls. There may also be cases of boyfriends exchanging sexual favours for gifts from their girlfriends, although this is not documented.

'CLASSIC PROSTITUTION' AND 'EXCHANGE PROSTITUTION' IN NAMIBIA

Namibia is also characterised by sexual relationships which, while not exactly prostitution, are based on the provision of cash or gifts by 'boyfriends'. This type of exchange prostitution manifests itself in women who have 'boyfriends' who provide cash or gifts to help support her in exchange for sexual favours. One study found that a fifth of their study population are young, unemployed women who live with a 'boyfriend', of whom 64 percent also receive cash from the 'boyfriend'. The study also found that the 'boyfriends' are typically older affluent men, many of whom are married and do not support the woman if she becomes pregnant. The authors conclude that, "while this type of social arrangement is not prostitution in a conventional sense… it does point to the disadvantaged position and vulnerability of many young women in Katutura" (Michael Lewis and Gert van Rooy, "A Study of the Prospects for Training Young Unemployed Women in Katutura", NISER, 1991).

Another form of sexual favours in exchange for cash and goods occurs with school girls. Many young girls are approached by older men who offer to buy them soft drinks, sweets and even clothes in exchange for sexual favours. In one court case in Windhoek a wealthy sheep farmer was accused of picking up young girls (average age of 14) and taking them to his farm for sex in exchange for cash and alcoholic drinks.

The indication is that people in Namibia tend to engage in both classic and exchange prostitution due to economic factors. One prostitute interviewed on the NBC television show Talking Point explained: "If you are poor and you do not have any assistance and nobody is going to love you, then you have to do something for yourself to just live in a world, so there is nothing wrong with prostitution because you are doing a business to survive… There is nothing wrong with prostitution. It is my business. I feed my kids from this money. I'm looking for work but I don't get it. What can I do?"

Eunice Ipinge & Debie LeBeau, *Beyond Inequalities: Women in Namibia,* 1997 at 35-36.

Focus of this study

This study does not attempt to analyse all forms of sexual relationships involving economic exchanges. It focuses on commercial sex work, by which we mean situations where there is active solicitation of money or some other form of reward for sexual favours, generally involving multiple clients. We have chosen this focus, because this is the type of prostitution which is covered by existing criminal laws in Namibia.

We have also attempted to keep in mind the fact that prostitution is a transaction involving two people – the seller and the buyer. Any genuine understanding of prostitution must examine this relationship, although it has proved to be harder to obtain information about clients in both the literature on the subject and in the field.

1.2 THE CONCEPT OF SEX WORK

The term "sex work" was coined by Carol Leigh, a prostitute based in the United States, back in the 1970s and was first popularised by the prostitutes' rights movements that emerged in the United States and Western Europe during this period. "Sex work" has since become a commonly-used international term, although the term "prostitution" still appears in many international documents. Because both

terms are still in widespread use, this report will employ both terms – although we prefer the term "sex work" as being more appropriate to the a discussion of the legal context of the activity.

Arguments in favour of the term "sex work"
Why do some people find the term "sex work'' preferable to terms such as "prostitution"?

- It identifies prostitution as a form of labour which is, like other forms of labour, subject to exploitation. For example, women can have similar experiences of exploitation in sex work and in other forms of work, such as domestic work, factory work or agricultural work.

- It focuses attention away from moral judgements and towards practical problems like unsafe and unfair working conditions.

- It opens up possibilities for solidarity between sex workers and other workers who are subject to oppression.

- It emphasises the fact that sex work is an activity and not an identity. People who engage in sex work are people involved in a particular activity – as with other jobs, their entire identity is not defined by the work that they do. (An analogy is the international changeover from the term "disabled persons" to the term "persons with disabilities", to emphasise personhood rather than disability.) Also, a person engaged in sex work may simultaneously be engaged in other income-generating activities.

- "Sex work" covers a broader spectrum of occupations than other terms. For example, it can include prostitutes, strippers, escorts, exotic dancers, etc. The identification of a diverse spectrum of occupations with a single term facilitates the forging of broader alliances between women. [12]

It has been argued that sex work is not inherently different from other kinds of work, since all work involves the sale of mental or manual labour involving different parts of the body. Sexual and reproductive capacity have been commercialised in a variety of contexts. Examples include wet-nursing (a practice once common amongst economically advantaged women in the West, where one woman is paid to breast-feed another woman's baby), the donation of ova or sperm for artificial insemination, and surrogate mothering (where one woman bears a baby for another).

It has also been observed that "sex work" has much in common with other "emotional labour" in which activities and jobs which require different sorts of care and emotion are commercialised, such as nursing, acting and child care. People in all such jobs find mechanisms for separating their personal emotions from their jobs so that they can maintain their professionalism and their personal integrity. One writer states that "sex workers are thus able to distinguish intimacy and love from the sexual act itself, much in the same way that an actor or therapist is able to separate their work from their private life, preserving a sense of integrity and distance from emotionally demanding work". [13]

Jo Bindman, an economist who works with Anti-Slavery International in London, explains:

> *The distinction between 'the prostitute' and everyone else helps to perpetuate her exclusion from the ordinary rights which society offers to others, such as*

rights to freedom from violence at work, to a fair share of what she earns, or to leave her employer. An employment or labour perspective, designating prostitution as sex work, can bring this work into the mainstream debate on human, women's and workers' rights. [14]

For example, prostitutes in New South Wales (Australia), relying on the re-definition of prostitution as "sex work", were the first to gain official acceptance as a union in 1996. [15]

> *"We first need to identify prostitution as work, as an occupation susceptible like the others to exploitation. Then sex workers can be included and protected under the existing instruments which aim to protect all workers from exploitation, and women from discrimination."*
>
> Jo Bindman and Jo Doezema, *Redefining Prostitution as Sex Work on the International Agenda* (Anti-Slavery International, 1997)

> *"In the English-speaking world, the term prostitution has a double meaning. It refers to both commercially orientated sexual activity, and the act of debasing oneself for material reward. For some, the latter has become synonymous with the former… Because of this negative imagery, many people involved in the commercial sex industry prefer to be called sex workers and the profession: sex work."*
>
> Kathleen Barry

Arguments against the term "sex work"

Some people object to the term "sex work" on the grounds that it "normalises" prostitution. For example, Sheila Jeffreys prefers the term "prostituted woman" because it brings the buyer of the sex into the picture, emphasising that the seller is being prostituted by the buyer's action of purchase. [16]

Persons who object to the concept of "sex work" assert that the inequality inherent in the relation between prostitute and client prevents this transaction from being "work" in the normal sense of the word. According to this view, the prostitute is treated as an object by the very nature of the transaction, which represents a denial of her essential humanity. A related viewpoint is that prostitution is different from other forms of work because of the profound involvement of the prostitute's body, and the connection between sexuality and personal identity. It is also asserted that prostitution (like the sale of human organs) is fundamentally wrong because it makes a commodity of human beings. [17]

> *"In a culture where women's sexuality is used to sell, and women learn that sex is our primary asset, sex work is not and cannot be just a private business transaction…"*
>
> Christine Overall, "What's Wrong with Prostitution? Evaluating Sex Work", 1992

> *"Many countries... are rushing to re-define prostitution as legal work in the misguided attempt to regulate and control what they allege are the abuses of prostitution, without recognising that the system of prostitution itself is the abuse."*
>
> Janice G. Raymond, Coalition against Trafficking in Women

1.3 SEX WORKERS

Internationally, both women and men are employed as sex workers, with men sometimes serving male or female clients. Men in some countries are also entering jobs such as stripping and exotic dancing in increasing numbers. But women dominate sex work by and large, and tend to receive lower wages overall than men in similar positions. An exception at the international level is male sex workers who serve male clients –in such cases, where the male sex worker takes a "feminine role", his working conditions and wages will often tend to resemble those of female sex workers. Because it is predominately women who are engaged in sex work, sex work has been treated internationally as an issue which implicates women's rights.

Children, both boys and girls, are increasingly engaging in sex work, particularly in developing countries. This has been analysed as a result of economic pressures which have drawn children into a variety of marginal occupations, with parents in extreme poverty sometimes being forced to rely on the earning power of their children to ensure that the household survives. Thus, it has been suggested that child prostitution should be seen as part of the global exploitation of child labour. [18]

> *"Unpalatable as it is, we have to acknowledge the fact that prostitution is very often the best means of subsistence available to children as well as to adults."*
>
> Julia O'Connell Davidson, *Prostitution, Power and Freedom*, 1998 at 80.

Sex work is often associated with physical violence and abuse, and is thus sometimes discussed in tandem with the overarching issue of violence against women. Sex work is also sometimes associated with drug and alcohol abuse. International research suggests that suicide and suicide attempts are common amongst prostitutes, as well as various other manifestations of emotional trauma. Many researchers report that a high percentage of prostitutes report being physically or sexually abused as children. For example, incest can be an initiation into prostitution because it forces the child to pay with his or her body for parental affection and care which should be freely given. [19]

People who engage in commercial sex work are often particularly vulnerable to exploitation or abuse because they are viewed as social outcasts. Some people view prostitutes as undeserving of care or protection on the grounds that they engage in an "immoral" activity – although the same people sometimes excuse the behaviour of male clients on the grounds that they are simply responding to their "natural" male sex drive.

> *"While men's prostitute use is widely tolerated, female prostitution is popularly viewed as a form of social and sexual deviance.... research on the topic has generally assumed that while men's prostitute use is based in natural, biologically determined sexual drives, women who prostitute are somehow abnormal, unnatural, a threat to public health and order."*
>
> Julia O'Connell Davidson, *"Prostitution"*

1.4 CLIENTS

Regardless of the sex of the sex worker, the customer is almost always male. [20] Thus, prostitution exists primarily to satisfy the desires of men. This fact leads many analysts to conclude that prostitution has arisen from power differences between men and women.

There appears to be less research and commentary about buyers than about sellers, reflecting the fact that many discussions about prostitution are one-sided, assuming that the practice exists solely because of the existence of the seller. However, some commentators emphasise that prostitution would not exist without the apparently insatiable international demand for opportunities to purchase sex.

Internationally, there is a particular concentration of clients in the following sectors:

- in connection with the military, including both local and foreign soldiers
- in port towns, in connection with merchant seamen, fishermen and navy personnel
- amongst truckers
- amongst men who have migrated from rural areas to urban areas in search of work
- in isolated mining areas
- amongst travelling businessmen
- amongst tourists.

The fact that these groups include many men who are away from home and family on a temporary or long-term basis might suggest that prostitute use is a simple function of biologically-based "need". But this explanation does not hold true, as there is also a demand for prostitutes from local men who are married, or have girlfriends. Also, some "displaced" men such as truckers and fishermen use prostitutes at home as well as when they are travelling. [21]

So why do men seek commercial sex? Studies of male customers in the United States report a range of reasons: unconventional sexual desires, insecurity about sexual performance, physical unattractiveness or physical disabilities, loneliness (particularly when travelling), and preferences for variety without emotional entanglement. [22]

Michael Kaufman of the White Ribbon Campaign in Canada (who visited Namibia in 2000 and helped to inspire the formation of Namibian Men for Change), suggests some interesting reasons for why men find the purchase of sex appealing. He says that in cultures where men are discouraged from openly expressing their full range of emotions, prostitution allows for physical intimacy (and even some level of disguised emotional intimacy) without open displays of emotion or emotional attachments. Men who are socialised to inhibit expressions of closeness through touch and other forms of intimacy may as a result focus on sexual intercourse alone as an outlet for their emotions: "nongenital forms of sexual desire get suppressed, belittled and often forgotten as sexual expression becomes focussed on our genitals". The result is that sexual intercourse can assume an exaggerated importance in the expression of male sexuality. This exaggeration is reinforced by the role of sex in popular Western culture (which enters Namibia in the form of television, movies and advertisements), where sexually charged images are used to stimulate interest and to sell products. [23]

Sheila Jeffreys suggests that the commercial, impersonal nature of the transaction is what makes it appealing to the customer:

> *The act of using a woman in prostitution could be seen as the purest form of objectification. An unknown body which is paid for is likely to offer more effective gratification in this regard than a woman who is known and may intrude demands and make comments that might remind her user that she is a real person.*

Jeffreys concludes that the result is dehumanisation. [24]

Julia O'Connell Davidson similarly suggests that prostitution gives men an opportunity to have sex with a person who is not really a person, but an object – in the sense that the sexual encounter is free from all of the social obligations and responsibilities which would be entailed outside of the commercial sex context. The prostitute is not a fully autonomous human being in the eyes of the client, because the act of giving payment for the sex give him control over the body of the prostitute. [25]

Other motivations for clients can be:

- peer pressure or a desire for male bonding ("all the other guys are doing it")
- the client's desire to pretend that a young, attractive woman is attracted to him -- disregarding the fact that it is money, and not the client's individual qualities, which is the basis of the transaction
- the feeling that "getting" an attractive women raises the man's status, as if women are units of currency in a competition among men. [26]

Some countries suggest that the law should penalise the clients rather than the prostitutes. For example, according to a Swedish Working Group on the Role of the Male,

> *The key message of penalising the client is that society cannot any longer accept the escape from human and social responsibility that prostitution in all times has offered men.* [27]

The pros and cons of criminalising commercial sex for the client will be discussed in more detail later in the report.

> *"… We must acknowledge that the sex industry also harms men, impairing their ability to experience sexual relations that are premised on mutual respect and equality. "*
>
> Dorchien A Leidholdt, "Prostitution: A Form of Modern Slavery" in Donna M Hughes and Claire Roche(eds), *Making the Harm Visible: Global Sexual Exploitation of Women and Girls* (1999).

1.5 THIRD PARTIES

There are many third parties who profit from prostitution – "pimps"; the owners and managers of brothels, bars and clubs used for prostitution; tourism operators; and newspapers which run advertisements for brothels or escort services.

In Namibia, there are some creative profit schemes in operation for the benefit of third parties. Our research uncovered one situation where the boyfriend of a female prostitute photographs the cars of her clients, obtains contact information from a helper inside the vehicle registration department, and then uses this information to

blackmail the client by threatening to reveal his actions to his wife or family members if he does not make satisfactory payment.

There are also more passive beneficiaries, such as children, spouses or other family members who knowingly or unknowingly make use of the income from prostitution.

The position of third parties must be considered in policies on prostitution.

1.6 OPPOSING INTERNATIONAL VIEWS

There are opposing views about prostitution at the international level.

Abolish all prostitution
Some people argue that all prostitution constitutes a human rights violation, on the grounds that it contradicts the rights to dignity and equality. These people advocate the abolition of all prostitution. The international group Coalition Against Trafficking in Women (CATW) takes this view.

The abolitionist view is represented by the UN Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others, by the statement in its Preamble that: "prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community."

Those who want to abolish all prostitution characterise it as a form of sexual violence, on the grounds that it is always degrading to the prostitute. Jeffreys refers to prostitution as "commercial sexual violence": "The assault is controlled by being paid for". [28] According to this view, prostitution has a common ground with rape in that both are unwanted sexual intercourse. Jeffreys concludes that "the sex industry, by encouraging men to pay for inflicting this violence, teaches that it is acceptable to treat women as sex objects, as nonpersons, unworthy of common respect." [29]

This view was also taken at a 1986 Meeting of Experts organised by UNESCO and CATW, which stated in its conclusions:

> *The "sex"; that the customer purchases requires that the body of the woman becomes an instrument for men to use… this constitutes an assault against the dignity of women and a form of sexual violence.* [30]

People who identify all prostitution as oppression against women reject the idea that it is possible for some women to "choose" prostitution. They draw analogies between prostitution and slavery, arguing that even a perception of "choice" or "consent" to these practices does not remove their oppressive character or make them justifiable. [31] Analogies are also drawn with battered women who "choose" to stay with their abusers. [32]

It is also argued by abolitionists that the idea that some women "choose" prostitution allows men to escape responsibility for their part in the transaction, in the same way that rape victims are sometimes blamed for being raped because they were in the "wrong" place or wearing the "wrong" clothing. [33]

Free versus forced prostitution
Some people make a distinction between forced prostitution and prostitution which is freely chosen as an occupation. These people argue that the right of all persons to

self-determination must be respected. The international group Global Alliance Against Trafficking in Women (GAATW) takes this view.

CEDAW echoes this view, as it calls upon states to take all appropriate measures "to suppress all forms of traffic in women and *the exploitation of* prostitution of women". An amendment which suggested that the Article should rather call for the suppression of "all prostitution" was rejected. [34]

One explanation of the possibility that prostitution can be a rational choice runs as follows:

> *In our world today, people in general and women in particular are often faced with limited opportunities to provide for themselves and their families. These are women considering all the dangers to which social exclusion will expose them, and the economic exploitation that they may face, and still calculating that this is their best available option.*
>
> *Can we tell such people what they may or may not do? Do they deserve anything less than the best possible conditions sought for other workers? Can we tell them that we would take away their power to choose this occupation, maybe condemning them to worse conditions in another field? Work for example, in a glass factory in India where the heat, fumes, noise and constant risk of terrifying injuries from the furnaces creates a hell for its workers and where life expectancy is said to be reduced by ten to fifteen years. Or back-breaking toil in subsistence agriculture all day, followed by a load of domestic duties, just to scrape together the bare minimum for survival. … It can be better than cleaning lavatories or enduring monotonous hours for very low pay on the production line. And it could be the only job available where a mother can be around to collect her children from school.* [35]

This view focuses on prostitution as being analogous to a business contract or a form of wage labour.

Human rights for all prostitutes

There is a middle ground which emphasises that, while the client's control over the prostitute has some things in common with both the slave-owner's control over the slave and with the employer's control over the worker, prostitution differs from both of these comparisons in important ways. It is generally a brief and transitory relationship, and the clients who exercise control over the prostitute's body are consumers rather than producers. The clients do not depend upon the prostitute for their economic well-being, which contrasts with the basis of both slavery and wage labour. Furthermore, the "commodity" which is the basis of the transaction – human sexual contact – is something which derives most of its social meaning outside of the commercial context. "Prostitution thus occupies a troubled and troubling space between two quite different symbolic domains. It does not readily fit into popularly understood categories of 'sex' or 'work', and this tension has been central to much feminist debate on the subject." [36]

Some people are concerned that international consensus in recent years has been limited to condemning forced prostitution and has neglected to focus on the need to protect *all* prostitutes against human rights abuses. Former sex worker Jo Doezema (from The Netherlands) states:

> *The distinction between free and forced prostitution has implicitly been recognised by the international community. But international actors*

and agreements are rarely as vocal about promoting prostitutes' rights as they are in condemning forced prostitution. No international agreement condemns the abuse of human rights of sex workers who were not "forced". [37]

The dichotomy between voluntary and forced prostitution has also been blamed for creating a distinction between "innocent" prostitutes (the ones who are forced into prostitution) and "guilty" prostitutes (those who enter into prostitution voluntarily), with the result that some people feel that the "guilty" prostitutes are deserving of punishment and not human rights protection. According to Doezema, "it is one thing to save innocent victims of forced prostitution, quite another to argue that prostitutes deserve rights". [38]

Examples of legal frameworks influenced by this dichotomy can be found in Germany (where the penalty for trafficking is reduced in cases where the victim knew she was gong to be a prostitute) and in the Netherlands (where police reportedly refuse to investigate complaints of trafficking from women who continue working as prostitutes) – as though the woman's lack of "innocence" somehow lessens the crime of trafficking.

Others assert that it is important to remember the diversity of prostitution. There may be some people who enter prostitution freely, on the basis of personal inclination alone. Some prostitutes may work independently and feel that they exercise a high degree of control over their interactions with clients. But the vast majority of commercial sex workers enter the field either because it represents "the best of a bad bunch of options" or because it is "a condition forced upon them by another person or persons". Entry into prostitution is usually the result of a particular set of economic, social and political circumstances. [39] Therefore, it has been argued that there is a need to analyse prostitution in a way which acknowledges its diversity, and in a way which recognises it as a unique sexual and economic activity which does fit neatly into any other categories. [40]

A human rights approach would focus on protecting all sex workers from human rights abuses.

1.7 SEX WORKER SUPPORT GROUPS

In recent years, there have moves in many countries to establish organisations to advocate for protection and support for sex workers.

For example, in South America, the "Association of Autonomous Women Workers" was established in 1982 in Ecuador (where prostitution is legal and state-regulated). This group is run by sex workers, health workers and women activists. In 1984, in an effort to protest against police malpractices and exploitation by club and brothel owners, this group organised a "general strike" by sex workers which drew national attention. The group also organised two national conferences to bring sex workers together for discussions of issues of common concern. [41]

In South Africa, the group SWEAT (Sex Workers Advocacy and Education Taskforce) was founded in 1994 in Cape Town as a health and human rights organisation assisting sex workers with health education, legal assistance and advocacy work. Its activities include HIV education, condom distribution, a monthly newsletter for sex workers, legal advice, a forum which brings together sex workers and police to address matters of common concern, and a Drop-In Centre where sex

workers can get counselling and information, make statements lodging complaints against clients or police and get training in marketable skills such as hair care, massage or manicures which can provide alternatives to sex work.

SOME OPPOSING VIEWPOINTS

"Prostitution victimizes all women, justifies the sale of any woman, and reduces all women to sex."

Coalition Against Trafficking in Women (CATW)

"What is being bought is not the woman, but the sexual services she offers."

Nicky Roberts, *Whores in History*, 1992

"It is not sex the prostitute is really made to sell; it is degradation. and the buyer… is not buying sexuality, but power, power over another human being…. "

Kate Millett, *The Prostitution Papers*, 1975

"Prostitution is rape that's paid for."

Janice Raymond, Coalition Against Trafficking in Women, *LA Times*, 11 Dec. 1995

"A discussion of prostitution must accept the premise that prostitution as a phenomenon is the aggregate of social and sexual relations which are historically, culturally and personally specific. The only common denominator shared by the international community of prostitutes is an economic one: Prostitution is an income-generating activity."

Radhika Coomaraswamy, UN Special Rapporteur on Violence Against Women, 1995

"The individual right to self-determination includes the ability and right of the individual to decide to work as a prostitute."

1994 International Conference on Traffic in Persons, Utrecht

"Prostitution is not about or for women, but for men."

Sheila Jeffreys, *The Idea of Prostitution*, 1997

"Sex work is an inherently unequal practice defined by the intersection of capitalism and patriarchy."

Christine Overall, "What's Wrong with Prostitution? Evaluating Sex Work", S*igns*, 1992

"The business is good for us. We earn very well and have flexible hours, that's why we are here. In no other profession can we earn what we do here."

Claudia Colimoro, Mexican sex worker, quoted in Kamala Kempadoo & Jo Doezema, *Global Sex Workers: Rights, Resistance and Redefinition* (1998) at 197

"In today's insecure job market, any employment that requires no CV, low skills and no education, allows you to be your own boss, work your own hours and even drink on the job - and carries no risk of retrenchment – sounds irresistible." But the "occupational hazards" include "risks of violence, sexual disease, substance abuse and mental ill health".

David MacFarlane & Glenda Daniels, "'One day I'll get a proper job'", *Mail & Guardian*, 18 April 2001, reporting on a study of Hillbrow sex workers

Coalition Against Trafficking in Women (CATW)

Mission:
The Coalition Against Trafficking in Women (CATW) is a non-governmental organization that promotes women's human rights. It works internationally to combat sexual exploitation in all its forms, especially prostitution and trafficking in women and children, particularly girls.

Philosophy:
- Sexual exploitation is a practice by which person(s) achieve sexual gratification or financial gain or advancement through the abuse of a person's sexuality by abrogating that person's human right to dignity, equality, autonomy, and physical and mental well-being.
- Sexual exploitation includes sexual harassment, rape, incest, battering, pornography and prostitution.
- All prostitution exploits women, regardless of women's consent.
- Prostitution includes casual, brothel, escort agency or military prostitution, sex tourism, mail order bride selling and trafficking in women.

The Harm:
- Sexual exploitation preys on women and children made vulnerable by poverty and economic development policies and practices; refugees and displaced persons; and on women in the migrating process, and women who have been victims of childhood sexual abuse.
- Prostitution affects all women, justifies the sale of any woman, and reduces all women to sex.
- Sexual exploitation eroticises women's inequality.
- Sexual exploitation is a vehicle for racism and "first world" domination, disproportionately victimising minority and "third world" women.
- Worldwide, the average age of girls' entrance into prostitution is 14.
- Local and global sex industries are systematically violating women's rights on an ever – increasing scale.
- Sexual exploitation violates the human rights of anyone subjected to it, whether female or male, adult or child, Northern or Southern.

The Solution:
- Decriminalize the women in prostitution.
- Criminalize the men who buy women and children and anyone who promotes sexual exploitation, particularly pimps and procurers.
- Reject State policies and practices that channel women into conditions of sexual exploitation.
- Provide education and employment opportunities that enhance women's worth and status, thereby diminishing the necessity for the women to turn to prostitution.

The Vision:
- It is a fundamental right to be free of sexual exploitation in all its forms.
- Women have the right to sexual integrity and autonomy.

http://www.catwinternational.org/about/index.html

Global Alliance Against Trafficking in Women (GAATW)

Mission Statement

GAATW seeks to facilitate on-going development of discourse and action on issues related to what has conventionally been described as 'trafficking in persons'. Through extensive consultation with GAATW member organisations and allies, it has become apparent that the term trafficking is insufficient to describe the range of human rights violations and abuses inflicted upon migrant women workers. In addition, through these consultations, it has become clear that an anti-trafficking approach to stopping abuses which occur during migration process of women for productive and reproductive service sector often results in repressive laws, policies and international agreements, that criminalise and stigmatise women who migrate to work in other informal sectors such as domestic work, marriage and sex work.

GAATW's mission is to ensure that the human rights of migrant women are respected and protected by authorities and agencies. We seek to promote living and working conditions in countries of origin to provide more viable alternatives and possibilities in their home countries, and to develop and disseminate information to women about migration, working conditions and their rights.

In order to achieve this goal, GAATW endeavours to document, de-mystify and denounce repressive uses of anti-trafficking conventions and legislation by proceeding to reinterpret and redefine anti-trafficking instruments in the interests of migrant women. This includes both moving away from those formulations that rationalise the social control and criminalisation of migrant women, and fostering the development of a human rights, immigrant workers' and workers' rights approach to combating abusive and exploitative travel, living and working conditions.

Objective

To work at all levels to promote the application of human rights principles and the use of appropriate instruments and mechanisms in addressing specific issues and providing support to persons in need in the context of migration, labour and trafficking in persons.

http://www.inet.co.th/org/gaatw/about.html

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"Prostitutes are generally regarded as a social category, as women who do not adhere to sexual and other behavioural norms; pitied or despised, they are excluded from mainstream society, their lowly and marginal position analogous to that of a low caste or minority ethnic group. Outcast status denies them whatever international, national or customary protection from abuse is available to others as citizens, women or workers. This social exclusion renders the prostitute vulnerable to exploitation."

Jo Bindman & Jo Doezma, *Redefining Prostitution as Sex Work on the International Agenda,* Anti-Slavery International, Network of Sex Work Projects, 1997

1.8 TRAFFICKING

"Trafficking" is essentially the illegal movement of persons for work elsewhere. [42] It involves the transport or trade of humans, usually women or children, for economic gain by means of force or deception. Often migrant women are tricked and forced into domestic work or prostitution. [43]

The following explanation was developed at a 1994 International Conference on Traffic in Persons in Utrecht (The Netherlands):

> *The traffic in persons is not only for purposes of prostitution, but for a range of other activities as well… It is important to emphasise that the element that defines traffic is force and not the nature of the labour to be performed… The trafficker cannot use as a defence the fact that the person is or was at any time, for example, a prostitute or a domestic worker…* [44]

The 1996 European Commission Communication on Trafficking in Women for the Purpose of Sexual Exploitation defines the problem of trafficking for sexual exploitation as follows:

> *Trafficking for the purpose of sexual exploitation covers women who have suffered intimidation and/or violence through trafficking. Initial consent may not be relevant, as some enter the trafficking chain knowing they will work as prostitutes, but who are then deprived of their basic human rights, in conditions which are akin to slavery.* [45]

A more recent December 1998 Communication from the European Commission suggested that the definition should be made somewhat broader "by including also women who are trafficked abroad and forced to perform other forms of commercialised sex than prostitution, as well as women who are forced into marriage for the purpose of sexual commercial exploitation". [46]

The first international definition of trafficking is contained in a new "Trafficking Protocol" to the UN Convention Against Transnational Crime, which was adopted in December 2000. This definition defines trafficking as "the recruitment, transportation, transfer, harbouring or receipt of persons" by means of force, threats, fraud, deception or other forms of coercion "for the purpose of exploitation". Exploitation includes "exploitation of prostitution of others or other forms of sexual exploitation, forced labour or services, slavery, servitude or the removal of organs".[47] This Trafficking Protocol will be discussed in more detail in Chapter 2.

The UN Special Rapporteur explains that two main patterns of trafficking for purposes of prostitution have been documented internationally: a "two-step" pattern which targets women already working in prostitution for movement to another country, and a more aggressive "one-step" pattern which focuses on women not previously involved in sex work. The one-step pattern usually involves a relative or a neighbour who approaches the victim or her parents and deceives them about what is planned, in order to get 'compliance'. The fear of HIV infection has led to an increase in "one-step" trafficking of young girls and women.

There has been a general international increase in trafficking for purposes of prostitution for the following reasons:

- a growing market for foreign or different women, based on racial and ethnic stereotypes
- the enormous profit in trafficking, which motivates individuals and organized crime rings to get involved

- the feminization of poverty in the victims' home countries, which leaves women in more desperate economic straits
- official encouragement of tourist sector services, especially where tourist development is undertaken to the detriment of other forms of economic development
- lack of an effective international system for combating the problem
- a growing demand for male migrant workers, which creates a parallel demand for female sex workers. [48]

Although there is no evidence that trafficking for the purposes of prostitution is a widespread problem in respect of Namibia, there has been at least one case involving the transport of young Namibian women to South Africa for the purposes of sexual exploitation.

Nam teens identify abductors

CHRISPIN INAMBAO

TWO Namibian teenagers held as sex slaves at an informal settlement near Johannesburg have named the two truck drivers who abducted them and smuggled them into South Africa. According to information from their relatives, the two girls were apparently abducted from Swakopmund while on their way to Windhoek for the September school holidays. The girls were held as sex slaves at separate shacks at Greenfields near Thokoza, 25 kilometres east of Johannesburg.

Superintendent Andy Pieke, spokesman for the East Rand Police, said although the names of the two suspects had been given to detectives they were still on the run. Pieke added that the two seemed to know they were being sought by law enforcement agents. In the meantime the two shacks where the victims were held as sex slaves have been put under observation."

"The police know the names of the truck drivers but they have not been traced, it is suspected they know the police are looking for them. Details of the truck company for which they worked are not sufficient for the police to identify the company," Pieke told The Namibian. In answer to a question, he responded: "We will see how the case progresses and if need be we will get a warrant of arrest for them, but that will be the last resort." "He added that the South African Police Service (SAPS) were still trying to ascertain the identity numbers of the suspects' IDs.

Meanwhile the two teenagers are likely to spend their Christmas and New Year in South Africa as they are still being kept at a place of safety near Johannesburg run by social workers from the Ministry of Health. The girls are apparently "doing well" and their case is being investigated by detectives from the Child Protection Unit within the SAPS.

The Namibian, 14 December 2000

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Herlyn Uiras was 16 when her life changed forever. She and her friend were picked up hitchhiking to Windhoek in September 2000. The truck driver who gave them a lift smuggled them over the border. On the way to South Africa, one of them forced Herlyn to have sex with him. She was frightened for her life and begged him to use a condom. It broke.

"Afterwards I knew he had infected me," she recalled. "I felt his disease moving through my body". Plagued by nightmares of being infected with HIV and the trauma of rape made her life unbearable. She was held hostage in a shack in Greenfields near Johannesburg. When she finally fled to seek help from neighbours, police took her to a hospital at Boksberg for a blood test. She was HIV positive…

The Namibian Youthpaper, 25 June 2002

Because this is a problem which may develop in future, it should be kept in mind while formulating policy on sex work. Namibia must also give attention to its international obligations to combat trafficking.

1.9 SEX TOURISM

When clients are foreign visitors or tourists to developing countries, the disparity between sex worker and client in terms of economics and power is unusually wide, thus increasing the vulnerability of the sex worker. Supply usually outstrips demand in such situations, which depresses prices and reduces the bargaining powers of the sex worker.

At an international level, sex tourism has the following characteristics:

> *On the whole, sex tourism flourishes in countries where a large percentage of the population lives in poverty, where there is high unemployment and no welfare system to support those who are excluded from the formal economy. In these countries the annexation of subsistence land and/or promotion of cash-crop farming is often having a devastating impact on rural economies and creating powerful pressure on young people, especially young women, to migrate to urban areas or tourist resorts in search of work. Those involved in tourist-related prostitution are thus very often migrants from rural areas..., and may be attempting to support several dependants as well as themselves through their prostitution. It would be wrong to claim that all those involved in prostitution in sex tourist destinations are working form a base of absolute poverty, and it is important to recognise that the economic rewards of tourist-related prostitution are very often far higher than those associated with unskilled work in factories or the hotel or catering industries or those associated with prostitution serving local demand. However... the greater the individual prostitute's economic desperation, the less she is in a position to dictate the terms of transactions or to turn down a client about whom she has a bad "gut feeling".* [49]

Although Namibian sex workers have tourists as clients, there is no evidence as yet that Namibia is being actively marketed as a destination for those interested in tourism for purposes of sex. However, one sex tour operator has already described Namibia as "a new and upcoming tourist destination" in this respect.

Prostitution, the Internet and the single travelling man
by Willem Odendaal

The Internet is increasingly being used to sell women to a global market of men, mostly from industrialised countries, like Western Europe, the USA, Australia and Japan. Advertisements and endorsements for sex tours, mail order brides, brothels, strip bars and escort services are easily and openly found on the Internet. This can have an impact on Namibia in several ways. Firstly, young Namibians could easily be exposed to Internet sites which speak about sex and prostitution in a dehumanising way. Secondly, it is possible that Namibia could be advertised as a sex tourism destination on the Internet in the future, although our research indicates that Namibia fortunately does not yet feature in this respect. Thirdly, it is possible

that wealthy Namibian travellers might turn to the Internet for information about prostitution on other countries.

For example, World Sex Archives.com advertises itself as "the largest interactive database about prostitution and sex tourism." It claims that it can give you access to the world's best prostitutes in an instant. However, to gain access, one needs to pay a small fee of about US$4.99 a month. The services include personal contact with escort agencies, call girls and independent working prostitutes. As a no-fee-attached "bonus", World Sex Archives gives its customers, which they assume are all men, tips on how to keep one's mischievous adventures with prostitutes secret from one's wife.

Men who have bought sexual service on their travels also use Internet discussion groups to give each other information and advice on buying the services of prostitutes. For instance, a Usenet newsgroup called the World Sex Guide devotes itself to discussions concerning prostitution, forming a sort of world wide bulletin board where "hookers and customers hang out." People post reports about certain sexual service providers, while others ask for more information. Below are a few examples of the reports about African women posted on the site (with some of the extremely explicit language deleted):

Client 1:
These are my experiences from several trips to East Africa from 1990 to 1995. I always travel alone and the experiences you make if you travel in a group may be very different from what I describe below. I am male and I report from a male point of view for single male travelers. If you are offended by this, or if you are a feminist, then better not go ahead. If you have ever dreamt to be desired by several women at the same time and have another partner every night, then East Africa will be your destination of choice. Never throughout the world I have found sex to be so free from cultural and social restrictions. Only if you play the game without a condom, you will probably sign your own death sentence. MOST OF EAST AFRICAN PROSTITUTES ARE HIV POSITIVE. SORRY, THIS IS NOT A JOKE!

Client 2:
Very little is known here in Australia about West Africa. ...you can walk the streets of Sydney for weeks and not see a really black face. So I wrote a few letters to advertisers from Ghana in a lonely hearts mag [yeah, snail mail] and was stunned by their style of ad and the responses. ... the Ghanaian babes are uninhibited, e.g., some openly seeking "broad-minded, sexy men; I am interested in erotic pictures, masturbation and making love". Well, after a $2500 for round-trip 38 hour I arrived in Accra the capital. I found my way 80 km to Swedru. I met Rita there who promised everything in her. The word soon got around town that an eligible white man had arrived; visitors soon came and my room phone ran hot. Jeez I had to schedule them: Caroline, Gifty, Spendy, Doris, Agnes etc. Each was gorgeous, like the best coffee: hot, strong, black and full of flavour! Aged 20 - 30, voluptuous, beautiful big African butt, fantastic breasts and hot and wild, do anything… I must be a tough old bastard to have survived that week [he gives his age elsewhere as 61]. No payment asked, but a few thousand Cedis [C1800 = US$1.00] would be welcomed and you should take some gifts, Raybans, a Walkman or similar will make you like a king. It's the ambition of every one to snare a white man and one succeeded. In short, I married one with a little difference, she's a Liberian refugee from a nasty civil war, lots of them in Ghana. Cost $2000 visa fees plus fares, much paperwork, HIV-free certificate required. Now she's been here nine months - wonderful, always happy and laughing, no PMT, loving, hard-working, bright, reliable, and so naturally good-natured, genuinely religiously devout thus faithful yet humorous...

Client 3:
i am a white man and i don't even need to visit prostitutes (but i love the adventure) as the ghanaian women are quite beautiful and willing i thought i'd mention a few places [in ghana] where wonderful sex can be had for a small price, say maybe 20k cedis...many times for free if u let them spend the night at your residence. there are beautiful and willing women at the univ of kumasi. they generally don't have a lot of "pocket money" and this helps some to get by. ghanaian women are discrete in the fact that it is not generally tolerated well to show open affection for your partner-in public. but, when u get them in a private setting, house, nat'l park, secluded beach, etc. they willingly go on that "honey ride". i have found most african women

love sex and make no bones about it. some really, and i mean really get off on it. i don't think i could ever marry a white woman after experiencing the beauty and pleasures of the african woman.

The list of countries on World Sex Guide where men write about their visits to prostitutes is quite extensive. In total 97 countries are listed on World Sex Guide site. (Namibia is not yet there.)

Travel agencies like Exotica Travel.com and Big Apple Oriental Tours claim that they organise "adventure tours." Exotica Travel.com promises you that you will have more fun, more often on their tours that even you can imagine. "The girls are beautiful, ready, real, willing, and able to fulfil your wildest dreams," they pledge. Exotica travel claims to have a track record to prove this. Some of their clients, they say, even go back home with new wives and girlfriends.

A representative of Big Apple Oriental Tours meets travellers to the Philippines at the airport and accompanies them to numerous bars. The traveller selects a girl or woman, and the 'tour guide' negotiates the transaction with the prostitute's "mamasan" (business manager). The cost of prostitution, called a "barfine," is reported to be minimal. The mamasan checks with the traveller in the morning to ensure that the woman was "satisfactory". This company also invites the prospective traveller to sample a video collection characterized as "an Encyclopedia Britannica of raunch". One of the films for sale includes descriptions such as "unbelievable scenes of lewdness and debauchery" and "the funniest gang rape on video".

Some sex tour operators claim to avoid child prostitution. For example, the travel group Best of Asia state that "Best of Asia does not condone child prostitution. Our tours are designed for men who like women!" On the other hand, there are many Internet sites devoted to the encouragement of child pornography and prostitution. For example, a pornographic paysite called Young Lolitas encourages its members to engage in paedophilia. It states that it specialises in young virgins between the ages of 7-16 years. In order to gain access to its files connecting the customer with potential clients, one needs to pay by credit card.

It is encouraging to see that some countries from which sex tourism originates -- including Australia, Germany, the Netherlands, Sweden and the United States -- have passed legislation which criminalises sex tourism. However, such laws currently apply only to travel for the purpose of engaging in sex with minors. In the United States, the Violent Crime Control and Law Enforcement Act of 1994 makes travel with intent to engage in any sexual act with a juvenile punishable by up to ten years' imprisonment.

Currently little information exists on the Internet regarding Namibia as a sex tourist destination. There is a widespread rumour that an Italian travel agent advertises Kaokoland as a sex tourism spot, where sex can easily be arranged with Himba women, but no information on this could be located on the Internet. A reply from Adventure Man (another world-wide prostitution info exchange board) stated that Namibia remains unexplored as a sex tour destination. However, Adventure Man promised to keep us updated on Namibia, as it is a new and upcoming tourist destination...

The links between the Internet, sex tourism and prostitution should be kept in mind when making laws and policies on sex work in Namibia.

1.10 CONCLUSION

This brief overview of concepts pertaining to sex work is intended to assist the reader's understanding of the information presented in the following chapters.

CHAPTER 2-INTERNATIONAL OBLIGATIONS

2.1 INTRODUCTION

Namibia is a member of the United Nations (UN) and party to various conventions and treaties, which are recognised in the Constitution of the Republic of Namibia as forming part of the law of Namibia. [1] This means that the international stance on sex work is important to a debate of Namibian law and policy on this issue.

Over the years, the UN has given increasing recognition to women's rights as human rights, and prostitutes have been singled out, amongst others, as women who are particularly vulnerable to abuse.

> *From demands that rights for women be equal to those enjoyed by men, international policies evolved towards the awareness that 'women' do not constitute a homogenous group. Some categories are often deprived of their basic rights (rural and refugee women, for example) and others are particularly susceptible to human rights violations (imprisoned women, prostitutes, for example).* [2]

2.2 EARLY INTERNATIONAL ACTION ON SEX WORK

The first notable international attention to sex work came in 1899, when a "Congress on White Slave Trade" was held in London. As a direct result of the congress, international committees and an international office were established to deal with the issue of trafficking in women. [3] Following this came the formulation of two International Conventions, which were signed in 1904 [4] and 1910 [5] respectively. Although further congresses were held in 1912 and 1913, the commencement of the First World War hindered further developments in this area. After the war ended, the pre-war feminist campaign against trafficking resulted in the "explicit condemnation of trafficking in the post-war settlement". [6]

The Covenant of the League of Nations specifically mentioned trafficking of women and children in Article 23, which was a significant step towards placing sex work on the international agenda. [7] The League of Nations held a conference on trafficking and drew up a third international convention on trafficking in women and children in 1921 [8], followed by a stronger convention on trafficking in 1933. [9]

Between 1895 and 1949 there were a total of seven different international agreements on prostitution, each carrying with it a different definition. However, all the agreements shared the common theme of protecting women and children against prostitution.

2.3 THE 1949 CONVENTION

In 1949, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (referred to here as the 1949 Convention) was approved by the United Nations General Assembly. [10] This Convention consolidated and replaced the previous conventions on trafficking and prostitution.

At this stage it is important to understand what the international community generally thought of sex work during the first half of the twentieth century. The "abolitionist" approach to prostitution prevailed during this period (and is still embraced by some as the correct approach). As explained in Chapter 1, abolitionists view all prostitution or sex work as a direct violation of any woman's dignity. As Bindman says:

> *The abolitionist approach declares that the institution of prostitution itself constitutes a violation of human rights akin to the institution of slavery…As such, no person, even an adult, is believed to be able to give genuine consent to engaging in prostitution*. [11]

The abolitionist approach sought to encourage governments to abolish prostitution altogether -- through the penalisation of third parties who profit from the transaction rather than through punishment of prostitutes themselves, who were viewed primarily as victims of processes they cannot control. [12]

The 1949 Convention reflects the abolitionist influence, as evidenced by the preamble which states that "*prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community….*". [13]

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (excerpts)

Article I
The Parties to the present Convention agree to punish any person who, to gratify the passions of another:

(1) Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person;
(2) Exploits the prostitution of another person, even with the consent of that person.

Article 2
The Parties to the present Convention further agree to punish any person who:

(1) Keeps or manages, or knowingly finances or takes part in the financing of a brothel;
(2) Knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others.

***

Article 6
Each Party to the present Convention agrees to take all the necessary measures to repeal or abolish any existing law, regulation or administrative provision by virtue of which persons who engage in or are suspected of engaging in prostitution are subject either to special registration or to the possession of a special document or to any exceptional requirements for supervision or notification.

***

Article 16
The Parties to the present Convention agree to take or to encourage, through their public and private educational, health, social, economic and other related services, measures for the prevention of prostitution and for the rehabilitation and social adjustment of the victims of prostitution and of the offences referred to in the present Convention

In line with abolitionist thinking, the 1949 Convention does not require the criminalisation of prostitution itself, but seeks to criminalize acts of third parties associated with prostitution. Member states which ratify the Convention agree to punish brothel-keepers, as well as any person who "procures, entices or leads away, for the purposes of prostitution, another person, *even with their consent*." (See box above). States parties further agree to make it an extraditable offence to kidnap or entice a person out of his or her own country for the purposes of prostitution. [14]

With regard to prostitutes themselves, the 1949 Convention forbids states from enacting any system which would require registration, focusing instead on prevention and rehabilitation. (See box above.)

This Convention has come under attack from all angles. Abolitionists criticise the convention for making a distinction between voluntary and forced prostitution, by suggesting that consent to prostitution is possible. On the other hand, proponents of prostitution as a form of work have criticised the document for prescribing the same treatment for women who are forced or coerced into prostitution and those who choose it voluntarily as a means of employment and income generation. [15]

The philosophy of the 1949 Convention has been strongly criticised by the United Nations Special Rapporteur on Violence against Women and Children, particularly with respect to its approach to trafficking:

> *The 1949 Convention has proved ineffective in protecting the rights of trafficking women and combating trafficking. The Convention does not take a human rights approach. It does not regard women as independent actors endowed with rights and reason; rather, the Convention views them as vulnerable beings in need of protection from the "evils of prostitution". As such, the 1949 Convention does very little to protect women from and provide remedies for the human rights violations committed in the course of trafficking, thereby increasing trafficked women's marginalization and vulnerability to human rights' violations. Further, by confining the definition of trafficking to trafficking for prostitution, the 1949 Convention excludes vast numbers of women from its protection.*[16]

Another criticism of the 1949 Convention is the fact that it pays absolutely no attention to the customer in the sex industry. There are no penalties to be paid by the customer, nor are state parties required to take any action against customers, despite the fact that prostitution would not exist without them.

One positive element of the 1949 Convention is the fact that it is phrased in gender-neutral terms and therefore gives protection to both women and men who are involved in prostitution. [17]

According to the UN Special Rapporteur on Violence against Women, the 1949 Convention has failed to attract widespread support because of "its ill-defined and broad terminology, a weak enforcement mechanism and its uniquely abolitionist perspective". [18]

Despite all the criticisms that have been raised against this document, it is still in force -- but it has been endorsed by only 73 states parties (as of June 2001), and fewer than half

of these parties submit regular reports. [19] Most countries agree that there is a need to reformulate international standards on the issues in question. Namibia has neither signed nor ratified the Convention.

The 1949 Convention is reproduced in full in the Appendix to this report.

2.4 WORLD CONFERENCES ON WOMEN

After the adoption of the 1949 Convention, prostitution took a back seat on the international agenda until the middle of the 1970's, when a "new wave of feminist-backed campaigning against trafficking in women, child prostitution and sex tourism" began. [20]

Since the 1970's there has been a global movement towards recognising the rights of sex workers as workers engaged in a legitimate form of employment, and there has been a very active campaign by sex workers who have formed groups to press for recognition of their rights as workers. This has resulted in a greater international emphasis on protection against *forced* prostitution and trafficking, with no specific consensus on prostitution in general:

> *A distinction has traditionally been made between prostitution as a manner of personal choice and a form of work, perhaps reprehensible but unavoidable, and enforced prostitution, or traffic in persons, considered a slavery-like practice to be combated by the international community ….* [21]

However, feminist groups are still divided on the issue, with the "abolitionist" approach still competing with the "prostitution as choice" approach in international forums.

The years 1976 through 1985 were dubbed the United Nations Decade for Women, which served to "promote and legitimise the international women's movement." [22] As a result, a series of world conferences on women were held. The first was in Mexico City in 1975, followed by a similar conference in Copenhagen in 1980, and in Nairobi in 1985. [23] This was followed by a more general 1993 Conference on Human Rights in Vienna, which gave explicit recognition to women's rights as human rights. The Fourth World Conference for women was held in Beijing in 1995, followed most recently by Beijing +5 in New York in 2000.

Each of these conferences has adopted platforms for action which encourage governments to adopt more effective policies on the status and rights of women. Each platform is the result of "years of negotiating, lobbying, consulting and consensus-building amongst government representatives and non-governmental organisations." [24]

Although the agreements that are produced by such conferences are not legally binding per se, they do have "ethical and political weight and can be used to pursue regional, national or local objectives. [25] Prostitution received some attention at each of these forums.

First World Conference on Women, Mexico City, 1975

The Mexico Declaration on the Equality of Women adopted at the 1975 Conference made no distinction between forced and voluntary prostitution, stating that "women all over the world should unite to eliminate violations of human rights committed against women and girls, such as rape, prostitution…" [26]

The document called on member states to implement legislation against prostitution and trafficking and to establish programs to prevent and rehabilitate women in prostitution and trafficking. It also called on governments to ratify the UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. [27]

Second World Conference on Women, Copenhagen, 1980

The document adopted five years later, at the Second World Conference on women, once again urged the ratification of the *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*. It also urged governments "to recognise that women and children are not a commodity and that every woman and every child has the right to protection against abduction, rape and prostitution" and ""to legal protection against maltreatment which they may be subjected to for the sole reason of their being prostitutes". [28]

Third World Conference on Women, Nairobi, 1985

By the time of the Third World Conference on Women, the emphasis had changed and international references to "prostitution" had been replaced with references to "involuntary" or "forced" prostitution. The Nairobi Forward Looking Strategies adopted by the Third World Conference on Women in 1985 included "women victims of trafficking and involuntary prostitution" amongst the areas of critical concern identified by this document (see box).

NAIROBI FORWARD LOOKING STRATEGIES, 1985

290. Forced prostitution is a form of slavery imposed on women by procurers. It is, *inter alia*, a result of economic degradation that alienates women's labour through processes of rapid urbanization and migration resulting in underemployment and unemployment. It also stems from women's dependence on men. Social and political pressures produce refugees and missing persons. Often these include vulnerable groups of women who are victimized by procurers. Sex tourism, forced prostitution and pornography reduce women to mere sex objects and marketable commodities.

291. States Parties to the United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others should implement the provisions dealing with the exploitation of women as prostitutes. Urgent consideration should also be given to the improvement of international measures to combat trafficking in women for the purposes of prostitution. Resources for the prevention of prostitution and assistance in the professional, personal and social reintegration of prostitutes should be directed towards providing economic opportunities, including training, employment, self-employment and health facilities for women and children. Governments should also endeavour to co-operate with non-governmental organizations to create wider employment possibilities for women. Strict enforcement provisions must also be taken at all levels to stem the rising tide of violence, drug abuse and crime related to prostitution. The complex and serious problems of the exploitation of and violence against women associated with prostitution call for increased and co-ordinated efforts by police agencies internationally.

World Conference on Human Rights, Vienna, 1993
The World Conference on Human Rights adopted the Vienna Declaration on 25 June 1993. This Declaration specifically mentions trafficking as a human rights issue. Paragraph 18 says that "gender-based violence and all forms of sexual harassment and exploitation resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated. This can be achieved by legal measures and through national action and international cooperation in such fields as economic and social development, education, safe maternity and health care, and social support."

In the chapter about the equal status and human rights of women, the Vienna Declaration again stresses "the importance of working towards the elimination of violence against women in public and private life, the elimination of all forms of sexual harassment, exploitation and trafficking in women…" [29]

The document also suggests that "national and international mechanisms and programmes should be strengthened for the defence and protection of children, in particular, the girl-child, abandoned children, street children, economically and sexually exploited children, including through child pornography, child prostitution or sale of organs…" .[30]

Fourth World Conference on Women, Beijing, 1995
The 1995 Fourth World Conference on Women in Beijing 1995 was one of the largest global conferences ever held, with 17 000 participants, and delegates from 189 countries. A Platform for Action was drafted "from a preparatory process more participatory and inclusive than any in history." [31] Trafficking, sexual exploitation and forced prostitution of women and girls were given substantial attention in this document, which links the problems of sexual exploitation and prostitution to a range of human rights issues. However, the document makes no call for action to combat prostitution which is not forced prostitution, child prostitution or some form of sexual exploitation.

One of the strategic objectives named in the Platform for Action was poverty, and the document notes that "poverty can also force women into situations in which they are vulnerable to sexual exploitation." [32]

The section on health acknowledges that "sexual and gender-based violence, including physical and psychological abuse, trafficking in women and girls, and other forms of abuse and sexual exploitation place girls and women at high risk of physical and mental trauma, disease and unwanted pregnancy." This portion of the Platform calls for formal and informal educational programmes that "emphasize the elimination of harmful attitudes and practices" including "sexual exploitation" and "sexual abuse" [33]. It also calls for "specific preventative measures to protect women, youth and children from any abuse" – including "exploitation" and "trafficking". [34]

Another one of the critical areas discussed under the Platform for Action is violence against women, which is defined as including "violence related to exploitation" as well as "trafficking in women and forced prostitution". [35] It is further extended to include acts of violence against women in situations of armed conflict, and "in particular murder, systematic rape, sexual slavery and forced pregnancy." [36]

In paragraph 122, violence related to exploitation is further highlighted as follows:

> *The effective suppression of trafficking in women and girls for the sex trade is a matter of pressing international concern. Implementation of the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, as well as other relevant instruments, needs to be reviewed and strengthened. The use of women in international prostitution and trafficking networks has become a major focus of international organised crime. The Special Rapporteur of the Commission on Human Rights on violence against women, who has explored these acts as an additional cause of the violation of the human rights and fundamental freedoms of women and girls, is invited to address within her mandate and as a matter of urgency, the issue of international trafficking for the purposes of the sex trade, as well as the issues of forced prostitution, rape, sexual abuse and sex tourism. Women and girls who are victims of this international trade are at an increased risk of further violence as well as unwanted pregnancy, sexually transmitted infection, including infection with HIV/AIDS.* [37]

This statement sends a very strong message about the growing international concern over trafficking and forced prostitution, although it is relevant that the issue of voluntary prostitution is not addressed in any way.

The Platform for Action suggests a range of action on trafficking by governments of countries of origin, transit and destination, regional and international organisations (see box).

EXCERPTS FROM BEIJING PLATFORM FOR ACTION ON TRAFFICKING

D. Violence against women

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Strategic objective D3: Eliminate trafficking in women and assist victims of violence due to prostitution and trafficking.

Actions to be taken

130. By Governments of countries of origin, transit and destination, regional and international organizations, as appropriate:

(a) Consider the ratification and enforcement of international conventions on trafficking in persons and on slavery;

(b) Take appropriate measures to address the root factors, including external factors, that encourage trafficking in women and girls for prostitution and other forms of commercialised sex, forced marriages and forced labour in order to eliminate trafficking in women, including by strengthening existing legislation with a view to providing better protection of the rights of women and girls and to punishing the perpetrators, through criminal and civil measures;

(c) Step up cooperation and concerted action by all relevant law enforcement authorities and institutions with a view to dismantling national, regional and international networks in trafficking;

(d) Allocate resources to provide comprehensive programmes designed to heal and rehabilitate into society victims of trafficking, including through job training, legal assistance and confidential health care, and take measures to cooperate with non-governmental organisations to provide for the social, medical and psychological care of the victims of trafficking;

(e) Develop educational and training programmes and policies and consider enacting legislation aimed at preventing sex tourism and trafficking, giving special emphasis to the protection of young women and children.

Reference is once again made to trafficking and forced prostitution under the section dedicated to human rights of women. Here, the Platform reiterates the statement made in other international documents that "sexual slavery and exploitation, and international trafficking in women and children, forced prostitution and sexual harassment…" are "incompatible with the dignity and the worth of the human person and must be combated and eliminated". [38] This section of the Platform commits states to

> *strengthen the implementation of all relevant human rights instruments in order to combat and eliminate, including through international cooperation, organised and other forms of trafficking in women and children, including trafficking for the purposes of sexual exploitation, pornography, prostitution and sex tourism, and provide legal and social services to the victims; this should include provisions for international cooperation to prosecute and punish those responsible for organised exploitation of women and children.* [39]

Finally the document encourages government to take action against trafficking, sexual exploitation and forced prostitution of the girl-child by the implementation of legislation and other measures. [40]

EXCERPTS FROM BEIJING PLATFORM FOR ACTION
ON CHILD PROSTITUTION

230. (m) Address the acute problems of children, *inter alia*, by supporting efforts in the context of the United Nations system aimed at adopting efficient international measures for the prevention and eradication of female infanticide, harmful child labour, the sale of children and their organs, child prostitution, child pornography and other forms of sexual abuse and consider contributing to the drafting of an optional protocol to the Convention on the Rights of the Child.
(n) Strengthen the implementation of all relevant human rights instruments in order to combat and eliminate, including through international cooperation, organized and other forms of trafficking in women and children, including for the purposes of sexual exploitation, pornography, prostitution and sex tourism, and provide legal and social services to the victims. This should include provisions for international cooperation to prosecute and punish those responsible for organized exploitation of women and children.

*****

277 (d) Develop policies and programmes, giving priority to formal and informal education programmes that support girls and enable them to acquire knowledge, develop self-esteem and take responsibility for their own lives; and place special focus on programmes to educate women and men, especially parents, on the importance of girls' physical and mental health and well-

being, including the elimination of discrimination against girls in food allocation, early marriage, violence against girls, female genital mutilation, child prostitution, sexual abuse, rape and incest.

*****

283 (d) Enact and enforce legislation protecting girls from all forms of violence, including female infanticide and prenatal sex selection, genital mutilation, incest, sexual abuse, sexual exploitation, child prostitution and child pornography, and develop age-appropriate safe and confidential programmes and medical, social and psychological support services to assist girls who are subjected to violence.

Beijing +5

The Twenty-Third Special Session of the General Assembly, which had the theme "Women 2000: gender equality, development and peace for the twenty-first century", took place at the United Nations Headquarters in New York in June 2000. This meeting, popularly known as "Beijing +5", reviewed accomplishments since Beijing. Over 180 countries participated in this meeting, adopting a document entitled "Further Actions and Initiatives to Implement the Beijing Declaration and Platform for Action". This document identifies achievements and obstacles to achieving the Beijing Platform for Action, and gives further elaboration to some issues.

In dealing with violence against women, one obstacle which is identified is the socio-cultural attitude towards women and girls which makes them more vulnerable to "violence related to exploitation" (among other things). [41] The document also notes "that in some countries problems have arisen from the use of new information and communication technologies for trafficking in women and children and for the purposes of all forms of economic and sexual exploitation." [42]

When the forum addressed the issue of women and armed conflict, there was once again mention of trafficking and forced prostitution. Of course this deals specifically with situations arising during times of war. One of the achievements noted by the meeting is the fact that the Rome Statute for the establishment of an International Criminal Court "provides that rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and other forms of sexual violence are war crimes when committed in the context of armed conflict and also under defined circumstances, crimes against humanity."[43] One of the obstacles cited under this section is the fact that women continue to be victims of the different types of violence mentioned above in times of armed conflict. According to the report, "displacement compounded by loss of home and property, poverty, family disintegration and separation and other consequences of armed conflict is severely affecting populations, especially women and children. Girls are also abducted or recruited in violation of international law, into situations of armed conflict including, *inter alia*, as combatants, sexual slaves or providers of domestic services."[44] In this respect, the report suggests the following:

> *95 (b) Increase awareness and knowledge of the Rome Statute of the ICC which affirms that rape,* ***sexual slavery, enforced prostitution****, forced pregnancy, enforced sterilisation and other forms of sexual violence constitute war crimes and, in defined circumstances, crimes against humanity, with the aim of preventing such crimes from occurring and take measures to support prosecution of all persons responsible for such crimes and provide avenues for redress to victims; also increase*

awareness of the extent to which such crimes are used as a weapon of war. [45]

The Beijing +5 document also reaffirms concerns about the vulnerability of migrant women to the "risk of trafficking, economic and sexual exploitation".[46] The recommendations on how to deal with the problem of trafficking in general have become more specific and detailed (see box).

EXCERPTS FROM BEIJING +5 ON TRAFFICKING

70. (a*)* Take appropriate measures to address the root factors, including external factors, that encourage trafficking in women and girls for prostitution and other forms of commercialized sex, forced marriages and forced labour in order to eliminate trafficking in women, including by strengthening existing legislation with a view to providing better protection of the rights of women and girls and to punishing the perpetrators, through both criminal and civil measures;
(b) Devise, enforce and strengthen effective measures to combat and eliminate all forms of trafficking in women and girls through a comprehensive anti-trafficking strategy consisting of, *inter alia*, legislative measures, prevention campaigns, information exchange, assistance and protection for and reintegration of the victims and prosecution of all the offenders involved, including intermediaries;
(c) Consider preventing, within the legal framework and in accordance with national policies, victims of trafficking, in particular women and girls, from being prosecuted for their illegal entry or residence, taking into account that they are victims of exploitation;
(d) Consider setting up or strengthening a national coordinating mechanism, for example, a national rapporteur or an inter-agency body, with the participation of civil society, including non-governmental organizations, to encourage the exchange of information and to report on data, root causes, factors and trends in violence against women, in particular trafficking;
(e) Provide protection and support to women and their respective families and develop and strengthen policies to support family security.

*****

96 (a) Increase cooperation, policy responses, effective implementation of national legislation and other protective and preventative measures aimed at the elimination of violence against women and girls, ***especially all forms of commercial sexual exploitation, as well as economic exploitation, including inter alia, trafficking in women and children***…

******

97 (a) Intensify cooperation between states of origin, transit and destination to prevent, ***suppress and punish trafficking in persons***, especially women and children;
(b) Support the ongoing negotiations on the draft protocol to ***prevent, suppress and punish trafficking in persons***, especially women and children, which supplements the UN Convention against Transnational Organized Crime;
(c) As appropriate, pursue and support national, regional and international strategies to reduce the risk of women and girls, including those who are refugees and displaced, as well as women migrant workers, of becoming ***victims of trafficking; strengthen national legislation by further defining the crime of trafficking*** in all its elements and ***by reinforcing the punishment accordingly; enact social and economic policies and programmes***, as well as information and awareness raising initiatives, to ***prevent and combat trafficking in persons***, especially women and children; ***prosecute perpetrators*** of trafficking; provide measures to ***support, assist and protect trafficked persons*** in countries of origin and destination; and facilitate their return to and support their reintegration in countries of origin.

2.5 CEDAW

The Convention on the Elimination of all Kinds of Discrimination against Women (CEDAW) was adopted in 1979, entering into force in 1981. Namibia is one of the few nations that have ratified CEDAW with no reservations. [47]

CEDAW, Article 6
States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

Article 6 of CEDAW obligates signatories to "suppress all forms of traffic in women and exploitation of prostitution of women." This article uses the same wording as the 1949 Convention. This might seem to imply that CEDAW's approach, like that of the 1949 Convention, is abolitionist in nature. However, it is significant to note that a broader wording which would have called for the suppression of prostitution in general was specifically rejected:

> *[W]hen the text was being drafted, Morocco introduced an amendment to Article 6 which called for the suppression of prostitution in addition to the suppression of the exploitation of prostitution. This amendment was found unacceptable by the Netherlands and Italy because they considered that the new element of suppression of prostitution unacceptable. The amendment was rejected, thus it can be argued that Article 6 does not consider all prostitution inherently coercive.* [48]

CEDAW General Recommendations
Apart from the Convention, there are also various recommendations that are made from time to time by the United Nations Committee which monitors CEDAW. These recommendations are intended as guides to the interpretation of the Convention. In 1992 the Committee made recommendations on Article 6 which emphasise the linkages between prostitution, poverty and unemployment. [49] (The relevant parts of the Committee's recommendation are reproduced in the accompanying box.)

EXCERPT FROM CEDAW GENERAL RECOMMENDATION 19 (1992)
Violence against women

Article 6

13. States parties are required by Article 6 to take measures to suppress all forms of traffic in women and exploitation of the prostitution of women.

14. Poverty and unemployment increase opportunities for trafficking in women. In addition to established forms of trafficking there are new forms of sexual exploitation, such as sex tourism, the recruitment of domestic labour from developing countries to work in developed countries and organized marriages between women from developing countries and foreign nationals. These

practices are incompatible with the equal enjoyment of rights by women and with respect for their rights and dignity. They put women at special risk of violence and abuse.

15. Poverty and unemployment force many women, including young girls, into prostitution. Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. They need the equal protection of laws against rape and other forms of violence.

16. Wars, armed conflicts and the occupation of territories often lead to increased prostitution, trafficking in women and sexual assault of women, which require specific protective and punitive measures.

***

Specific recommendation

24. …
(g) Specific preventive and punitive measures are necessary to overcome trafficking and sexual exploitation;

(h) States parties in their reports should describe the extent of all these problems and the measures, including penal provisions, preventive and rehabilitation measures that have been taken to protect women engaged in prostitution or subject to trafficking and other forms of sexual exploitation. The effectiveness of these measures should also be described…

The Committee also referred to prostitution in connection with Article 14, which pertains to rural women:

> *Rural women are at risk of gender-based violence because traditional attitudes regarding the subordinate role of women persist in many rural communities. Girls from rural communities are at special risk of violence and sexual exploitation when they leave the rural community to seek employment in towns.* [50]

The Committee linked prostitution to health problems in its General Recommendation on Article 12, which covers women and health:

> *While biological differences between women and men may lead to differences in health status, there are societal factors which are determinative of the health status of women and men and which can vary among women themselves. For that reason, special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups, such as migrant women, refugee and internally displaced women, the girl child and older women, women in prostitution, indigenous women and women with physical or mental disabilities.* [51]

Noting that women in prostitution are particularly vulnerable to HIV/AIDS and other sexually transmitted diseases, the Committee went on the recommend that "States parties should ensure, without prejudice and discrimination, the right to sexual health information, education and services for all women and girls, including those who have been trafficked, even if they are not legally resident in the country". [52]

These recommendations focus on trafficking and sexual exploitation. However, they also focus on the social conditions that may 'force' women to enter commercial sex work. This seems to suggest that there is more than one kind of 'force' at work – human agents can coerce people to enter prostitution, but so can social and economic conditions. However, the emphasis of the recommendations is on the *protection* of women engaged in prostitution, not on their punishment.

2.6 TRAFFICKING PROTOCOL 2000

In November 2000, the UN General Assembly adopted a new Convention Against Transnational Organised Crime. Namibia is already a signatory to this Convention. The Convention is supplemented by two protocols, one on trafficking in persons and one on the smuggling of persons. (The existence of two separate protocols reflects the fact that these are two different problems which call for different measures.) These two new protocols were opened for signature in December 2000, and will enter into force once they have been ratified by 40 countries. Namibia has signed both protocols.

The stated purposes of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the "Trafficking Protocol") are:

> *(a) to prevent and combat trafficking in persons, paying particular attention to women and children;*
> *(b) to protect and assist the victims of such trafficking, with full respect for their human rights; and*
> *(c) to promote cooperation among States Parties in order to meet those objectives.* [53]

The Trafficking Protocol is oriented around crime control. It includes a number of provisions on international cooperation in the prevention and combating of trafficking.

The Protocol provides the first internationally–accepted definition of trafficking (see box). The term "exploitation of prostitution of others or other forms of sexual exploitation" is purposefully left undefined, as the government delegates could not agree upon a common meaning. While there was unanimous agreement that that forcing people to participate in prostitution constitutes trafficking, most of the governments which participated rejected the idea that voluntary, non-coercive participation in prostitution (by adults) should fall under the definition. Thus, the Trafficking Protocol reflects the distinction between free and forced prostitution rather than an abolitionist approach. However, it should be noted that the delegates who adopted the Convention emphasised the fact that the Convention should not affect how voluntary prostitution is treated in domestic legislation:

> *The traveaux preparatoires* [background documents which are used as guides to the interpretation of international conventions] *should indicate that the Protocol addresses the exploitation of the prostitution of others and other forms of sexual exploitation only in the context of trafficking of others. The terms 'exploitation of the prostitution of others' or 'other forms of sexual exploitation' are not defined in the Protocol, which is therefore without prejudice to how States Parties address prostitution in their respective domestic laws.* [54]

INTERNATIONAL DEFINITION OF TRAFFICKING
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (supplementing the United Nations Convention Against Transnational Organised Crime)

(a) 'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in subparagraph (a) of this article;
(d) 'Child' shall mean any person under eighteen years of age.

Article 3

The definition of trafficking which it employs is a very broad one, which includes not only trafficking by force, but also more subtle means of coercion such as deception and "*abuse of power or of a position of vulnerability".*

Where such means of coercion are used, the definition of trafficking states that the consent of the trafficked person is irrelevant—a point which aroused much international debate, along the same lines as the more general question of whether or not there can be any such thing as voluntary prostitution. Some worried that making consent irrelevant might hamper women's freedom of movement, or lead to policies which discriminate against women. The UN Special Rapporteur on Violence Against Women and Children stated:

> *At the core of any definition of trafficking must be the recognition that trafficking is never consensual. It is the non-consensual nature of trafficking that distinguishes it from other forms of migration. The lack of informed consent must not be confused with the illegality of certain forms of migration. While all trafficking is, or should be, illegal, all illegal migration is not trafficking.* [55]

Another point of heated debate was whether the definition should refer to prostitution or sexual exploitation at all. The UN Special Rapporteur on Violence Against Women and Children was of the opinion that a definition of trafficking should focus on "forced labour or slavery-like practices", rather than narrowly focusing on prostitution or sexual exploitation. She noted that "trafficking is undertaken for numerous purposes, including but not limited to prostitution or other sex work, domestic manual or industrial labour, and marriage, adoptive or other intimate relationships". [56] The International Labour Organization also proposed deleting any reference to 'sexual exploitation', as did the UN High Commissioner for Human Rights who worried that this was an "undefined, imprecise and emotive" term. [57]

A strength of the definition is that it does not require cross-border movement, but would also cover trafficking within a single country. It also addresses the demand which keeps trafficking alive, by requiring states parties to "*adopt or strengthen legislative or other measures, such as educational, social or cultural measures... to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking*." [58]

The Trafficking Protocol calls upon member states to criminalise trafficking, and suggests certain protections for the victims of trafficking. However, one criticism of the Trafficking Protocol is that, while it provides for protection for trafficked persons who are prepared to be witnesses in criminal proceedings, it does little to protect the rights of other trafficked persons. Another weakness is that the law enforcement provisions of the Protocol are mandatory for parties to the Convention, while the provisions on protection and assistance to trafficked persons are discretionary. [59]

For example, rather than stating anything definite about the residence rights of victims of trafficking, the Protocol says that each State party "shall *consider* adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, *in appropriate cases"* – without acknowledging that forced repatriation to the home country can pose a serious safety risk for the trafficking victim, especially in the context of organised crime. [60] The provisions on support programmes for victims of trafficking are similarly limited to *"appropriate cases".* [61]

The European Union has set an example of good regional co-operation around trafficking by the adoption of a victim-sensitive programme of action known as the "Hague Declaration on the Question of Trafficking in Women". Among the measure included in this programme are

- the introduction of national rapporteurs who will gather and exchange information on trafficking
- the use of information campaigns in both countries of origin and countries of destination, in an effort to prevent trafficking
- acknowledging trafficked women as crime victims, so that they are not treated as illegal immigrants and deported
- providing victims of trafficking with support and time to reflect on whether or not they will participate in court cases against the perpetrators
- giving temporary resident status to victims as necessary during the criminal proceedings against the perpetrators
- training of police and the judiciary on the nature and characteristics of trafficking
- improving the general social and economic status of women in countries of origin. [62]

This programme could serve as a model for similar regional co-operation in Africa.

The Trafficking Protocol is reproduced in full in the Appendix to this report.

Malawi Acquits Trafficker Because Victims Can't Prove Force

Malawi… has experienced an increase in the commercial sexual exploitation of women and girls driven into prostitution by poverty and abuse. Reports have surfaced of scores of Malawian girls in prostitution in Germany, Britain, Italy, the Netherlands and some Nordic countries.

Recently three Malawian young women brought a case against a local businesswoman who runs an exclusive nightclub in the Malawian capital of Lilongwe. The nightclub owner paid for their airfare, arranged all travel documents in false names, and told them that they would be assisting her in transporting goods for her boutique. Upon arriving in Amsterdam, she forced them to work in prostitution in Amsterdam's red light district. "We were forced to sleep with any man as long as he had the money," said one of the victims.

Despite the courage of the women in coming forward and attempting to bring charges against their abuser, she was acquitted. The magistrate dismissed their complaint, holding that because the victims had previously been in prostitution they could not prove that they were forced into trafficking…

CATW Coalition Report

2.7 RELATED INTERNATIONAL ISSUES

Sex work and slavery

Prostitution has often been coupled with slavery in international discussions. For example, the UN Working Group on Contemporary Forms of Slavery has prepared a draft programme of action for prevention of traffic in persons and the exploitation of the prostitution of others. While some people would argue that all prostitution is a form of 'sexual slavery', most people would agree that at least some sex workers are subjected to conditions of slavery:

> *Where an individual's ability to negotiate is constrained by another person; where another person has the power to decide which or how many clients she will service, and what services may be performed, or the consent of the individual is overridden in any direction, then indeed we find slavery.* [63]

For those forms of sex work carried out in conditions of slavery, the international conventions on slavery would be applicable. For example, the International Covenant on Civil and Political Rights (which Namibia has ratified) states that "No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited." [64] The prohibitions in Article 9 of the Namibian Constitution on slavery, servitude and forced labour would also be relevant in this respect. [65]

Sex work and violence against women and children

At the international level, the link between sex work, trafficking in women and children and violence against women and children has been widely acknowledged. For example, the 1993 Declaration on the Elimination of Violence against Women adopted by the UN General Assembly makes specific reference to "violence related to exploitation" and "trafficking in women and forced prostitution" as forms of violence. [66] (The Declaration represents another international move away from the abolitionist approach, in that the

wording refers to trafficking and forced prostitution but does not allude to voluntary prostitution.)

Another example of the linkage can be seen in the fact that prostitution and trafficking falls within the mandate of the UN Special Rapporteur on Violence against Women and Children, who has reported extensively on these topics.

The right to free choice of employment

If sex work is considered as a form of work, then there are a number of other international statements and agreements on labour which become relevant. There is evidence towards an increasing analysis of voluntary prostitution as "work" at the international level.

One sign of the international movement towards the recognition of sex work as a legitimate form of labour is a controversial 1998 publication by the International Labour Organization (ILO) of a book entitled *The Sex Sector: The economic and social bases of prostitution in Southeast Asia*. The ILO asserts in the preface to the book that prostitution raises a number of issues which fall within the ILO's mandate – including employment and working conditions. [67] The ILO did not take a stand on whether prostitution should be legalised, but it did make the following statement:

> *The study shows that some go into prostitution as a matter of free personal choice or the right to sexual liberation, others are pressured because of dire economic conditions or the lack of remunerative alternatives and yet others are forced through deception, violence or debt bondage. Partly depending upon the mode of entry into prostitution, the terms and conditions of work can range from decent and lucrative to severely exploitative and abusive.* ***Where prostitutes are considered as workers with rights under standard labour legislation, the concern would be to ensure that they, like other legitimate workers, are entitled to proper working conditions and protection from exploitation and discrimination.*** [68]

According to the ILO study, commercial sex work in Southeast Asia "has assumed the dimensions of an industry and has directly and indirectly contributed in no small measure to employment, national income and economic growth" and therefore needs to be recognised "as a economic sector in official statistics, development plans [and] government budgets". The ILO report suggests that such official recognition would help governments to assess health impacts, develop appropriate labour market policies and extend taxation policies to cover the sex sector. [69]

The European Court of Justice recently equated prostitution with other forms of self-employment, in a case holding that prostitutes from Eastern Europe have a right to work in any European Union country where prostitution is legal. [70]

Euro court grants rights to prostitutes

A group of Polish and Czech women have won a ruling in the European Court of justice, granting them the right to work as prostitutes in the Netherlands.

The four women took their case to court when they rented "window rooms" in Amsterdam's red-light district but were refused work permits on the grounds that prostitution was not a regular job.

The court found in their favour, saying that, under treaties between the European Union and its applicant countries, they had the right to work.

The judges said prostitutes could work in any European Union country where selling sex was tolerated - as long as they were genuinely self-employed, had the means to set up their business and had a reasonable chance of success.

"The activity of prostitution pursued in a self-employed capacity can be regarded as a service provided for remuneration," the judgment said.

BBC News, 20 November 2001
http://news.bbc.co.uk/hi/english/world/europe/newsid_1665000/1665695.stm

If prostitution is accepted as a legitimate form of "work", then the principle of freedom to choose one's profession would apply. For example:

- Article 23 of the Universal Declaration of Human Rights grants everyone the "right to work, **to free choice of employment** …" [71]
- The International Covenant on Economic, Social and Cultural Rights states that "the States Parties to the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he **freely chooses or accepts** …" [72]
- The International Covenant on Civil and Political Rights says that "all peoples have the right of self-determination. By virtue of that right they **freely determine …and freely pursue their economic, social and cultural development**." [73]
- These international references to economic self-determination are echoed in the Namibian Constitution, which protects the right of any person to "**practise any profession, or carry on any occupation, trade or business**" as a fundamental right of every person in Namibia.[74]
- Conventions on working conditions and domestic labour legislation would become relevant to sex work.

Sex work and discrimination

Because sex work is primarily a female activity, it has been argued that penalising it is a form of sex discrimination – particularly where the sale of sexual service by females is criminalised, but not the purchase of sex work by clients. It has also been asserted that penalising sex work constitutes an unfair restriction on women's right to work. [75] The provisions of international conventions pertaining to sex discrimination are relevant to this dimension of sex work, as are the prohibitions on sex discrimination in Article 10 of the Namibian Constitution. [76]

2.8 CHILD PROSTITUTION

The UN Special Rapporteur on Violence against Women and Children has defined child prostitution as "the act of engaging or offering the services of a child to perform sexual acts for money or other consideration with that person or any other person". [77] This definition emphasises that child prostitution is not committed by the child, but by the other persons who are involved. [78] The international definition of a child is a person under the age of 18 years. [79]

At the international level, child prostitution is recognised as a specific problem which is different in many respects from adult sex work. There is less disagreement about the position of child prostitution:

> *While in the case of adults it may be possible to make the distinction between voluntary and enforced prostitution, child prostitution 'constitutes a form of coercion and violence against children and amounts to forced labour and a contemporary form of slavery". (World Congress against the Commercial Sexual Exploitation of Children, 1996).* [80]

The vexed question of "choice" assumes different dimensions when children are involved, since physical maturity does not coincide with social and emotional maturity. For example, it has been argued that children who grow up in environments characterised by extreme poverty, lack of educational opportunities, dysfunctional families, substance abuse and domestic violence are more likely to be victims of these environments because their lesser degree of maturity makes them more vulnerable. Children, being impressionable, are also more susceptible to peer pressure or the example of the adults around them. [81] Children are generally more vulnerable to fraud and trickery, and so are more likely than adults to become victims of trafficking. It has been suggested that the term "child prostitution" is a misnomer, and that it would be more accurate to talk rather of "child victims of prostitution". [82]

Most countries which have decriminalised sex work by adults still prohibit child prostitution in some way.

Worldwide, it is estimated that child prostitution produces US$5 billion annually. It is a global problem, but is believed to be particularly widespread in Asia and in Central and South America. [83] Children are often a particular focus of sex tourism. [84]

Internationally, child prostitution is subject to patterns which have been named the "spiral factor" and the "chain effect". The "spiral factor" is the trend towards younger and younger victims, because of beliefs among some customers that they can rejuvenate themselves by having sex with very young virgins, or beliefs that this will enable them to protect themselves against HIV/AIDS. The "chain effect" refers to the situation where one form of abuse leads to other more serious abuses, with an accumulation of negative consequences. For example, a child who is subjected to sexual abuse at home may run away and turn to prostitution in order to survive. The same child may then become dependent on drugs, which increases the dependency on prostitution for money to purchase the drugs. The same child may even start the pattern all over again by growing up to become an abusive parent. [85]

The effects of prostitution on children tend to be more severe than on adults. The psychological scars can be deeper, and children are more vulnerable to extreme

physical, psychological and emotional abuse in the course of the work. Children risk early pregnancy and attendant maternal mortality. Children also face a higher risk of contracting HIV than adult prostitutes:

> *They are much less likely to have access to information on the risks and consequences. They are also much less likely to have access to the means to prevent infection, including condoms. Even if they have such access, they tend to be powerless to negotiate safe sexual practices. Their immature reproductive tracts, the genital abrasions they suffer during sexual activity, and the hormonal fluctuations and permeability of key tissue walls increase the risk of transmission. Once exposed, they have limited protection against disease because their immune systems are not yet fully developed. The irony here is that there has been a notable shift towards commercial sex with younger children –even where this is not the sexual preference of the clients – because of the belief that they represent a lower risk of HIV/AIDS, while in fact the reverse is more likely to be true.* [86]

Increased attention has been devoted to the problem of child prostitution at the international level during the last decade. In 1990, the UN Commission on Human Rights appointed a Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography. [87] In 1992, UN Commission on Human Rights adopted a Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography. [88]

There have been two World Congresses on the Commercial Sexual Exploitation of Children – one in Stockholm, Sweden in 1996 and the second in Yokohama, Japan in 2001. [89] The 1996 Congress adopted the "Stockholm Declaration and Agenda for Action" which commits states to a range of actions to combat the sexual exploitation of children, including the development and strengthening of national laws and policies, regional and international cooperation, preventative measures and programmes for the recovery and reintegration of child victims. Namibia has committed itself to this Agenda, which was reconfirmed at the Second World Conference in 2001. [90] (The Stockholm Declaration and Agenda for Action and the follow-up Yokohama Global Commitment 2001 are reproduced in full in the Appendix to this report.)

excerpts from THE "STOCKHOLM DECLARATION AND AGENDA FOR ACTION"
agreed to by Namibia on 26 August 1996

The World Congress reiterates its commitment to the rights of the child, bearing in mind the Convention on the Rights of the Child, and calls upon all States in cooperation with national and international organizations and civil society to:

- Accord high priority to action against the commercial sexual exploitation of children and allocate adequate resources for this purpose;
- Promote stronger cooperation between States and all sectors of society to prevent children from entering the sex trade and to strengthen the role of families in protecting children against commercial sexual exploitation;
- Criminalize the commercial sexual exploitation of children, as well as other forms of sexual exploitation of children, and condemn and penalize all those offenders involved, whether local or foreign, while ensuring that the child victims of this practice are not penalized;
- Review and revise, where appropriate, laws, policies, programmes and practices to eliminate the commercial sexual exploitation of children;

- Enforce laws, policies and programmes to protect children from commercial sexual exploitation and strengthen communication and cooperation between law enforcement authorities;
- Promote adoption, implementation and dissemination of laws, policies, and programmes supported by relevant regional, national and local mechanisms against the commercial sexual exploitation of children;
- Develop and implement comprehensive gender-sensitive plans and programmes to prevent the commercial sexual exploitation of children, to protect and assist the child victims and to facilitate their recovery and reintegration into society;
- Create a climate through education, social mobilization, and development activities to ensure that parents and others legally responsible for children are able to fulfill their rights, duties and responsibilities to protect children from commercial sexual exploitation;
- Mobilize political and other partners, national and international communities, including intergovernmental organizations and non-governmental organizations, to assist countries in eliminating the commercial sexual exploitation of children; and
- Enhance the role of popular participation, including that of children, in preventing and eliminating the commercial sexual exploitation of children.

There are also several new international agreements which deal with the sexual exploitation of children.

UN Convention on the Rights of the Child
The UN Convention on the Rights of the Child, to which Namibia is bound, contains two articles which explicitly address the sexual exploitation of children (see box).

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

Article 19
1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, **maltreatment or exploitation, including sexual abuse**, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

*****

Article 34
States Parties undertake to protect the child from **all forms of sexual exploitation and sexual abuse**. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:
(a) The inducement or coercion of a child to engage in any unlawful sexual activity;
(b) The exploitative use of children in **prostitution or other unlawful sexual practices**;
(c) The exploitative use of children in pornographic performances and materials.

In addition to the two key articles quoted in the box above, Article 35 binds states parties to take all appropriate national, bilateral and multilateral measures to “prevent the abduction of, the sale of or traffic in children for any purpose”. Article 39 focuses on

measures to promote the physical and psychological recovery and social reintegration of child victims of abuse and exploitation, which must take place "in an environment which fosters the health, self-respect and dignity of the child".

Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography

The UN Convention on the Rights of the Child has been supplemented by an Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. [91] The Optional Protocol was adopted and opened for signature in May 2000. Namibia signed it on 8 September 2000. It was deposited with the United Nations on 16 April 2002 and came into force in respect of Namibia on 16 May 2002.

The Optional Protocol defines child prostitution as "the use of a child in sexual activities for remuneration or any other form of consideration". [92] It sets standards for the treatment of violations under domestic law, and provides a framework for increased international co-operation in these areas, in particular for the prosecution of offenders.

States parties to the Optional Protocol undertake to criminalise "offering, obtaining, procuring or providing a child for child prostitution" or sexual exploitation. [93] In terms of Article 8, states parties also promise to take measures to protect the rights and interests of child victims at all stage of the criminal justice system (see box). [94] States parties are also expected to take preventative action, and to raise public awareness about the harmful effects of child prostitution. [95]

In Namibia, many of the procedural concerns addressed in Article 8 are expected to be addressed in a draft law, the Vulnerable Witnesses Act, which would amend the Criminal Procedure Act to reduce the trauma of trials for children and other persons.

The Optional Protocol entered into force at the international level on 18 January 2002. As of April 2002, 93 nations had signed the Optional Protocol and 20 had ratified it. [96]

The Optional Protocol is reproduced in full in the Appendix to this report.

excerpts from
OPTIONAL PROTOCOL ON THE SALE OF CHILDREN
CHILD PROSTITUTION AND CHILD PORNOGRAPHY

Article 1
States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

Article 2
For the purposes of the present Protocol:
…
(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;
…

Article 3
1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:
…
(b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;
…

Article 8
1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

(a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;

(b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;

(c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;

(d) Providing appropriate support services to child victims throughout the legal process;

(e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;

(f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.

3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.

4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.

5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.

6. Nothing in the present article shall be construed to be prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

ILO Convention on the Worst Forms of Child Labour

Another new convention which is relevant to Namibia's national policy on sex work is the recently-adopted ILO Convention on the Worst Forms of Child Labour, which was the outcome of discussions at a series of national and regional consultations highlighted by a Global March against Child Labour.

The Convention entered into force on 19 November 2000 and, as of August 2001 had already been ratified by a total of 93 countries -- making it the most quickly adopted convention in ILO history. [97] It was ratified by Namibia on 15 November 2000.

from the ILO Convention on the Worst Forms of Child Labour

Article 1
Each Member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.

Article 2
For the purposes of this Convention, the term *child* shall apply to all persons under the age of 18.

Article 3
For the purposes of this Convention, the term *the worst forms of child labour* comprises:

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

(b) **the use, procuring or offering of a child for prostitution**, for the production of pornography or for pornographic performances;

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

This Convention represents a major step forward in the struggle against child labour. It covers a wide range of situations, and offers enough flexibility to be adapted to the priorities in different countries. Each country which ratifies it must adopt a National Action Plan to end the worst forms of child labour. Members who ratify the Convention are expected to adopt criminal sanctions or other appropriate sanctions in respect of the worst forms of child labour. They are also expected to adopt measures aimed at prevention, to offer direct assistance to remove children from the worst forms of labour and rehabilitate them, to ensure access to education for such children, to "identify and reach out to children at special risk, and to "take account of the special situation of girls". The ILO Convention is reproduced in full in the Appendix to this report.

Child sex tourism: SA to address dangers

South Africa held its first Sex Tourism Conference in Cape Town [in October 2001] to address what is considered a taboo topic in this country.

No official statistics are available, but speakers at the conference noted that the phenomenon of commercial sexual exploitation and child sex tourism is on the increase in South Africa, although it is nowhere near what has become an epidemic in parts of Asia.

Experts believe the root cause of the problem is poverty. Child sex tourism is fuelled by the ready availability of children; tourists believing it's acceptable in local cultures to have sex with children, even though it's illegal in their own countries; the perception that children are less likely to be HIV positive; no visible prosecution of offenders and no messages to tourists that sex with minors is illegal.

Offenders are foreign and local visitors. Names of children and their addresses are distributed through taxi drivers, hotel staff, sailors, brothels, families, the Internet and through word-of-mouth.

Experts say most people who work in tourist destinations and industries are ill equipped to deal with the problem. "Child Wise Tourism" is a concept developed by the tourism industry in Australia to prevent child sex tourism and is now applied in the most severely affected countries in the Far East. Government, NGOs, communities and the tourism industry work together to train tourism front-line staff on how to deal with sex tourism. Tour guides, taxi drivers, hotel and security staff are often the first to be confronted with the problem.

Another idea is to get tourism industries to sign a Code of Conduct developed in Sweden and already implemented in northern Europe. The code obliges tourism businesses to train their staff, to establish ethical policies, to provide information to travellers (such as leaflets and brochures advising that child sex tourism is illegal) and to report annually on code implementation.

In South Africa, experts agree, greater co-operation is needed from all role players to combat child sex tourism, while police have to find better ways to investigate child sex offences. "Police only act on reports, but a child living off sex tourism is hardly going to report it to police. It's not the child that should be criminalised, but the abuser," says Joan van Niekerk of the South African Law Commission. Proposed changes to SA legislation on child prostitution are supposed to crack down harder on offenders, but are still a far cry from Australian law which jails offenders for 17 years for child sex offences abroad…

[Another idea put forward is that] South African Airways should publish articles in their in-flight magazine featuring "No Child Sex Tourism" campaigns and logos, or follow the example of some European airlines which show in-flight videos educating travellers that sex with children is illegal…

According to the international non-profit organisation: End Child Prostitution, Child Pornography, and the Trafficking of Children for Sexual Exploitation (ECPAT), more than one million children worldwide enter the sex trade annually.

Southern African Tourism Update, November 2001, http://rapidttp.com/tourism/1/01novcf.html

2.9 AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

The African Charter on Human and Peoples' Rights (African Charter) was adopted in 1981 and entered into force in 1986. As a regional human rights instrument, it is specifically designed to reflect the history, values, traditions and development of Africa. [98]

Article 5 reads as follows: "Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited." Article 18 further makes the elimination of discrimination against women a duty of member states, and links the African Charter to all existing international conventions and declarations. Thus, although the African Charter does not mention prostitution specifically, it contains a number of general principles which are consistent with other international statements on the issue.

Additional Protocol on Women's Rights

In 1997, the members of the Organisation of African Unity drafted an Additional Protocol on Women's Rights under the African Charter, in an effort to combat the gender bias that is so rife in various parts of Africa. A 'final' draft was adopted by the African Commission of the OAU, but some provisions are still under debate. The Additional Protocol must be ratified by fifteen member states before it will become binding. [99]

The Additional Protocol is a comprehensive document which deals with various aspects of the rights of women in Africa. The latest draft available at the time of writing [100] includes a specific reference to the trafficking of women, as well as general commitments with relevance to sex work. For example, Article 3 calls for the adoption of "appropriate measures to prohibit any exploitation and degradation of women and girls." This is reinforced by the more explicit language of Article 4(g), which calls on states parties to take appropriate measures to "prevent and prosecute perpetrators of trafficking in women and girls and protect those women and girls most at risk of such trafficking." Article 12 similarly calls upon states parties to prohibit, combat and punish all forms of exploitation of children, especially the girl-child.

2.10 SADC COMMITMENTS

The Southern African Development Community (SADC) is a body which facilitates cooperation among the governments and peoples of southern Africa. In 1997, SADC member states signed a Declaration on Gender and Development in Blantyre, Malawi. This document was supplemented in 1998 by an Addendum on the Prevention and Eradication of Violence against Women and Children. The SADC documents are not legally binding, although they encourage pro-active commitments by SADC states.

The Declaration on Gender and Development does not refer specifically to prostitution or trafficking [101], but the 1998 Addendum on Violence recognises "trafficking in women and children" and "forced prostitution" as forms of violence against women. The SADC states are encouraged in this document to implement legislation to combat this form of violence against women.

2.11 OTHER SETS OF INTERNATIONAL PRINCIPLES

The following documents have no official status at the international level, but may provide useful reference points for policy-makers.

World Charter for Prostitutes' Rights
A "World Whores Congress" was held in Amsterdam in 1985. This meeting came up with a "World Charter for Prostitutes' Rights", in an attempt to galvanise a worldwide movement for prostitute's rights.

Some 75 prostitutes, ex-prostitutes and prostitution rights advocates from the Netherlands, France, Switzerland, Germany, England, Sweden, Canada, and the United States produced the World Charter for Prostitutes' Rights, which was the first manifesto written by prostitutes to express their concerns and put forth their demands. The conference also created the International Committee for Prostitutes' Rights, an organization dedicated to advancing the rights of prostitutes.

Among other things, the World Charter seeks to "decriminalize all aspects of adult prostitution resulting from individual decision", both for prostitutes and their customers, and to "guarantee prostitutes all human rights and civil liberties". It demands that prostitutes be allowed to "provide their services under conditions that are absolutely determined by themselves," and that "prostitutes must have the same social benefits as all other citizens". Emphasising the themes of choice and positive support, the World Charter suggests that "shelters and services for working prostitutes and re-training programs for prostitutes wishing to leave the life should be funded', and that "employment, counselling, legal, and housing services for runaway children should be funded in order to prevent child prostitution". (See following pages.)

A Second World Whores' Congress was held in Brussels in 1986 as a follow-up.[102] This meeting once again provided an opportunity for prostitutes to have a direct public voice on issues of concern to them.

> *It is almost unprecedented for prostitutes to speak on their own behalf and on behalf of other oppressed people in a large well-publicized forum. It is also almost unprecedented for non-prostitute women to work as equals with prostitute women in shared struggle.* [103]

It has been pointed out that the two congresses were dominated by Western countries and so does not represent a truly international perspective. [104]. However, the World Charter for Prostitutes' Rights continues to be used as a basis for organisation in a range of countries. For example, it has been used to guide the principles of prostitutes organisations and support groups such as the Red Thread in the Netherlands and SWEAT (the Sex Worker Education and Advocacy Taskforce) in South Africa. [105]

World Charter for Prostitutes' Rights

International Committee for Prostitutes' Rights (ICPR), Amsterdam 1985

Laws

Decriminalize all aspects of adult prostitution resulting from individual decision.

Decriminalize prostitution and regulate third parties according to standard business codes. It must be noted that existing standard business codes allow abuse of prostitutes. Therefore special clauses must be included to prevent the abuse and stigmatization of prostitutes (self-employed and others).

Enforce criminal laws against fraud, coercion, violence, child sexual abuse, child labor, rape, racism everywhere and across national boundaries, whether or not in the context of prostitution.

Eradicate laws that can be interpreted to deny freedom of association, or freedom to travel, to prostitutes within and between countries. Prostitutes have rights to a private life.

Human Rights

Guarantee prostitutes all human rights and civil liberties, including the freedom of speech, travel, immigration, work, marriage, and motherhood and the right to unemployment insurance, health insurance and housing.

Grant asylum to anyone denied human rights on the basis of a "crime of status," be it prostitution or homosexuality.

Working Conditions

There should be no law which implies systematic zoning of prostitution. Prostitutes should have the freedom to choose their place of work and residence. It is essential that prostitutes can provide their services under the conditions that are absolutely determined by themselves and no one else.

There should be a committee to insure the protection of the rights of the prostitutes and to whom prostitutes can address their complaints. This committee must be comprised of prostitutes and other professionals like lawyers and supporters.

There should be no law discriminating against prostitutes associating and working collectively in order to acquire a high degree of personal security.

Health

All women and men should be educated to periodical health screening for sexually transmitted diseases. Since health checks have historically been used to control and stigmatize prostitutes, and since adult prostitutes are generally even more aware of sexual health than others, mandatory checks for prostitutes are unacceptable unless they are mandatory for all sexually active people.

Services
Employment, counseling, legal, and housing services for runaway children should be funded in order to prevent child prostitution and to promote child well-being and opportunity.

Prostitutes must have the same social benefits as all other citizens according to the different regulations in different countries.

Shelters and services for working prostitutes and re-training programs for prostitutes wishing to leave the life should be funded.

Taxes
No special taxes should be levied on prostitutes or prostitute businesses.

Prostitutes should pay regular taxes on the same basis as other independent contractors and employees, and should receive the same benefits.

Public Opinion
Support educational programs to change social attitudes which stigmatize and discriminate against prostitutes and ex-prostitutes of any race, gender or nationality.

Develop educational programs which help the public to understand that the customer plays a crucial role in the prostitution phenomenon, this role being generally ignored. The customer, like the prostitute, should not, however, be criminalized or condemned on a moral basis.

We are in solidarity with workers in the sex industry.

Organization
Organizations of prostitutes and ex-prostitutes should be supported to further implementation of the above charter.

Proposed United Nations Convention Against Sexual Exploitation
Because there are competing international views, there are also competing proposals for new international standards. The Coalition Against Trafficking in Women, together with other organisations, has drafted a “Proposed United Nations Convention Against Sexual Exploitation”. However, this document has no formal UN status at present.

The proposed convention is unlikely to be adopted internationally, because it takes an abolitionist view which is contrary to the philosophy which currently prevails at the international level. It defines *all* prostitution as sexual exploitation and states that “the violation and harm of sexual exploitation is not obviated by the consent of the victim”. According to the proposed convention, “sexual exploitation is the sexual violation of a person's human dignity, equality, and physical and mental integrity. It is a practice by which some people (primarily men) achieve power and domination over others (primarily women and children) for the purposes of sexual gratification, financial gain, and/or advancement”.

The proposed convention calls for the criminalisation of customers and third parties involved in prostitution. It opposes any law which "legitimizes the prostitution of anyone and that renders lawful or regulates prostitution in any way", but also rejects "any form of penalisation of the prostitute" and emphasises preventative measures. A few key provisions from this document are reproduced in the box below.

excerpts from
CATW's Proposed United Nations Convention against Sexual Exploitation

Article 5
1. States Parties will initiate preventive policies and practices to prevent all forms of sexual exploitation and agree to:

a) Reject state economic policies and practices of development that help precipitate persons into situations of sexual exploitation;

b) Ensure that valid written contracts of employment are entered into and that existing labor laws protect migrant workers, monitoring the provisions of such contracts in order to protect these workers from sexual exploitation in the host country;

c) Enact or enforce such regulations, as the right to retain one's own passport or travel documents, that are necessary for the protection of persons in the migrating process at places of departure, arrival and while en route;

d) Monitor public transportation and port facilities for the presence of persons who appear to be principals, accomplices and customers engaged in prostitution and trafficking and to protect the victims of prostitution and trafficking;

e) Adopt special provisions to prevent the sexual exploitation of persons during all situations of armed conflict. In refugee camps and evacuation centers, States Parties will appoint a special team of observers to prevent and monitor violations of sexual exploitation.

2. States Parties will provide those most vulnerable to sexual exploitation (as specified in Article 4) and victims of sexual exploitation with:
a) Educational programs and work to increase their economic opportunities and enhance their status and worth;
b) Shelter and housing assistance;
c) Voluntary and confidential counseling and medical services, particularly for prevention, treatment of sexually transmitted diseases, HIV and AIDS, and substance abuse.

Article 6
States Parties shall punish perpetrators of sexual exploitation and redress the harm done to victims by developing penal, civil, labor and administrative sanctions.

Article 7
1. States Parties shall reject any policy or law that legitimizes the prostitution of anyone and that renders lawful or regulates prostitution in any way, including as a profession, an occupation or as sex entertainment.

2. States Parties will adopt appropriate legislation that recognizes prostitution as a form of sexual exploitation by:

a) Punishing anyone who procures, entices or leads away by any means, a person for prostitution, even with that person's consent; anyone who knowingly keeps, manages or finances or takes part in the financing of a brothel; and knowingly lets or rents a building or other place for the purpose of prostitution;

b) Penalizing customers who promote the demand for the prostitution of others, while rejecting any form of the penalization of the prostitute;

c) Punishing their military personnel and affiliated civilian personnel, whether on home territory or outside the country, for any involvement (whether as a customer, financier, manager or procurer) in the prostitution of others;

d) Repealing criminal or civil penalties, where they exist, against the victims of sexual exploitation and prostitution.

Dhaka Declaration II

The Coalition Against Trafficking in Women is also popularising a conference statement called the "Dhaka Declaration II" which is a set of resolutions taken by a conference of some 400 persons which met in Dhaka, Bangladesh in 1995. The document elaborates on the abolitionist policy which is the basis for the proposed UN Convention discussed above. (See following pages.)

Human Rights Standards for the Treatment of Trafficked Persons and Recommendations

On the issue of trafficking, the Global Alliance Against Traffic in Women (GAATW), together with other NGOs, is promoting the Human Rights Standards for the Treatment of Trafficked Persons and Recommendations. This document collects standards from international human rights instruments and formally-recognised legal norms, and focuses on their application to the issue of trafficking. These standards are being used as a lobbying tool at national, regional and international levels. (A summary of this document appears on the following pages.)

THE DHAKA DECLARATION II

26-29 January 1999, Dhaka, Bangladesh

Introduction

During the last couple of decades, prostitution and sex trafficking have reached an alarming magnitude the world over. Each year around 5,000 to 6,000 Nepali women and children, some as young as 9, are trafficked across the border into India. There are around 200,000 Bangladeshi women and girls in sex bondage in Pakistan. It is estimated that Thailand has around 2 million women and children in prostitution. About 100,000 Filipina women and girls are annually trafficked as "entertainers" into Japan's booming sex industry. So too, prostitution and sex trafficking have acquired new and pernicious forms.

From January 26-29, 1999, the Coalition Against Trafficking in Women, Bangladesh, convened a global conference of around 400 participants from the continents of Asia, Africa, Europe, Latin America, and North America to address these growing concerns. Entitled "Organizing Against

Sexual Exploitation Regionally and Globally", the central objectives of the conference were to forge a common understanding on prostitution and trafficking and the sexual exploitation of women and children; and to develop region-specific and common strategies.

Conference Statement:
Prostitution and sex trafficking are not universal and inevitable aspects of the human condition. They are a violation of a woman's human rights and forms of violence against women. There are those, however, who recast the traditional view that prostitution is the oldest profession within a new mold of the inevitability of prostitution as women's work. They would urge us to accept prostitution and sex trafficking as realities of women's lives caused by intensifying female powerlessness and the growing feminization of poverty. They posit a distinction between "forced" and "free" prostitution, arguing that sex trafficking and "forced" prostitution be penalized by special trafficking laws. They further argue that "free" prostitution, including third party managers running prostitution businesses, also known as pimps, procurers, and brothel keepers, be subject to the same labor laws as any other businesses. This validation of prostitution as an economic sector capitulates to women's inequality and to violence against women.

We call for the decriminalization of women in prostitution, not as workers, but as victims and survivors of sexual exploitation. However, to decriminalize the institution of prostitution and to validate prostitution as work is to indemnify pimps, recruiters, buyers of women, and brothel keepers who confine women in conditions of bondage and sexual servitude. To do so is to accept that a certain class of women are destined to be used for profit and male consumption and their bodies commodified for male pleasure.

Legitimating prostitution as work only awards legal protection to pimps and procurers. According them a respectability as third party businesses, it provides them with a marketing environment conducive to the violation and commodification of women's bodies, and gives them legal impunity and invisibility as exploiters. In countries that have legalized and regulated prostitution as work, even larger numbers of women are lured into the sex industry from both foreign trafficking and local markets.

Furthermore, so-called free prostitution is a myth because the choices of women existing in conditions of sex trafficking and prostitution are severely circumscribed, if such choices exist at all. Rather than speak about women's consent to prostitution and women's right to engage in prostitution, we should emphasize a woman's compliance with the limited options available to them. Women enter prostitution as a result of circumstances ranging from overt force and deception to economic deprivation and sexual abuse.

The challenge of governments today is to recognize that prostitution is a massive and growing industry while not reifying prostitution as a job. The challenge of governments today is to provide rights and protections to women in conditions of sex trafficking and prostitution while acknowledging that prostitution violates women's rights and human dignity. The challenge of governments today is to penalize the growing numbers of sex exploiters, pimps, recruiters, buyers, brothel keepers, while not penalizing the women who find themselves in conditions of sex trafficking and prostitution.

We therefore recommend that women in conditions of sex trafficking and prostitution be accorded the following rights:

1.That governments protect and promote women's rights while they are still in conditions of sex trafficking and prostitution, and at the same time eliminate the causes of prostitution.

2.That governments reject any policy that legitimizes sex trafficking or prostitution or that legalizes or regulates prostitution in any way including as a profession, occupation, entertainment, or as an economic sector.

3.That governments decriminalize the women in conditions of sex trafficking and prostitution, at the same time that they penalize the pimps, procurers and promoters of prostitution, as well as those who buy women for sexual acts (a.k.a johns or customers).

4.That governments monitor and prevent the growing trafficking in children for adoption, slave-like labor and organ extraction.

5.That governments adopt legislative measures to prohibit sex tourism and to penalize those who organize and advertize tourism for the purpose of sexual exploitation as practices of the procuring and promotion of prostitution. Such measures shall be adopted and implemented in both countries from which the sex tourists come and the countries to which they go.

6.That governments use appropriate publicity to warn of prosecution for sex tourists.

7.That governments prohibit persons or enterprises from promoting, profiting from, or engaging in any business involving the matching of women in marriage to foreign nationals, as in mail order bride selling and pseudo-marriages.

8.That governments take responsibility to prevent the sexual exploitation of women and children by the military whether at home or abroad.

9.That governments co-operate to stop the use of the Internet for sexual exploitation and trafficking of women.

10.That women in conditions of sex trafficking and prostitution have the right to sexual integrity and sexual autonomy and therefore can sue for harm and civil remedies for sexual exploitation, sexual harassment, assault and rape.

11.That consent of the woman procured for sex trafficking and prostitution not be recognized as a defense for pimps, procurers and buyers, nor as a rationale for state sanctioned institutionalization of prostitution as work,

12.That socio-cultural practices of temporary marriage, honor or written contracts shall not be used to justify or defend against any act of sexual exploitation.

13.That women receive fair, sustainable and/or legally mandated compensation as waitresses, receptionists, dancers, singers, bar-workers, entertainers, artists, “GROs" or guest relations officers — but not as "sex workers". This would reduce the economic pressure to engage in prostitution often cloaked by these terms.

14.That women have the right to keep and control any money they receive.

15.That no third parties profit from the earnings of women in conditions of sex trafficking and prostitution.

16.That women in prostitution be able to form associations to lessen their conditions of sexual and economic exploitation, while at the same time not formalizing these groups or collectives as labor unions which institutionalize prostitution as work.

17.That women in conditions of sex trafficking and prostitution be able to organize for support services such as child care.

18.That governments and non-governmental organizations put resources at women’s disposal such as credit, micro-lending programs, enterprise training and other needed services.

19.That governments and non-governmental organizations provide voluntary medical care, shelter, voluntary counseling and educational programs for women who have been harmed by sex trafficking and prostitution.

20.That specially trained police officers be responsive to women in conditions of sex trafficking and prostitution.

21.That a woman's prior sexual history, status as an illegal immigrant, or stateless person shall not be used against her.

22.The regulations protect emigrant and immigrant women, both at the place of departure and arrival and while en route.

23.That women enjoy freedom of movement.

24.That women retain their own passports and travel documents which may not be taken from them.

25.That trafficked women be provided with refuge, refugee status and protection and voluntary repatriation whether victims of sex trafficking have entered a country illegally.

26.That governments recognize 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.

27.That migrant women workers be protected from sexual exploitation and abuse in the host country and awarded valid written contracts of employment that are monitored by the appropriate authorities.

28.That under no circumstances can governments construe these above rights to prevent women from migrating or travelling abroad.

The Coalition Against Trafficking in Women, http://www.uri.edu/artsci/wms/hughes

HUMAN RIGHTS STANDARDS FOR THE TREATMENT OF TRAFFICKED PERSONS

Global Alliance Against Traffic in Women / Foundation Against Trafficking in Women

January 1999

SUMMARY

These Standards are drawn from international human rights instruments and formally-recognized international legal norms. They aim to protect and promote respect for the human rights of individuals who have been victims of trafficking, including those who have been subjected to involuntary servitude, forced labour and/or slavery-like practices. The Standards protect the rights of trafficked persons by providing them with an effective legal remedy, legal protection, non-discriminatory treatment, and restitution, compensation and recovery.

Under international law, states have a duty to respect and ensure respect for human rights law, including the duty to prevent violations, to investigate violations, to take appropriate action against the violators and to afford remedies and reparation to those who have been injured as a consequence of such violations.

Accordingly, the Standards adopt the following definition of trafficking and mandate the following State obligations towards trafficked persons:

Trafficking: All acts and attempted acts involved in the recruitment, transportation within or across borders, purchase, sale, transfer, receipt or harbouring of a person involving the use of deception, coercion (including the use or threat of force or the abuse of authority) or debt bondage for the purpose of placing or holding such person, whether for pay or not, in involuntary servitude (domestic, sexual or reproductive), in forced or bonded labour, or in slavery-like conditions, in a community other than the one in which such person lived at the time of the original deception, coercion or debt bondage.

Principle of Non-Discrimination: States shall not discriminate against trafficked persons in substantive or procedural law, policy or practice.

Safety and Fair Treatment: States shall recognize that trafficked persons are victims of serious human rights abuses, protect their rights notwithstanding any irregular immigration status, and protect them from reprisal and harm.

Access to Justice: The police, prosecutors and court shall ensure that their efforts to punish traffickers are implemented within a system that respects and safeguards the rights of the victims to privacy, dignity and safety. An adequate prosecution of traffickers includes prosecution, where applicable, for rape, sexual and other forms of assault (including, without limitation, murder, forced pregnancies and abortions), kidnapping, torture, cruel, inhuman or degrading treatment, slavery or slavery-like practices, forced or compulsory labour, debt bondage, or forced marriage.

Access to Private Actions and Reparations: States must ensure that trafficked persons have a legal right to seek reparations from traffickers as well as assistance in bringing such actions, if necessary.

Resident Status: States shall provide trafficked persons with temporary residence visas (including the right to work) during the pendency of any criminal, civil or other legal actions and shall provide trafficked persons with the right to seek asylum and have the risk of retaliation considered in any deportation proceedings.

Health and Other Services: States shall provide trafficked persons with adequate health and other social services during the period of temporary residence.

Repatriation and Reintegration: States shall ensure that trafficked persons are able to return home safely, if they so wish, and when they are able to do so. Recovery includes medical and psychological care as well as legal and social services to ensure the well being of trafficked persons.

State Cooperation: States must work cooperatively in order to ensure full implementation of these Standards.

CHAPTER 3-PROSTITUTION IN NAMIBIA IN COLONIAL TIMES

3.1 INTRODUCTION

In order to comprehend the historical occurrence of prostitution in Namibia, one also has to examine the social and economic context in which it was embedded, including changing ideas about marriage and morality and degrees of female autonomy. In particular, this historical survey suggests the crucial interconnection between prostitution and “mixed marriages” (and the laws enacted to deal with them).

The prevailing view that women were, and are, always and inevitably victimized in the modernization and globalization process is decidedly problematic. Too much of the literature on gender and prostitution portrays women as passive, unresisting victims of forces beyond their reach. Far from being submissive sufferers of male exploitation, some women were adept at using their sexuality as a survival mechanism. Sex was, in some instances, a commodity used in both direct and indirect delayed exchanges and often the return was a "gift" of some sort.

In Namibia the historical evidence suggests that prostitution is best conceptualized as a continuum stretching from blatantly professional prostitution to people providing casual sex in exchange for "gifts" which are provided either immediately or delayed and can be given, not necessarily to the sexual service provider, but to that person's guardian. There is evidence that some women and children were forced or pressured into prostitution, as well as evidence that others entered into such exchanges voluntarily. This historical record also demonstrates the impact of colonialism, its demographics, and changes in ideas about marriage and gender roles which took place during the colonial era.

It is, of course, necessary to be wary of cultural stereotypes. One must be especially sensitive to the fact that the European construction of African sexuality occurred within an epoch of imperialism. It is a common occurrence that the "Other" are always believed to be more sexually promiscuous than the members of one's own group, whether it is African stereotypes of European women [1] or Indian male beliefs about American women. [2] European imperialism made the world safe for tourism and scientific travel, and the copious use of writing was able to transfix such stereotypes more effectively. Thus it was commonly assumed that black women had a "degree of lascivity unknown in our climate" - often taken as evidence of lack of "civilisation". For example, the Italian criminologist Lombroso stated that "The primitive woman ... was always a prostitute", the implication being that Europeans visiting "primitives" could treat them in the same way as prostitutes and feel free to indulge themselves without restraint. [3] Nevertheless, it would be short-sighted to dismiss all of the colonial accounts in their entirety. Rather, such records must be carefully read with attention to their invisible meanings, and with sensitivity to "presentism" (imposing our current values upon the past) as well as to male and class biases.

3.2 THE IMPACT OF DEMOGRAPHICS

In order to understand the history of prostitution in what later became Namibia, one must consider the massive gender imbalance during colonial times -- not only among the colonisers but later, because of the policy of segregation and apartheid, also amongst Africans.

Consider the following figures from the heyday of German colonialism, which exclude the 15 000 troops brought in during the 1904-7 war:

Europeans in German South West Africa

YEAR	MALES	FEMALES	CHILDREN	TOTAL
1903	2 804	712	1 166	4 682
1910	8 451	2 173	2 311	12 935
1913	8 530	3 058	3 242	14 830

Source: Goldblatt 1972: 200

In 1912, for example, there were 9 046 adult European males over fifteen, of whom 2 438 were married. For those claiming to be married, 1 970 had European wives living with them, 421 claimed absentee European wives and 47 were married to "coloureds". [4] These figures exclude the large number of troops and other military personnel stationed in the Territory and suggest the severity of the shortage of European women.

The implications of this demographic imbalance were many, not least as David Courtwright has argued [5] , that it made violence in its various manifestations endemic in the territory. It also meant that many European males engaged in sex with indigenous women and some even lived in stable relationships with them or married them. Several accounts suggest that such liaisons were quite common in the latter half of the nineteenth century. [6] In 1887, some concerned Rhenish missionaries argued in a memorandum to Reichskomisar Goering for a policy encouraging mixed marriages because concubinage was so common and this, they felt, harmed both blacks and whites since such loose liaisons made for ready abandonment of children and partners. The uncertain position of the indigenous partner in turn led, they felt, to large numbers of abortions and infanticides. The situation led to much bitterness on the part of the Africans involved, especially since many of the women came from prominent African families. The missionaries asserted that recognizing "mixed marriages" between Africans and Germans would encourage closer contact between the races and thus combat African "moral backwardness" which would otherwise hinder colonial development. [7]

Goering remained unpersuaded, and in 1905 Namibia became the first European colony to ban "mixed marriages". [8] In contrast to Rhenish Mission, which opposed the ban, the Roman Catholic Church in trying to establish itself in the Territory, decided to support the ban on mixed marriages, echoing popular settler belief by suggesting that it was only the poorer Europeans, who could not afford European wives, that were engaging in "mixed marriage". [9] The State, Church and settler concern was with "*Mischlingen*" (children of mixed ancestry) rather than with illegitimacy *per se*. It was the legal ramifications of marriage which were important and which were an important direct and indirect stimulus

to extra-marital relationships and prostitution. If *Mischlings* were born in wedlock they gained their father's citizenship, whereas according to German (and later South African Roman-Dutch) law, illegitimate children were legally related only to their mothers. [10] If the offspring of mixed marriages were given German citizenship, Leutwein believed that South West Africa would be a "Baster Colony" within fifty years – which could have the political result that the progeny of mixed marriages would support and identify with their motherland and turn their back on the German Fatherland. [11] But illegitimate children had no claims to German citizenship and were defined as part of the African labour force. Not surprisingly, many, if not most, male settlers agreed with this policy. [12]

Governor Leutwein agreed with Rohrbach that unmarried German farmers were likely to take African women as concubines. This would not raise the woman to his level, but would rather drag him down to her level "and that of her numerous relatives". [13] This reference to the extended family suggests an awareness of the exchange nature of the relationship -- kinsfolk of the concubine would see her position as authorization for claiming gifts and services, including accommodation from the settler.

At issue were two conflated questions –"race mixture" within marriage and extra-marital "race mixing". While the former was easier to deal with because of the small numbers of persons involved, the latter was far more serious numerically. Some attempt was made to deny the progeny of "mixed race" liaisons any rights. [14] Indeed, "full-blooded" Africans were privileged above them by the Administration both formally and informally.

In January 1907 Colonial Secretary Dernberg pronounced the "half-white" population a "*Denkmalen deutscher Schande*" ("monumental German disgrace"). In an attempt to prevent such racial mixing, he prohibited the employment of juvenile female Africans with unmarried white officials and tried to have the same done in terms of labour placements with European farmers. [15] Indeed, this was one of the issues the German Administration was grappling with as late as July 1914. One of the aims of urban and township curfews was clearly to restrict cross-racial sexual liaisons. In 1910, the District Head of Warmbad put in a special request for fencing material to encamp the African location because, he explained, this would be the only effective measure to stop nightly penetration by Europeans. Later, in 1912, the State insisted that a register of births include the names of European fathers and that if the father was the employer of the mother, that labour contract should be terminated. The police were empowered to separate European males from African females where they were living together, on the grounds that they were a "public nuisance". Even a half-hearted effort to shame and force European fathers to have their progeny registered and pay support appears not to have been successful. Other measures were more indirect. Single white women were imported by a variety of German public interest organizations like the *Frauenbund,* and placed especially in the South, where only a fifth of resident white men were married. [16] But despite their best efforts, these organizations could not cope with the demand for women. In any event, some scholars (such as Bonn) argued that what caused miscegenation was not the shortage of European women, but the presence of black ones. [17]

Colonial rhetoric and policy aside, the cross-racial liaisons resulted in mission efforts to school first generation "*mischlingen*". In 1890 the Rhenish Mission opened a school for them in Okahandja and later opened another one in Keetmanshoop. In 1902 the Catholics followed suit in Windhoek. [18] Certainly some missionaries were extremely concerned at the large number of first generation European-*mischlingen* who were

making their appearance in the years immediately prior to the First World War, and whose fathers had "disappeared". Indeed Poewe suggests that in 1910 M*ischlingen* numbered some 4 300 (or approximately 10% of the black population in the Police Zone) and that their number was rising rapidly. In a single year in Windhoek alone the number of M*ischlingen* rose from 68 to 186, and even in Karibib they sky-rocketed from 12 to 107. [19] By the early twenties over 10% of all the school children in Windhoek were first-generation *Mischlingen*. [20]

The timing and debate around "mixed marriages" had a profound influence on the pattern of prostitution in Namibia, coming as it did during a huge influx of German troops into the Territory. The ban on mixed marriage encouraged illegal fornication across the colour line, but now no white father was allowed to acknowledge or legitimize his offspring and the black mother had no legal recourse. White use of African prostitutes was consciously tolerated by the Administration right until the end of the German era.

3.3 CHANGING GENDER ROLES, FEMALE AUTONOMY & PROSTITUTION

Another factor which influenced the historical development of prostitution in Namibia was the changing gender roles which resulted from the colonial influence. For example, Vedder sensed that colonialism and capitalism were affecting gender relations in Nama society:

> *The position of the woman among the Nama is by no means that of the devoted servant of the man. According to old custom the hut belongs to her and she disposes of everything within it... But since the old-fashioned huts ... have been displaced by the modern houses, which the man builds... the woman is being pushed into the background (and there is) danger that the consequence will be ill-treatment of the woman*. [21]

In this assessment Vedder was joined by Jacobowski who specifically spelt out the relative sexual egalitarian nature of Khoi society in 1896, when he observed that Khoi distinguished themselves from the other groups in Africa in their treatment of women. Numerous authors, Jacobowski wrote, had observed that women were not mistreated. The declining status of women in recent years he attributed to the bad example set by the Dutch-speaking Boers. The source of women's power, he argued, rested in their control over the allocation of milk which was the staple. If a man drank milk without the woman's permission her family could take the cow or sheep (even if he owned it) and slaughter and eat it. Women could inherit from women and moreover could own livestock. Marriage required minimal bride-price and most definitely the bride's consent. A large portion of the bride price went, not to the bride's father, but to her mother. Divorce was quite common and typically men would be blamed for it. Another social arrangement which probably contributed to this situation was the institution of cross-sexual naming whereby old men would be named as "their daughter's father", boys would be named after mothers and girls after fathers. Cases were reported of women beating men with sjamboks. This is not to say that there was no exploitation of women – - indeed there was plenty of it - but the evidence suggests that women had a greater degree of personal autonomy in pre-colonial times.

Early missionaries were often perplexed at the alleged inability of Nama to accumulate wealth in the Western mode. The Reverend Tindall, after much thought, attributed it

largely to two particular institutions: begging and “magu”, a form of ritualized friendship. [22] Begging is, on reflection, simply a foraging strategy. Tindall provides numerous accounts of how a man coming back from a hunt with a wagon loaded with *biltong* might provide so much to the beggars that he would not have enough for his own family. Begging was the reason, according to Tindall, why coffee was not a popular trade item amongst the people he worked with, because people attracted by the aroma would insist on their share. Some were known to hoard their coffee at the local missionary’s house, or to drink it while people were asleep. While the Protestant ethic has endowed begging with a certain social stigma, it is crucial to see that anthropologically it is simply a form of generalized exchange based on reciprocity which is aimed at reducing risk in hazardous and precarious environments. In a sense it is one of a range of foraging strategies with the crucial difference that people give and thus build up a network of obligations. Similar acts were reported amongst other groups, like the Herero. [23] The point here is that sex is also a commodity which can be, and was, used in such exchanges.

Socio-economic conditions during the early colonial era could be interpreted as increasing certain opportunities for female autonomy within the framework of male decision-making. For example, Galton reported that about 80 Damara women accompanied his party on its journey to Ovamboland during his 1851 Expedition. He reported that the older women were looking for food and work, while the younger ones were searching for husbands. [24] His reports on the journey to Owambo also contain much evidence of women being “forward”, such as trying to charm members of his party. In one case, when Galton returned to his tent, King Nangoro presented him with a Princess as a temporary wife. Several sources report such flexible attitudes towards marriage and extra-marital sex. Husbands, for example, could readily engage in extra-marital sex while a wife who committed adultery would suffer “no penalty other than that imposed by her husband”. [25] Tonjes hinted at instances of female autonomy as well when he reports that children always remain the property of the woman and that a man is not responsible for debts of his wife or children or vice versa. [26]

Indeed, in the frontier zone of expanding capitalism women played a crucial role as intermediaries, as interpreters -- and as concubines. A close reading of missionary and travel accounts of this era suggests that when the writers refer to "loose morals" they often have local women in mind who, either with or without the connivance of their families, had set up as concubines or informal wives of European traders. The fact that a large number of such women came, not from the lowest rungs of society, but from the elite, indicates that such liaisons were made with the active involvement of kin, and if necessary, kings. Such liaisons were held to facilitate access to goods and services which these traders were believed to be able to supply. Namibians were not unique in engaging in such strategies, as this is a common situation globally. [27]

Already at the turn of the century missionaries were concerned about the "loosening of conjugal ties" among Herero, and the rise of "informal unions". Illegitimacy even then held no significant social stigma in the Herero community. This should not be surprising, as restrictive concepts of family stemmed largely from the Judeo-Christian tradition. Goody has shown how the churches in Medieval Europe stood to gain in direct material ways from the tightening of the web of restrictions on marriage and family formation. [28] The exclusion of the concubine and the bastard had a major impact on patterns of inheritance from which the church derived considerable material benefit – which, in fact, propelled the church into becoming the largest single land holder in the world. By

emphasizing the importance of marriage rites as practised by the church, the church was in effect making an effort to control female bodies as a strategy to increase its power over both males and females. In short, there were sound material reasons for the churches to define bastardy and its seductive accomplice, prostitution, as "immoral". Over time this became the norm for the Judeo-Christian tradition.

Given the general poverty of material wealth in Namibia one could argue that the inheritance of property was not significant and thus female autonomy and bastardy was tolerated. Children born outside of marriage were simply incorporated into the mother's family.

Sharing the alarm of officials and missionaries at the decline in Herero birth-rates after the 1904-07 War, Dr W.P.Steenkamp undertook research on this topic and -- while his research is generally of dubious credibility -- it underlines what other sources report. He interviewed a group of Herero "men of intelligence and holding responsible government, civil and municipal positions and kindly put at my disposal by the respective departmental heads of the SWA Administration". [29] These Herero men claimed that "After the rebellion, ...our wives and daughters were forced either by starvation or by the authorities to go to the villages and farms of white people. In these villages and on these farms they came in contact with immoral whites and soldiers, contacted gonorrhea, and when after years they again were met by their husbands and fathers they were sterile. At Windhoek, a house of prostitution was opened by the German military. Our daughters were placed in it. When they returned, they were sterile". [30]

Despite being forced into prostitution, many girls stayed on, having acquired a "craving for dress, trinkets and other refinery" which could be satisfied only through the avenue of prostitution, either full or part-time. "Fashion is contagious, unfortunately however not the means to live up to it. The Herero women love clothes, and to acquire the European trappings there was an exodus from the country to the towns, where they soon fell for temptation". [31] The connections between the consumerism of the global capitalist system and female autonomy were echoed in the Report of the South West African Commission which reported, among other things, that the Waterberg Herero headmen claimed that "they were poor...and had no money to buy clothes for their women, who in their anxiety to obtain clothes, went to the nearest village where they came into contact with 'Zulus, Cape-boys, Basutos, Okavangos, whites and all such', and slept with them". These observations were confirmed by the District Surgeon and by Vedder, who noted that many women "without even the permission of their husbands, who seem to have little or no influence over them, often leave the reserves to go and seek work". [32]

In 1923 Missionary Vedder was awarded a doctorate for a two volume study on the Damara based on his first-hand experience. Reading it, it is clear that Vedder thought adultery was common and that there was a frequent "for profit" motive in such behaviour. He reports that Damara women did not regard it as a "disgrace to have a child by a rich Herero and to have child by a white man is even considered an honour, largely because they are wealthy and this leads to the expectation of many presents...". [33] Vedder was particularly concerned about "women's unbridled desire for travel", saying that "anyone who knows the Bergdama, knows that when she is far away, she does not remain faithful to her husband, and that he, in his empty hut, does not keep faith with his wife". He went so far as to claim that women's freedom to travel was "a danger to married and family life" and that " ....this state of affairs is a cancer in the national life of the Bergdama". However his explanation for it is rather unsatisfactory:

It has arisen as the result of the upheaval during the colonial era. Its root cause is the passage of the man from a lower to a higher stage, a progression in which the wife did not participate. Not only has she remained fixed at the lower stage, so that she is still a gatherer, as she was in the past, but she has sunk even further and been thrown out of work. [34]

But on another level, Vedder is highlighting a significant factor. A global history of prostitution shows that it has a propensity to expand dramatically during situations of rapid socio-cultural change and upheaval. [35] Indeed, in Europe from 1750 to 1850 with the development of industrial capitalism there was a similar phenomenon which was attributed to the changes in the division of labour and an increasing female sense of self-worth or autonomy. [36] Even as late as the end of the 19th century in the USA, prostitution was the second most common female occupation after domestic service.

Another factor was the simple fact that while the Administration encouraged the provision of accommodation for male African workers, no such accommodation was available for females. With few cash paying jobs available for females, the general economic situation brought to the fore females' ability and near monopoly in running shebeens -- and made the interchange with prostitution easy and obvious. Again the situation was not unique but duplicated in many parts of Africa. [37] At the same time, it is clear that the missionaries and the colonial authorities were aware that they were incapable of directly controlling the situation.

"In 1918 the then Resident Commissioner for Ovamboland (RCO), Major C.N.N. Manning embarked on a policy of containment against women in Northern Namibia. It all started when a woman returning from a visit to the North was refused permission to return to her work in Tsumeb. The woman had a pass allowing her to return to Tsumeb. The woman took along a girl relative. This action provided the colonial resident Commissioner with the pretext of accusing her of the 'oldest profession in the world'. This incident marked the beginning of tight administrative controls over women going to the south…."

from Nahas Angula, "The Unequal Sexes, Namibia's Gender Challenge", *The Namibian* 13 December 2000, citing Meredith McKittrick, *Conflict and Social Change in Northern Namibian 1850-1954*, doctoral dissertation Stanford University (1995) at 94.

Every Picture tells a Story

Casper Erichsen and Dr Jaochim Zeller

… A series of images recently uncovered by the German historian Jaochim Zeller, with chilling effect attest the use of images as propaganda tools during the anti-colonial war of 1904-08…

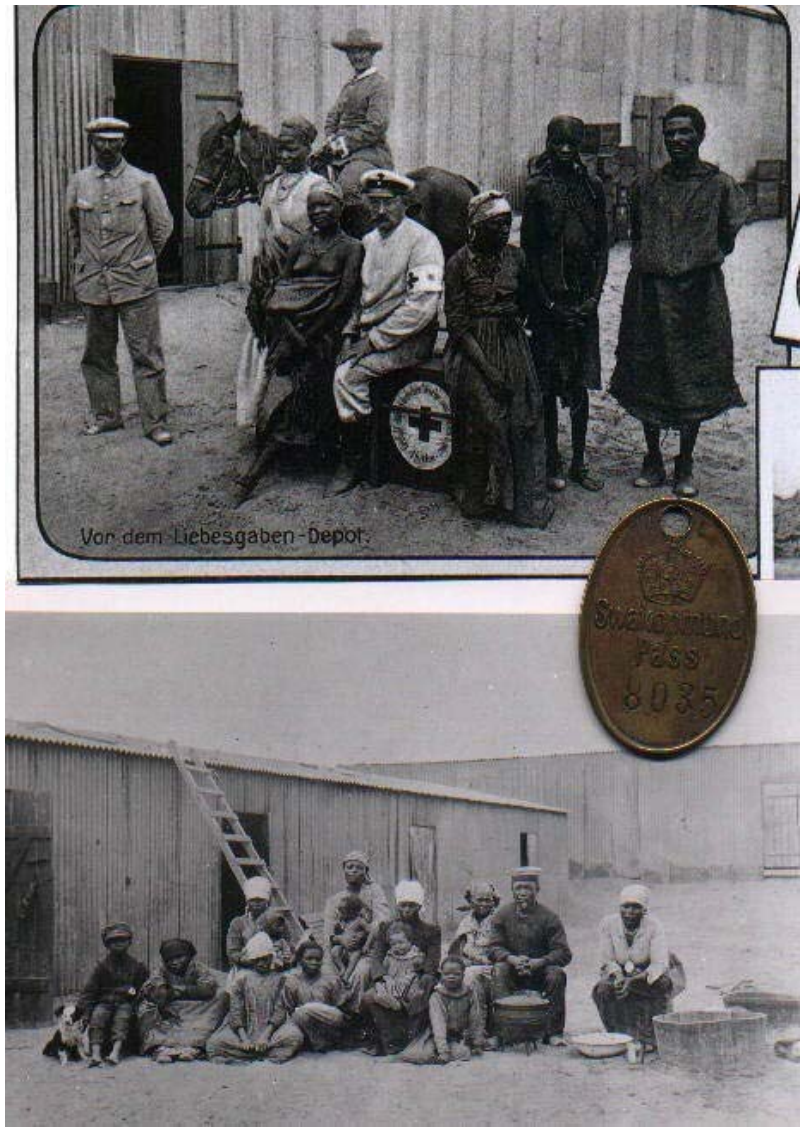
The first image is a traditional group photo. On first glance, the photo creates a mellow impression. There seems to be little tension between the people in the image; some of the women are, in fact, showing hints of a faint smile. But the image is not the cosy or mellow exchange between coloniser and colonised it might appear to be. A caption accompanying the image reveals to the viewer the true nature of the depicted scenario, it says: 'Vor dem Liebesgaben-Depot'. The somewhat esoteric caption points out that this is the place where 'sexual favours' were obtained by German soldiers. This information provides a whole new reading of the image. The man wearing a white uniform with a red armband, sitting in the middle of the picture, is an army doctor. Perhaps he was scrutinising the 'prostitutes' sitting on either side of him for the sexually transmitted diseases syphilis and gonorrhoea that were prevalent at the time. The scenario is not unthinkable in an environment where many indigenous Namibian women

were forced to have sex with German soldiers and settlers, either to survive or to feed family members starving on unsustainable concentration camp rations…

'Liebesgaben' was printed as a postcard and circulated as a semi-pornographic image, but it was more than that; it was a manifestation of German colonial power. In the right-hand side of the image a concentration camp prisoner is brought in to provide balance to the composition of the image. The position of the soldier on the extreme left of the image invites the viewer to contrast the sack-clad, humiliated prisoner and the camp guard, the colonised and the coloniser. The power relationship between the colonial male and the colonised female if equally loaded with sexually formulated photographic impressions of dominance and, essentially, rape. The bared breasts of the woman next to the Doctor does not seem accidental, but staged by the photographer as an inconspicuous symbol of sexual and colonial power; it is propaganda.

The most obvious example of power imagery in 'Liebesgaben' is the mounted officer at the back of the image. The soldier on horseback is perhaps the most pervasive symbol of colonial might during the 1904-08 war. Numerous images of German officers on horseback are found in the German photographic catalogue of the War, and it was even the foremost symbol of German sacrifice in the war, namely the Rider statue overlooking Windhoek from its hilltop.

The Namibian, 5 April 2001



3.4 WHITE PROSTITUTES

The first reports of informal white prostitution are found in Swakopmund in 1899, but the practice only became a serious public policy issue towards the end of the 1904-07 War when regulations were promulgated to control the European brothels. In October 1904 eleven European prostitutes were reported to be doing business in Swakopmund, and more were expected to arrive from Germany and the Cape. Many of the new arrivals seemed to head to Okahandja and other inland points. The regulations drafted by the Swakopmund local council to control prostitution (7 September 1904) encompassed various conditions. Some of the more pertinent rules were that the brothel had to be located out of the centre of town and surrounded by a two-metre wall. All sleeping rooms had to be single with an outside door, and the prostitutes had to present a weekly medical certificate to the local police station. These regulations served as a model for those of other places including Luderitz, Keetmanshoop and Seeheim with various additional twists. For example, in Seeheim (built to accommodate the railway construction crews), a maximum of five prostitutes could work in a brothel and a daytime curfew from 10am to 6pm was imposed.

It appears that these white prostitutes were a cosmopolitan group with sojourns in Lagos, Gold Coast and Cape Town. The brothel owners were also a diverse group including males and females, and in some cases they were long-term residents – one, as the Keetmanshoop District Chief explicitly noted, being married to a Baster (and thus providing some important clues to colonial bourgeois theories of sexuality). It is likely that they were part of the emerging international traffic in women which had seen the drawing up of an international treaty in 1904 and to which Germany was a signatory. [38] Pimps were particularly prone to recruiting women and young ladies from among refugee groups, such as Jews fleeing East European pogroms. [39]

Stals, in his thorough study of "native policy" during the last days of German colonialism, suggests three immediate concerns about African prostitution which made the encouragement of white prostitution a policy issue: a) its bearing on the labour supply function; b) its impact on health in the face of a veritable venereal disease pandemic; and c) the alleged loss of prestige of Europeans. The last reason was apparently the most crucial. [40]

Colonial officials believed that black prostitution was already disrupting the labour supply. In Keetmanshoop, for example, where labour was already in short supply, it was estimated that at least a third of the African men and all the women were unprepared to work, preferring to live off the earnings of a few prostitutes who were related to them. [41] This was apparently a major problem especially in the south of the Territory, where even in desolate places like Bethanien the Bezirkshauptmann complained: "The so-called free natives abuse their privilege ...do nothing and when in need meet it by letting their daughters sleep with love-starved Whites and thus absolve themselves from labour... The young women go to the troop stations, the larger centres, and the railway where through the attractiveness of their hips they find sustenance rather than through manual labour". [42]

Unregulated African prostitution was believed by colonial authorities to be the leading cause of a massive increase in venereal disease. In 1911 Stabarzt Siebert claimed that the great scarcity of white women was driving European men into "the lap of the native

syphilitic prostitute". He estimated that at least one third of the African population was syphilitic. and that at least half the patients in the local hospitals suffered from it. [43] The Bethanien Bezirkshauptmann proposed that the only "realistic measure" was the (re)creation of "native brothels as it was during the (1904-7) war and is in China and in the Foreign legion". [44] The African labour supply so desperately needed by settlers was in serious difficulty of being unable to reproduce itself. More pertinently, syphilis was also infecting Europeans and had became a major concern for the Administration especially during the1904-7 War when indigenous settlements were periodically surrounded and all the inhabitants---men, women and children--- coercively examined for venereal disease. [45] African prostitutes, where they could be rounded up, were forced to undergo medical examinations but officials felt that most prostitutes escaped these dragnets.

Africans understandably objected to this heavy-handed treatment, and Governor von Schuckmann was forced to use the churches as middlemen to explain Government policy in 1908. Using Damara teacher Frans Hoesemab as spokesman, the Windhoek location inhabitants challenged the Government explanation, claiming that population decline was not so much due to venereal disease as changing life circumstances and increased impoverishment. They also argued that indigenous modes of disease treatment were superior to German methods. Both parties agreed that fear of the local hospitals was a factor. By 1912 stronger measures were called for, and in 1913 all African employees in domestic or food industries were compelled to have regular medical examinations. At the same time travel regulations insisted that African "wives who are travelling must allow themselves to be examined by a government doctor... And must produce a certificate stating that they are not suffering from venereal disease". This ruling was apparently in force even during the South African inter-regnum. [46]

Mirroring the patterns of present-day HIV infection, venereal diseases tended to be prevalent along the building of the railway line, in the settlements adjacent to larger military barracks and in the mining town of Tsumeb. However, it is important to note Marion Wallace's argument in this regard. After a careful study of the evidence for venereal disease in the inter-war years she suggests that colonial fears were largely a "moral panic" designed to control "unruly African women". [47] What these tales of heavily infected Africans did do was obvious: they served as a deterrent to cross-racial sexual liaisons.

This becomes an attribute in considering the third factor, the alleged decline in European prestige. The dominant settler opinion which continued to reign for the next fifty years, epitomized in the novels of Hans Grimm, was that black women did not rise to the white male's level but rather dragged the white male down to her level in a process of "Verkaffirung". [48] As noted above, this belief was also factored into the heavy debate on "mixed marriages". Moreover, folk genetics of the era held that the weaker characteristics of the parents would predominate in mixed-race "cross-breeding".

It was considerations such as these which led to the sanctioned creation of brothels where a degree of medical and legal control could be exercised in various parts of Namibia -- Swakopmund, Okahandja, Karibib, Windhoek, Keetmanshoop, Luderitz, Tsumeb and even Seeheim.

European women, it was felt, would be more self-interested in undergoing periodic medical check-ups while African prostitutes were dismissed as fatalistic. Government

policy in this regard tended to be left in the hands of the local District Administration, and thus was largely ad hoc and displayed quite a wide variation in tolerance and practice. White women were an obvious European preserve, and when white prostitutes serviced Cape Coloured and Rehoboth Basters in Windhoek they were severely dealt with. [49] In 1915 the invading South African forces were surprised to find two operational brothels in Swakopmund when they landed. [50] The South Africans continued with the German regimen and prostitutes continued to present their weekly medical certificates at the local police stations, despite the Assistant Provost Marshal of Swakopmund finding that "this Teutonic habit is anterior and derogatory to all British principle, and it is repugnant to have to recognize such a practice". [51]

A more complete analysis would also have to consider structural factors which contributed to making women available for these libidinous European men. The Government policy of discouraging married Europeans from taking up employment in Namibia was an obvious factor.

3.5 THE SOUTH AFRICAN ERA

One of the first Proclamations the South Africans issued in 1919 was one prohibiting Europeans from entering Native Locations without a permit between Dusk and Dawn (**Proc 6/1919**). Although it is obvious why this rule was promulgated (especially since the immediate preceding proclamation dealt with Venereal Disease), the reasons were never explicitly stated. [52]

Most settlers believed that Africans were subject to three vices: "Drink, Gambling and Prostitution". But while drink and gambling were recent phenomena, prostitution was believed to have had a long historical pedigree. [53] While legislation regulating drinking and gambling have a long and tortured history, prostitution and associated practices were never formally dealt with.

Indeed, a survey of legislation during the early Mandate period shows that prostitution was never criminalized *per se*. Instead, European infringements were policed through the **Undesirables Removal Proclamation** (50/1920) which allowed the Administration to remove, without appeal, anyone they considered "dangerous to the peace, order and good government of the Territory". The attached Schedule included offences like rape, sodomy, bestiality, illicit dealing in precious stones and alcohol, and keeping a brothel. A cursory survey of court records suggests that this Proclamation was hardly ever invoked inside the Territory, as the Administration preferred to deport any White females it suspected of such activities. In fact, most of the European prostitutes and brotheleers were repatriated to Germany under this Proclamation.

A third control measure was the **Police Offences Proclamation** (20/1920) which made it an offence for “any common prostitute or night-walker” to loiter or be in any thoroughfare or public place for the purpose of prostitution or solicitation “to the annoyance of the inhabitants or passengers”. This, prostitution was not criminalized, only annoying methods of solicitation.

The fourth piece of controlling legislation was the **Girls' and Mentally Defective Women's Protection Proclamation** (28/1921), which is remarkable for its male-centeredness. Anyone who was found guilty of unlawful carnal connection with a girl

under 16, or one known to be an idiot, could be sentenced to up to six years with whipping and hard labour as well as a 500 pound fine. Any person, owner or occupier of premises who assisted in enabling such acts was an accomplice and could be sentenced to seven years in hard labour if the girl was under 12 years of age and five years if she was under 16. Any person who detained any girl or woman against her will in a brothel was liable to three years in hard labour.

Part of the implicit tolerance of white prostitution had to do with the so-called "poor white" problem and the dangers of "miscegenation". In a rare editorial on this issue, the Editor of the *Windhoek Advertiser* discussed attempts in South Africa to criminalize inter-racial sex, stating that the suppression of brothels had not increased the purity of South African white women and had led to an increase in sex between white males and African females. [54] While inter-racial prostitution and liaisons did not generally feature in the settler press, the concern was clearly present.

Given the watchful role of the League of Nations Permanent Mandates Commission, official legislation did not differentiate on grounds of race. Nevertheless there was a concern about lascivious African females. Officials cited prostitution as a prime motive for African female migration to the urban areas [55], yet at the same time (for a variety of reasons) African women were not subject to the dreaded Pass Laws. [56] There were periodic requests to the Administration to control "Native women". As late as 1953, for example, the South West Africa Agricultural Union's request was turned down on the grounds that the "Natives have always opposed this, *inter alia,* because of the abuses to which the system could give rise, e.g. molestations by Native Police. To enforce such a law might therefore have the result of many of the women who are employed in urban areas giving up their work rather than carrying a pass". [57] This significant lacuna in the legal mechanisms of colonial control can be interpreted in a number of ways [58] , including a cynical view which sees informal toleration of African prostitution as a way of keeping the African work force on the job.

ON "FEMALE NATIVE LABOUR"

The 1921 report of the Native Reserves Commission, a body charged with investigating (amongst other things) the potential labour force which could be drawn from the reserves for white farms, gives a good indication of prevailing attitudes about black women generally, and in respect of prostitution:

Female native labour is extensively used throughout this territory in domestic and light farm work. If the complaints made to us are to be regarded as any criterion it is safe to say that this type of labour is by far the most unsatisfactory. Native women do not seem to be possessed of any sense of responsibility in respect of their contractual obligations. They work when so disposed, and refrain when disinclined. Coupled with this disposition is that of independence and insolence, and the opinion has been expressed on all sides that this attitude is greatly accountable for the demeanour their men at times exhibit towards their European employers.

Complaints have also been made to us that they serve as active agents in the removal and concealment of stray or stolen stock, and that their movements from place to place are largely for the purpose of prostitution. Whether this is correct or not we cannot say, but it is worthy of note that the Herero Chief Frederick Maherero who recently visited this country found it necessary to address the women on this subject and to exhort them to desert from the practice. It is unfortunate and unsavoury to have to mention also that at several of the meetings of Europeans our attention was drawn to the question of the cohabitation of European males with

native women and at one meeting it was suggested that a fine of 50 pounds should be inflicted upon Europeans living under such conditions. To what extent this state of affairs towards the European it is difficult to say [sic], but it is certainly not one calculated to stimulate respect.

(Report of the Native Reserves Commission, 11-12)

This Commission recommended a return to tighter "native control", including the reintroduction of a pass law under which travelling passes, visiting passes and residential passes would have to be carried by all natives, male and female, from the age of 16.

In the early thirties there was a discussion by politicians and officials on whether to impose on the Territory the **South African Immorality Act (1927)**, which expressly prohibited carnal knowledge between European males and black females. The Administration noted with concern the dire warning of the magistrate of Luderitz in 1933 about the "dangers of intimate social contact" which if continued would lead to "the destruction of the very foundations of that respect which the native still holds for the white man".

As part of the discussion various authorities were asked to assess the effectiveness of the Immorality Act in South Africa. It is clear that this legislation was more than an attempt to achieve gender equality, as the South African legislators proclaimed during the debate introducing it in that country -- as white women could previously be charged for intercourse with Africans. [59] The South African Commissioner of Police expressed particular pleasure at the fact that the Act had reduced the number of African prostitutes, as European men were now afraid to have sex with them. [60] Indeed, implicit in the debate was the assumption that women who engaged in inter-racial sexual liaisons were prostitutes.

Eventually in 1934 (by virtue of the **Immorality Proclamation 19 of 1934**), the main provisions of the South African Act were made applicable to the Territory. [61] Nevertheless, three years later the location superintendent of Windhoek still expressed concern that without fencing in the location "sexual intercourse between European and native cannot be effectively checked...and unfortunately there is abundant evidence.... of this". [62]

Initially "immorality" was defined as carnal intercourse between Europeans and Africans. It was only after the Second World War that the offending category was enlarged to include Coloureds. A survey of court records and newspaper articles reveals that there were surprisingly few court cases under the law, despite widespread beliefs in all sectors of the community that such liaisons were common. Oral testimony suggests that when cases were successfully prosecuted the white male culprit tended to be not an established member of the community but a new arrival, usually from Germany and dismissed by many local Europeans as a "*SchneeKaffir*" (Snow Kaffir).

Subsequent policy indicates that the Proclamation was not perceived as being effective. In 1938, because of concern about sexually-transmitted diseases, a regulation was enacted requiring every "native female" in Windhoek between the ages of 18 and 60 -- with the exception of "any legally married woman actually living with her husband" -- to undergo a compulsory medical examination every six months (GN 152 of 1 October 1938). About 100 Herero women staged a violent protest against this new regulation in

March 1939, with the result that mass examinations were discontinued although the requirement that individual women be examined was not rescinded. [63]

These attempts at state regulation need to be contextualized within the social conditions pertaining in the Territory. Our sources here are largely missionary or administrative, with a rare anthropological insight provided by Agnes Winifred Hoernle. While they express much concern about “marital infidelity”, in settler rhetoric this is often a gloss for prostitution.

In 1923 Hoernle visited the Territory to do a restudy of the Nama. In Windhoek, she reported, they were "living an entirely artificial life" and "suffering real hunger" since there was now no milk ration as provided by the Germans and pasture, dog and hut taxes took a toll. "Under the Germans our backs knew no rest, but this government doesn't know how to keep its hands out of our pockets". The churches too, charged high prices for schools, baptism and marriage. The old patriarchal control was gone and she saw small children deliberately flout their elders time and again. Syphilis was rife among the Topnaars and even in Fransfontein, a relatively isolated place, she reported that a young girl of the chiefly family had defiantly left her husband and moved in with her lover in Outjo. There was, she noted, "much free choice of marriage". [64]

In October 1926 F.Olpp, Inspector of (Rhenish) Missions and long-term resident and observer of the Territory, wrote a letter to the Administrator which the latter deemed important enough to republish almost in its entirety in its Annual Report to the League of Nations. In this missive, missionary Olpp warned of a "disastrous evil": "Conjugal fidelity has never been a strong point amongst the peoples of this country. From the remotest time quite trifling reasons, frequently merely a dispute, were enough to separate couples. As a rule, however, the reasons for such separations were some chastisement meted out to the wife, unfaithfulness or sterility on the part of the wife. In such cases the wife usually returns to her nearest relative, unless she throws in her lot at once with some other lover".

Since the war the problem had grown and was now nothing less than a "national disaster" which he attributed not to changing social conditions but rather to a "false conception of freedom, unbridled licence and a desire to shake off every tie". The introduction of civil marriages had exacerbated the situation. Many people refused to be legally married "because they want to be able to dissolve their marriages at will. The men know by experience that the women may desert them any day for some trifling reason and will always find protection from their relatives". They also know that they cannot afford the expense of a divorce, thus they prefer informal unions. This despite the fact that the "mission has for years done everything in its power to combat the lack of morals and discipline, which has been gaining the upper hand since the war. It has made use of all the means at its disposal - exhortation, church discipline, and even excommunication - but it has not succeeded in stemming the tide to any appreciable extent". [65]

Accounts by Vedder in the 1928 *Native Tribes of South West Africa* on Herero, Nama and Damara underwrite Olpp's concerns about immorality and high venereal disease rates. [66] Similar concerns were expressed in respect of the Kavango region where Commissioner Nelson complained:

> *Marriage in the true sense, is not respected by them. Without the least provocation, women leave their husbands to join other men, especially if*

these men are better off. It has become almost a custom for women to desert their husbands when the latter are at work in the South. [67]

From the early thirties there is also a bureaucratic concern, inspired it appears by a League of Nations enquiry, about child marriage and child prostitution. Mothers in the Kavango region would apparently trade off their pre-adolescent daughters for material benefit in the form of labour and as the cash consumer economy penetrated, cloth, blankets or clothes were substituted. [68] Finnish missionary, Rev. Jarvinen, and Catholic Bishop Gotthardt supported these observations based on their personal experience. Mothers would, they claimed, prostitute their daughters for the gift of a blanket or a few mats. [69] Child marriage and prostitution remained an issue until after the Second World War. [70]

HOMOSEXUAL PROSTITUTION IN NAMIBIAN HISTORY

An additional issue which needs to be explored is that of homosexual prostitution. For a large part of the 20th century one of the dominant economic characteristics of the Territory was the institution of the male-only contract labour system in which workers from beyond the Police Zone and Angola would take contracts to work at assigned mines, factories, farms or other European employers for a period ranging from six months to two years. During this period they would typically be housed in compounds with their fellow male workers. As on the South African mines, "boy wives" became a feature. Indeed it was common for every compound to have a few *ovashengi* or effeminate men who would undertake wifely and other female duties. Indeed, according to Falk, homosexuality among Ovambo-speakers was "almost proverbial" as a result of the contract labour system. He mentions a case reported by a mine doctor who treated a worker with a totally ripped anus from servicing some 45 men at a pound (R20) apiece.

But it would be a mistake to attribute homosexual prostitution solely to the contract labour system. At the beginning of the twentieth century, Tonjes reported that there were many *omashenge* living in the country. [71] Loeb also reports the existence of hermaphrodites (*osilumelpiluka*), noting that "Medicine men often instruct their male patients to sleep with hermaphrodites in order to have good luck". [72]

In 1942 the musicologist Percival Kirby gave a brief description of a "secret" Kuanyama musical instrument called an *ekolo* which can only be played in the presence of males. Kirby was able to trace the existence of the *ekolo* and associated behavioural comportment involving it back to 1694. What is important about this instrument is the description of it by Kirby's informant, A.C.Logie: "*The ekola is essentially connected with sodomy, and is played in the first instance by the medicine man, who encourages this practice. To him it is a source of revenue, as he obtains a 'fee' from every man he has enticed to be a partaker."* [73]

Clearly then male prostitution occupies a well-established if challenged historical role in Namibian society, at least amongst certain groups. That this should be so can be related to a number of factors, structural and cultural. Homosexual sex is non-reproductive sex (and this is one of the reasons why certain institutions and leaders so vehemently oppose it). There is probably a correlation between its non-reproductive nature and the fact that it was so well institutionalized in the Kuanyama kingdom, which is the most densely populated part of Namibia and even in pre-colonial times suffered devastating famines with thousands of people dying. Scholars working in Papua New Guinea have argued that such tolerance of alternative sexual practices serves as a *de facto* and symbolic form of population control in areas suffering from overpopulation. Certainly this is a hypothesis which should be tested against the Namibian data.

In the early fifties, following urgent church representations, four special native assistants were hired to patrol the Ondangua and Ondjondo areas, especially around the SWANLA complex, and to "arrest all prostitutes and take them to the Chief for trial". [74]

At the same time, Gunther Wagner undertook a comprehensive survey of the Windhoek District. Looking at the urban area he distinguished three types of what are locally styled as "loose unions" of which the first type is pertinent to this essay. These were casual relationships between men and young women who came from the reserves, from farms, or from the Rehoboth Gebiet, ostensibly in search of work but actually to indulge in loose living and illicit brewing: "These women live either by themselves or in the house of a female relative who often plays more or less the part of procuress. It is in this group that the borderline between loose unions and downright prostitution is fluctuating. The Superintendent of Locations takes the view that 'while there are many women who grant favours to men and accept presents in return, there are very few who can be called professional prostitutes'. In recent years there was only one known case of a professional prostitute, and one case of obvious procuring, viz. in 1937 when a Union Native opened a dance hall with a number of 'hostesses'. This view on the extent of prostitution was shared by most of my Native and Coloured informants though some of them insisted that 'there is a good deal of organized prostitution but that such practices are hushed up as far as possible by all parties concerned, especially where the clients are not 'Natives'." [75]

With meticulous thoroughness Wagner observed that "loose sex morals and unions" were not only an urban phenomenon and were remarked upon in early turn of the century Herero and Damara ethnographies. [76] He concluded that "all informants agreed that fidelity to one's spouse is only a rare virtue". [77]

3.6 CONCLUSION

A number of conclusions can be drawn from this brief historical survey. The widespread assumption usually made by churches that prostitution can be used as an index of moral corruption and social disorganization is erroneous. As several studies have shown, prostitution was quite widespread in traditional societies in Africa. [78]

Any analysis of prostitution needs to be firmly lodged within the overriding context of expanding capitalism as manifested by colonialism and globalisation. The colonial state's major concern was with inter-racial sex. Prostitution among Africans was tolerated, indeed informally encouraged. The demographic gender imbalance created by the labour policies of the State further promoted the profession. Moreover, the colonial state probably lacked the resources to police and control prostitution. To be sure, the largest single category of offences Africans were charged with in urban areas was not infringements of the pass laws but rather liquor offences. Not only was liquor, unlike sex, a solidly quantifiable commodity, but it also made inebriants "unpredictable" and "unproductive". Sex on the other hand was believed to placate labourers and prevent the rape of white women. Not only did this contribute to keeping the African labour force docile, but prostitution was one of the few entrepreneurial niches, along with shebeens, open to women who needed cash. [79]

Much of the discussion and debate on prostitution has been be-devilled by a fixation with the "morality" of the activities rather than an analysis of the causes and social activities themselves. Analysis of prostitution in Namibia is further skewed by the operation of the notorious "double-standard" that only men are supposed to derive pleasure from sex. In many parts of Namibia, for a woman to show pleasure is to be defined as wanton and wayward.

This overview has emphasized the importance of not dismissing prostitutes as powerless pawns in the hands of unscrupulous pimps. To be sure, this was the lot of some, but many prostitutes had a positive self-image and were more affluent than other women. Some women bartered sex for reward, in the context of a general increase in women's autonomy and a looser attitude towards martial fidelity.

Most Namibians still do not see prostitution as a central part of their identity. For them the body is a means of production rather than a mirror of the self. Prostitution in Namibia is best viewed as part of a range of coping strategies and social support networks people use to deal with their day-to-day survival.

While consumerism has long played a role in shaping desires and wants, globalisation is increasingly shaping the agenda: The mass media, slick marketing and the Internet are rewriting the script for sexual behaviour, even in rural parts of Namibia. For example, youth and others now engage in forms of sexuality (like kissing and foreplay) which would have been unacceptable in former times. Altman sums it up:

> *While one might expect various fluctuations in sexual behavior following particular campaigns, the impetus of globalization is almost certainly to both break down existing taboos... and lead to a gradual convergence of sexual behavior across different societies".* [80]

CHAPTER 4-THE CURRENT LAW IN NAMIBIA

Amathila takes the bull by the horn -'register prostitutes'
Conrad Angula

HEALTH and Social Services Minister Libertina Amathila has launched an urgent appeal for prostitutes in Namibia to be registered. Speaking during Friday's launch of Project Eluwa, a Namdeb initiative to fight HIV-AIDS within the company, Amathila said sex workers needed to be registered so that they could be protected from harassment by their clients and pimps."

"I know this is going to lead to a major uproar in some circles. But it is time that we stare reality straight in the face by seriously thinking about the registration of sex workers."

"A recent study at Walvis Bay showed that most women are resorting to this trade out of poverty. Most of them are single mothers who are just trying to feed their children," the Health Minister said.

Amathila said sex workers in Namibia were exploited in many ways. Some sex workers, Amathila said, were employed by hotels located in the harbour area to attract customers. "In most cases they are not even paid by their employers but they are ordered to sell their bodies whereafter they are expected to pay the boss. In many cases they are entertaining their customers without condoms."

"They don't actually have a choice because it rests entirely in the hands of their customers whether they want protected sex or not. The situation is serious, we are therefore calling for this issue to be addressed with the urgency it deserves," Amathila said.

Responding to a question on whether the sex workers would be required to pay tax once registered, Amathila said no. "It will be unfair to the women because we don't even collect tax from cuca shop owners", she said. The Health Minister said the challenges of HIV-AIDS would only be addressed if Namibians worked together in mutual respect as a nation…

The Namibian, 9 April 2001

4.1 INTRODUCTION

Prostitution was never an offence in terms of the common law, [1] and the act of engaging in sexual intercourse for reward has not been made into an offence in terms of any Namibian statute. [2] However, various other aspects of sex work are currently criminalized by the Combating of Immoral Practices Act, the Children's Act and municipal regulations. The Combating of Rape Act 8 of 2000 is also relevant to child prostitution, whilst the common law crimes of sodomy and unnatural sexual offences affect male sex workers with male clients.

Several policy-makers have recently suggested that Namibia's legal approach to sex work should be re-examined. A High Court judgement on the question of whether some of the current laws on sex work are unconstitutional is expected in a case which is currently pending, and this may force Parliament to reconsider the issue. This chapter of the report explains the current legal position.

National Council Notes Stirring the hornet's nest

Deputy Chairperson of the National Council Margie Mensah on Thursday stirred a hornet's nest in the male-dominated House of Review when she proposed that prostitution in Namibia be legalised. Contributing to the Appropriation Bill debate, Mensah said: "Legalising sex workers will not increase operations of sex workers but will slow the spread of HIV-AIDS since commercial sex workers will be able to be tested, treated, counselled and given education and information on sexually transmitted diseases including HIV-AIDS."

Recently Health Minister Dr Libertina Amathila expressed a similar view saying it was time that Government looked into the issue of legalising commercial sex workers. Legalised commercial sex workers, according to Mensah, would become productive citizens and would look for other types of jobs since they will not be stigmatised anymore. She said sex workers were often blamed and not their clients, adding that it should be stressed that sex workers sell themselves for survival and not because they enjoy their trade.

"Interact with these sex workers and find the pain they suffer especially if it comes to the risk they face in the poorest section of the paid sex trade because they have less power to negotiate safe sex and are prone to contract HIV from their male clients," she added.

The Namibian, 21 May 2001

4.2 COMBATING OF IMMORAL PRACTICES ACT (ACT 21 OF 1980)

Prostitution is currently covered in Namibia primarily by the Combating of Immoral Practices Act (Act 21 of 1980) which is similar, but not identical to, the South African Sexual Offences Act (Act 23 of 1957). The stated intention of the law is to provide for the "combating of brothels, prostitution and other immoral practices…". [3]

The statute does not criminalise the actual act of engaging in sex for reward. [4] Instead, it criminalises a number of the surrounding activities. It is illegal under the act to do the following things:

- **to solicit** or "make any proposals to any other person for immoral purposes" **in a public street or place**
- **to exhibit oneself in an indecent dress or manner in public view, or in any place which is open to the public**
- **to commit "any immoral act" with another person in public** (but not in private)
- **to keep a brothel**, which is defined as "any house or place kept or used for purposes of prostitution or for persons to visit for the purpose of having unlawful carnal intercourse or for any other lewd or immoral purpose"
- **to "procure" any female to have unlawful carnal intercourse with another person**, **to become a prostitute**, or **to "become an inmate of a brothel"**

- **to entice a female to a brothel** for the purpose of prostitution, or to conceal a female who has been enticed to a brothel

- **to furnish information,** or **to perform any other act,** aimed at **assisting a male to have unlawful carnal intercourse with a female**

- **to knowingly live wholly or in part on the earnings of prostitution**

- **to assist** in bringing about **"the commission by any person of any immoral act with another person"** , or to receive any money for the commission of such an act

- **to detain a female against her will in a brothel**, or to otherwise detain her for the purposes of unlawful carnal intercourse with a male.

The Combating of Immoral Practices Act also contains a few offences which are not necessarily related to the issue of commercial sex work:

- In terms of section 14, recently amended by the Combating of Rape Act, a **sexual act or "sexual contact" with a boy or girl under the age of 16** is an offence if the sexual partner is more than three years older.

- Section 5 makes it an offence to have sexual intercourse or to commit **an immoral or indecent act with "any female idiot or imbecile"**. There is no protection for males with similar mental disabilities.

- Section 16 makes it an offence for any person **to give a female drugs, liquor or other intoxicating substances with intent to stupefy or overpower her for the purposes of having unlawful carnal intercourse with her**.

- Section 17 makes it an offence **to manufacture, sell or supply any article "which is intended to be used to perform an unnatural sexual act**".

excerpt from COMBATING OF IMMORAL PRACTICES ACT 21 OF 1980

Enticing to commission of immoral acts

7. Any person who

(a) in any public street or place entices, solicits or importunes or makes any proposals to any other person for immoral purposes;

(b) wilfully and openly exhibits himself in an indecent dress or manner at any door or window or within view of any public street or place or in any place to which the public have access,

shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand rand or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Committing of immoral acts

8. Any person who in public commits any immoral act with another person shall be guilty of an offence and liable on conviction to a fine not exceeding three thousand rand or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

The Act has been subject to much criticism, and to a large extent has fallen into disuse due to the fact that it is very difficult to obtain a conviction under its provisions.

The Act is aimed primarily at third parties ("pimps" and brothel-owners) and at public manifestations of prostitution (such as public solicitation). Sexual intercourse for reward is not in itself a criminal offence in terms of the Act. [5]

The law is biased in gender terms. There are a number of offences which can be committed by prostitutes who are predominately female (such as soliciting in public, displaying oneself indecently in public or keeping a brothel), but the only offences which could possibly be applied to clients are (a) making a proposal to any other purpose for immoral purposes in any public street or place or (b) committing an immoral act with another person in public. [6] In practice, however, there appear to be no instances of clients being charged under the Act. Thus, the existing law does not take an even-handed approach.

At the same time, other provisions of the act provide a range of *protections* for females but not for males. For example, it is illegal to procure a *female* to have unlawful carnal intercourse with another person, to entice a *female* to a brothel, to detain a *female* against her will in a brothel, to administer drugs or alcohol to a *female* for the purpose of facilitating unlawful carnal intercourse by another, or to commit a sexual act with a *female* idiot or imbecile. [7] These gender-biased provisions seem to be based on a stereotype of females as a group that require special protection, as if the chastity of women and girls requires more safeguarding than the morality of men and boys. The law seems designed to protect "good" women who may be weak and vulnerable, while punishing those "bad" women who solicit paid sex.

"Why then does the law not penalize the conduct of the client? One obvious explanation is the historic double standard applying in regard to matters of sexual morality. In essence, the standard requires women to be chaste, while allowing men to be sexually unchaste. Historically prostitutes were almost always women, and the unchastity in their behaviour justified their being punished, while the behaviour of their male clients, being not considered unchaste, was not seen to be deserving of punishment. "

Milton and Cowling, *South African Criminal Law and Procedure, Vol III,* page 41

Some provisions of the law are so overbroad as to be ridiculous. For example, a brothel is defined under the act as "any house or place kept or used for the purposes of prostitution or for persons to visit for the purpose of having unlawful carnal intercourse or for any other lewd or immoral purpose." [8] Unlawful carnal intercourse is further defined as sexual intercourse between individuals who are not married, either according to civil

law, or customary law. Thus, any unmarried individuals who indulge in sexual intercourse are considered to be having "unlawful carnal intercourse". If an unmarried couple buy or rent a home to share, then this home is considered to be a brothel. This is an obvious absurdity, and it is one of the grounds on which the law has been challenged in Namibia's High Court. [9]

The offence of knowingly living off of the earnings of prostitution could also lead to absurdities. It is not limited to persons who actively seek to control or encourage prostitution for their own profit, but would apply equally to a child who knows what his mother or father or sibling does to get money for the groceries.

The Act contains a large number of presumptions which are intended to facilitate proof. For example, if the question of unlawful carnal intercourse is at issue, all sexual intercourse is presumed to be unlawful unless there is proof to the contrary. Another example is that where a house is being used as a brothel and the owner who rents out the house is receiving a rental that is "exorbitant", the owner will be presumed to know that the house is being used as a brothel. It is quite likely that some of these presumptions are so far-reaching as to be violations of the constitutional principle that a person accused of a crime is innocent until proved guilty by the state.

The prostitution-related provisions of the Act have seldom been invoked, perhaps because of the difficulty of securing sufficient evidence. [10]

The Combating of Immoral Practices Act is reproduced in full in the Appendix to this report.

Current constitutional challenge to the Act

The most recent case on 'prostitution' or sex work was brought to the High Court of Namibia in 2000, in the case of *Hendricks and Others v Attorney General and Others*. Although the judgment has yet to be handed down, it nevertheless poses several interesting legal questions regarding the future of sex work in Namibia.

The facts of the case are that the applicants kept a house on a plot just outside Windhoek, which served as a brothel of sorts. This house was raided by members of the police on 16 November 1999, as it was suspected that certain illegal practices were being conducted at the house. According to the affidavits of the applicants, approximately 16 police officers searched the premises without a warrant, confiscating photographs, diaries, money, video cassettes and liquor. The applicants were then asked to accompany the police officers to a police station, where they were charged under the Combating of Immoral Practices Act with the offences of keeping a brothel (section 2(1) [11]) and living off the earnings of prostitution (section 10(a) [12]), and then released on bail. [13]

The matter was first brought before the magistrate's court, but this proceeding was postponed pending a decision from the High Court where the applicants are seeking to have certain sections of the Act declared unconstitutional. [14] Their submissions were not opposed by the government, which acknowledged that the Act contains provisions which are unlikely to survive Constitutional scrutiny and preferred to leave this matter to the guidance of the court.

Sex law set for revamp

WERNER MENGES

THE 1980 legislation which in effect outlaws prostitution in Namibia is set to be overhauled in the wake of a High Court case which yesterday resulted in agreement that parts of the law are unconstitutional.

Judge President Pio Teek and Judge Gerhard Maritz heard an application from five alleged brothel workers to have sections of the Combating of Immoral Practices Act of 1980 declared unconstitutional. The judges ordered that the prosecution of the five in terms of the Act be stopped until the High Court has ruled on the law.

They reserved judgment after hearing lawyers Kobus Miller, who appeared on behalf of the five applicants, and Government Attorney Vicki Erenstein ya Toivo, who represented the Attorney General, Prosecutor General and Minister of Home Affairs, who agreed that the Act was flawed and that parts of it would not survive when tested against the Namibian Constitution.

The five applicants - South African citizens Shamielah Hendricks, Wilhelmina Elizabeth Robertson and Charmaine du Plooy and Bulgarian nationals Theodora Bekova and Dimitar Dimov Kouzidimov - were in November last year charged with contravening the sections of the Act which prohibit the keeping of a brothel and living on the proceeds of prostitution. They had been working at a plot in the vicinity of Aris near Windhoek where a high-class 'house of pleasure' was said to be operating.

Miller pointed out that there was a quirk in Namibian law on the subject of prostitution, which is not outlawed in itself, but instead is forbidden indirectly. Prostitution was prohibited through the way in which the Combating of Immoral Practices Act outlawed the keeping of a brothel and living on earnings from prostitution, Miller said. He told the court that his clients did not claim that prostitution may not be regulated by any law. However, their case was based on the argument that the sections of the Act they were challenging on constitutional grounds, were too sweeping.

The Act defines a brothel as any house or space used for prostitution or for persons to visit to have "unlawful carnal intercourse". With "unlawful carnal intercourse" defined as sex between any persons who are not married, this definition would mean that a house where two unmarried people had intercourse would also be considered to be a brothel.

Sections of the Act which Miller attacked, include those that state that any person who lives in a brothel or whose wife lives in one would be considered to be a brothel keeper unless the person can prove that he or she did not know it was a brothel or that his wife lived there.

He also attacked the section which makes it an offence to live on the earnings of prostitution. That part of the Act was too broad because it did not distinguish between people who made their money by being prostitutes and those who legitimately depended on the earnings of such persons, for example their children, Miller said.

The last part of the Act which he said should be declared unconstitutional was the section which states that intercourse between a man and woman would be presumed unlawful unless it was proven not to have been. The section also states that it would be presumed that a person lives on the earnings of prostitution, unless the opposite is proven, if it is proven that the person lives in a brothel, lives with or is habitually in the company of a prostitute and does not have a visible means of subsistence.

Erenstein Ya Toivo agreed without hesitation that these provisions were unconstitutional. She also agreed that the Act's definition of "unlawful carnal intercourse" was too broad. The Government Attorney asked the judges to refer the Act to Parliament so that it could be brought in line with the Constitution. By striking out sections of the Act, she said, the court could send a wrong message to Namibian society, which still viewed prostitution as an evil which offended its morals.

Miller was assisted by Christian Mouton. The two advocates acted on the instructions of lawyer Chris Brandt.

The Namibian, 16 May 2000

The applicants are seeking an order declaring sections 1(1), 2, 10 and 12 of the Combating of Immoral Practices Act unconstitutional. In the papers filed by the applicants it was submitted that these sections are an “unreasonable and unjustifiable violation of the Applicants’ right of freedom of association, practising any profession or carrying on any occupation, trade or business.” [15] Other constitutional rights which are cited include the right to equality, freedom from discrimination and the right to privacy. The applicants also argue that their right to be presumed innocent is unreasonably and unjustifiably violated by the presumptions in the law. Some of the sections of the Act are

also being challenged on the grounds that they are unconstitutionally overbroad –such as section 2 which makes it an offence to keep a brothel, as defined in section 1 in absurdly broad terms, and section 10(a) which makes it an offence to benefit knowingly from the proceeds of prostitution.

> *"The matter before this court is a matter relating to morality in general… The debate about law and morality is an old one, which provides interesting insights but not many concrete answers. Should the morality of a society be enforced by law, even at the cost of the said constitutional rights?"*
>
> *Hendricks and Others v Attorney General of Namibia and Others*
> Applicants' Heads of Argument, paragraph 4

4.3 CHILDREN'S ACT (ACT 33 OF 1960)

The Children's Act 33 of 1960 is an outdated piece of legislation which was inherited from South Africa at independence. At the time of writing (April 2002), it is under review and expected to be replaced in the near future with a more modern piece of legislation.

Section 19 of the Act makes it an offence for the parent, guardian or custodian of a child to "cause or conduce" to the child's prostitution, or to allow the child to reside in a brothel. The law assumes that an offence has been committed if the child is knowingly allowed to consort with" or work for "any prostitute or person of known immoral character". This criminal provision is seldom, if ever, utilised in practice.

excerpt from CHILDREN'S ACT 33 OF 1960

19. Corruption of children.

(1) Any parent or guardian or any person having the custody of a child who allows that child to reside in or to frequent a brothel as defined in section one of the Immorality Act, 1957 (Act No. 23 of 1957), shall be guilty of an offence.

(2) Any parent of guardian or any person having the custody of a child who causes or conduces to the seduction, abduction or prostitution of that child or the commission by the child of immoral acts shall be guilty of an offence.

(3) For the purposes of sub-section (2) a person shall be deemed to have caused the seduction, abduction or prostitution of a child who has been seduced or abducted or has become a prostitute if, being the parent or guardian or having the custody of that child, he has knowingly allowed the child to consort with or enter or continue in the employment of any prostitute or person of known immoral character.

(4) Any person convicted of an offence under this section shall be liable to a fine not exceeding two hundred pounds or in default of payment of such fine or imprisonment for a period not exceeding two years or to such imprisonment without the option of a fine or to both such fine and such imprisonment.

Section 1 of the Act defines a child in need of care, among other things, as a child-

> *who frequents the company of any immoral or vicious person, or is otherwise living in circumstances calculated to cause or conduce to his seduction, corruption or prostitution.*

This could be grounds for removing the child from his or her usual home and placing the child in a place of safety, then eventually, after an enquiry by a children's court, in foster care or a children's home. Social workers report that 400-500 children are removed from their homes each year in terms of the Children's Act because of various forms of abuse and neglect, but no information is available on whether or not exposure to prostitution has been a factor in any of these cases.

> A German researcher, conducting linguistic studies on the Kxoe,,, said some Kxoe parents have approached him saying that they want to get money from people who sleep with their minor children for several nights in a row.
>
> The researcher, who preferred not to be named, said "some parents have come to me complaining that their children are not being paid after having sex with certain people".
>
> He observed that the parents just want money as they are so poor and in many cases do not know the consequences of these sexual relationships.
>
> Kxoe girls freely give their bodies away to strangers even for a bottle of beer.
>
> All these developments are being attributed to the economic hardships and poverty afflicting most of the Kxoe community.
>
> Chrispin Inambao, "Caprivi's teen 'sex slaves'", *The Namibian*, 6 June 1997

> A rape suspect appeared in the High Court this week over shocking allegations of paying to have sex with a 11-year-old girl who was living in desperate poverty with her mother.
>
> The trial of Jonas Valentine (35) has already produced disturbing claims from his alleged victim. She told Acting Judge Simpson Mtambanengwe that she willingly had sex with Valentine over a period of time, since her mother would receive payment in return and she needed the money to buy food.
>
> The child has described her mother, who has since passed away, as a drunk who repeatedly sent her off to spend nights with Valentine…
>
> … When she tried to resist Valentine, he was quick to remind her that she was his and had been paid for, she told the court…
>
> Werner Menges, "Young girl 'sold into sexual slavery'",*The Namibian*, 31 May 2002

4.4 COMBATING OF RAPE ACT (ACT 8 OF 2000)

Most of the Combating of Rape Act deals with overt forms of force or coercion. However, in terms of section 2, **rape is committed in any case where a sexual act is committed with a person under the age of 14 by a perpetrator who is more than three years older**. Even if the sexual act was consensual, or took place as paid sex, the crime of rape has still been committed.

This provision, along with the provision of the Combating of Immoral Practices Act which gives similar protection to persons under the age of 16, could potentially be used as a tool to combat the demand for child prostitutes. However, these offences are unlikely to be very effective for this purpose. Who will be the complainant? If a sexual act take

place between a willing child prostitute and a willing client, no charge is likely to be laid. A third party might lay the charge if the sexual encounter takes place in public, but if witnesses observe only the negotiations which take place prior to the sexual act, then it is unlikely that there will be sufficient evidence to prove a charge of rape.

4.5 SODOMY AND UNNATURAL SEXUAL OFFENCES

The common law crime of "sodomy" criminalises anal intercourse between males. The common-law crime of "unnatural sexual offences" covers mutual masturbation, "sexual gratification obtained by friction between the legs of another person" and other unspecified sexual activity between men. None of these sexual acts are illegal if they take place between a man and a woman, or between two women.

Namibia's new Combating of Rape Act covers a wide range of intimate sexual contact in circumstances that involve force or coercion, including oral sex, anal sex and genital stimulation between people of the same sex or different sexes. It protects children below the age of 14 against all such sexual activity, while the Combating of Immoral Practices Act gives additional protection to children up to age 16. So the common law crimes of sodomy and "unnatural sexual offences'' are now relevant primarily as they apply to consenting adults – such as male sex workers with male clients.

These common-law crimes are seldom enforced with respect to consenting adults, but the fact that they exist adds to the stigma experienced by male sex workers and thus increases their vulnerability.

4.6 MUNICIPAL REGULATIONS

Since the beginning of 2002, a number of persons have been arrested in Windhoek and charged with contravention of section 12 and 16 the Municipal Street and Traffic Regulations (Government Notice 9 of 1930, as amended by General Notice 27 of 1994). Some were charged only with "loitering", while others were charged with "loitering and soliciting". [16]

excerpt from Street and Traffic Regulations of the Municipality of Windhoek
Government Notice 9 of 1930, as amended by General Notice 27 of 1994

Loitering
12. No person shall wilfully –
(a) sit, lie, stand or congregate in a street or public place or otherwise act in such a manner as to obstruct free traffic, or jostle or otherwise hinder any other person using the street, or obstruct the free movement of persons in such public place;
(b) loiter near the entrance to a public place of assembly in such a manner as to obstruct the free movement of persons into or out of the public place of assembly; or
(c) loiter within 1000 metres from the premises of an institution for the care of aged or handicapped people, a school, hospital, church or other similar institution.

***

Soliciting
16. No person shall in or in view of any street or public place solicit a person in any way for the purpose of prostitution.

It appears that current municipal practice is to arrest women who are found walking on the street at night or waiting for taxis, on the assumption that they are sex workers. Windhoek City spokesperson Hafeni Nghinamwaami is quoted in the press as saying that these arrests form part of an ongoing campaign to "clean up" the city's streets and make them safer. He also stated that the people who had been picked up had been arrested for their own protection, in light of attacks and even rapes of persons in certain parts of the city which are deemed to be "hot spots". Whether or not those arrested are prostitutes or not is not the central point, Nghinamwaami said, what is of concern are the actions they engage in, such as soliciting, thereby exposing themselves to being attacked. [17]

The Legal Assistance Centre was approached on 28 March 2002 (on the eve of the long Easter holiday weekend) by 16 persons arrested on this basis in the Ausspannplatz area on the previous day. The group includes three teenagers, three men and a 48-year-old nurse. Some of the members of this group may have been sex workers, but some are adamant that they are not. Three of the women were pregnant at the time of their arrest, and two were breastfeeding. After considerable difficulty and many hours of consultation with the police, the Legal Assistance Centre secured the release of all these women on bail at 10h00 in the evening. All the women had to appear in court to formally answer to the charges against them on 3 April 2002. They all pleaded not guilty and the case was postponed.

The experience of the representatives from the Legal Assistance Centre in the context of this case illustrates the bias against sex workers that affects their treatment in such situations. For example, when one legal representative asked to see her clients at the Wanaheda Police station, the police officer on duty remarked, "oh, you are representing those prostitutes". In further discussion, this officer claimed that these women deserve to be placed in custody because they are the ones who are "spreading the AIDS disease around".

The women who were arrested claim that they were not given a chance to explain what they were doing on the street at the time of arrest. One women who insists that she is not a sex worker worries that being charged with soliciting is demeaning to her. She says that she has problems explaining the reason for her arrest to her two children -- how will they deal with the fact that their mother has been arrested for being a prostitute?

Another 17 people were arrested on similar charges in Windhoek on 25 January 2002.

There may be other local authorities in Namibia which have similar regulations on loitering or solicitation.

4.7 CASE LAW

No reported cases concerning the Combating of Immoral Practices Act have been located, but cases on older laws and on similar South African legislation provide guides to the possible interpretation of the current Namibian law.

Past court cases concerning prostitution illustrate the difficulties of proof. For example, in the 1966 case of *S v Swartz* [18], a woman was charged under the Police Offences Act 27 of 1882 with being a prostitute or night walker loitering or being in a thoroughfare or public place for the purpose of prostitution or solicitation to the annoyance of the inhabitants or passengers. The court overturned her conviction on the grounds that the State had not proved beyond reasonable doubt that she was loitering in a public place *for the purpose of prostitution or solicitation*. She was observed standing by a main road for about 50 minutes, and talking to several men, but there was no evidence as to the conversations which took place. As the court pointed out, it may well have been the *men* who were soliciting her. The court concluded that the accused's actions were "highly suspect" and that she "might" have committed the crime in question, but the State had not carried its burden of proof.

It is often the case that the only way to obtain sufficient evidence of prostitution-related offences is for the police to resort to entrapment (by posing as a client) – which has been referred to as a "sordid tactic". [19] Milton, a well-known South African criminologist, has stated that these "high enforcement costs seem a quite inappropriate expenditure to achieve the eradication of that which history has taught cannot be eradicated". [20] In considering one elaborate entrapment scenario, a South African court similarly commented:

> *I pause at this stage to reflect on the energy expended and ponder whether, in these times, the talents of the police force could not be put to combating more pressing evils.* [21]

There are a few cases which help to shed light on the offence of "**soliciting" for the purpose of prostitution (as in the municipal regulations) or for "soliciting" or "importuning" or "making proposals" for immoral purposes (as in the Combating of Immoral Practices Act).** "Solicit" has been interpreted as meaning "to ask earnestly" or to make any "serious proposal". It has also been found to "suggest beguiling or alluring or petitioning". "Importune" has been interpreted as connoting "urgent and persistent verbal pressure or solicitation repeatedly made to overcome resistance to a suggested course". [22] The addition of the phrase "makes any proposals" in the Combating of Immoral Practices Act would seem to cover even the most casual requests, where no element of resistance is encountered. It appears that solicitation can take place by means of conduct rather than words. [23] The degree of success or failure following on the proposal seems to be irrelevant. [24]

Soliciting could in theory be carried out by sex worker or client (as the case of *S v Swartz*, discussed above, indicates). However, there appears to be a bias in the law on this point, based on the assumption that it will almost always be the sex worker who does the soliciting:

> *… it is really the female prostitutes that have done the soliciting at all times. It is their business and their profession to do it when they are streetwalkers in the public street…* [25]

> *No doubt the concept of a prostitute requiring to be importuned or persistently solicited for an immoral purpose is, generally speaking, ludicrous, though even prostitutes might demur at certain "immoral purposes".* [26]

There have been several court cases on **the offence of "keeping a brothel"** under laws similar to section 2 of the Combating of Immoral Practices Act. Physically, a brothel is a house or place. "House" includes "a dwelling-house, flat, building, room, out-house, shed or tent or any part thereof" and "place" is defined to include "any premises, field, enclosure, space, vehicle or boat or any part thereof".

> *Thus, although the classic conception of a brothel may be an establishment in a house, presided over by a formidable "madame", it is clear from these definitions that the act has cast its net far wider and contemplates the possibility of a brothel being kept, for instance, in a boat or a tent or even in a field.* [27]

The concept of a brothel usually implies the involvement of one or more sex workers and another person who manages the establishment and receives some portion of the income for this role. However, according to the 1977 case of *S v M,* a single sex worker who maintains control of premises which he or she habitually uses for prostitution commits the offence of "keeping a brothel". [28]

The same case interpreted the phrase "used for the purposes of prostitution" from the definition of brothel to mean "consistently or habitually so used" and not to refer to a place where a single act of a few isolated acts of prostitution may have taken place. [29] In similar fashion, the 1961 case of *R v K* held that "an element of continuity of use", as opposed to isolated occasions, must exist for a place to constitute a brothel. This case also found that intermittent prostitution could be regular enough to establish the requisite continuity. [30]

A brothel is defined in the Combating of Immoral Practice Act as a house or place kept or used for purposes of prostitution, for the purpose of having unlawful sexual intercourse or "for any other lewd or immoral purpose". Several cases interpret this phrase in the South African Immorality Act, 1957 as including a place kept for the purpose of "pelvic massage" (masturbation of clients). [31] Furthermore, as one court pointed out, "there could no doubt be a great variety of lascivious purposes which could be characterised as being lewd or indecent…". [32]

The 1975 case of *S v F* suggests that the offence of "management or assisting in the management of any brothel" requires a certain measure of personal supervision and control. [33] It also provides an interpretation of the offence of "knowingly receiving all the money or any share of the money taken in a brothel":

> *Section 3(c) [of the Immorality Act 23 of 1957] is directed at persons who knowingly receive "moneys taken in a brothel". The prostitute who earns money from the man with whom she had intercourse in the brothel or the woman who accepts money from the man upon whom she has performed some lewd or indecent act, does not in my view receive "moneys taken in a brothel" in the sense contemplated in sec. 3(c). These moneys only become tainted and acquire the sense of being "moneys taken in a brothel" after the prostitute or the other woman has taken the moneys from her client. But if these moneys or any share thereof were to be paid*

> *over to some third party, the latter would, in my view, be a person receiving "moneys taken in a brothel" within the meaning of sec. 3(c). It may also be that if the prostitute or the woman performing the lewd or indecent act were to pay over all the moneys received by her, to the brothelkeeper, in return for payment of some fixed salary, the receipt of such salary, paid out of the proceeds of moneys taken in the brothel, would also amount to the receipt of moneys, or any share thereof, taken in a brothel.* [34]

But does a prostitute operating out of a particular place "keep a brothel"? This question was explored by the Appellate Division in the 1977 case of *S v M and Another*. The court first noted that "the essential concept underlying the 'keeping" of a brothel, in the ordinary sense of the word, is that of exercising powers of management and control over the brothel". [35] It then went on to hold as follows:

> *It was submitted by appellants' counsel that the word "keep" necessarily referred to the organisation and management of the brothel and not to the prostitution of themselves by the girls who worked there; and that consequently the so-called "common prostitute" could not be the keeper of a brothel since she cannot manage herself…*
>
> *It may well be that in the case where a brothel is managed and controlled by a "madame" or mistress, who is herself not a prostitute, it would not be correct to say that the prostitutes who worked there, or any one of them, kept the brothel. She, not they, would have management and control. It does not follow, however, that in a case where there is no mistress, prostitutes themselves cannot keep a brothel. Nor do I think that such a mistress is a* sine qua non *of a brothel. It seems to me that where, as in the present case, two prostitutes together hire or gain* de facto *control of premises and then, while maintaining control thereof, proceed to use the premises habitually for the purpose of prostitution, they commit the offence of keeping a brothel.* [36]

This same case suggested (*obiter dictum*) that the wording of the provisions on brothels do not necessarily require "a plurality of prostitutes" to find that a brothel exists. [37]

In a recent South African case, the court made the following general observations about the sections of the South African statute dealing with brothels:

> *Section 2 [the offence of keeping a brothel] is clearly intended as a measure to restrict or repress prostitution. Secondly and equally importantly, it is designed to discourage organised prostitution and to dissuade third persons from commercial exploitation of a prostitute and from living on or parasitising on the income earned by the prostitute. This amounts to trading in the body of a human being. Such conduct is obviously loathed and despised or at least heavily frowned upon by all civilised and even uncivilised communities… In my view a third party managing a prostitute or prostitutes with their consent amounts to virtual trafficking in human beings. This is censured in most countries and in those where it is permitted, it is controlled and regulated by the governmental authorities.* [38]

Turning to the provision which makes it an offence for "any person" to "**knowingly live wholly or in part on the earnings of prostitution",** can this offence be committed by a

prostitute living on her or his own earnings, or only by a third party? The 1986 case of *S v H* held that the identical wording in the South African Immorality Act 1957 "was not directed at prostitutes living on their own earnings":

> *There is no reason to say that a prostitute "knowingly lives on the earnings of prostitution". It is bizarre to contemplate a prostitute who does not know why she is being paid. To put the word 'knowingly' to some use in the scheme of the sections in question, it must apply to the persons who trade in or benefit from the prostitute's activities… my conclusion is therefore that [the relevant section] only refers to a person, not being the earning prostitute, who lives on the earnings of such a prostitute.* [39]

LEGAL ATTITUDES TOWARDS PROSTITUTES

"… the evidence of prostitutes in always tainted… they are a class of people of very low morality who do not scruple to tell untruths in the witness box That has been human experience for ages past… Now although prostitutes are notoriously untrustworthy persons, yet at the same time they are not utterly unhuman… ."

R v Seligman 1908 TS 390

"It is a well-known fact that the evidence of a prostitute is always suspect."

Rex v Christo 1917 TPD 420

(on the question of a claim for sentimental damages by a husband against a person who has committed adultery with his wife) "*… an extreme case… would be where the husband is married to a prostitute; in such a case it is difficult to conceive of a Court awarding any damages."*

Viviers v Kilian 1927 AD 449

"Rape upon a prostitute, for example, though it is the crime of rape would not ordinarily call for a penalty of equal severity to that imposed for rape upon a woman of refinement and good character."

R v L 1960 (3) SA 503 (A)

"…to call a woman a prostitute in the presence of many witnesses will undoubtedly injure her dignity but at the same time it will also injure her reputation"

S v Dziva 1971 (4) SA 185 (R)

CHAPTER 5-SEX WORK IN NAMIBIA TODAY

5.1 INTRODUCTION

Previous studies
Little has been written and published about commercial sex work in Namibia. Perhaps the most detailed study on the subject thus far is that of the Youth Health Project conducted by the Ministry of Youth and Sport. The first phase of the study dealt with commercial sex work in the Walvis Bay area and consisted of a number of qualitative interviews conducted with young sex workers during 1996-97. The sample of persons interviewed was very small – ten sex workers, one client and two club owners. The report is descriptive, with data presented in a synoptic manner around a number of issues such as venues for sex work, reasons for doing sex work, the economics of sex work and health risks.

Walvis Bay Commercial Sex Workers Project
Ministry of Youth and Sport, Youth Health Programme

Due to the special characteristics of Walvis Bay as a harbour town, the EPZ and the increasing commercial activity it is easy to suppose that there should exist a number of people, even young people, involved in providing sex for money.

The Ministry of Youth and Sport decided to explore the situation further and attempt to design health promotion strategies to work mainly with these young people involved in the commercial sex in Walvis Bay. The financial support for the first phase of the project was provided by the United Nations Population Fund (UNFPA).

Two club owners, one client and ten women involved in sex work were informally interviewed. Of the ten women interviewed, the range in their ages was from 19 to mid-60s, though the majority was from 19-29. Most of these women had been involved with commercial sex work for at least several years. The following conclusions were reached based on these interviews:

- Women are involved in sex work for money, some for excitement, and as such will respond differently to different approaches to health promotion.
- There is a very high awareness about HIV/AIDS and current fear, but there is also a high degree of perceived powerlessness and fatalism with regards to taking control and preventing infection.
- Men appear to make the decisions regarding safer sex practices. Women take the men as clients who are paying and therefore allow the men to make the choices.
- Women do seem to have control over how much money they are paid and this therefore suggests that they have the ability to be assertive.
- There is some clear indication from the research that women do not want to be "preached at" and this is coupled with an attitude of being "tired of hearing about AIDS".
- Reported use of condoms is very low and perceptions and feelings about condoms are very negative.

Ministry of Youth and Sport, in *Joint United Nations Programme on HIV/AIDS and Spanish Agency for International Cooperation (AECI), Counselling News, No, 4*, February 1998 at 13.

The second phase of this study focused on commercial sex work in Windhoek. Data was collected during 1998 in much the same fashion as during the first phase. Again, the sample size was small – a total of 15 sex workers were interviewed. The report on this study is also descriptive, with much of the data being presented by means of short extracts from actual interviews. This information was supplemented by brief statements recorded at an HIV/AIDS Awareness Workshop for Commercial Sex Workers held in February 1999.

EXCERPTS FROM "YOUNG PEOPLE INVOLVED IN COMMERCIAL SEX WORK"
Research report for Windhoek: November-December 1998, Ministry of Youth and Sport

Interview 5: Hillside Mansion Flats
18 year old woman. This woman has been working for a commercial sex worker for only two weeks. She said that she hated it but is forced by circumstances to work like this. She would give up commercial sex work immediately if she could find another job. Her income goes towards buying food, but she gives the majority to her mother. She said that her mother knows that she does not have a job, but doesn't ask her where she gets the money from. The woman said it hurts her a lot to know that this is what she has to do in order to survive. The young woman was a domestic worker but was told to leave when she was informed by the lady of the house that her husband was trying to sleep with her. The woman is now jobless sitting on the street waiting to be picked up.
***
Interview 8: outside the Kalahari Hotel
33 year old woman. This woman has been working in commercial sex work for about 5 years and doesn't think she will stop because of the money she can earn. She says she is living well and happy and thinks of commercial sex work as a job, like anybody else's work. She said she can earn N$2000 a week and is able to earn more when she can send her children to stay at her parents' house during the holidays…
***
Interview 15:
26 year old man. This man said he always liked playing with dolls and girls, and dressing up in women's clothing. His first homosexual experience was at the age of 14 when he was sodomised by a priest while he was at boarding school. He said it was a horrific experience. At age 20 he was 'seduced' by his male employer which was again a horrible experience. He felt helpless and couldn't report the situation to anyone. Unemployment is a reason for selling sex and he says he would give it up if he could find a job. He told us "I use alcohol to make me feel good and attractive towards my clients and I use condoms every time I'm serving a client".

Common themes
- Most of the women have children and have the children at a young age (16 years).
- Majority of the commercial sex workers have 'dropped out' of school.
- Financial pressures and unemployment are the main reasons for starting work as a commercial sex worker.
- Money earned is often used to support the bringing up of children.
- Income earned is often shared with family members – mothers, brothers and boyfriends.
- Strong relationships exist between many of the workers and their mothers (no mention of the fathers); the mothers of some of the younger workers support their daughters either explicitly or implicitly through for example providing child care.
- Only some of the woman expressed concern over safety, for example carrying a knife, or having a boyfriend/brother as a protector.
- Sexual abuse as a child or young person has been experienced by some of the workers.
- Only some of the workers mention alcohol use, no one mentions drug use.
- There is limited discussion of HIV/AIDS and strategies for safer sex.
- Commercial sex work (street work) does not seem to be 'organised', that is controlled by male 'pimps', although occasionally boyfriends and brothers are acting as 'informal pimps'.

***

A second study on the topic was conducted by the Gender Research and Training Programme at the Multi-Disciplinary Research Centre of the University of Namibia. This study formed part of a Gender Research Methodology Training Workshop that took place in 1999. The fieldwork for the study was also conducted in Walvis Bay. Partly as a result of the fact that this study was as an exercise in methodology, the actual report contains very limited data and analysis on commercial sex work.

Although all three reports contain information that provides some insight into the practice of commercial sex work, none contains any broad analysis of this complex issue. As a result, they do not contribute to our general understanding of commercial sex work as a social and economic phenomenon.

Current study
The Legal Assistance Centre therefore commissioned a Namibian research group, Research Facilitation Services, to conduct a survey on the topic of adult commercial sex work in Namibia. The main aim of the survey was to compile a profile of sex work in Namibia on the basis of personal interviews with sex workers, key informants and clients, and to ascertain the feelings of the general public towards the practice.

Survey planning commenced in February 2001 and fieldwork was conducted during the months of June to August 2001. The survey was planned to consist of three parts, namely personal face-to-face interviews with sex workers and their clients, and a telephone survey amongst the Namibian population with landline telephones. However, the final study consists only of two parts, with the client survey not being very successful due to high refusal rates by clients.

This report does not condone or condemn sex work but will attempt to provide some insight into the sex worker industry in Namibia.

No one knows how many people in Namibia are engaged in commercial sex work. Some idea of the magnitude of the problem can be drawn from the work of Father Hermann Klein-Hitpass who reports that he has assisted **910 single mothers engaged in sex work on the streets of Windhoek in less than three years**.

See Father Hermann Klein-Hitpass, "*Report on single mothers on the streets, ie Windhoek, selling themselves to make ends meet*", as updated February 2002

5.2 METHODOLOGY

Sex worker study
It is nearly impossible to obtain a sample of sex workers that can be called "representative". The truth is that no one knows how many sex workers are active in Namibia at this, or any other point in time. The fieldworkers had to systematically find sex workers and structure the sample accordingly.

The issues surrounding sex work are also too complex to be understood simply through numbers. It was therefore decided to combine a qualitative approach with some quantitative analysis of the data. The qualitative approach would provide insight into

motives and feelings of the sex workers, and the quantitative approach would provide the necessary statistics to highlight trends in the data.

In order to incorporate both approaches, the questionnaire was designed as structured, containing both closed-ended as well as open-ended questions. The open-ended questions were coded and categorised at the RFS offices before capturing the data. The open-ended questions were also used to provide the quotes throughout the report. Interviewers were trained to write field notes after every interview to explain how and where the sex worker was approached, his or her appearance and feelings towards the survey, and some "life" information not asked for in the questionnaire. [1]

Taking all the above into consideration, the study could methodologically best be described as **qualitative-quantitative explorative-descriptive.** [2]

Furthermore, various in-depth interviews were conducted with key informants knowledgeable on sex work. This enabled field workers to know where to find sex workers. One of these key informants was Father Hermann Klein-Hitpass of the Roman Catholic Church who has, over the years, developed a database of sex workers in Windhoek. Although the database is confidential to him, he not only shared his knowledge of problems encountered by sex workers with us, but arranged for interviews to be conducted with sex workers who come to the church for economic and emotional assistance.

Sex workers received a gift of male and female condoms and educational material published by the Legal Assistance Centre to thank them for their time and co-operation. [3] Their anonymity was guaranteed and they could use false names during the interviews to protect their identity if they so wished.

Client study
The client study was planned to follow the same methodology as that of the sex workers, namely a combination of quantitative and qualitative data. The feelings of clients are also important in order to understand their motivations for using the services of sex workers. Unfortunately, most of the few clients who agreed to grant interviews were not interested in lengthy questionnaires, but only in answering brief questions.

Telephone survey
The telephone survey was conducted in order to ascertain the feelings of the general public towards sex work. The sample was designed to include members of the general population with landline telephones. Only respondents aged eighteen and older were interviewed. Structured questionnaires, which included mostly closed–ended questions, were used. Due to the nature of a telephone interview it had to be limited to a short questionnaire asking core questions about feelings towards sex work.

Telephone surveys, in a country like Namibia, cannot be regarded as representative of the entire population. However it is commonly agreed that sex workers (of the kind we study here) are mostly active in areas where most people have access to telephones. This means that this type of sample-based survey cannot be dismissed as completely unrepresentative.

Additional interviews outside the study methodology
The Legal Assistance Centre conducted some additional interviews with sex workers in Windhoek and Walvis Bay in the process of making a film documentary to accompany this report. The objective behind the documentary was to give sex workers a direct voice about their problems and needs, since public attitudes about sex work make it hard for them to speak out in person. Some excerpts from these interviews are included below (in green boxes), to complement the data compiled by Research Facilitation Services. However, it should be noted that these interviews were **not** part of the methodology of the field study and are not in any way incorporated into the findings and statistics contained in this chapter.

5.3 SAMPLE

Sex worker study
The sample was designed to include five towns from different geographical areas of the country, and the combined sample size for the sex workers and clients was initially set at 200, intended to be equally divided amongst the two groups.

Even though the entire country could not be included, the sample was spread out to include Central Namibia (**Windhoek**), Northern Namibia (**Grootfontein**), Southern Namibia (**Keetmanshoop**), and the Coast (**Swakopmund** and **Walvis Bay**). Due to the absence of a sample frame (not knowing how many sex workers operate in the country and where they operate), sample size per area was not pre-determined. In each area, sex workers were interviewed in different places such as streets, hotels and pubs. Sample size per area depended finally upon the willingness and availability of sex workers to grant interviews.

Several factors limited the final realisation of the sample. In both **Rundu** and **Oshakati**, the fieldworkers were unable to conduct any interviews. In Oshakati they were told that sex workers would be attacked by the public if they were found there, and in Rundu they were simply told that no sex workers operated there. In Rundu a few interviews were eventually granted but they could not be used for analysis since most questions were not answered -- interviewees either refused to give an answer or said that they did not know the answers.

The other factor that limited the final sample size was of course the shortage of client interviews.

With the pilot survey and the focus group included, the final sample size of the sex workers amounts to 148. When adding interviews with key informants and clients, the final sample size amounts to 160, which is an 80% realisation of the intended sample.

Table 1 shows the sample design and size of the study.

Table 1 Sample realisation of sex worker study

Region	Town	Sample Size
Khomas	Windhoek	81
Erongo	Swakopmund and Walvis Bay	19
Karas	Keetmanshoop	15
Otjozondjupa	Grootfontein	14
	Subtotal	**129**
Khomas	*Pilot phase*	11*
Khomas	*Respondents of focus group*	8**
	Total	**148**

** An additional eleven interviews were conducted during the pilot phase of the survey. Since the layout of the pilot questionnaire differed from the final version these could not be captured for quantitative purposes. However, these interviews were drawn on where possible for verbatim quotes.*

*** A focus group discussion with eight (8) respondents was also conducted as part of the pilot study, and these responses were incorporated into the study insofar as possible.*

The table does not include interviews with key informants.

Client study

As explained, the combined sample size for sex workers and clients was initially set at 200. The aim was to achieve equal numbers of interviews in both studies, so that trends from both groups could be compared to each other. The questionnaires were structured with this in mind, for example asking sex workers why they thought clients made use of their services, and then asking clients why they made use of these services. However, as already noted, this proved to be impossible because of clients' reluctance to be interviewed.

Only two clients agreed to individual, face-to-face interviews. A few additional persons seen to be negotiating with sex workers were willing to be interviewed in groups, to talk about "what they have heard or observed".

Telephone survey

The areas for the telephone survey were selected to include a fair spread of different geographical areas. With Windhoek being the major economic centre of Namibia and having the highest number of telephones, 60% of the sample was drawn from this area. The other areas were represented proportionally to their size.

The telephone numbers were drawn in a systematic, random fashion from the Namibian telephone directory. This means the following:

- The total number of telephone numbers in each area is determined.
- A random starting point is determined, the total number of telephone numbers is divided by the sample size and this is the interval (*n*). Every *n*th number is then selected.

A sample size of three hundred and fifteen (315) was achieved, which yielded a Confidence Level of 95%, meaning that given the sample size compared with the size of the population with access to land lines in the targeted areas, we can be 95% sure that the answers are an accurate reflection of reality. The sample also yielded a Confidence Interval of 5%, meaning that the percentages given are within 5% of the figures which would have been obtained if every person with access to a land-based telephone line in the targeting areas had been surveyed.

The current teledensity (number of telephone lines) in Namibia is 110 176. [4] Table 2 shows the sample realisation of the telephone survey.

Table 2 Sample realisation of telephone survey

Region	Town	Sample Size
Khomas	Windhoek	200
Oshana	Oshakati/Ondangwa	40
Erongo	Swakopmund/Walvis Bay	30
Omaheke	Gobabis	15
Karas	Keetmanshoop	15
Hardap	Mariental	15
	Total	**315**

5.4 FIELDWORK

As noted above, the field research took place from June to August 2001.

Training of fieldworkers
The initial training of the fieldworkers focused on the contents of the questionnaire. Thereafter they received training on relevant health issues that might come up during an interview, such as HIV/AIDS and sexually transmitted diseases (STD's) as well as the correct usage of protective devices such as condoms. They were handed a catalogue containing key telephone numbers of appropriate support services to share with respondents. [5]

Furthermore they were trained extensively in qualitative interviewing skills by Dr Willem Schürink who has conducted a number of studies on the topic of sex work in South Africa. He taught them to truly observe and not just ask questions, and to write down these observations in the form of field notes. These field notes served as a colourful and informative background to the interviews and proved to be the key to a deeper understanding of each case. Interviewers also had to conduct a few pilot questionnaires and these were discussed with them before they finally ventured into the field.

Fieldwork problems
Despite all the preparations fieldwork was not without its own challenges. Many respondents were reluctant to be interviewed, fearing that they might become known or labelled as sex workers. The following quote may help to explain this reluctance:

> *"I come from a very good Christian upbringing. I still don't understand why I am here ...I am ashamed and scared that anyone I know might find out what I really do for a living."*

Others were very eager to be interviewed since they felt that they could not normally discuss what they do for a living with other people. However, a certain amount of trust had to be built up with respondents before an interviewer could even start a conversation. In some areas outside Windhoek, field workers were unable to locate any sex workers initially, being told that there were none in the area. Some sex workers

initially denied being operative in sex work, but as soon as trust was built up with them interviews were granted, and good co-operation was received from them.

Interviews were often interrupted due to clients arriving. This made the time of interviewing much longer. Fieldworkers confessed to being emotionally drained, but enriched, after the survey.

5. 5 FINDINGS OF THE SEX WORKER STUDY

This part of the report will discuss the findings of the sex worker study.

5.5.1 Biographical profile of respondents

The first section of the questionnaire dealt with the biographical details of the respondents. **The vast majority of sex workers in the sample were female (94%).**

Table 3 Sex of respondent

Male/Female	Percent
Female	94.0
Male	6.0
	100.0

Table 4 shows the sexual orientation of respondents. Respondents were asked to explain how they "see" themselves in terms of sexual orientation. The sample included a fair spread of different sexual orientations among respondents, from "straight" to "transgendered"[6] and "gay". **The majority (92,2%) regarded themselves as "straight", and the remainder of the sample classified themselves as gay, lesbian or transgendered.** Some 1.6% of respondents chose not to answer this question.

Table 4 Sexual orientation

Sexual orientation	Percent
Straight	92.2
Gay	3.1
Transgendered	2.3
Lesbian	0.8
Missing Cases	*1.6*
	100.0

Table 5 shows that **80.6% of the respondents were single**, and the remainder were spread across different categories of marital status such as being divorced, married or living together with a partner without being married.

Table 5 Marital status

Marital status	Percent
Single never married	80.6
Divorced	5.4
Married	4.7
Separated not divorced	2.3
Living with same sex partner	2.3
Living together, not married	1.6
Widowed	1.6
Missing Cases	*1.5*
	100.0

Respondents were asked what language(s) they speak at home. Table 6 below shows that **46.5% of respondents speak Nama/Damara, and 34.1% Afrikaans as their first language.** This should be seen in the light of the fact that no sample frame exists of sex workers, so final realisation of the sample depended on availability and willingness of sex workers to grant interviews. Therefore, **the report does not suggest that almost 50% of sex workers speak Nama/Damara, merely that the sample worked out this way.**

Table 6 Home language (ranked according to first language)

Language	First language Percent	Second language Percent
Nama/Damara	46.5	12.4
Afrikaans	34.1	48.8
Oshivambo	7.0	2.3
Herero	4.7	0.8
Other	3.2	3.1
English	1.6	24.8
Tswana	0.8	1.6
Caprivian language	-	0.8
Missing Cases	*2.1*	*5.4*
	100.0	100.0

Table 7 shows that **the majority of respondents (80.6%) have some secondary school training**, but not a single one had any tertiary education. However, one of the respondents (a fulltime student) is currently completing her diploma. **Whilst this gives the impression of respondents having attained reasonable levels of education, it is not enough to secure proper fulltime employment at reasonable remuneration.** Section 5.5.5 (Table 13) shows that, **for additional income, sex workers do mostly unskilled labour, such as domestic work or waitressing.**

Table 7 Highest level of schooling

Highest level	Percent
Some Primary School	14.7
Some Secondary School	80.6
Missing Cases	*4.7*
	100.0

Many respondents appear to maintain reasonable living standards, with only one third living in informal housing. Table 8 shows that the majority of respondents (65.1%) live in formal housing, and some 12.4% own the houses they live in, as shown in Table 9. However, as mentioned before, numbers alone cannot tell the story. Field notes gathered in Walvis Bay tell this story about housing:

> *"Living conditions here are terrible. Access to the rooms is through a huge wooden gate and you have to tread through dozens of beer bottles and rubbish with the smell of urine hanging in the air before you get to the rooms."*

More notes written by the same interviewer:

> *"The sex workers stay in a house that looks forlorn and unkempt with beer bottles strewn over a dry, yellow lawn. The rooms inside the house looked dirty with no signs of furniture in the living room".*

Table 8 Type of house or dwelling

Type	Percent
Formal	65.1
Informal	30.2
Missing Cases	*4.7*
	100.0

Table 9 Own or rent house/dwelling

Own or rent	Percent
Rent	48.1
Not paying rent	27.9
Own	12.4
Other	7.8
Missing Cases	*3.8*
	100.0

The majority of respondents (78%) have dependents, the numbers ranging from one or two to entire families. These numbers change from time to time depending on circumstances. One example is a respondent who is single and who suddenly inherited five children when her sister died. She is hoping to find someone to help her with them. In the meantime they are her responsibility.

Many sex workers form economic networks of support with each other, as was especially evident in the coastal areas. For example, many live together, supporting each other in any way possible. A fieldworker observed the following situation:

> *"The sex workers here seem to operate like a family, discussing problems among themselves, helping each other with money and other necessities. During the visit, one of their friends, who works in town, dropped her four-year old son off for the day. He ran around the house, clearly enjoying being amongst his 'aunties'."*

5.5.2 Childhood and sexual history

The questionnaire was structured in such a way that a respondent could "tell a life story" to the field worker. This proved to be a highly emotional experience for many respondents who had never before had the opportunity to discuss their past with anyone. [7] The picture that emerged is very disturbing: a difficult childhood, poverty, alcohol abuse and problems with stepfamily are but a few of the issues the majority of respondents had to deal with during childhood.

General information about childhood

Many respondents were brought up by family members other than their own parents, or by a single parent. Only 10.3% of respondents were brought up in family units including both of their own parents. Consider the following quotes, keeping in mind that the question was open-ended and simply asked for childhood recollections and not abuse as such. Clearly **neglect and abuse formed the core of many a childhood** and thus formed the basis of many memories recalled.

Some had a good childhood only up to a certain point. Most of the time parents or guardians passed away, whereafter circumstances worsened:

> *"We used to raise goats in a very good atmosphere. Then both my parents died and life became so difficult to manage and I used to suffer of hunger."*

> *"After my mother's death I was adopted by my aunt who also passed away later, and then life changed for me."*

> *"I had a very good and happy childhood with my grandparents until they both passed away."*

Some were abandoned:

> *"My mother gave me away to strangers through the train's window when I was only a baby."*

Some did not receive proper care and experienced negative influences:

> *"Grandmother was old and sick so it was difficult for her to supervise us very well..."*

"We lived with other relatives in overcrowded conditions ... the older people did not care about bad behaviour, they performed [sex] in front of the children."

"My uncle and his wife teach me to smoke cigarettes while I was at the age of fourteen."

There were endless examples of verbal abuse. The following quotes are indicative:

"I was a boy playing with dolls and wearing my mother's clothes and she beat me because she didn't understand my behaviour."

"My mother called me a slut even though I was just a small child."

"My stepmother was using abusive words and it hurt so much that I sometimes started crying."

In Table 10 the neutral, negative and positive responses were grouped together. Respondents could provide more than one answer, and these are presented as multiple responses in this table. There appeared to be only one category of truly positive responses, and that was where respondents specifically mentioned *a good life as a child* (10.3%). Although a family unit including both parents appears to be the ideal it cannot be assumed that it was happy and stable. Therefore the majority of responses (89.7%) fell into neutral and negative categories.

Table 10 General childhood

NEUTRAL RESPONSES	**Percentage of responses**
Looked after by another family	20.2
Single parent	15.2
Family unit including both parents	10.3
Large family	1.6
POSITIVE RESPONSES	**Percentage of responses**
Good life as a child	10.3
NEGATIVE RESPONSES	**Percentage of responses**
Poverty	9.9
Difficult childhood	9.5
Good life to certain point	5.3
Step family problems	4.9
Other abuse (verbal and unspecified)	4.1
Alcohol abuse	3.7
Adopted	2.9
Orphaned/Wandered around	1.3
Raped	0.8

Abuse suffered as a child

When specifically questioned about childhood abuse, more than half of the respondents reported suffering some form of abuse. The abuse experienced by them ranged from verbal (20%) to physical (15%) to sexual (16%), as Table 11 shows.

Table 11 Child abuse

Type of abuse	Percent
No abuse	47.4
Verbal abuse	20.4
Sexual abuse	16.1
Physical abuse	15.3
Abuse – other	0.8
	100.0

The following quotes relate to verbal and physical abuse.

> *"My mother whipped me and shouted at me..."*
>
> *"My aunt didn't allow me to go to school if I haven't completed all my work at home..."*
>
> *"My uncle used to beat the hell out of me... he would put my head between his legs and beat real hard."*

The abuse reported also included extreme poverty, as illustrated by the following quote.

> *"We would get through some days without the smallest morsel of food..."*

An abused child may find it hard to break out of this cycle later in life. Furthermore, as will be seen below, many sex workers are still experiencing abuse, from their partners, clients, members of the public and officers of the law. It was obvious from the interviews that most sex workers accepted some abuse to be part of their lives and did not really expect it to change.

First sexual experience

Respondents were asked to describe their first sexual experience: how old they were, who it was with and whether they were under the influence of alcohol or drugs, as well as whether sex was forced upon them. **Most respondents could not really remember at what age they first had sex. Those who were raped remembered it best. The age of first sexual experience ranged from 4 years old upwards.**

Some 63.6% experienced sex for the first time with a boyfriend or girlfriend. **A large number (25.6%) said that their first sexual experience was not out of free will. Of these, 10.1% mentioned a member of an extended family and 2.4% mentioned an immediate family member such as his or her own father.** This is domestic violence in its ugliest form. It is just as difficult to understand the shocking incidence of those in positions of authority, such as teachers and ministers of the church, who were guilty of

the same offence. It is possible that the levels of domestic abuse and violence go beyond that which is described in this report.

This report does not suggest that these conditions automatically lead to somebody becoming a sex worker later in life. But a forced sexual experience, especially at a tender age, is definitely degrading and contributes to low self-esteem and negative perceptions of sexuality. **It is possible that sexual abuse contributes significantly to the perception that the body and sex are commodities to be sold.**

Sadly, the youngest age reflected in the following quotes is seven. What is just as disturbing are the circumstances under which the sexual abuse of young children occurred – such as in a parent's house and at school, two places where a child should be protected and not abused. The quotes speak for themselves...

> *"My stepfather always touch me at buttocks by the time I was seven years old."*
>
> *"Most of the time it was hurting to make sex and by that time I was ten years old."*
>
> *"I was ten years old. I was under the influence of alcohol."*
>
> *"It was a person who rape me while I was asleep while my parents went to disco. I was eleven years old."*
>
> *"I was raped at the age of twelve by a man in the school yard ... he raped me together with some five other men..."*
>
> *"I was raped by a stranger. I was raped two times. Once when I was twelve and once when I was sixteen."*
>
> *"I was raped by my uncle."*

Table 12 shows the full range of responses.

Table 12 First sexual experience

With whom first sexual experience	Percent
Boyfriend or girlfriend	63.6
Member of extended family	10.1
Stranger	9.3
Teacher/Reverend	3.9
Friend	3.1
Immediate family	2.4
One-night stand	2.3
Can't remember	0.8
Missing Cases	*4.5*
	100.0

Similar tales of abuse emerged in interviews with Windhoek-based sex workers filmed by the Legal Assistance Centre in April 2002:

> *My mother lived with another man when my father passed away. That boyfriend of my mother (my stepfather) raped me when I was 16 years old. He committed suicide when it came public that he raped me. I was pregnant with twins by him but they died before birth. My mother left me with my sisters and brothers in Windhoek and moved to the farm.*

One young girl told us that she began sex work at the age of 12, shortly after being raped:

> *I was raped in1998 behind Wanaheda. I was on my way home from school when 4 men stopped me and three of them raped me. The other one ran away. It was painful.* (She said that she reported the case to the police and the men were jailed.)

5.5.3 General issues affecting sex workers

Job profile

One section of the questionnaire dealt with general issues affecting sex workers. **Interviewees were asked how long they had been operating as sex workers. The average time period seems to be somewhere between two to ten years.** Other responses ranged from less than six months to more than fifteen years, but these were in the minority.

The majority of respondents (83.5%) are full-time sex workers with no other sources of income. Those who do have supplementary sources of income aside from sex work obtain such income from a variety of lowly paid and unstable jobs. (See Table 13 below.) Many sex workers (66.1%) have had other jobs in the past, but those jobs were mostly lowly-paid and casual, with no security or stability; such as domestic work or working in bars and pubs.

What is important here is that the same pattern has emerged as during the formative years of many of the respondents -- **the absence of stability**, in the form of events with economic as well as emotional consequences: parents die, jobs disappear, but as one sex worker said: *"At least with sex work you know you always have a job!"*

Table 13 Additional income of sex workers

Other sources of income	Percent
None	83.5
Casual domestic work (domestic worker, washing and ironing. baby sitting)	7.1
Waitress/Bar assistant	4.7
Fulltime employment	3.9
Student	0.8
	100.0

JOB INSTABILITY AND SEX WORK

The connection between job instability and sex work was also a feature in interviews with Windhoek and Walvis Bay-based sex workers filmed by the Legal Assistance Centre in April 2002:

The story of a 32-year-old woman who became a sex worker after losing her job as a domestic worker in Windhoek:

> *I came [to Windhoek] in 1998 with a white family where I did domestic work. I left two of my children with my parents in the south and came only with the last born. When the white family left for South Africa, life in Windhoek became too hard for me. I had no place to stay. No income anymore… Life became unbearable for me.*
>
> *I met a guy with whom I stayed in the river. There I met a friend, also from the south who was already involved in sex work and who showed me how to do this business. She hired a room at Royal Hotel where we always met with our clients. The first two days I was introduced to it and then I took my own decision to start myself.*

A similar explanation from a 21-year-old in Windhoek:

> *I worked as a domestic worker for an Ovambo family. After I got the baby, it was not possible anymore.*

A similar story from a 22-year-old sex worker in Walvis Bay:

> *I came here* [from Schlip to Walvis Bay] *with neighbours of us who asked me to do domestic work for them. I worked one month for them but it didn't work out because they didn't pay me. Then I decided to take my own way and make new friends.*

The role of partners

Almost half of the respondents (45%) have regular partners although they do not necessarily live with them. However, only 16.3% said that their partners knew and approved of what they do for a living. With "approval" it is uncertain whether the partners help them operate, live off their earnings, protect them or simply keep them on the streets. **Many sex workers (16.3%) told of abuse by their partners** (discussed in more detail below)). One quote reflects the general trend of what was said about partner abuse:

> *"Yes my partner knows and he doesn't approve. The other day he beat me so badly that I had to go to hospital."*

Some do know and approve:

> *"Yes he knows and approves."*
>
> *"He knows and approves because I met him while doing sex work."*

Others do not know:

> *"He knows nothing because I am hiding it from him."*

Some partners are simply absent, and not necessarily by choice. This is an extract from a field worker's notes:

> *"She was busy breastfeeding her baby of five months. She was afraid to come out of the house but agreed to an interview. According to her, the father of her baby is working at the mine and can only come to visit her once every month or two. Therefore it is very difficult for her with so many kids. She has five kids to support. She looked neatly dressed but in an old, poor quality dress. She seemed to struggle very much."*

Some partners play a more active role than others. In the following example the partner has become part of a crime network. These observations were made by a fieldworker during an interview one night:

> *"My interview with the sex worker got interrupted when a client picked her up and she disappeared into his car with him. Her boyfriend, who was with us, told me that they didn't really mind how much she receives for what she does with her client since they have a little scheme for making extra money. They have friends in a car parked further down the road. These friends take down the number plate of the client's car and look him up the following day. They then confront the client and tell him that they know what he did the previous night and if he doesn't want his family or friends to find out about it in the newspapers, he better pay an outrageous amount of money to them."*

5.5.4 Entry into sex work

Reasons for going into sex work are varied but the most important considerations are financial, whether they were stated as such or described as having to support children, having to support other family members or simply that the person could not find another job. Considering the fact that most respondents have only some secondary schooling and no other training, their choices are extremely limited. Table 14 shows the full range of reasons provided for entry into sex work.

Table 14 Reasons for going into sex work

Reasons	Percent
Financial reasons	50.3
Child support	23.3
Can't find other job	17.9
Support other family members	8.5
	100.0

Ways of entering sex work are closely linked to the reasons for doing so. It is mostly a mix of socialisation and poverty. These stories were told to interviewers:

> *"She said that she was in Grade 3 when her uncle who looked after her died. She had to drop out of school then because there was nobody to look after her. Then she started to search for bottles to sell in different places for food to eat. One day she came across a man who was older than her who gave her food and money and later he showed her how to have sex. This is how it started."*

> *"At the farm where we grew up there was no parental control over the children. Men at the age of 25 and older called us into the bush to teach us how to make sex. And as the process began happening regularly they gave us something precious that attracted us to do it again. We became used to the situation..."*

Some admitted to other reasons for going into sex work:

> *"I did it for drinking money."*

> *"I went into sex work for luxuries and to get the right man to marry."*

REASONS FOR ENTERING SEX WORK

Almost all of the sex workers interviewed on film by the Legal Assistance Centre cited poverty and joblessness as the reasons for entering sex work. Many of them have numerous dependents – elderly or ill parents, brothers and sisters, children or some combination of these. Several women reported that they had tried to get help from agencies and organisations without success before resorting to sex work.

> *When you look for a job you are always faced with words like "Kapena Ilonga", and they always say there is no job. You don't want to steal because stealing is a criminal offence. Now you are arrested and jailed for selling your own body.*

> *If I had a job, I never would have allowed my daughter to do this.*

> *I want any other type of job to stop what I am doing now.*

> *It is just the daily needs that forced us to do this.*

> *I don't want to do this any more. I want a decent job.*

> *Everywhere where I went for help, I could not find it, therefore I decided to start doing this job.*

There is a strong connection between sex work and the problem of maintenance. Adult sex workers who were interviewed repeatedly emphasised the need to support children or other family members. Young people sometimes enter sex work because absent fathers do not pay for their support, because the relatives whom they depended on died, or because their parents were simply unable to earn enough money to support their children.

This means that improvements in the enforcement of private responsibility for child maintenance, as well as a more efficient system of state support for families in desperate need would be one way to discourage sex work.

Teenage pregnancy also appears to be a factor in driving young women onto the streets – when an extra responsibility is added to a family situation which is already precarious, this can be the factor that tips the balance.

*****

The response of a 15-year-old when asked why she started doing sex work at the age of 14:

Hunger and lack of clothes. I suffered a lot.

From a 16-year-old, who said that she had just started doing sex work:

I am not going to school and my parents don't know what I am doing. I have four brothers and one sister… My father died in a car accident and my mother doesn't work. My friends showed me how to do it.

The response of a 17-year-old girl, when asked why she started sex work at age 15:

I have a 2-year old daughter. The father of my daughter is in jail. I am living with my mother, 2 brothers and my daughter. I started doing sex work on the age of 15 years only because there was no one who could look after my daughter… I support my child, my mother and my two brothers.

The response of a 16-year-old girl, when asked why she started sex work at age 14, shortly after being gang-raped:

My mother is suffering from cancer. My father did not look after us because he was jobless.

From a woman who started sex work at age 16:

I was not assisted with the support of my children. We suffered a lot after my father passed away and at that time my mother was also jobless. We were 11 children of my parents and we had a very difficult time growing up. I was motivated by my friends to join their company.

The story of a 21-year-old sex worker:

I came on the streets in 1988 after my father passed away… My mother left me with my sisters and brothers in Windhoek and moved to the farm when she became ill. I was the first born and had to look after my younger brothers and sisters. When I got money I also gave some to her… Although I was looking for a job, I could never find it. Then I thought of going to the street to get my money.

A statement by a 22-year-old sex worker in Walvis Bay, who has one child:

The men promise that they will look after you and when you get pregnant they just disappear. Who supports your child then? You are the only one. So, that forces you to start sleeping with other men while they are not the biological fathers of your child. You have to make a living from other men. The father of your child promises that he will come, but he doesn't.

From a 23-year-old who started sex work at age 12:

I stayed with my father in Shandubala but he did not support me and life became too difficult for me. By the time that I was 12 years of age, my sister invited me to stay with her. One day she took me to town and introduced this job to me.

From a 26-year-old sex worker who started sex work after having a baby at age 19:

I left school in 1993 after I became pregnant with my first child… I grew up with my grandmother who passed away. Since then I lived with my father [as her mother had also passed away], but he didn't support me. My father didn't support me. I did domestic work here and there to support my child. I was 19 years when I became pregnant by a farm worker.

When asked why she started sex work, she replied:

Out of poverty.

From a 26-year-old with four dependent brothers and sisters and two children of her own, who dropped out of school in Grade 11 because of financial problems:

My mother passed away last year and my father is still alive but he does not support me… So everything became so hard that I decided… Okay what must I do now? If you go look for a job you must have experience. And if you can do the job but you don't have five years' experience or diplomas and all that kind of stuff -- that's why I decided, okay let me start.

A young mother in Walvis Bay with two children:

I gave birth to my daughter on 19 of March. She is now 2 years old. I looked after her myself. The father of my child refused to accept responsibility. Then I decided to jump [do sex work] although I was pregnant. I invited men to sleep with me... When I gave birth to my child, my eldest sister bought me clothes for the baby. When my baby became 3 months old, I stopped breast-feeding to go out and to struggle for us. Until now I am jumping and if a man don't understand, then he must just leave.

Another young mother from Walvis Bay:

My daughter is 2 years old. I am struggling to feed her. I feed her with that jump money [income from sex work] *… I support my child since birth with that jump money.*

From a man who started sex work at age 9:

I could not finish school because my father died while we were young and we stayed with my mother who had no other income than the pension for the elderly. I left school very early. My mother was too old and could not support us. I started at the age of 9 years… My mother knew about that and she was against it. Every time when I brought money home she took it, but wanted to know from where I got it. I always lied and said that I picked it up. She did not want me to continue with that work. She wanted to support me with her pension.

This sex worker is now aged 29. When asked what he does with the money he earns from sex work, he replied:

I support my brothers and sisters, the children of my deceased sister, my mother and myself. I also pay the rent of our house.

When asked if anyone else in his family earns an income, he replied:

No. Only my mother who gets a pension for the elderly.

Some drifted into sex work out of necessity. Some were introduced to it by other sex workers or by their friends, who are likely to be sex workers themselves. As Table 15 indicates, **very few of the sex workers interviewed (1.6%) described sex work as being their own idea, uninfluenced by other people or by example**.

Table 15 Ways of entering into sex work

Ways of entering sex work	Percent
Friend	45.6
Other sex workers	23.7
Observed on streets	10.7
Observed clubs/bars	10.1
Family member	8.3
My own decision	1.6
	100.0

The findings of the focus group are interesting in this regard. Although sex workers were recruited from different areas in Windhoek, more than half of them knew each other and some actually came from the same area of birth and grew up on the same farm. The life stories they told in the group were almost identical: all of them came from conditions of extreme poverty and were unable to find employment anywhere so they decided to come to Windhoek. The first choice of employment for most of them was domestic or other casual work, but with these jobs being so badly paid and unstable, they soon found out that there are other ways (easier ways) of making money, such as sex work. Of course word of mouth played a big role as friends tell friends about this way of making money. From the focus group it was evident that **sex work was the last and often desperate choice for most of the respondents to earn money**.

WAYS OF ENTERING SEX WORK

The interviews filmed by the Legal Assistance Centre in April 2002 told similar stories.

In several cases, young girls entered sex work because their mothers were sex workers. This was one example:

> *My 13-year-old daughter is also in this business. When I asked her why she does this, she just told me she does this because her father does not support her and also to help me supporting her younger brothers and sisters.*

Others followed the example of their friends:

> *I decided to join the company of my friends who already had been in this job.*

> *I met a boyfriend who stabbed me three times. After I was healed from the wounds I decided to move around with my friends who did sex work. My friend who passed away showed me how to "zula". Then I decided myself to start with this job.*

One story illustrates a gradual descent from "mistress" to sex worker:

> *After I dropped school in Gr. 7, I started with domestic work and temporary jobs in holidays. Life in Karasburg became hard and I decided to come to Windhoek for greener pastures. I went with friends to hotels where I met a white guy. We always had great times together and he gave me huge amounts like N$500. We danced in the Continental Hotel, always had a lot of alcohol and fun. I could afford my nice clothes and always had money. Hotels were our homes. When my friend (the white guy) was out, you know the way women are, I started seeing also other men to advance my income. I was tempted*

to get more and more. When he (the white friend of mine) went back to Germany, all nice things started collapsing. I smoked "dagga" and started going out with black men. I had nowhere to stay and moved to the river. I had four miscarriages. I started hearing about the HIV disease. The death of my family members and also friends through HIV/AIDS scared me. I realized that I have to change my life and went to Fr. Herman to seek for help. I left domestic work because I earned N$500 to N$600 at my white client whereas I only earn N$60 for domestic work. I never had imagined that I would live in a house. I thought I would live only in hotels and eat nice food. Now I am living in a "kaya".

This woman claims that she stopped doing sex work in 1998 because of her fears of HIV/AIDS:

I also went to several welfare organizations to seek help for my daughter. I suffered a lot, but did not to go back to the street because of fear of this deadly AIDS disease… When my aunt and my families died of AIDS, my mother warned me to stop with the reckless life. It makes you worry if you see how your family dies. I also buried my younger sister who was infected with AIDS this year. Now I am reformed…

5.5.5 Problems facing sex workers

General problems

Health issues and abuse are the two main problems facing sex workers. Even though abuse was not mentioned in this question it was the main issue that emerged. Ironically, although the business of sex work depends upon clients, **clients are the primary source of problems for sex workers.** Clients who don't pay were mentioned by 26.1% of respondents, and abusive clients by 19.8%. Add to this clients who refuse to wear condoms and "client problems" constitute 51.2% of the responses, as can be seen in Table 16 below.

The quotes below illustrate abuse from different sources. The first set of quotes concerns various kinds of abuse perpetrated by clients:

"One day a client took me to a truck and had sex with me for N$300. After paying me he told his friends to rape me and I suffered so much injuries that it was even difficult to walk."

"Half of the clients do not want to pay after sex. Half go around with guns and do not want to use condoms. Others do not want to give you back your clothes and leave you to walk home naked."

"We have no control over the men who pick us up – they do anything they imagine, some even stuff bottles into us."

"A customer beat me and tore my clothes before raping me repeatedly and leaving me for dead. I reported him and he is not even in jail."

Not all sex workers just accept this. One sex worker proudly recounted how she hits back twice as hard when attacked.

On a weekday in September 2001, a staff member of the Legal Assistance Centre driving north on the Okahandja Highway saw a sex worker who frequents a certain spot on this highway being attacked by two young men. The staff member managed to get the sex worker into the car and lock the door behind her, although the assailants followed and tried to get inside the car as well. The angry sex worker said that the two men were trying to rape her and asked to be taken to a telephone so that she could contact the police. Many other cars drove by while the attack was underway right beside the road, in broad daylight, but no one else stopped to help.

Jealousy amongst sex workers is rife everywhere. All of the field workers encountered sex workers with injuries sustained from other sex workers. Scars and cuts were common and bottles were often used to attack each other. Most fights happen after drinking alcohol.

> *"The girls are jealous of each other and some attack you. One girl slashed my neck with a knife..."*

Whilst conducting an interview at a club the interviewer was told to wait because another sex worker was waiting to beat up the woman he was talking to. She had apparently stolen a client from another sex worker and this is unforgivable. The interviewer was helpless against the two women who then beat the accused sex worker:

> *"...she got beaten real badly with fists raining on her and sticks hitting her... no one came to her aid, not even the security guard that was standing three metres away at the door..."*

The same fieldworker witnessed the following event while interviewing a sex worker one evening. The following is an extract from his field notes:

> *"Two girls and a cross-dressing man were being interrogated by three Special Field Force (hereafter SFF) members. They kept on asking them what time it was and what they were doing on the streets. The girls were visibly frightened and told them that they were just strolling. One girl said something in a soft voice and the SFF member told her to shut up and turned his attention to the man, telling him: 'Hey you moffie*, how many times have I told you to keep off these streets?' He (the SFF member) then punched the male in the stomach and slapped his face."*
>
> (* Rude slang for homosexual male)

This extract is a typical example of the abuse endured by gay and transgendered sex workers. Whilst they fear the same things as other sex workers (health issues and violence being two examples), they seem to endure more verbal abuse from others such as the public.

Along with Special Field Force members, police were also mentioned as the source of problems – an issue which was reiterated in response to subsequent questions (discussed below). A quote from a sex worker about a policeman:

> *"I was blackmailed by a policeman to have sex with him so he would not jail me because prostitution is illegal."*

Table 16 General problems facing sex workers

Problems	Percent
Clients who don't pay	26.1
Abusive clients	19.8
AIDS	8.7
Problems with police	7.7
Clients refusing condoms	5.3
Robbery	5.3
Public attitude	3.9
No problems	7.2
Other	*16.0*
	100.0

Abuse

After the general question about problems experienced, the next question asked more specifically about any abuse suffered by sex workers in their adult lives, or during the course of doing sex work. The answers reinforced what was said in response to the discussion of general problems. Abuse comes from different sources, such as clients and the public. However, other problems also emerged, such as being a target for robbers who know that a cash transaction has just taken place:

> *"Sometimes just after sex I suffer at the hands of robbers after sex then I am left with nothing again."*

Client abuse:

> *"They take you, f**k you and just dump you. Some of them beat you afterwards."*
>
> *"Some of the clients are very rough during sexual intercourse... I suffered vaginal injuries in most cases."*
>
> *"Some clients enjoy hurting you in order to be aroused sexually."*

Attitude of the public:

> *"Some members of the public insult us."*
>
> *"The name calling "moffie*" on the street."*
>
> (*Rude slang for homosexual person)

Special Field Forces:

> *"The abuse comes mostly from the SFF. They whip us and chase us away from the streets."*

Table 17 shows all the responses. **Fewer than one third (27.7%) of respondents have not yet experienced any abuse. The remainder of the sample mentioned partner abuse (16.3%), beatings and abuse by clients (17.7%), and abuse at the hands of police and Special Field Force members (9.2%).** Some mentioned verbal and emotional abuse (14.2%) and others sexual abuse (10.6%) but did not specify from whom they had suffered this abuse.

Table 17 Abuse suffered by sex workers

Type of abuse	Percent
No abuse	27.7
Client beatings/abuse	17.7
Partner abuse	16.3
Police/Special Field Forces (SFF) beatings	9.2
Attacks by other sex workers	1.5
Rape/Sexual abuse (perpetrator unspecified)	10.6
Verbal/Emotional abuse (perpetrator unspecified)	14.2
Robbery (perpetrator unspecified)	2.8
	100.0

Some sex workers reported that they take safety precautions, such as writing down the registration number of their clients' cars, or giving cash from previous transactions to a friend to keep while they are with a new client.

MORE EXAMPLES OF ABUSE

The following are some other examples of alleged abuse and harassment, taken from interviews with Windhoek-based sex workers filmed by the Legal Assistance Centre in April 2002:

Problems with clients

Sometimes you run after the vehicle, sometimes you are dropped very far from town and have to see yourselves how to come home.

One day my friend and I went with two unknown guys to Daan Viljoen. On our way, they stopped under the bridge, had sex with us, beat us up and left us there. We had to walk home in the middle of the night. A second car stopped by. My friend decided to climb in that vehicle, but I refused, because I was too afraid. He did the same with her and just left her there.

On Tuesday night I had an appointment with [a man who works at the municipality]. *We drove to Auas Blick. We agreed for N$70. After having sex with me he said he doesn't have money to pay me. I asked him twice to give me my money and he just said that he doesn't have. When I told him that I would sue him, he beat me up, pulled a bunch of hair out of my head, bit me, left me there and drove back to work.*

One day a guy took me to his house, had sex with me and then stabbed me without saying anything. (The sex worker who made this statement showed us the scar on her thigh which resulted from this attack.)

I once went out with a white man from the South African Defence Force. One night he took me to the veld. After having sex with me, he beat me up and just left me there. I had to go back home in the dark, barefoot and with wounds on my body.

Men beat you up after having sex with you.

Sometimes they agree to pay, but after having sex, they refuse paying. Some refuse to use condoms.

Problems with police, Special Field Force members and other officials

They [the police] *are inhuman and treat us badly. They use swear words against us. The municipal police are also our clients, but we are afraid to bring this out in public. They claim that it is their job to arrest us because we are busy with 'dirty' work. I am just wondering why they are also involved in this 'dirty' work by having sex with us. If the ladies refuse to have sex with them, they arrest them.* (This statement was made by a male transgendered sex worker who reported that he had been arrested more than 10 times)

They [the police] *beat you up when they find you on the street even if you are on your way to another place or not having the intention to sell your body. The fact that they recognize you, they beat you up without saying anything and send you home.*

The Special Field Force beat me up once. I went to the police station to open a case but was informed that I cannot open a case against the Special Field Force.

On my way for an appointment with a client, the men from Rescue beat me up, threw me in their vehicle and took me to the police station. That was not actually what they wanted to do. They were looking for specific ladies to have sex with them.

The same men who had sex with us yesterday come today and arrest us.

After they [the policemen] *have sex with us, they beat us up… They ignore us when we lay charges but when those men lay charges against us, they throw us in jail. Why? Why? I want to know why.*

Other problems

The taxi men themselves kidnap you. They take you to the dunes or to Wambostrand, do whatever they want to with you and leave you there. That is what happened to friends of mine.

Now I am sitting in a club. If I go out from here, I am called "hoer" just because I am with a man.

Why stay in this world if it is so cruel? Consider the following quote from a club owner who also owns a house where a few sex workers stay in and operate from:

> *"These girls do what they do to survive. There is nothing else to it. Most of them have families and when you visit their homes, you'll be shocked to see the poverty and destitution they left behind. Each of them sends a certain amount of money to people who either look after their children or maybe to their mothers or grandmothers. Some of them even send packets of mealie meal and rice instead of money. The money they earn as sex workers are spent mostly on dependents and definitely not on themselves. Most of them don't have a proper education and left school at a young age. You don't get a job with a Standard 7 or 8 certificate!"*

5.5.6 Issues pertaining to children

Most respondents (72.7%) look after children of their own or look after someone else's children. Table 18 shows that only a small percentage (16.7%) have no children, and a further 10.6% said that someone else cares for their children. This response shows once again that **money is the big problem**. Furthermore children require attention and care, which 12.9% of respondents felt that they could not adequately provide. Only 6.8% felt that childcare was not a problem.

Table 18 Child care issues

Child care	Percent
Money required for looking after children	53.1
Children need attention and care	12.9
Someone else cares for children	10.6
Child care is not a problem	6.8
No children	*16.6*
	100.0

Examples of networking by sex workers to support each other have been mentioned previously in the report. One sex worker, when asked why she went into sex work, said:

> *"I just got so sick and tired of seeing my children hungry..."*

Another felt helpless to assist her disabled child in any other way:

> *"She told me that her parents were illiterate so they did not think she had to go to school either. Now she has a disabled son and he needs special care. But she does not know where to take him or how to approach the social workers because she is also illiterate. I felt so very sad interviewing her."*

ONE WOMAN'S STORY

The following is an excerpt from an interview with a Windhoek-based sex worker, filmed by the Legal Assistance Centre in April 2002.

I have 6 children. The eldest one is 13 and the youngest, one year. Four of them are attending school. I don't want to go to the street but it is for their survival. They sleep with hunger and I have to pay their school fees.

I had a very difficult childhood. My mother died when I was one month old. Since then I had been living with my father and sisters. I started doing sex work from the age of 10 because I had no other option. The father of my children, a truck driver, never supports us and since then life became very difficult for us…

My 13-year-old daughter is also in this business. When I asked her why she does this, she just told me she does this because her father does not support her and also to help me supporting her younger brothers and sisters…

Poverty sent me to the streets. One of my seven children had died from malnutrition. I would not have gone to the streets if there had been another option…

If there is another way of getting rid of poverty, we will leave this job because we only do it out of need.

I also want something to be done about the maintenance issue. The father of my children was instructed to pay only N$300 for all six of his children. I was very upset and felt humiliated. He even does not fulfil his promise to pay that money. What should I do? These days I am even not sleeping well, because it is only for them that I do this. I would not have gone to the streets if I haven't had children…

After this interview took place, the Legal Assistance Centre assisted this woman with a procedure to attach the property of the father of her children, so that the property could be sold to pay the outstanding maintenance. Our help came too late. A second child in the family, the youngest, died of malnutrition in May 2002.

5.5.7 The world of paid sex

Where clients are contacted

Alcohol and places where it is sold play an important role in the world of paid sex. Most clients are contacted in institutions that serve alcohol such as bars, hotels, shebeens [8] and clubs. In the section on health it becomes evident that the majority of sex workers also use alcohol on a regular basis. One sex worker said:

"When we get drunk the kissing starts and then we negotiate..."

Some clients are attracted on the streets (about a quarter) and a relatively small percentage of them (13.2%) are contacted by telephone – mostly cell phones. (See Table 19.)

There appears to be a certain status ascribed to sex workers on the grounds of where they operate. One of the sex workers interviewed in a bar said that she *"...preferred to meet her clients in bars and pubs rather than on the streets as the cheap girls do*." A sex worker operating on the fringes of a town said that it was not as profitable as working in the centre of town where one could be picked up in a bar. Many

of the sex workers operating from bars or hotels appeared to be quite sophisticated, judging by the observations made by interviewers:

> *"She is a beautiful woman, tall and slender. She seems sophisticated and prefers foreigners as clients. She was attracting a lot of attention from the men coming into the bar."*
>
> *"She dresses provocatively, a very short skirt, a long black coat with long boots: picture Pretty Woman..."* [9]

Some go to great lengths to attract clients:

> *"While she was talking to me she was standing and watching out for clients. She stood with her hands on her hips and even danced a little."*

One sex worker who was interviewed on a street corner said that she was very proud of herself, and felt that the.*"...girls on the streets are more beautiful than other people...that is why they (clients) use our services..."*

Table 19 shows all the responses.

Table 19 How clients are contacted

Where contact	Percent
In bars/hotels	27.7
On the street	24.5
Shebeen	14.5
Clubs	14.5
Telephone	13.2
Other	*5.6*
	100.0

SEX WORK IN WALVIS BAY

from a 2002 article in *Drum* magazine, by Sam Mathe

"I have so many dreams. I would like to see the outside world. Meet with the guy I would like to marry. Then I want a house. If he feels like it, he can buy me a car as well". At face value, the speaker sounds like an ordinary girl who dreams about a reasonably decent future. But Madeline (28) is no ordinary girl and her profession cannot by any stretch of the imagination be regarded as decent.

Madeline is a prostitute who ekes out an existence by combing the ports of Walvis Bay, Namibia, looking for prospective clients. Strategically located halfway down the coast of this desert country, Walvis Bay has direct access to principal shipping routes, making it a natural gateway for international trade. As Namibia's largest commercial port, it receives approximately 800 vessels a year and handles about 2 million tonnes of cargo.

And although seamen from all over the world visit Walvis Bay, for Madeline, business is frustratingly scarce. "Here a man comes in tonight. Tomorrow the vessel goes out again. Forget about finding love here"', she says despairingly. Madeline says she became a prostitute after her mother passed away and the family fell apart, with siblings going separate ways. "My father was a fisherman but he drank more and more until he became an alcoholic. As a child I would go to school barefoot. At home sometimes we would spend four days without food". Poverty eventually forced her on to the streets where she landed a job as a barmaid in a club after the owner was attracted by her good looks.

"It was like a dream come true. He offered me a flat and everything just fell into my lap. For a month I worked contentedly behind a counter until I found out that it was a prostitutes' club". She also discovered that she earned less in a month than the girls made in one night. So when four women from Walvis Bay recruited her to work in a prostitution ring, she says she didn't hesitate.

Like Madeline, family tragedy and poverty forced Denise (44), a mother of five, into prostitution. Her father, a fisherman, had a stroke and was forced to abandon his job. Her husband, a sole breadwinner at the time, passed away last year, leaving the family virtually destitute. "I know that in Namibia it is illegal to be a prostitute. But I have no choice. There is no other income".

Referring to the beatings that the call girls sometimes endure at the hands of their clients, Denise says: "I am not happy with what I am doing but I have to because I must survive. I must keep my children alive. Some days there is not even bread at home. Then I just had to go out and earn money."

After her husband's death, Denise says she decided to tell her children and mother about her plans. "My eldest daughter was totally against it. But my mother said, 'Denise, you are a woman now. Do what you think is right for you'". Since she started as a 'working girl' on the ports of Walvis Bay, Denise confesses that the list of her international clients reads like the Who's Who of the United Nations: Russians, Spanish, Japanese, Filipinos, Czechs, Americans.

And while daily the vessels dock and leave after few days, the menace of HIV/AIDS always lingers in the minds of these young and desperate women who find themselves trapped in the desolation of Walvis Bay. "Two of the girls who were here have already died", says Denise. "If you get HIV you have no back-up. Very few people know that you are positive. There is no one to help you".

It is a different picture with the seamen, most of whom come from advanced countries, where the rate of HIV infections is low and the level of AIDS awareness is high. This gives some of the girls a false impression that because the seamen are regularly tested, they don't necessarily have to use condoms. Madeline naively states that, "'because they are regularly tested, when they come from the sea they are clean. This means that if a guy asks me to go steady with him, then we don't have to use a condom because I can easily make my life with that man."

This yearning on the part of the girls to have regular, if not life partners, is exemplified in Stella's (35) story. Unlike her fellow call girls, Stella's drop-dead enticing looks, honeyed tongue and sharp wit see men queuing in droves for her services. "I am fast like a jet when I choose men. In this life you have to be because competition from the other girls is tight". She recalls that sometimes in rooms, in a row men would be waiting for her.

"As much as I loved money, I loved good sex partners. I wanted to give my clients my best so that they will come back for more." But one of Stella's multiple clients saw something in her soul and fell in love with her. He married her immediately but when he went back into the sea on a six-month business voyage, she repaid him by converting their house into a brothel.

"When my husband returned he instantly knew that I was into prostitution again and he was very angry with me. He threw out every man he found in the house. Even when he hit me for the wrongs that I did and I locked myself in the bathroom, he would come and cry with me." Stella genuinely believes that her husband was a guardian angel God set on her path to change her ways. "Something happened to me when I worked at the bar. Every time I went out with a man and had sex or he touched me, I would feel funny. One day I packed my bags and left. The boss was disappointed because I was one of her best bar girls. But I just knew I couldn't do that anymore." For the first three months she retreated into the desert where she joined a church of Born Again Christians, "the house of love".

Having realised that religion was her salvation, today all she wants to do is to meet her husband and ask for forgiveness. "He was the only one who succeeded in winning my heart."

But Madeline, who has a child by one of her lovers, reiterates that she would love to have a family. She smiles mischievously and declares, "I have so many lovers who want to marry me. I really love my child's father. But at the moment, to be honest with you, I met a guy in Walvis Bay. I have to go to Walvis Bay next month, find him and ask him about our marriage. It is all I want - to be a housewife." That is how she hopes to fulfil her dream of experiencing life outside the desolate sand dunes of the Namib desert and the gushing waves of Walvis Bay.

Working arrangements

About half of the respondents (46.5%) work alone, and the rest work in a group or with a friend. Only 1.6% said that they worked with a "boyfriend", but partners are probably included in "groups". **Only 13.2% split their earnings with someone else. Traditional "pimps" do not appear to play a large role in Namibian sex work.** If

they do, they are not eager to disclose this role to anyone, possibly because of the illegality of sex work.

Where it happens

As noted above, most sex workers are contacted on the street or at a hotel or pub, where the negotiations start. As to the venue of the sex act itself, **almost a quarter of paid sex takes place in the *veld*** (see Table 20). In addition to the obvious economic reasons behind this, there appear to be more sinister motives as well. Apart from the fact that someone is unlikely to be discovered and recognised by anybody in this type of location, it is easier to rape or abuse someone in a distant lonely area such as a field. This seems to happen on an alarmingly regular basis, judging by the quotes below:

> *"They take us into the field (*veld*) and beat us. A man might kill you there..."*
>
> *"One day a client took me to the field upon agreement of paying me N$200.00 Then he paid me N$50.00 only and left me there in the field."*
>
> *"A client took me into the field and pay me only N$10.00 and then leave me there in the bush. It was very far outside the city then I have to walk back."*
>
> *"They take you there and leave you to walk home naked."*
>
> *"Some clients take us a distance outside the city then pay us and leave us there in the bush after having sexual intercourse."*

Table 20 shows all the responses, and illustrates the variety of venues encountered. **Cars, houses and hotels are common venues. Quite a number of respondents operate from houses where a few of them live together and someone "supervises" them although nobody admitted to having or being a "pimp" as such.** Although these could not be called official brothels perhaps *informal sex venues* would be an appropriate term. (Even if they were brothels nobody would admit to it, since brothels are illegal.)

Table 20 Locations for sex

Location	Percent
Veld	23.2
Cars	15.5
Houses	15.0
Hotel/Guest houses	14.5
Own room	10.0
Clients' place	3.2
Trucks	3.2
Hidden or dark places	2.8
Anywhere	1.8
Offices	0.9
Missing values	*9.9*
	100.0

It appears that those sex workers working from relatively protected establishments are able to negotiate from a stronger position on where the sex act will take place. One sex worker operating from a hotel in Windhoek said the following:

> *"The tourists come in and we attract them by the way we talk. Then we drink and we decide where to go..."*

In some cases the venue depends on the amount the client is willing to pay.

SEX WORKER TRAPPED IN A VICIOUS CIRCLE OF VIOLENCE

Kalilo M Kambo, *echoes,* Polytechnic of Namibia Community Journalism Project, 13 June 2002

Watching Shila (not her real name) going about her business of soliciting clients on the back streets of Windhoek, one would never imagine what burns inside this complex soul.

To most residents of Windhoek, sex work is part of a seedy underworld they would prefer not to acknowledge, let alone (if they are men) admit to patronizing.

Take the unusual step of just talking to a woman like Shila, one of Windhoek's growing number of well turned out and business-like sex workers, and you will realize that her life is but another reflection of the economic and physical violence that plagues Namibian women.

Shila said she turned to this work because she was abused and molested by her step-father who treated her as punch bag and raped her. Her step-brothers and sisters also used to beat her up a lot and humiliated her: "I was the oldest child in the family because I had a different father from others." she explained.

Not wishing to tell her mother what her step-father did to her because her mother had a weak heart, Shila left home at age 15 and has since made her living on the streets.

Shila has no drug problems or addictions, although she drinks alcohol and smokes to "free her from any inhibitions" to approaching clients and speaking to them freely.

Shila has one child who lives with her grandmother since the father of her child died some years back.

While sex workers are treated as illegal … their clients generally get away free. Efforts to try to interview clients proved unsuccessful.

According to Shila her clients are high-ranking black and white men who pay well. Sex workers, she noted, work long day and night shifts depending on the clients and the groups.

Most of her friends, she says, have faced similar family problems that also drove them to the streets. The violence that many sex workers experienced as children follows them to their work place. "We always get mugged, raped and abused both verbally and physically," Shila noted.

Disagreement over fees is another common source of violence in sex work. Passers-by frequently shout and swear at sex workers and many throw bottles and stones at them.

These sorts of abuses are one strong argument that has been put forward in other countries for legalizing sex work so that those in the profession can enjoy the same workplace rights and protection as other kinds of work.

But Shila says she would support a law that prohibits sex work simply because she does not believe that it is the type of occupation that any young woman willfully takes up. "A lot of girls do not like what they are doing, but they are doing it because they do not want to steal other people's properties," she noted.

A better alternative, she argued, is for the government to provide young women with work so that they can earn a living to support their children and their families.

"This is not something I wanted to do, nor would wish or advise anyone to do. I had no one to go to, or to talk to. I would like to quit one day." she said.

According to Shila, Windhoek has about 150 prostitutes who are well known, but the number might be higher than that because many work underground as they are embarrassed about their relatives and friends seeing them or finding out what they do.

Windhoek sex workers are mostly well groomed. They frequently change their outfits and sometimes wear wigs to look different. They operate from various street corners and most of them are 15 to 25 years old. Of key concern, says Shila, is the growing number of young girls being lured into sex work because of the high sums that men are willing to pay them for unprotected sex.

Sex acts and prices

The **sex acts vary as much as the prices charged for them**. This question was not captured in statistical form since many respondents were uncomfortable with answering it or could not explain the various sexual acts clearly. However, those who did reply described acts ranging from "normal" (penis to vagina) sex, to anal sex, oral sex ("blowjobs") or masturbation. These are the most popular and frequently requested acts, and **prices charged range anywhere between N$20 to N$300 per sex act**. There are no fixed prices charged for any given act, but the average price per sex act can be tentatively estimated at N$50 to N$100. A few sex workers actually charge the same for all acts regardless of what is entailed, but most negotiate specific prices with clients. **Sex without a condom is generally more expensive than sex with a condom**, and disturbingly, this depends on the demand by the client for unprotected sex.

What was evident was that **sex workers in Walvis Bay described more unusual sex acts** -- such as masochism (enjoying pain inflicted on oneself: one sex worker hits men on their genitals with a whip), sadism (enjoying inflicting pain on someone else) and "golden showers" (urinating on clients or in their mouths) – than sex workers anywhere else. One gay sex worker said that the majority of his clients are married men and that he has one client who only wants to be urinated on. This sex worker was also from Walvis Bay. Again prices for such acts range from very cheap to more expensive and many negotiate this with clients. It does seem to be the norm that **the more unusual acts are more expensive** -- as one sex worker said: *"The weirder the acts the more expensive they are."* One response encountered quite frequently was: *"Anything, depending on the client."*

Legal Assistance Centre's filmed interviews in Windhoek produced a similar range of responses in respect of prices:

> *You know actually I started my job at Kalahari Sands… The start was quite okay Sometimes a guy comes to you if he needs a service. They give you N$300. If you are lucky, they almost give you US$100. Now as the time is passing, it is not okay anymore.*
>
> *I charge them N$10 to N$20 to buy mealiemeal and candles.*

The typical client

Firstly, **there is no such thing as a typical client**. One sex worker said: ***"Anyone with money is a client".***

The relationship between sex workers and their clients appears to be a complex one. Although clients are guilty of abusing sex workers in many cases, this is not always the case, and not all clients can be portrayed as cruel and abusive. Some sex workers have called their typical clients "gentle", "understanding" and so forth. Many appear to have a good understanding, especially with their regular clients. One sex worker spoke of the child that she had with a married man, who, together with his wife, had adopted the

child. Other sex workers have entered into long-term relationships with clients. Some of them are in a position of trust with their clients who confide to them why they visit them.

Of course, there is also the possibility of "client abuse" by sex workers in some unusual instances. For example, two sex workers interviewed on film by the Legal Assistance Centre admitted to stealing from their clients. Field researchers also came across a situation where accomplices of a sex worker noted the registration numbers of clients' cars and used this information at a later date to blackmail the clients for more money by threatening exposure of their actions.

The majority of respondents (69.8%) have some regular clients. Clients come from all walks of life and all sectors of society, and are of all age groups. In Windhoek an interview was interrupted when a client arrived. The client was 17 years old. The sex worker (age 32) commented: *"We are even starting to screw our own kids for money these days".*

Table 21 below shows the various types of clients mentioned. **Although there are clients of every variety, white and foreign men were frequently mentioned.**

Table 21 Typical client

Typical client	**Percent**
Foreigners	23.6
Whites	13.2
Business men	8.5
Truck drivers	7.5
Different languages mentioned such as Oshivambo/Otjiherero/Afrikaans/English/German	7.1
Seamen	5.7
Tourists	5.7
Different races mentioned (excluding Whites who were mentioned above)	5.6
Local people	5.2
Understanding/Caring people	4.2
Politicians	2.8
Other	*10.9*
	100.0

WHO ARE THE CLIENTS OF SEX WORKERS?

Once again, the interviews filmed by the Legal Assistance Centre correlated the findings of the larger survey. Here are some of the descriptions of clients from sex workers based in Windhoek:

Those clients of us who work in the government are also human like us and we all meet in the night… People from high societies, municipalities, the government, traffic and almost the best vehicles over the world stop by.

from Namibia, white and black

Angolans, Basters, Whites, Chinese, Japanese, and most of them were Germans

Kenyans, Angolans, whites, and Portuguese

Angolans, whites, Zairians

between the ages of 25 to 45

Damara, German, Namibians, rich, poor, underpaid, those from high levels in the government and even those who are on their way home from work

I also get guys from America. One guy from France. Even one from Germany. The one from Germany comes regularly to Namibia.

Most of them are from Namibia. Some are married men. They are Damara/Nama and Ovambo. I was not involved with other races yet.

Descriptions of clients from Walvis Bay:

Spain, Italian, Owambo and fishermen

The married man comes. The man in the bank and the one in high ranks come and ask for sex.

Why clients use services of sex workers

When sex workers were asked why they think clients use their services, they came up with a vide variety of reasons. Note that these are the perceptions of the sex workers and not reasons provided by clients themselves.

Perceptions of fantasy and desire:

"We look beautiful and sexually appealing."

"We meet their desires."

"They can live out their fantasies with us."

Some feel they satisfy their clients more than their own partners or spouses do:

> *"(Some say)... their wives have died or others say their wives refuse to have sex with them."*
>
> *"I think their girlfriends are not performing well."*

Pleasure certainly plays a major role too:

> *"They like sex with strangers and one-night stands."*
>
> *"(They say) ... we are experts and we know how to bring a man to climax."*
>
> *"The service is excellent. We are always in the mood for sex."*
>
> *"It is mostly for pleasure as part of entertainment."*

Just a need for sex...

> *"Seamen are at sea for 6 months without sex and just want a girl for the night."*
>
> *"Men have to be satisfied regularly."*
>
> *"Some are just addicted to sex."*

And some being noble?

> *"They pity us."*

Table 22 shows the entire range of responses.

Table 22 Why clients use the services of sex workers

Reasons for using sex workers	**Percent**
Our sexual performance	45.4
Partner problems	11.3
Don't know	9.5
No other opportunity for sex	7.1
Entertainment	6.4
Easier than relationships	2.8
Need variety	2.8
Sex workers are attractive	2.8
Other	*11.9*
	100.0

Perceptions of children working on the streets

Respondents were asked whether they have ever seen children doing sex work. **About one third of respondents (29.7%) see children regularly on the street and even at some clubs.** The majority of children appeared to be around 14 or 15 years old but many respondents said that one could not really be sure since they tried to look older than they actually are.

> *"I knew one who was 14 years old, though she looked older. She died of AIDS in 1997."*

It is not always clear whether the children seen on the streets operate as sex workers or whether some of them only attract customers for older sex workers.

> *"Yes, a lot of them stand around with the older sex workers."*

> *"I have seen some children operating under the supervision of a mature sex worker."*

> *"They work together with their mother during the night."*

Some of them operate in groups consisting of young children only:

> *"These (children) most often operate in a group of three to four. They are street children."*

Some appear to work on the streets in order to support themselves:

> *"I once saw a nine year old girl working on the street. She did this to pay her school fees because both her parents were dead and she had no one else to help her."*

And...

> *"I have an eleven year old friend who works in Windhoek..."*

It is clear that **a new generation of sex workers is already being established on the streets**. This generation is young and is struggling with exactly the same problems as the previous one: abandonment and having to fend for yourself, as well as being brought up in a certain environment of deprivation or abuse and not expecting anything else. Note the following observation of a fieldworker conducting an interview at a group house:

> *" These little girls, it seems, run around telling the sex workers whenever a man comes around."*

A YOUNG GIRL WHO WANTS OUT

During the course of the research, the Legal Assistance Centre came into contact with a 15 year old sex worker named Sarah (not her real name). Sarah told us that she started this work at the age of 14. She used to live with her mother and a step-father in Windhoek. She says that she left home because her step-father did not give her mother money, or support the children. She was subjected to verbal abuse from her step-father. Sarah left her home and went to live with friends her age who were also involved in sex work. Her friends told her that this was a good way to make money. She began going out with her friends to find clients. Sarah says that she does not want to be a sex worker. She would like to go back to school and be educated. She approached the Legal Assistance Centre to request assistance to be placed in a children's home. Her problem has been referred to a social worker.

Forced into Prostitution: Windhoek Sex Workers Speak Out

Patience Smith and Serenia Klein, *The Namibian Weekender*, 5 April 2001

"What can I do? I have no one who supports me so I have to do it myself,' says young and pretty teenager, Melissa*, shrugging her shoulders when asked why she decided to become a prostitute.

Melissa says she has no other alternative but to sell her body in order to make a living. Her 17-year-old sister Tracy* who also trades her body for cash nods in agreement.

"Our mother abandoned us and the school kicked us out because we couldn't pay the school fees so we had to start dong something to survive."

The two sisters ventured into the sex trade in 2000 before they even completed primary school. They left school while in their seventh grade.

Although they say they are not on street corners every night, they sell their bodies whenever they are strapped for cash to buy basics such as food or toiletries. They charge between N$100 and N$200 per client for sex.

Tracy takes contraceptives to avoid pregnancy and says she always insists on condoms. Melissa says that when a man doesn't want to use a condom she insists that they do to avoid contracting sexually transmitted diseases such as AIDS.

The sisters say that they are aware of the risks involved in the sex trade, but are adamant that they have no other alternative. "There are times when men say: 'you are just kids, I can't have sex with you, so here's N$20, go buy yourself food,'" relates Tracy.

The two sisters share a shack with a friend, Maria*, in the informal settlement of Havana. Maria, who is 18, is also a prostitute.

She maintains she does not feel 'okay' about selling her body, but like her two friends she insists she does not have any other better choice.

Together with her two housemates, Maria says efforts to find 'decent' ways of earning an income have failed.

"There is no work for us. Sometimes we try to stop going to the streets, but then when poverty takes over we go back there," Maria says. She says they are kept sane and helped by Father Herman Klein-Hitpass of the Catholic Church who helps the women with their basic needs…

5.5.8 Attitudes towards Namibian laws on sex work

The majority of sex workers (67.4%) would like to see the laws in Namibia changed to legalise sex work. This is in direct contrast to the general population where almost 70% felt that sex work should be illegal for both client and sex worker.

Only 7.8% of sex workers wanted the laws to stay as they are now and 24.8% did not know which answer they preferred. Some of those who felt that the laws should stay the same stated that to legalise sex work would result in too much competition. It has been mentioned that jealousy among sex workers is high, and some felt that legalisation would worsen the situation. Others felt that to be a sex worker legally would give them an even worse image. Also, to have an official status as a sex worker would mean that everyone would then know what they do for a living, which in turn could increase harassment by the public.

Table 23 shows that **almost half of the respondents felt that they needed protection and security. This can only happen if they have official recognition in the eyes of the law, as another one third mentioned.** Many sex workers have accepted that this is the only work they will ever do and would at least like to see it legalised.

Table 23 Law should be changed

Reasons	Percent
Need protection/security	48.5
Official law recognition	31.8
Only available job – has to be legal	9.8
Creating jobs officially will reduce rape	2.3
Other	*7.6*
	100.0

Table 24 shows how respondents would feel about certain possible legal enforcements on them, should sex work be legalised. **The majority were opposed to having to register as taxpayers, as well as being opposed to having a certificate proving that they are legal sex workers.** As was seen from previous responses, most sex workers fear being labelled as such. Considering the strong feelings sex work evokes from the public, this is not surprising.

Table 24 Possible legal requirements for sex workers

	Negative and will refuse to do so	Positive and will welcome it	Don't know
Having to register as a sex worker	19.4	76.7	3.9
Having to register as a tax payer	36.4	58.1	5.5
Having to undergo regular HIV testing and undergo pre- and post-test counselling*	1.6	94.6*	3.8
Having to undergo regular testing for STDs	1.6	94.6	3.8
Enforced use of condoms with all clients	2.3	93.8	3.9
Having a certificate to prove legal status as sex worker	23.3	72.9	3.8

** Of those interviewed only 61.1% have had HIV tests before. Although this figure is high, it should be higher considering the high risk of contracting HIV/AIDS during the course of sex work, and the high levels of awareness by sex workers of the disease.*

POLICY RECOMMENDATIONS FROM SEX WORKERS

Many of the sex workers interviewed on film in Windhoek and Walvis Bay answered questions about their views on legalisation by suggesting that the government should provide jobs or job-training, to remove the need to do sex work. However, many of them were realistic about the problems of eliminating unemployment in Namibia.

The government must provide jobs for the women.

They [the government] must create jobs. Sex work is very dangerous and unpleasant.

If they create jobs for us, we will stop doing this… We can do needlework or any other type of income generating project. However if they don't give us jobs, than they must legalize sex work so that we proceed with what we are doing.

I don't want to do this any more. I want a decent job. But the problem of joblessness will remain. What about those who are and still will be affected by such problems?

What I want to say to the government of Namibia is that if they don't legalize they must help us getting jobs. Like there are many of us who want to study, but who cannot afford. They must just help us to come out of the streets.

I think that [prostitution] must be stopped. But then we must get jobs to support our children and give them school. I am tired of this life. It must end.

This "jump" story [sex work] must stop. Give us jobs so that we can work for our children and ourselves.

One sex worker suggested that improvements in the area of maintenance would reduce sex work:

I want something to be done about the maintenance issue.

Others recommended legalisation to reduce harassment and provide protection:

I think it will be safe for us [if sex work is legalised]. Then we no more need to walk in the dark.

I think it [legalisation] is a good idea, because many of the prostitutes in Windhoek get their clients in the street or make an appointment with someone who you jump into the street to pick you up. But here in Walvis Bay we meet with clients at clubs. I think that it must be legalized. Then you are safe. You are saved from being abused. It will be better if they legalise that. Really.

I feel the government must legalise it. So that I don't need to be ashamed or afraid… You cannot just go to the police because what you are doing is illegal. I don't have long stories. I just want the Namibian Government to legalise it. Then you can go wherever you want and no one will show fingers to you or there is no need for you to be afraid or ashamed… Many times I was beaten up in the hotel room when I ask for my money. I cannot go to the police because they tell you that they don't pay attention to such cases because it is prostitution… If it is legalised, we are safe.

A significant number of sex workers expressed a desire for a place to do sex work legally, saying that a more controlled environment would be safer for them:

I want the government to know that we are doing this. They must give us a place where we do our business.

They must provide a building where we can do business.

A place to do business would be the best. That will protect against women catching all types of sexually transmitted diseases. When they die, their children will be cared for in orphanages.

Like in Walvis Bay. There is a place where you give your identity document to do business. There you can do your business without being perpetrated.

We also want our own clubs to do our things there. I think this will be safe because we will no longer need to go to the streets when there is a central place where we do our business.

Some were totally opposed to the legalisation of sex work:

I think they [the government] must stop prostitution. Totally.

In today's life it is dangerous. It is not good. Many of my friends died of AIDS.

A few felt that they had a right to use their bodies as they wish:

They say it is illegal. The man comes to me. He prefers me above the other lady. The other way round it is the same with me. And we go. Of cause they must leave us. They must think about the women. I did not ask to do this business. No one forced me into that. It is the difficulty of life that forced me. I have to live, so I have no other choice. So they must consider also the position of the women. Not just believe in men.

My only question to the people in government is, whose body is it? Are they our bodies or the state's bodies? Does my body belong to the state, or to my parents, or to me?

5.5.9 Interaction with different groups in society

Sex workers were asked about their interaction with Namibian law enforcement officers, as well as social workers and the church. From Tables 25 and 26 it is clear that **most of the sex workers interviewed experience officers of the law in a rather negative light, but social workers and the church in a more positive way.**

Table 25 Relations with state actors

Contact	Police	Soldiers/ SFF members	Social workers
Positive	19.4	14.0	27.1
Negative	72.1	73.6	27.9
Neutral	4.7	7.8	34.9
No contact/problems	1.6	2.3	7.0
Missing Cases	*2.2*	*2.3*	*3.1*
	100.0	100.0	100.0

One in five respondents said that they did not attend church and could therefore not comment. A sex worker who had been brought up as a Christian but had stopped going to the church said the following:

> *"The church doesn't do anything apart from prayers. Prayers do not feed your stomach."*

Two more quotes show some disillusionment with the church:

> *"These activities are against the Word of God, therefore I stopped attending the church when I became a sex worker."*
>
> *"I once went to the church so that they can pray for me to get a job. But it didn't work."*

Others do find consolation at church:

> *"Sex work is against the Word of God but the pastors don't reject us so I go to church sometimes."*
>
> *"I am a reborn Christian so the church is very important to me."*
>
> *"Only God can judge me, not people..."*

More than half of the respondents noted a positive interaction with the church, as can be seen in Table 26.

Table 26 Interaction with the church

Church	Percent
Positive	55.7
Do not attend so can not comment	22.2
Negative	19.8
Neutral	2.3
	100.0

From Table 27 below it appears that **44.9% of respondents feel that they have no support systems**. The church was mentioned by only 4.7% of respondents but this could be more, since 11.2% of respondents said that they go to the church for support with problems in response to the next question (see Table 28). Furthermore about half of the respondents noted a positive interaction with the church in the previous question (see Table 26).

Less than 10% of respondents noted family as a support system. Responses to questions about childhood showed similar patterns during the respondents' youth. **The lack of family support throughout the lives of the majority of respondents may be a key factor to their choice of work.**

Table 27 Support systems

Support system	Percent
None	44.9
Friends	24.4
Some support system but not specified	16.5
Family	8.7
Church*	4.7
Boyfriend	0.8
	100.0

**See notes above on church.*

Almost half of the sex workers interviewed have, or feel that they have, nowhere to go to get assistance with their problems:

"I am too scared to go anywhere because I might be jailed."

Table 28 Assistance with sex-work problems

Where go to	Percent
Nowhere	47.2
Friends	24.8
Church	11.2
Family	10.4
Don't know	2.4
Professional person	1.6
Other sex workers	0.8
Boyfriend	0.8
Police Station	0.8
	100.0

Hardly anyone (only 2.4%) has ever approached a Woman Child Protection Unit for assistance before, even though a high level of abuse taking various forms was reported.

About one third (33.5%) of respondents felt that they were not able to discuss sex work with others. Those who do, discuss it with their friends (24.8%), family (10.4%) and a few (0.8%) with their boyfriends.

5.5.10 Health issues

Health concerns

HIV/AIDS is the biggest health concern of sex workers. Although no questions were asked about the HIV status of respondents, it was a topic that some wished to discuss with the interviewer. One respondent offered the information that she as well as her whole family was HIV positive. According to the interviewer:

"She said that she was always praying to God that He should protect her and her family.

The following description also concerns an HIV positive sex worker:

"She had just been discharged from hospital and was very weak. She insisted on doing the interview with me although it looked as if she would hardly outlive it. She was very, very thin, and had drips attached to her arm. She told me that her boyfriend had infected her and that he passed away not so long ago. His family blames her for his death. At times she still operates and does anything the men want: anal sex, sex with or without a condom and then charges N$50 for everything. She lives in a shack and is 30 years old."

The following sex worker charges between N$10 to N$30 for her services. She says that she always asks clients to use condoms. She still works at times when she feels better.

"I am a very sick person, even as I am sitting here everything is in pain because apart from AIDS I have TB too. I really think that sex workers should use condoms regularly in order not to become the way I am now."

DEALING WITH HIV

This is the story of a 41-year-old woman in Windhoek who stopped doing sex work when she discovered that she was HIV positive.

I started sex work at the age of 16 in 1985…But now I stopped doing sex work. The reason is because my partner with whom I am living for years became involved with a women who infected him with AIDS. On 24 October 2001 last year I was informed that I am HIV positive. But I did not get the disease from clients on the street. I got it from my boyfriend with whom I am living for years…

My daughter [aged 17] also does this job because the father of her daughter is in jail and there is no one who supports her daughter. She also assists me with what she earns from the streets…. I called both my two daughters, informed them and warned them about the dangers of sex work and that they must always make sure that the condoms are safe.

…What will happen to my children if I die?

Another woman who was interviewed worked for several years after becoming HIV positive, but claims that she did not understand that she was infected. She says that her medical records show that she was HIV positive before she entered sex work.

Other health problems mentioned were other STDs (sexually-transmitted diseases) and vaginal injuries. Many clients are rough during sex, and sex workers are often raped in the course of their work, so this is not surprising.

Condoms pose two problems: the fact that clients do not always want to wear them and accidents such as breaking or leaking. **Not all respondents use condoms during sex**

with clients: 67.4% of the sex workers interviewed said that they always use condoms, and 24% said that it depends on the client. Almost 10% did not reply to this question. Furthermore, less than a third (27.9%) use condoms during intercourse with their regular partners in their private lives. Table 29 shows the full range of responses, which includes the possibility of death in the course of work and unplanned pregnancies.

Table 29 Biggest health concerns

Health concerns	Percent
HIV/AIDS	59.8
STD's	24.4
None	4.3
Unplanned pregnancy	3.7
Vaginal problems	3.6
Clients refuse condoms	3.0
Problems with condoms	0.6
Death in the course of work	0.6
	100.0

Table 30 shows what is being done to prevent pregnancy, HIV and sexually-transmitted diseases (STDs). **The method used by the majority of sex workers to prevent pregnancy is the contraceptive injection (used by 63.5% of respondents), while only 18.3% of respondents rely solely on condoms for this purpose.** The 11.1% who use nothing are probably the same group that does nothing to prevent HIV and STDs. However, the majority of sex workers (92%) use condoms although not always. As was seen in response to the previous question, condom use often depends on the client. What one can conclude from this is that **condoms are not used one hundred percent of the time, which reduces their effectiveness, both as protection against HIV and STDs, and a contraceptive.**

Table 30 What is being done to prevent pregnancy, HIV and STDs

What is being done	Prevent Pregnancy	Prevent HIV	Prevent other STDs
Nothing	11.0	7.1	7.9
Contraceptive injection	63.5	N/A	N/A
Condom	18.3	92.9	92.1
A contraceptive pill	4.0	N/A	N/A
Sterilization	3.2	N/A	N/A
	100.0	100.0	100.0

CLIENTS AND CONDOMS

Sex workers in Windhoek and Walvis Bay interviewed on film by the LAC were asked what they do if a client refuses to use a condom:

If there is no condom, there is no sex.

Even if he promises me N$1 000, I don't practice unprotected sex because I love my life.

If he forbids me to use condoms I will just leave everything. I never had one who refuses to use a condom.

Once a white man forced me to have sex with him without a condom. (15-year-old interviewee)

If you sleep without a condom you agree for a higher amount like N$500. You take that risk because you need more money.

One hit me with a beer glass on my forehead because I wanted him to use a condom. I wanted to go to the police office to lay a charge. But could not, because I was blinded with blood and could not recognize the registration number of the vehicle.

In the beginning [when the interviewee first began sex work] when a client wants sex without a condom I will refuse. But right now, I don't care what happen with my life.

I don't do that. Even if he promises to give me more money, we must use condoms. I don't know him and if he doesn't want to use condoms he must leave. He can go look for another woman. Even if it is in the hotel. One of us must leave.

No man will lie with me without a condom even if it is for more money.

If they refuse to use condoms then I decide to rather stay without food.

Several sex workers interviewed in Windhoek reported that they use Femidoms for protection:

I am using Femidoms… If he refuses to use a condom then I know I already took measures. So we just make sex.

Mostly I am using Femidoms. Because I don't trust male condoms, that's why I use Femidoms.

Substance use

Table 31 shows that **most respondents (77.5%) use alcohol on a regular basis**. (Some respondents refused an interview without a free drink.) **Drugs and painkillers are used to a lesser degree. About a quarter of respondents admitted that they used some substance on a regular basis, but did not specify what.** The reluctance to discuss this issue makes it impossible to come to any conclusion about the presence or absence of connection between sex work and trade in illegal drugs.

Table 31 Substances used

Substance	Percent
Alcohol	77.5
Taking a substance did not want to specify	26.4
Drugs	13.2
Pain Killers	11.6

5.5.11 Definition of sex work by sex workers

Finally, respondents were asked to define sex work (see Table 32). **More than half (52.8%) defined sex work as sex that is paid for and another 13.4% defined it as selling one's body or sexual organs.** Having to define the job they do led one respondent to say:

> *"We are worse than dogs. We are just hoere (whores)."*

Clearly, sex workers do not all see themselves as glamorous or desirable. Many are at the other sad extreme of very low self-esteem.

Table 32 Definitions of sex work

Definition	Percent
Sex that is paid for	52.8
Selling your body/sexual organ	13.4
Survival forces one into it	7.0
Can't define	1.6
Easy money	0.8
Missing	*24.4*
	100.0

62.7% of respondents said that they would not recommend sex work to anyone. Some have dreams of a better life:

> *"The other girls tease her regularly about her dream of becoming a nurse and say that one day she will end up washing dead peoples' bodies...for the moment she is dreaming of meeting a rich man whom she can marry and who will look after her and her kids and pay for her to study..."*

Most of the sex workers interviewed on film were equally negative about sex work:

> *Sex work is very dangerous and unpleasant.*
>
> *I will never, ever go back to the streets again… It is too dangerous to sell your body.* (statement from a sex worker who left the trade after a scary experience with an abusive client)

The numbing effect of sex work was also evident. Legal Assistance Centre interviewed a 23 year-old who entered sex work at age 12. We asked her what she feels when she has sex with a client. Her answer:

I feel nothing.

5.6 FINDINGS OF THE CLIENT STUDY

Namibia is a small country. People generally know (or think they know) what others do. Perhaps that is one reason for the **high refusal rates amongst clients approached for interviews**. This is rather ironic, since clients are not breaking the law by using the services of sex workers. One has to then assume that shame and/or guilt are present when visiting a sex worker. Fear of disclosure is not only the fate of the sex workers. It is also obvious, when considering the high incidence of sex work in this country, that there are many clients around. The law of supply and demand gives us this answer.

The unfortunate outcome of clients' reluctance to speak is that **a profile of clients had to be built around a few interviews only, combined with sex workers' perceptions and the observations of fieldworkers.** Only two clients agreed to individual, face-to-face interviews. Others at first denied being clients even though they were clearly in the process of negotiating with sex workers. These were willing to be interviewed in groups (men at pubs or hotels or truck ports), to talk about "what they have heard or observed". Based on these findings the following trends emerged.

Firstly **there is no such thing as a typical client**, as was noted earlier in the report. Perhaps the sex worker who said that anyone with money is a client, was correct.

Prostitutes prepare for 'prime time'

LEVISON MWASE

BLANTYRE - Scores of prostitutes from neighbouring Zambia, Zimbabwe and Botswana and from within the country have already started arriving in Blantyre to ply their trade ahead of the Southern Africa Development Committee (SADC).

The summit takes place in the city from today until August 15. SADC Heads of State and government, including hundreds of other officials, are expected to swell the prostitutes' potential clientele.

The prostitutes started arriving in the city some two weeks ago and are already frequenting Blantyre's most popular entertainment centres and hotel bars to acquaint themselves with the layout and the environment. One bartender said there was fierce competition between locals and the foreigners. Local prostitutes, he said, were afraid that they would lose their business to the foreigners because of their fluency in English and other languages of the region. "The local prostitutes are busy grooming themselves and polishing up their English vocabulary so that they are not out-done by the foreign girls. They know the summit is their best chance to make good money," the bartender added.

The Namibian, 6 August 2001

Soccer team 'seduced'
NFA blames Madagascan hosts

CHRISPIN INAMBAO

THE Namibian Football Association (NFA) say soccer controlling bodies of host nations should ensure that visiting teams are booked into hotels that are not frequented by prostitutes to prevent "unpleasant incidents" from happening.

The NFA statement yesterday comes in the wake of a report that in April some Brave Warriors players fought with prostitutes in the foyer of a hotel in Madagascar after squabbling over money they were supposed to pay the sex workers.

Yesterday an employee at the Panorama Hotel in Antananarivo in Madagascar, that charges around N$440 a night, confirmed that several Brave Warriors players picked up local prostitutes after they beat the home team 2-1.

But some hours later a fight erupted in the foyer of the four-star hotel between players and the prostitutes, according to a Panorama employee.

She said the prostitutes scuffled with their clients because the players tried to give them Namibian dollars and they wanted to be paid in Madagascar francs or American dollars.

The row was apparently resolved when one of the foreign-based national team players came to the rescue of his colleagues and settled the bills by paying US dollars to the angry sex workers.

A female government employee in Antananarivo, who gave her name as Hanta, yesterday told *The Namibian* that prostitutes normally charge between N$80 to N$160.

At the time of the Madagascar match the national team players were each paid approximately N$3000 in camping and appearance fees by the football controlling body, according to an NFA official.

None of the implicated players were available for comment yesterday. Some of them are out of the country while several local payers could not be traced.

President of the NFA, Petrus Damaseb, has already been briefed by the football's Secretary General, Alpheus Gawaseb, about the soccer scandal.

Said the NFA Secretariat: "If anything the Madagascar experience emphasises the importance of host national associations to ensure that visiting teams are not booked in accommodation establishments where locals seek to involve visiting players in situations that have the potential to lead to unpleasant incidents.

"It is an unfortunate exaggeration to suggest that Namibian football is in chaos on account of what happened in Madagascar or that it [the sex scandal] marked the downfall of Namibian football."

Contacted for comment, Barry Rukoro, an adviser to the NFA President, said: "For people like yourself who are not in this game, [you should know that] these things are happening every day. This is not a problem that is peculiar to Namibia. It happens all over the world. South Africa (Bafana Bafana) were here and the way they behaved!

"As a journalist you are doing more damage to these players than saving the situation. Most Namibians do that when they go outside the country, including journalists," charged Rukoro, who chuckled throughout the interview.

Rukoro felt the issue was not newsworthy and asked "if a senior Government employee goes on duty to China and sleeps with a prostitute would that be of national concern?"

He was adamant that the players merely reacted to a "provocative situation".

Meanwhile, a hotel employee at the Panorama said national team players from Zambia and Nigeria had also picked up local prostitutes after playing that country in soccer matches.

It is understood that not every player in the squad picked up prostitutes…

The Namibian, 9 August 2001

But **why buy sex** when there are ample opportunities to engage in it for free? According to the two clients who were interviewed, it is simply **a need for sex at times when one cannot find it anywhere else**, for example when between relationships. Both clients who said this were single and not in romantic relationships at that moment. Both appeared to have respect for sex workers and felt that the laws should be changed to make sex work legal. Both clients bought sex for the first time out of **curiosity** at a young age. Both these clients (and keeping in mind they were the only two who were willing to be interviewed) had ostensibly straightforward motives. **Many clients tell the sex workers that their own wives or partners do not understand them.** Whether this is true or whether it is a way of justifying their actions to themselves is unclear. Then there are those who lead **double lives**: two male homosexual sex workers both said that some of their best and most regular clients were married men, who also complained about unfulfilling sex with their wives.

It would become repetitive to provide quotes again but the section on abuse and problems faced by sex workers shows clearly the actions of clients. However, **although there are some clients who clearly abuse sex workers, not all clients are abusive or violent**. One sex worker told of a client who brings her food and money from time to time without asking for sex. The relationship between clients and sex workers appears to be as complex as any other relationship. Some clients enter into relationships with sex workers, even having children with them, and others beat them up. The behaviour of a person towards a sex worker probably mirrors his or her behaviour in general.

Clients do not only differ in personality -- geographically there appear to be some differences in the trade. In Swakopmund and Walvis Bay, clients appear to be mostly tourists and men working on ships, both groups being willing and able to spend money. In these areas particularly, many sex workers have entered into relationships with seamen. Furthermore, according to a club owner in Walvis Bay quite a few happy endings have occurred with sex workers marrying clients and subsequently moving away to their countries of origin with them. Some sex workers regard regular clients as boyfriends or partners and when they are in Walvis Bay they (the sex workers) stop their normal sex activities for money. However, once the client leaves they continue doing sex work.

In Grootfontein and Keetmanshoop, sex workers were willing to negotiate sex for a drink or a meal during times when clients do not have money available. When they do have money available at other times the negotiations revolve around money again. Long-term commitments are also the order of the day in these areas, with sex workers having regular clients whom they will accommodate at varying prices, depending on the availability of cash at that moment. Some truck drivers however, complained of "over-selling" on the side of sex workers to those who were not interested in sex services. Many sex workers confessed to a much higher starting price for an apparently wealthy client. Some even double the starting price and then negotiate downwards.

Most men interviewed at truck ports did not admit to being clients of sex workers, although they were clearly entering into transactions with them at the time. Most of them had a rather flippant air about why sex is bought: "snacks", "lunch boxes", or "something to nibble on during a long trip" were some descriptions of sex workers. Most of them appeared to regard sex workers as entertainment and distraction from the long trips they have to make.

Finally it is important to remember that **what is being bought and sold is the human body as a commodity. It de-personalises the human being and makes control over "it" easier: buy something and it's yours, to treat as you wish and to dispose of as you wish**.

SEX WORKERS' ACCOUNTS OF CLIENT BEHAVIOUR

Some Windhoek-based sex workers interviewed on film by the Legal Assistance Centre in April 2002 reported strange and abusive games and practices on the part of clients. Some of the more odd information was corroborated by more than one interviewee.

On 23rd of December last year I went out with a white man. That night I was with my friend Beverley. I never knew that his friend was at the back in the boot. On our way from the bank machine where he would have withdrawn money for our business, we stopped at a garage to get some petrol. I told him to take me back. All of a sudden a man climbed out of the boot, which made me scared. I asked the man whom I had the deal with who this guy is, and he said that they are from the police and that they are busy arresting prostitutes.

Luckily the petrol attendant helped me out. It nearly degenerated into a fight. They pulled me, the petrol boy on the one side and those two men on the other side. In the process they pulled my hair out. Later the petrol attendant managed to lock me in the overnight room. He told them that he would not open the room unless they called their colleagues (the police) to come. I don't what would have happened to me that night.

I was confused and overwhelmed with fear… That was a narrow escape…

Pretending that the car has run out of petrol or has some malfunction appears to be a common ploy which clients use to escape without paying:

If he doesn't want to pay you after having sex with you, he asks you to push his car, pretending as if it is empty, and just drives off with a high speed. Then you have to walk back home without even one cent.

I went with another man to Daan Viljoen. When we finished having sex, he told me to push his car because it was, according to him, running out of fuel. While I was pushing, he drove off with a very high speed and I fell very hard on the tarred road.

One night I met a guy in Windhoek in Bach Street. He asked me how much I charge. When I told him that I don't know, he said I must give a price. Then he offered me N$100 and we go off. After we did what we had to do, he asked me to look whether his car lights are functioning. When I climb out and move to the back of the car, he suddenly drove off. There I am standing, without money, alone and he is gone.

There is one notorious client who featured in several of the interviews. (All the interviews were conducted in private, so it not likely that the women compared notes.)

There is a white man in Pioneerspark who lives with puppies. He wears a metal ring on his penis. If you have sex with him, his penis swells like a balloon. If you don't want to have sex with him, he instructs his dogs to bite you. (This sex worker reported that she has in fact been bitten by the dog.)

One day I went with a white man who was known to my friends as "Ring Dring" He wears a metal ring in his penis. I never met him before. After I was already in his car I recognized the dog at the back on the right hand side they always talked about. I was overwhelmed with fear but it was already too late to escape. I just prayed to God to save me. When we came home we had sex in every possible position he wanted and as long as he wanted. I was at the end of the day

so exhausted, hungry and had so much pain, that I broke out in tears and pleaded to him to leave me. He just refused. When he had enough, he beat me up and dropped me at a place very far from the town and told me to go home.

Another client encountered by more than one woman reportedly enjoys using a snake to scare the sex workers:

My client took me home after we had a good time together. on our way back home he asked me whether I want to meet his friend "Susie". I was eager to meet her. He said that he would give me, besides the N$200 for business, an additional N$100 for dancing with his friend. All of a sudden a snake appeared right in front of my face. I was shocked, disappointed and did not know how to react. I am in the vehicle, so there is no way to escape. When he asked me whether he should let the snake go in, I just nod my head. He let the snake back in its place and took me home.

One night I was with a white man who stays with dogs. On our way back he asked me if I don't want to talk to his 'friend'. This friend of him is not a human being. It is a snake. He promised me to give me N$100 if I talk to his friend. Then he called the snake that all of a sudden appeared in front of my face.

Some other tales of client abuse:

He [a client] *asked me, "Do you know that I hate prostitutes because my mom was a prostitute? After having sex with me, he gave the dog the N$100 and instructed it* [the dog] *to give it to me. He forced me to drink whiskey and said "Drink, you are just a prostitute, not a human being."*
In the meantime he went upstairs. I heard sounds like those of knives. After a while he came back naked. He wanted me to go upstairs with him. All of a sudden, maybe it was the will of God, his cell phone rang. I guessed that he was called out urgently. He instructed me to wait there until he comes back. Luckily the front door was open although he used the remote controller to lock me up. The yard was also not electrified, so I jumped from the balcony and escaped through the gate. I waited there until I got a hike…
I reported that but the police did not find him. Sometimes they put other registration numbers on their vehicles if they plan to mess with us.

Recently a white man who introduced himself as Johan picked me up at Auspannplatz. We drove to Auasplatz. When we came there, he pulled me out of the vehicle and hit me with the back of the revolver on my neck and said: "tonight I will show you horses". Now, what horses did he want to show me? The mountain was high, and he ran up and down. Now what did he actually mean by that? He just left me there, approximately 3h00 in the morning and drove away. On my way home other ladies who also had been out for business gave me a lift. They dropped me in town. I was in tears and decided to go straight home.

Near the graveyard in town, I climbed on a taxi of a black man who said he also could pay the amount white guys pay for a service. He looked like a gentleman. After having sex with me, he just dropped me there and threatened me to destroy me for selling my body. He also did not pay me. The whole night was a mess-up. Luckily a security guard that was on duty in the same area saved me.

And yet there were also some tales of clients who are kind and considerate:

On this moment I have 3 regular clients who contact me or come to my house… I have a good relationship with the one in Otjiwarongo. He is 52 years of age and cares a lot about me. He built me a house where I am staying currently. I can trust him, but not those whom we meet at the corners of the streets. We met in 1989 at Windhoek Airport.

This same sex worker reported being shocked when she found another of her regular clients [a white man whom she named], living with a white woman who was pregnant by him, after he had told the sex worker that he was single. *"In that same week he bought a brand new Toyota Corolla… maybe to please me. Not long after that he had an accident and passed away."*

Some sex worker accounts of client abuse in Walvis Bay:

I heard about instances where one of the ladies of this club preferred to go out with her client, instead of being with him in the room because the client promised her more money. When they came to the dunes the man pushed a beer bottle into her vagina. And he just left her there.

Recently I was in jail for U$20. On one Thursday morning very early at 6h00 a friend of mine woke me up and asked me to join her. We were barefoot. On our way to the taxi we hired I noticed a car that stopped by. It was the guy who was with my friend that night. He claimed that we stole his U$20 that was according to my friend the payment she got from him for the service she had done. He took my friend to the police station. Not long after that a police van came to pick me up at the place where we were drinking and threw us in jail. That is what they do. They agree to pay for our services and then sue us as if we stole their money. And the stupid policemen believe that.

I was poured with petrol to be burnt. They once threw me in the rubbish dump, they beat me up and then I had to see how to come home in the dark, barefoot with torn clothes, afraid for the police because I am also drunk.

5.7 FINDINGS OF THE TELEPHONE SURVEY

This part of the report will discuss the findings of the telephone survey. This questionnaire was a structured one, with only two open-ended questions (where definitions were required). Its main aim was to determine the perceptions of the general public towards sex workers.

5.7.1 Biographical profile of respondents

The sample consisted of 42.1% female and 57.9% male respondents. Their ages ranged from 18 to 85. Table 33 shows that the majority of respondents (85.1%) were between the ages of 18 and 45.

Table 33 Ages of respondents

Age	Percent
18 to 25	31.6
26 to 35	30.7
36 to 45	22.8
46 to 55	7.3
55 Plus	7.6
Total	100.0

As illustrated in Table 34, **the marital status of respondents was spread across a wide spectrum,** with 38.9% of respondents being married, 49.1% single, and the remainder divorced, widowed, living together, separated or living with same sex partner.

Table 34 Marital status

Marital status	Percent
Single	49.1
Married	38.9
Widowed	4.2
Divorced	3.8
Living together	2.8
Separated	0.9
Same sex partner	0.3
Total	100.0

The majority of respondents were Afrikaans or Oshivambo speaking. Table 35 shows the other languages present in the sample.

Table 35 Home language

Language	Percent
Afrikaans	43.7
Oshivambo	25.0
Otjiherero	13.6
English	11.1
Nama/Damara	4.1
German	1.6
Portuguese	0.6
Sifwe	0.3
Total	100.0

Table 36 shows the highest levels of schooling completed by respondents. **About half of the respondents completed Grade 12 and about 20% have post-school qualifications.**

Table 36 Highest level of schooling completed

Level of schooling	Percent
Up to Grade 4	0.6
Up to Grade 7	1.6
Up to Grade 10	22.8
Up to Grade 12	49.7
Diploma	9.2
Degree	11.4
In-service training	0.3
Missing values	*4.4*
Total	100.0

Table 37 below shows that **respondents came from different income categories, starting from no income to more than N$10 000 per month**. Please note that this is individual and not household income.

Table 37 Income category per month

Income category	Percent
No income	20.3
Up to N$100	1.3
N$101-500	5.1
N$501-1000	6.6
N$1001-3000	18.0
N$3001-5000	21.5
N$5001-10 000	14.9
More than N$10 000	2.5
Refuse to answer	8.2
Uncertain / don't know	1.6
Total	100.0

Judging by the biographical details, **the average respondent in the sample was fairly well educated with a reasonable income.**

5.7.2 Definition of sex work

The aim of the first section of the questionnaire was to ascertain feelings of the general public towards sex work. **Respondents were asked for a definition of sex work in their own words. Most respondents defined sex work as the exchange of sex for money.** Almost 10% did not know how to define it. Table 38 shows all the categories recorded. This was one of the two open-ended questions where the responses were categorised and coded afterwards.

Table 38 Definition of sex work

Definition	Percent
Earning a living through sex	43.4
Selling the body for money	15.8
Sex for money with different men	15.2
Don't know	8.8
Statements that condemn sex work	2.5
Missing	*14.3*
Total	100.0

It is interesting to note that **most of the responses focused only on the sale of sex, without mentioning the purchase of sex for money,** which is the other side of the coin. .

5.7.3 Attitudes towards sex work in general

In the second open-ended question, **respondents were asked about their feelings towards sex work in general. This question elicited mostly negative responses, although some (11.7%) said that although they were against it they did not condemn it and another 7.1% felt that sex workers have no other options.**

Table 39 Feelings towards sex work in general

Statement	Percent
Totally against it	49.0
Against it but don't condemn it	11.7
Sex workers have no other choice	7.1
Morally wrong	5.2
Spreads diseases	4.5
Against my culture or religion	3.9
Don't know	2.9
Missing	*15.7*
Total	100.0

5.7.4 Attitudes towards Namibian laws on sex work

When asked whether sex work is currently legal or illegal in Namibia in their opinion, 3.5% thought it was legal and 4.7% did not know. However, the vast majority (91.8%) said that it was illegal.

Respondents were then asked whether they felt the laws should be changed or remain the same. Four options were given (See Table 40 below) and only one could be chosen. What emerged was a very negative attitude towards sex workers as well as those using their services: **69.7% of respondents felt that the laws should be changed to make sex work *illegal for both the client and the sex worker*.** (The current laws are generally interpreted to mean that sex work is illegal only for the sex worker and not the client.) **About 21% of respondents thought that the law should be changed to make sex work legal.**

Table 40 Do you think that the laws should...

Statement	Percent
Be changed to make sex work illegal for both the client and the sex worker	69.7
Be changed to make sex work legal	21.0
Remain the same so that sex work continues to be illegal for the sex worker	6.4
Be changed to make sex work illegal for the client but not for the sex worker	2.9
Total	100.0

NBC RADIO CHAT SHOW ON LEGALISING SEX WORK
"Perspectives", April 2002

Listeners who called in to an NBC radio programme on the question of legalising sex work expressed a wide range of views:

We cannot allow things which are inhuman to be legalized… We cannot legalize the satanic.

I think prostitution should be legalized. Because it's legalized in Europe and America and I don't know where else...

How can prostitution to be legalized in Namibia, people? I am very, very shocked. And imagine maybe someone wants to sleep with a certain lady and you have to contribute money to that lady. Do you think that particular person will do sex with that lady with a condom? I don't believe that.

Let's try and get our people off the street and see whether we can create employment…. So that these people can make some other sort of living instead of selling their respective bodies.

Some will say that they steal because their children are hungry and they are hungry also. Others will sell drugs. Others will sell food on the street and so on. But the fact remains that prostitution is something which is wrong. We Namibians, in our eyes it is wrong. It is a social evil.

I do support the idea [of decriminalisation]. *Because there is the increase of the thing of poverty. So if we do that it will decrease poverty. Those people will have money for themselves. They will have a way to survive.*

My view is that why can't we try it, to legalize the profession and for instance set up centres where gentlemen can go and book out ladies with their identity documents or whatever. And if we as Namibians really are against prostitution, then we can determine through that whether more people start using it or not. Because history has told us that the client base of these prostitution are not unemployed people. They are well-paid people. People maybe in high positions and so on. So if we legalize it we set up centres where these ladies can be booked out with an ID. In other words, the client comes with his ID. In case something happens to these ladies he will be answerable to that.

Definitely from my point of view legalizing prostitution, I think we shouldn't think about it. So if people are thinking prostitution is a means of survival, I think they have to opt for something else -- maybe going to government so that they should at least provide something at least for a living. But not prostitution. So I don't support it at all.

We should realize that we will never get rid of prostitution as such, but we can never make it a profession.

EXCERPTS FROM STATEMENTS BY STUDIO GUESTS
NBC RADIO CHAT SHOW "Perspectives", April 2002

Fr Hermann Klein-Hitpass, Stand Together:

In general it is not right [to use the body for commercial gain]. *But we have so many hungry people and poor people who end up dead on the street. We should fight the poverty… I saw the shelters, I saw when the water was locked. I saw when the children were hungry. So, I have all reasons to support any good idea to help the poor and to protect the mothers to keep them next to the children and not leaving their children as orphans behind… Legalizing I will leave to the lawyers, but I want to explain, let us change everything that is necessary to help the poor single mothers on the street and their customers and their children on both sides because they will be left orphans behind. And in this point let us change what is necessary. No matter what it is in the time of this AIDS.*

Dr Shaun Whittaker, clinical psychologist

Commercial sex work is definitely not an abnormality. I think these are normal everyday women who are simply trying to make a living. For me commercial sex work is a human rights issue. It is really for me about the right to work, the right to food, shelter, clothing, the right to choose what to do with your own body. And certainly I think in terms of issues of unemployment and HIV/AIDS. I certainly think we have to consider the issue very seriously…

…Very often they are single mothers. Very often they have children to support. They have bills to pay. You know they have to pay school fees. They have to buy food. They have to buy clothes for their children. They have medical expenses. Very often the men are not involved in supporting the children to pay maintenance. And maintenance payments are very low in Namibia. What do you expect these women to do? They often are very desperate…

…The legalization of commercial sex work… would have various benefits in that we could provoke safe sex. In that way women could also be treated, tested for HIV/AIDS, treated, counselled for sexually transmitted deceases in general. So, yes I certainly am in favour of decriminalizing commercial sex work… You know our police force certainly have more important crimes to focus on. And I think very often we do not allow these women to live with dignity and respect. And you know very often they become victims of their customers. It is interesting that the customers are never prosecuted. And very often these customers are abusing these women, or they do not pay for their services. But the women are in such a helpless situation, because they cannot go and lay a charge against these men. So it puts them in a very very awkward position. But very often I think that the customer who really should have been prosecuted as well then gets away scot-free. So in that sense it is quite unfair.

Petrina Muetulundila, Executive Director, Namibia Planned Parenthood Association

I tend to agree with my two colleagues that very often as a nation we are quick to judge. We never take an opportunity to just ask and listen to the people who are involved in these activities Ask them and listen to why they are indulging in such practices which we consider immoral. But I think if we could listen and then look to their situation, we will see that social and economic issues are attached to the people who are involved in commercial sex work. And most often it is families who are disintegrating, or families having too much on their hands now to deal with economic situations at hand. There are many orphans who are left behind by their parents. And you find that an elder child, an elder girl for example in a family, would have to look after her siblings and most often you find them indulging in these activities to get bread on the table. So, in agreeing with my colleagues, I will say we should consider decriminalizing the oldest profession in the world.

… We are not saying let everyone start doing commercial sex work. That's not what we are saying. We are saying those who are involved in it already. Let them be protected at least.

5.7.5 Attitudes towards sex and sexual relations in general

Following the questions on sex work, a number of questions were asked to determine popular attitudes towards sex and sexual relations in general. This was done to determine the extent to which these attitudes and opinions shape and influence citizens' attitudes towards sex workers and their activities. The questions solicited responses on diverse issues such as:

- sexual relations before marriage
- pornography
- interracial sex and marriages
- live-in relationships outside wedlock
- brothels and other institutions supplying sex
- same-sex (homosexual) relations
- casual sex.

Factor Analysis was used to determine whether or not there are different dimensions underlying the various responses. Factor Analysis is a statistical procedure that is used to determine the underlying dimensions of variables. Only one factor was extracted, suggesting that respondents regarded all items as essentially the same thing: unacceptable sexual conduct and behaviour. There are, however, significant differences among the items with regard to the degree of unacceptability. These differences are illustrated by the average scores as shown in Table 41 below. The statements were ranked from most strongly against to least strongly against.

Table 41 Perceptions toward sex and sexual relations

	Average score on a 5-point Likert scale: 1=Strongly against 5=Strongly in favour of
Homosexual relationships	1.56
Brothels and institutions supplying sex	1.77
Casual sex	1.85
Pornography	1.85
Sex before marriage	2.20
Live-in relation outside marriage	2.31
Interracial sex and marriage	2.78

To summarise: **the Namibian population is most strongly against homosexual relationships, then brothels and other institutions selling sex, and then casual sex and pornography. More tolerance is revealed towards sex before marriage, live-in relations outside of marriage, and interracial sex and marriage – although there is still some social disapproval of these activities.**

It is clear from the above that **Namibian society is essentially very conservative when it comes to matters sexual, meaning that public disapproval of sex work must be understood in this context.**

5.7.6 Preferences for future policy on sex workers

Respondents were given a number of options with regard to future policy on sex workers. These were:

"Should sex workers..."

- Be allowed to work as sex workers?
- Have the right to protection from abuse?
- Have the right to insist on the use of condoms and other protective measures?
- Have to register as sex workers?
- Have certificates to prove registration?
- Be required to go for regular STD/HIV testing?
- Be restricted to working in certain areas only?

These were presented to the respondents by means of a 2-point approval-disapproval scale. This type of scale measures only the *direction* of opinions (positive or negative) and not *intensity* (strong, moderate or neutral feelings of approval or disapproval). Table 42 below shows what percentage of respondents replied that they agreed with the statements supplied.

More than 75% or respondents agreed with the following three statements:

Sex workers should be required to go for regular STD and HIV testing.
Sex workers have the right to insist on the use of condoms or other protective devices.
Sex workers have the right to protection from abuse.

Some of these statements were posed to sex workers as well and their responses compared to those of the general public in Table 42. Regular testing for STDs and HIV as well as the right to insist on protective devices were agreed by both groups to be absolutely necessary.

Table 42 Future of sex workers

STATEMENT: Sex workers should...	**Yes, I agree (Percent) GENERAL POPULATION**	**Yes, I agree (Percent) SEX WORKERS**
Be required to go for regular STD & HIV testing	93.5	94.6
Have the right to insist on use of protective devices	91.3	93.8
Have the right to protection from abuse	76.4	
Be restricted to working in certain areas only	60.7	
Have certificates proving that they are registered	37.9	72.9
Be required to register as sex workers	37.6	76.7
Be allowed to work as sex workers	24.2	

An important conclusion from these findings is that although most of the general public is against legalisation of sex work, the measures that they support can only be enforced in an environment where sex work is decriminalised.

However, in the next question on attitudes towards sex workers and possible future policy options, the public's feelings are shown to be negative towards legalisation. (See Table 43) This question employed a 5-point Likert scale that required respondents to disagree strongly, disagree, be neutral, or agree or strongly agree with each statement. These scores were entered into a Factor Analysis to show common dimensions to the responses on these statements. In Table 43, Factor 1 represents an anti-legalisation dimension, which means that these statements constitute the basis upon which legalisation is opposed. Factor 2 represents the pro-legalisation dimension, which means that these are the reasons why people are for the legalisation of sex work.

Table 43 Future options for sex work and sex workers

STATEMENTS	ANTI-LEGALISATION FACTOR 1	PRO-LEGALISATION FACTOR 2
REASONS WHY THE PUBLIC FEEL SEX WORK SHOULD NOT BE LEGALISED		
Legalisation will undermine my community's norms and values.	.837	
Against my religion and should not be legalised.	.812	
Legalisation will undermine the nation's norms and values.	.874	
Sex work constitutes a health risk to our community and nation and should not be legalised.	.852	
Sex work is a threat to marriages/family values and should not be not legalised.	.839	
REASONS WHY THE PUBLIC FEEL SEX WORK SHOULD BE LEGALISED		
To legalise sex work would extend human rights to sex workers which is a good thing.		.778
Sex workers, like all citizens, are entitled to protection by the law and the law enforcement agencies.		.707
By regulating sex work, we will have more control over serious health issues such as HIV and STDs.		.704

What is important is the fact that the scores lie close together on each of the two dimensions. This means that the various factors are all almost equally important and carry almost the same weight for and against legalisation of sex work.

As was the case in other questions, **these factors show a certain contradiction in public opinion, in the sense that public opinion seems to be against legalisation, but the more specific issues that are supported can only be dealt with only in an environment of legalisation** -- for example, it would not be possible in practice to extend human rights to sex workers effectively in an environment where laws making sex work illegal open the door to harassment without allowing recourse to protection.

The presence of Factor 2 (which can be described as a progressive dimension) is interesting given the fact that we have identified the Namibian value system regarding sex and sexual relations to be quite conservative.

5.7.7 Conclusions from telephone survey

The use of Factor Analysis helped to determine two important factors relevant to the debate on legalisation of sex work and sex workers. Firstly, it helped us to understand that **Namibians are generally quite conservative when it comes to sex and sexual relations in general. This should be seen as the general backdrop against which policy reforms (if any) will be debated and implemented.** Secondly, with the help of Factor Analysis, we have established that **there is a significant component of the Namibian society who, despite their overall conservative value system, are prepared to see greater rights granted to sex workers**. In this case, their social conservatism does not translate into political conservatism.

THE DEBATE IN THE PRESS

The following letters, which appeared in *The Namibian* newspaper in June 2001, provide another indication of the range of views in Namibia.

Sick Of Sexual Indulgence...

KINDLY grant me space in your newspaper for my statement on the issue of prostitution. It appears to me that Namibians are becoming sick of sex indulgence and sex excitement. Some people are demanding to practice homosexuality in the name of "human rights". Some are teaching the youth to practise masturbation (*Open Talk*, Vol 2 - Issue 8, 8 May 2001). We have on the other hand those who would like to have prostitution legalised in the land. The latter issue is being advocated mainly by Hon Libertine Amathila and Hon Maggie Mensah (*The Namibian*, Monday, April 9 2001 and May 21, 2001) and by Father Hermann Klein-Hitpas of the Roman Catholic Church (*Windhoek Observer*, Saturday, April 21, 2001). The three referenced articles force one to wonder if something is wrong with our Church and society.

The last days mentioned in the Holy Bible seem to have fallen upon our nation. "First of all, you must understand that in the last days, some people will appear whose lives are controlled by their own lusts", "people who follow their own godless desires" (Jude 18 and 2 Peter 3:3).

Prostitution is an act of sinning against God's will. It is a form of violence against a human body that God created and which belongs to him alone. The body is not to be used for sexual immorality but to serve the Lord: and the Lord provides for the body. You know that your bodies are parts of the body of Christ. Shall I take a part of Christ's body and make it part of the body of a prostitute? Impossible! Or perhaps you do not know that the man who joins his body to a prostitute becomes physically the same with her?

"Avoid immorality. Don't you know that your body is the temple of the Holy Spirit, who lives in you and who was given to you by God? You do not belong to yourselves but to God. He bought you for a price. So use your bodies for God's glory" (Corinthians 6).

Immorality was one of the serious problems facing the Christian congregation in Corinth and it challenged Apostle Paul's missionary work. People practised idolatries. Some of the women were prostitutes serving Aphrodite (the Greek goddess of beauty, fertility and sexual love). When St Paul arrived in Corinth for the first time during his second missionary journey, he found that Corinthians were enslaved in a mass of evils. Through hard work he was able to convert many of them to the Christian faith. But some thought that they could continue with their immoral practices, using their bodies as they wished and satisfying themselves with all carnal desires whilst they were still Christians. These misunderstandings and misbehaviours of Corinthians invited St Paul to correct them and instruct them to understand how to live the Christian life. They were liberated from the power of sin and they could no longer be controlled by their evil desires. Through baptism, they entered into a spiritual union with Jesus Christ and became part of this body. They were ransomed with the blood of Jesus Christ. Hence, they belonged to the Lord. To live the life of immorality is to defile their bodies for which Christ also died. Theirs were to become instruments for God's glory in everyday life. We Namibian Christians should take the Bible's revealing instructions seriously. No one has a right to use his/ her body as he/she pleases. The right we have is to work hard, to feed our bodies with the right food and to protect our bodies from evils and

diseases. We also have a duty to do good and justice for others and for our country. We cannot glorify God by being prostitutes; that is blasphemy!

To legalise prostitution is to dishonour God and disrespect one's body and integrity. Legalising prostitution is tantamount to making it a collective and national sin. It will bring a shame to the nation and will promote trade in sex. Prostitution is a way of humiliating and abusing women sexually. It is indeed a form of violence against the dignity of women. Wherever the bodies of women are sold for sex, there is an act of degrading the wholeness of womanhood and that of the buyer. It is a perpetuation of man's domination over women. I am totally against the idea of legalising prostitution in our country.

Father Hermann Klein-Hitpas feels that legalising prostitution could help the poor women to support themselves and could protect them against diseases. There are acceptable ways of helping poor women and of protecting them against diseases. I think Father Hermann Klein-Hitpas is trying to convince us to accept situational ethics. He seems to teach poor women to indulge in prostitution because they are poor. Whilst God is concerned with our survival in this world, He forbids us to survive through sinning. God invites us to trust in Him and in His loving care under whatever circumstances. (Luke 12).

Father Hermann Klein-Hitpas is right for revealing information about the plight of prostitutes. This is a call to us all to do something. The Church in Namibia has been silent and inactive about these issues for too long. Now that the issues have been raised, we should come together and see what we can do for the poor women who resort to prostitution as a means of survival.

What we should do must not encourage them to sin again. The Church of Christ should stand up to be the champion of the poor and not for the prostitution. Prostitutes should be guided to repentance.

All the Churches in Namibia should jointly engage in projects to create income for the poor women and the poor men. The Namibian Government should take it as its priority to combat poverty in this country and be the main donor for job creating projects. It should also be a responsibility of the Ministry of Women Affairs and Child Welfare to protect women from evils that destroy and degrade women sexually, physically, mentally and socially. Helping women this way will enable them to discover their dignity, self-esteem and their God's image in which they were created. Women will never be women with dignity if they sell their bodies for sex. This also applies to buyers. Namibian Christian should unite, men and women together, in combating evils of the last days.

Abisai Shejavali, Windhoek, 15 June 2001

Rehabilitate, Don't Castigate

ALLOW me space to air views on the topic raised by Dr Shejavali's letter ('Sick of Sexual Indulgence', *The Namibian,* Friday, June 15 2001).

I share Dr Shajavali's contention that prostitution is not the right way to earn a living. Like him I agree that it is humiliating and abusive to women.

However, I disagree with Dr Shejavali's harangues concerning the apparent fiendish nature of prostitution. I believe such attitude and sermonising is not helpful in combating prostitution and helping to rehabilitate the parties. It will only further alienate and ostracise prostitutes.

Jesus taught us not to be judgmental of others. He himself dined with people of ill repute. Though he did not approve of their practices, he did not cast them out. I believe the helpful thing to do is to protect prostitutes from abuse and humiliation while at the same time trying to rehabilitate them. I don't see how we can do this if we do not know who they are. And we can only know who they are if we legalise and in the process decriminalise prostitution as expressed by Hon Libertine Amathila, Hon Maggie Mensah and Hermann Klein-Hitpas.

I agree with Dr Shejavali that all the churches in Namibia should do something to create income for the poor women and men (including prostitutes) and that the Government should prioritise the combating of poverty. I only trust that Dr Shejavali realises what a difficult task poverty eradication is.

I appreciate Dr Shejavali's concern about the country's apparent moral decay as a churchman. But I don't think refusing to legalise prostitution will necessarily lead us all to uprightness. Sweeping prostitution under the carpet may help us to pretend it does not exist, but it would not help rid the country of prostitution.

"Negumbo ly' Angala", via e-mail, 6 July 2001

SEX WORK IN NAMIBIA IN BRIEF

The following is a brief profile of sex work based on the information obtained from the field research.

The sample included a fair spread of different sexual orientations among respondents, from "straight" to "transgendered" and "gay". The majority of respondents were single females. Most respondents had some secondary school education. Whilst this gives the impression of respondents having attained reasonable levels of education, it is not enough to secure proper fulltime employment at reasonable remuneration. Sex workers do mostly unskilled labour such as being domestic workers or waitressing to secure an extra income. Many uphold reasonable living standards, with only one third living in informal housing and a small percentage owning their own property. The majority of respondents have dependents, the numbers ranging from one or two to entire families. These numbers change from time to time depending on circumstances. Most respondents also have children of their own or someone else's to look after.

The majority of respondents are full-time sex workers with no other sources of income. Those who do have other sources of income obtain them from a variety of lowly paid and unstable jobs to supplement their income from sex work. Many sex workers have had other jobs in the past, but those were mostly casual jobs with no security or stability, earning low salaries, such as domestic work or working in bars and pubs.

Reasons for going into sex work were varied but the most important considerations were financial, whether they were stated as such or described as having to support children, other family members or simply not being able to find another job. About one third of respondents regularly see young children suspected of doing sex work on the street and even at some clubs.

Most sex workers experienced verbal, physical or sexual abuse during childhood. Many also experienced extreme poverty. The age of first sexual experiences ranged from four years old upwards. Sadly, about one quarter of the sample said that their first sexual experience was not out of free will.

The two main problems facing sex workers are health issues, such as HIV/AIDS and Sexually Transmitted Diseases (STDs), and abuse from various sources such as partners, clients, the general public, and officers of the law. Clients are the primary source of problems for sex workers, including clients who don't pay, abusive clients and clients who refuse to wear condoms. Abuse at the hands of police and Special Field Force members was also a significant problem.

Most sex workers are contacted on the street or at a hotel or pub, where the venue for the sex act is negotiated. Almost a quarter of this takes place in the field, and in addition to the obvious economic reasons behind this, there appear to be more sinister motives behind this too. Apart from the fact that someone is unlikely to be discovered and recognised by anybody, it is easier to rape or abuse someone in a distant lonely area such as a field.

The relationship between sex workers and their clients appears to be a complex one. Although clients are guilty of abusing sex workers in many cases, this is not always the case, and not all clients can be portrayed as being cruel or heartless. Some have entered into long-term relationships with clients and built up positions of trust with them. The majority of respondents have some regular clients.

Clients generally come from all walks of life and all sectors of society, and are of all age groups. It is obvious, when considering the high incidence of sex work in this country, that there are many clients around.

The majority of sex workers would like to see the laws in Namibia changed to legalise sex work. This is in direct contrast to the general population where the majority felt that sex work should be illegal for both client and sex worker, although a significant minority -- more than one-fifth of those surveyed -- supported legalisation.

The telephone survey amongst the general population highlighted two important factors. Firstly, it appeared that Namibians are generally quite conservative when it comes to sex and sexual relations. Secondly, there is a significant component of the Namibian society who, despite their overall conservative value system, believe that sex workers need more rights and a greater degree of protection. The irony behind this is that the rights they feel that sex workers should have cannot be granted to them whilst they operate illegally.

There is a high demand for sexual services. This demand has not diminished in the past because of sex work being illegal, and will certainly not diminish in the future by keeping it illegal.

CHAPTER 6- LEGAL APPROACHES TO SEX WORK IN OTHER COUNTRIES

6.1 INTRODUCTION

Four basic legal frameworks for dealing with prostitution have been identified by the UN Special Rapporteur on Violence against Women and Children -- prohibition, abolition, regulation and decriminalization.

Prohibition punishes all persons involved in prostitution, including the sex worker, the client and any third parties involved. All prostitution is considered unacceptable, and most or all aspects of prostitution are **criminalised**. South Africa is the best example of this approach. Namibia, Canada, England & Wales are also essentially prohibitionist.

Problems: In practice, it is usually the female prostitute who is targeted for punishment, with laws against clients and traffickers being rarely enforced. The illegality of prostitution under this system can encourage corruption and blackmail, and makes prostitutes more vulnerable to abuse.

Abolition punishes third parties such as pimps, brothel-keepers and traffickers, but does not criminalise the transaction between the sex worker and the client. The prostitute is not criminalised directly because she is seen as being a victim. Many European countries, including Sweden, take this approach.

Problems: Because this view makes no distinction between forced and voluntary prostitution, it sees all prostitutes as passive victims who need to be rescued. This negates the idea of individual choice.

Regulation tolerates prostitution, but seeks to control it by means of regulatory schemes such as licensing of brothels, registration of sex workers or identification of "red light zones" where sex workers may solicit. Sometimes mandatory health checks are part of the regulatory system. This approach is also referred to as **legalisation**. Germany has a regulatory system, with rules about the times and places that prostitution is allowed being left to local authorities. The Netherlands has a new regulatory system for brothels.

Problems: This system creates a distinction between 'legal' and 'illegal' prostitution, and thus can create a particularly vulnerable underclass of sex workers who are working outside the regulatory system.

Decriminalisation views sex work as a legitimate form of work, to be approached through labour laws which address working conditions and the rights of prostitutes. Laws on sex work focus on combating coercion and violence, rather than on prostitution itself. This approach has been used in New South Wales, Australia and is being considered for New Zealand.

Problems: Although this approach is gaining increasing international support, some find it unacceptable for the state to condone a practice which they find immoral or unacceptable. It is also argued that prostitution is inherently degrading and should never be accepted as a legitimate profession. [1] Decriminalisation may also identify a country as a destination for trafficked women and children or for sex tourism.

This Chapter examines a few other jurisdictions in different parts of the world, in order to find out more about the social and economic impact of different legal approaches. It is not intended as a comprehensive discussion of the treatment of prostitution around the world. Instead, a few examples of the four different legal frameworks have been chosen for the purposes of contrast and comparison. The Chapter will look at the following countries, to highlight the indicated approaches and issues:

- **South Africa** – prohibition; law reform underway
- **Germany** – regulation
- **Netherlands** – regulation
- **Sweden** – abolition, by means of client criminalisation
- **New Zealand** – bill to decriminalise sex work under consideration
- **Australia** -
  - *Victoria*: legalisation of brothels, street solicitation criminalised
  - *New South Wales*: decriminalisation with business regulation of brothels
- **England & Wales** - regulatory approach which is essentially prohibitionist
- **Canada** - regulatory approach which is essentially prohibitionist
- **Asian examples**
  - *Thailand*: sex work as big business
  - *Nepal and India*: problems of trafficking
- **African examples**
  - *Zimbabwe*: strengthened provisions aimed at international manifestations of sex work and child prostitution
  - *Zambia*: the problem of police corruption
  - *Malawi*: gender discrimination in enforcement outlawed and reform under consideration
  - *Senegal*: registration requirements and mandatory health checks widely ignored

The countries included in the discussion were chosen in part on the basis of the availability of information about the laws in force and in practice.

> *"The law must reflect generally accepted notions of right and wrong, but it must also work. "*
>
> Churton Collins, "Back at the Ranch…", *Mail & Guardian*, 27 September 2001

6.2 SOUTH AFRICA

> *"The overwhelming weight of opinion from experts and stakeholders in a wide variety of fields is that South Africa's prohibitionist policy is dead wrong."*
>
> Ted Leggett, *Rainbow Vice: The Drugs and Sex Industries in the New South Africa*, 2001

South Africa provides an example that is of particular interest to Namibia because of our common legal and social history and our similar constitutions. South African legislation makes sex work illegal, although the topic of sex work is currently under consideration by the South African Law Commission. [2] Various aspects of the South African legislation are also currently being challenged in court.

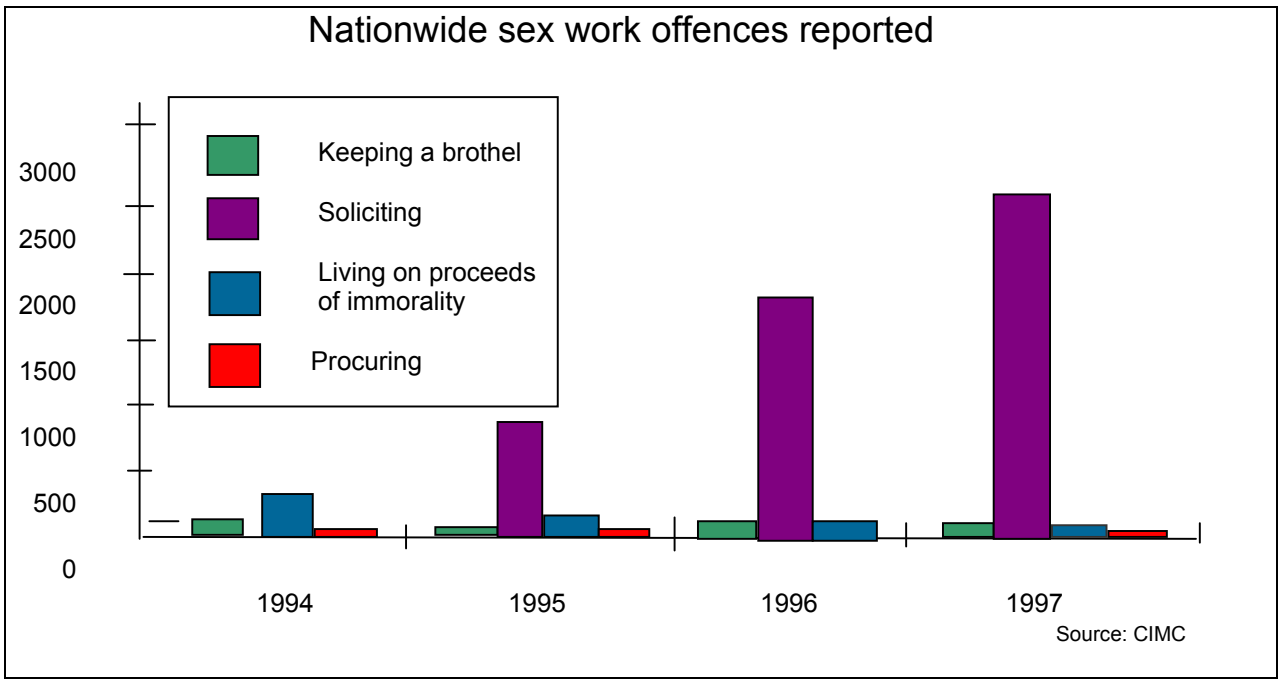
Sex work in South Africa is currently covered by the *Sexual Offences Act 23 of 1957*. The provisions on sex work in this statute are very similar to those in Namibia's Combating of Immoral Practices Act, with one important difference. Unlike the Namibia law, the South African law criminalises the act of prostitution itself. A 1988 amendment to the act inserted the following provision:

> *Any person who… has unlawful carnal intercourse, or commits an act of indecency, with any other person for reward… shall be guilty of an offence.* [3]

Thus, South Africa's stance would technically be categorised as **prohibitionist** – although there is an unresolved legal debate as to whether clients can be charged under the current statute. One commentator observes:

> *At present, the practice of sex work in South Africa defies easy categorisation. Sex work is technically illegal but the law is selectively enforced. Although prostitution is not a priority offence, police officers are still compelled to act in the case of a complaint, and over 800 sex work offences were reported in the first quarter of this year [1998]. The present situation makes targeted interventions very difficult and government regulation impossible.* [4]

National statistics on sex work offences show that the most common charge by far is soliciting, while charges under the offences aimed at third parties – keeping a brothel, living on the earnings of prostitution and procuring – are much more rare.



Source: Ted Leggett, "The least formal Sector: Women in Sex Work", Indicator Project South Africa, 1998, http://www.und.ac.za/und/indic/archives/crime/issue13/legfina2.html.

In the case of S v *Jordan and Others* [5] , the Pretoria High Court recently ruled that the provision of the Sexual Offences Act which criminalises sex for reward is an unconstitutional violation of the right to equality, because it criminalises the actions of sex workers but not their clients. The right of privacy was also implicated, as the court found that "it cannot be contended that sexual relations conducted between a man and a woman in private constitutes criminal conduct merely because money changes hands". [6] (In a very controversial statement, the court went on to observe that: "In principle, there is no difference between a prostitute who receives money for her favours and her sister who receives, for rendering a similar service, a benefit or reward of a different kind, such as a paid-for weekend, a free holiday, board and lodging for a shorter or longer period, a night at the opera, or any other form of *quid pro quo*". [7])

However, the same case held found that the provisions of the act on brothel-keeping can withstand Constitutional scrutiny, as they form part of the public face of prostitution and therefore have a greater impact on the rights of the surrounding community. (The court did not discuss public solicitation, as this was not raised in the case before it.)

The judgement has been both welcomed and criticised. For example, some sex workers hailed the ruling as a victory, saying that their lives would be improved by the decriminalisation of their trade. [8] Some commentators felt that the judgement did not go far enough -- sex workers in brothels are in exactly the same position as before, and, because most sex workers on the street are charged with solicitation rather than with prostitution itself, the ruling is not of much practical assistance to them. [9] (See also the box on "Prostitution and Human Rights" below.)

The judgement has no practical effect at all until it is confirmed by the Constitutional Court, which has not at the time of writing (July 2002) released its decision. But, as one news article put it, "The stage has been set for a raging moral war over the legalisation of prostitution." [10]

EXCERPTS ON BROTHEL-KEEPING FROM *S v JORDAN AND OTHERS*
2002 (1) SACR 17 (T).

When prostitution becomes an organised business venture conducted by persons who profit from the prostitute's activities, it is no longer a private affair between a man and a woman (or nowadays between any two persons) which takes place in private without directly affecting third parties. When it becomes a business openly carried on in business or residential areas or the streets or in buildings, the rights of every other citizen and therefore the community are affected. *The evidence placed before the court in this matter shows conclusively that the general public regard any form of prostitution with repugnance and disgust. All such individuals have the right to be free of the risk of being accosted on the street by a prostitute or a pimp or of having to tolerate not only the disturbance of their peace of mind, their ethical or moral serenity, dignity and tranquillity, but also of being exposed to and having to endure all the byproducts that accompany such business, such as disorderly, disgraceful or disgusting conduct, drunkenness and drug abuse – to name but a few.*

***

Section 2 [on brothel-keeping] *is clearly intended as a measure to restrict or repress prostitution. Secondly and equally importantly, it is designed to discourage organised*

prostitution and to dissuade third persons from commercial exploitation of a prostitute and from living on or parasitising on the income earned by the prostitute. This amounts to trading in the body of a human being. Such conduct is obviously loathed and despised or at least heavily frowned upon by all civilised and even uncivilised communities. Such conduct may offend the religious beliefs of some people, a particular group's sense of morality, or another's views on health, hygiene and the risks associated therewith or perhaps a group's dignity or even another's views on the social or economic consequences thereof – to name a few…

Where the rights of a considerable segment of the community are affected, individual's rights – if one may postulate such rights in this instance – must yield to the rights of the majority of the community. For this reason, amongst others, section 22 of the Constitution empowers the state to regulate the practice of a trade, occupation or profession, by law. Regulation may in proper cases even embody the power to prohibit… In my view a third party managing a prostitute or prostitutes with their consent amounts to virtual trafficking in human beings. This is censured in most countries and regulated by the governmental authorities…

PROSTITUTION AND WOMEN'S RIGHTS

Professor Cathi Albertyn, Centre for Applied Legal Studies
Gender Research Project Bulletin, Vol 6, 2001

…Adult commercial sex work is prohibited by the Sexual Offences Act. This law, formerly the Immorality Act, has historically sought to enforce a puritan sexual morality that criminalised all forms of sexual conduct that did not conform to sex between heterosexual, married people of the same race. The prohibition on sex across the colour line was removed in 1985. In 1998, the Constitutional Court found that the criminalisation of sexual conduct between consenting males violated the human rights of gay men, and was unconstitutional. The Act criminalises prostitution, brothels, child prostitution and procurement, soliciting, pimping and trafficking in women and girls. Interestingly, while criminalising (usually women) sex workers, it does not explicitly criminalise (usually male) clients. As such, the Act is not free of the sexual double standards that condemn women sex workers but that tolerate male behaviour in patronizing them.

By declaring the provision that outlaws sex for reward to be unconstitutional, the High Court has further weakened the Act's claim to constitutionality. However, it has not really challenged the moral foundations of the Act. **Although the judgment is to be welcomed, it is not free of the moral censure of prostitution that underpins the Sexual Offences Act. In particular, the court reinforces a distinction between private conduct (between consenting individuals) and public morality. Prostitution is "acceptable" as long as it stays out of the public eye.** Where it enters the public domain as a business venture, it transgresses the boundaries of acceptable norms to disturb the "peace of mind, ethical or moral serenity, dignity and tranquillity" of the public. Brothels are impermissible in this context. Public soliciting of clients is probably also unlawful on this reasoning (although this was not before the court).

The fundamental problem with the court's approach is that it does little to address the human rights of sex workers. It is sex workers (mostly but not exclusively women) who are most vulnerable to abuse and most likely to have their human rights violated under the current legal framework. For many sex workers, the constitutional commitment to a society based on equality, social justice and fundamental human rights is denied daily. The rights of these sex workers should provide the starting point for law reform.

In the past decade, sex work has expanded visibly. The proliferation of under-age sex workers is a tragic indictment of our social and economic circumstances and requires a different discussion and policy response. In relation to adult prostitution, women and men become sex workers for many reasons. For the majority, it is a decision made in the context of the harsh realities of economic survival. For some sex workers, it is also a choice, albeit a limited one, since prostitution may be less exploitative than other working environments.

Adult sex workers are a diverse group with different needs and interests. However, in a climate of criminalisation, all sex workers are vulnerable to exploitation and abuse by brothel owners, pimps, clients and the police. Women in brothels do not enjoy labour law protection and the potential for economic exploitation is unchecked. Street prostitutes are particularly vulnerable to physical and verbal abuse by clients, pimps, police and passers-by. In general, sex workers are unable to access much-needed health services because of a fear of discrimination by health workers. Many sex workers do not have the power to insist their clients use condoms and thus protect themselves from sexually transmitted diseases and HIV. All sex workers are particularly vulnerable to all crimes of violence against women. As a result of their extremely vulnerable position, sex workers experience daily violations of their rights to dignity, privacy, bodily autonomy and equality. They are unable to seek assistance from the criminal justice system, not only because prostitutes are not seen as credible complainants but also because it is often the police themselves who are the harassers and abusers…

Another recent South African case which has garnered a great deal of publicity is the prosecution of a notorious Gauteng brothel known as "The Ranch". About R40-million of assets of owner Andrew Phillips were seized as the proceeds of organised crime, pending the outcome of prosecution on offences under the Sexual Offences Act. Phillips challenged the state's restraining order against his assets on technical grounds. Although the court did not make any actual finding on the merits of Phillip's potential constitutional defences, it was required to consider whether the state had made out a valid *prima facie* case in order to justify the restraints on the Ranch property. After considering cases in Canada and several US jurisdictions, the court stated:

> *The divergent views held in democratic jurisdictions to which I have referred leave no doubt in my mind that the overthrow of the legislation, while not beyond contemplation, will not be achieved without the rejection of weighty considerations of policy and morality… [T]here is a reasonable prospect that prostitution and the related offences under the Sexual Offences Act will survive constitutional scrutiny.* [11]

It has been argued that The Ranch is just the sort of brothel which should not have targeted. It employed more than 400 people -- including sex workers, strippers, cooks, cleaners and related personnel – and reportedly offered the highest standards in the business. The Ranch reportedly offered on-site testing and counselling for STDs as well as excellent income-earning opportunities, and sex workers based there were apparently treated extremely well. [12] On the other hand, 40 women of foreign nationalities were amongst those arrested during the raid on the Ranch, and many of those were present in the country illegally. [13]

A variety of diverse groups -- from the Sex Worker Education and Advocacy Taskforce to the Gauteng Ministry of Safety and Security -- have put forward motivations for decriminalising sex work in South Africa. [14] The forthcoming report on prostitution from the South African Law Commission is bound to fuel intensified debate, which may be instructive to Namibia.

FINDINGS FROM A STUDY OF SEX WORK IN HILLBROW, JOHANNESBURG

- 99.5% of the sex workers interviewed would prefer another job.
- 99% say that they use condoms with their 'one-off' clients, and 95%with regular clients.
- 53% are HIV-positive, 30% have gonorrhoea, 28% have syphilis.
- 60% reported regular police harassment.
- 16% say they have been forced to have sex with police to avoid arrest.
- More than 60% of the clients of these sex workers were married.

Findings from *Women at Risk*, Reproductive Health Research Unit, as reported in David Macfarlane and Glenda Daniels, 'One day I'll get a proper job', *Mail & Guardian*, 12-19 April 2001 and Melanie-Ann Feris, "I'm my own madam and boss, says sex worker", *The Star*, 10 April 2001

FINDINGS FROM A STUDY OF SEX WORK ON THE STREETS OF CAPE TOWN

- 78% of the sex workers interviewed reported that they were supporting children.
- The majority appear to use drugs regularly.
- The relationships between sex workers and "pimps" is seldom abusive or exploitative.
- Some groups of sex workers employed men as bodyguards, while some sex workers work for gangs who are more controlling and abusive.
- The majority report at least one instance of abuse by a client.
- The majority would not feel comfortable reporting abusive or violent clients to the police.
- Police sometimes confiscate condoms as evidence of sex work.

SWEAT (Sex Worker Education and Advocacy Taskforce), Loren Brenen, "Sex work on the Streets of Cape Town"

Child prostitution

The South African Law Commission has already made very specific suggestions on how to deal with the commercial sexual exploitation of children, including child prostitution. [15]

Section 50A of the South African *Child Care Act 74 of 1983* (as amended in 1999) currently defines the commercial sexual exploitation of a child as "the procurement of a child to perform a sexual act for a financial or other reward payable to the child, the parent or guardian of the child, the procurer, or any other person". The section then provides as follows:

> *(1) Any person who participates or is involved in the commercial sexual exploitation of a child shall be guilty of an offence.*
> *(2) Any person who is an owner, lessor, manager, tenant or occupier of property on which the commercial sexual exploitation of a child occurs and who, within a*

reasonable time of gaining information of such occurrence, fails to report such occurrence at a police station, shall be guilty of an offence.
(3) Any person who is convicted of an offence in terms of this section, shall be liable to a fine, or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

The South African Law Commission came to the conclusion that the existing formulation is not clear or comprehensive enough. It has recommended the enactment of the following provisions:

The Commission recommends a complete prohibition on the commercial sexual exploitation of children in the Bill. Commercial sexual exploitation is defined in section 1 of the Bill [as "engaging the services of a child, or offering such services to any person, to perform a sexual act for financial or other reward, favour or compensation to the child or to any other person"] *and includes child prostitution, child pornography and trafficking in children. The Commission is convinced that the commercially sexually exploited child is a victim in need of care and protection and not a criminal. The following provisions in the Bill give effect to this recommendation:*

Child prostitution
10. *(1) Any person who intentionally commits a sexual act with a child for financial or other reward, favour or compensation to the child or to any other person, is guilty of an offence.*
(2) Any person who intentionally invites, persuades or induces a child to allow him or her or any other person to commit a sexual act with that child for financial or other reward, favour or compensation to the child or to any other person, is guilty of an offence.
(3) Any person who intentionally participates in, or is involved in, the commercial sexual exploitation of a child is guilty of an offence.

[Sexual act is defined as "any indecent act, and includes an act which causes— (a) direct or indirect contact between the anus, breasts, penis or vagina of one person and any part of the body of another person, or (b) exposure or display of the genital organs of one person to another person, and further includes an act of sexual penetration".]

Keeping a brothel for child prostitution
11. *(1) Any person who intentionally keeps a brothel is guilty of an offence.* [A brothel is defined as the property where the commercial sexual exploitation of a child occurs.]
(2) For the purposes of this section keeping a brothel includes owning, leasing, renting, managing, occupying or having control of a brothel.

Offering or engaging a child for commercial sexual exploitation
12. *Any person who intentionally offers or engages a child for purposes of the commercial sexual exploitation of that child is guilty of an offence.*

Facilitating or allowing commercial sexual exploitation
13. *(1) Any person who intentionally facilitates, in any way, the commercial sexual exploitation of a child is guilty of an offence.*
(2) Any parent, guardian or caregiver of a child who intentionally allows the commercial sexual exploitation of that child is guilty of an offence.

Receiving consideration from commercial sexual exploitation
14. *(1) Any person who intentionally receives any financial or other reward, favour or compensation from the commercial sexual exploitation of a child is guilty of an offence.*
(2) Any person who intentionally lives wholly or in part on rewards, favours or compensation for the commercial sexual exploitation of a child is guilty of an offence.

Conspiracy or incitement to commit sexual offence
15. *Any person who conspires with another, or incites another to commit any offence under this Act shall be guilty of an offence.*

Extra-territorial jurisdiction
16. *Any person who, while being a citizen or permanent resident of the Republic, commits any action outside the Republic which would have constituted an offence under this Act had it been committed inside the Republic, is guilty of the offence which would have been so constituted.* [16]

It should be noted that the *child* is not to be made guilty of any offence, but is rather to be treated as the victim of the crime – and probably as a child in need of care or protection, for purposes of rehabilitation.

Trafficking
The South African Law Commission has made additional recommendations in respect of trafficking. It recommends that a trafficked child should be afforded refugee status and, if appropriate, be dealt with as a child in need of care or protection. [17] It also suggests that trafficking in children, for any purpose, should be a criminal offence. Drawing on the international definitions of trafficking from the relevant treaties, the South African Law Commission has proposed the following formulation for such an offence:

Any person who traffics in children shall be guilty of an offence.
(a) 'Trafficking in children' means the recruitment, transportation, transfer, harbouring or receipt of a child by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over a child, for the purpose of exploitation.
(b) Exploitation shall include the commercial sexual exploitation of children (as defined in the new Sexual Offences Act), forced labour or services, any form of illegal (child) labour, slavery or practices similar to slavery, servitude or the removal of organs. [18]

The emphasis in the proposal is on children because the recommendation was made in the context of a discussion paper on child law. The provision on extra-territorial application quoted above in connection with the commercial sexual exploitation of children would also apply in respect of the offence of trafficking. The South African Law Commission has also suggested the retraction of the operating licences of any travel agent or bureau found to have organised or planned to organise sex tours within the borders of South Africa or abroad. [19]

MOST RECENT SOUTH AFRICAN RECOMMENDATIONS ON CHILD PROSTITUTION AND TRAFFICKING

The initial recommendations of the South African Law Commission were revised, after incorporating input from interested persons and groups. The following recommendations appear in the draft bill published in South African Law Commission, Project 107, Sexual Offences: Process and Procedure, Executive Summary, 2002:

Child prostitution

9. (1) Any person who, in relation to a child below the age of 18 years, for financial or other reward, favour or compensation to such child or to any other person, intentionally-

(a) commits an indecent act or an act of sexual penetration as defined in section 1 with such child;

(b) invites, persuades or induces such child to allow him or her or any other person to commit an indecent act or an act of sexual penetration with that child;

(c) makes available, offers or engages such child for purposes of the commission of indecent acts or acts of sexual penetration with that child by any person;

(d) supplies, recruits, transports, transfers, harbours or receives such child, within or across the borders of the Republic of South Africa, for purposes of the commission of indecent acts or acts of sexual penetration with that child by any person;

(e) allows or knowingly permits the commission of indecent acts or acts of sexual penetration by any person with such child while being a primary care-giver as defined in section 1 of the Social Assistance Act, 1992 (Act No. 59 of 1992), parent or guardian of that child;

(f) owns, leases, rents, manages, occupies or has control of any movable or immovable property used for purposes of the commission of indecent acts or acts of sexual penetration with such child by any person;

(g) detains such child, whether under threat, coercion, deception, abuse of power or force for purposes of the commission of indecent acts or acts of sexual penetration with such child by any person; or

(h) participates in, is involved in, promotes, encourages or facilitates the commission of indecent acts or acts of sexual penetration with such child by any person

--is, in addition to any other offence of which he or she may be convicted, guilty of the offence of being involved in child prostitution.

(2) Any person who has knowledge of the commission of indecent acts or acts of sexual penetration with a child by any person and in any circumstances as contemplated in subsection (1) and who fails to report such knowledge within a reasonable time to the South African Police Services, is guilty of the offence of failure to report knowledge of child prostitution.

(3) Any person who intentionally receives any financial or other reward, favour or compensation from the commission of indecent acts or acts of sexual penetration with a child below the age of 18 years by any person is guilty of the offence of benefiting from child prostitution.

(4) Any person who intentionally lives wholly or in part on rewards, favours or compensation for the commission of indecent acts or acts of sexual penetration with a child below the age of 18 years by any person is guilty of the offence of living from the earnings of child prostitution.

(5) Any person, including a juristic person, who-

(a) makes or organises any travel arrangements for or on behalf of any other person, whether that other person is resident within or outside the borders of the Republic of South Africa, with the intention of facilitating the commission of any sexual offence against a child below the age of 18 years, irrespective of whether that offence is committed; or

(b) prints or publishes, in any manner, any information that is intended to promote or facilitate conduct that would constitute a sexual offence against a child below the age of 18 years, is guilty of the offence of promoting child sex tours.

(6) A person may not be convicted of an offence in terms of subsections (2), (3) or (4) if that person is-

(a) below the age of 15 years; and

(b) not a person contemplated in paragraphs (a) to (h) of subsection (1).

Extra-territorial jurisdiction

27. (1) Any person who, while being a citizen of or permanently residing in the Republic of South Africa, commits any act outside the Republic which would have constituted an offence under this Act or a sexual offence at common law against a person had it been committed inside the Republic, is guilty of the offence which would have been so constituted and is liable to the same penalty prescribed for such offence.

(2) A person may not be convicted of an offence contemplated in subsection (1) if such person has been convicted of the act that would have constituted an offence in terms of this Act in the country where the act was committed.

(3) No prosecution may be instituted under this section without the written consent of the Director of Public Prosecutions who has jurisdiction in the area where the person contemplated in subsection (1) is ordinarily resident.

(4) If the consent of the Director of Public Prosecutions to institute prosecution has been obtained as referred to in subsection (3), prosecution may be instituted in any appropriate court within such Director's jurisdiction.

6.3 GERMANY

> *"In passing his judgment* [allowing a bar that doubles as a brothel to retain its liquor and restaurant license] *the judge said prostitution was now a morally acceptable pursuit as long as it involved consenting adults working in a safe environment."*
>
> Craig Francis, "German brothel given legal all-clear", *CNN.com*, http://www.cnn.com/2000/WORLD/europe/germany/, 28 December 2000

In Germany, prostitution itself is not currently illegal. However, a prostitute can be prosecuted for participating in an exchange for sexual services outside designated areas, or during prohibited times, in terms of local ordinances. Therefore, a sex worker is free to engage in sex work provided that he or she is not in the wrong place, or "doing it", so to speak, at the wrong time. (In practice, some small towns prohibit street prostitution or brothel prostitution altogether, while others restrict various forms of prostitution to certain areas. There are also prohibitions on the public advertisement of sexual services. [20]) Thus, Germany is an example of a **regulatory approach** to prostitution.

Section 184a of the *Criminal Code* states:

> *Whoever persistently contravenes a prohibition enacted by ordinance against engaging in prostitution at particular places at any time or during particular times of the day, shall be punished with imprisonment for not more than six months or a fine of not more than one hundred eighty daily rates.*

Section 184b further restricts the places in which prostitution may occur, for the purpose of protecting children. It states:

> *Whoever engages in prostitution:*
>
> 1. *in the vicinity of a school or other locality which is intended to be visited by persons under eighteen years of age; or*
> 2. *in a house in which persons under eighteen years of age live,*
>
> *in a way that morally endangers these persons, shall be punished with imprisonment for not more than one year or a fine.*

Sections of the code also prohibit trafficking in human beings. [21] Germany's *Criminal Code* also criminalises sexual acts with or involving children under the age of 14 [22], as well as the promotion of sexual acts with those under 16 [23]. Interestingly, the German *Criminal Code* also places a duty on parents and other caregivers of children with respect to prostitution. It is an offence for them to breach their duty to provide care and upbringing to a child such that "his physical or psychic development could be seriously damaged, that he will lead a criminal life or *engage in prostitution*". [24]

There were, until recently, provisions which penalised exploitative practices or the active promotion of prostitution by pimps [25] and brothel keepers [26].

Despite the legality of commercial sex work (provided it is within the parameters outlined above), it was argued by some sex workers' rights groups as well as many academics, that the lack of recognition of sex work as a profession had a negative effect on the health, safety, and social welfare of prostitutes. For example, a 1973 decision of the

Supreme Court (*Bundesgerichtshof*) stated that “rape of a prostitute is a crime less serious than the rape of a woman who does not offer sex for money." This led to assertions that the recognition of prostitution as a legitimate job would prevent such discriminatory distinctions. [27]

Until 1 January 2002, German sex workers did not have access to health insurance, pensions, or unemployment benefits, despite the fact that they were required to pay taxes to the state. A party spokeswoman on women's rights for the German Green Party stated that "the law considers prostitution offensive to good moral standards but the government is less prudish when it comes to making prostitutes pay taxes. This double morality must end." [28]

In 2001, a new law was enacted, allowing prostitution to be recognized as a legitimate form of employment. [29] Prostitution was previously described as “immoral” in the German legal code. [30] The new law states expressly that prostitution is allowed, as long as sex workers are not personally or financially exploited. Sex workers are now eligible for the same range of social security benefits as other workers, including health insurance, pension and unemployment benefits. This social security coverage makes it possible for prostitutes to participate in government-sponsored retraining programmes that can assist them to move into other segments of the labour market.

No regular health checks are required for prostitutes, although health checks are offered by street social workers and health centres. Prostitutes are not generally required to register as such, but they must sign up for any social benefits they wish to receive.

“Promotion of prostitution” (which applied to brothel owners) was previously a criminal offence punishable by up to three years in prison, thus making it impossible to regulate the working conditions of prostitutes. The new law removes this criminal offence. Now, the owner of a brothel may set working hours, but is not allowed to dictate a sex worker’s choice of clients or sexual acts.

The new law also makes changes to contract law in respect of sex work. Previously, contracts between prostitutes and their clients were unenforceable because prostitution was considered to be immoral. Under the new law, sex workers will be able to sue clients who fail to pay for their services. However, clients will have no right to sue prostitutes on the grounds of inadequate services. (However, a prostitute who accepts money with no intention to provide any sexual services has committed the crime of fraud.) [31]

Forcing women to sell sex, using child prostitutes and trafficking in women or children remain strictly illegal. [32]

The German Unified Service Sector Union is currently in the process of developing standard working contracts for prostitutes, and helping prostitutes to create organizations which will enable them to speak out for their rights with a unified voice.

Some prostitutes’ groups welcomed the new law, saying that it would be a first step in removing the stigma surrounding the profession, thus allowing for greater protections. [33] However, others were concerned that the new law might create a two-tier market of legal prostitutes and an illegal underclass of illegal immigrants and drug addicts. As one prostitute stated, “The sex work industry is very anarchic and can’t be ruled by laws.

There will always be pimping and a black market." Some prostitutes also expressed a reluctance to "go public" with their real line of work. [34]

The change in legal approach reflects a shift in moral attitudes towards prostitution in Germany. An article from the BBC notes the comments of the judge who heard a recent prostitution case regarding brothels. Judge Percy Maclean reflected that the sex trade should no longer be viewed as immoral, remarking that it was now broadly accepted, as long as it was freely entered into without force. [35]

There are an estimated 400 000 sex workers in Germany, offering their services an estimated 1.2 million times per day. Perhaps half of these sex workers are foreigners, and about 64% work out of bars, clubs or brothels. It has been estimated that about 1 out of 4 men living in Germany make use of the services of sex workers. Surveys show that most Germans find prostitution normal and believe that it should be recognized as a job. [36]

6.4 THE NETHERLANDS

> *"The Netherlands has a history of particularly liberal policy regarding prostitution. In 1413 for example the City of Amsterdam decreed… that 'because whores are necessary in big cities and especially in cities of commerce, it's better to have them than not to have them'. "*
>
> from a radio interview between Chris Chambers of Newsline and Professor Fred Bruisma researcher on the sociology of law, Utrecht University, 29 December 2000, Radio Netherlands
> http://www.rnw.nl/hotspots/html/netherlands001229.html

Holland has been one of the most progressive countries in the world when it comes to legal reform. For example, it was one of the first countries to enact legislation on euthanasia, it was the first nation to afford homosexual couples the right to marry, and it is one of the few countries allowing the sale of marijuana in specially-designated coffee shops.

The Netherlands is also known for its red light districts, which are a common tourist attraction, and yet it is only recently that brothels were technically legalised. Prostitution itself has never been illegal in the Netherlands, and in fact since 1988 it has been defined as a legal profession. Sex workers can unionise, and they have had to pay taxes since 1996. However, they have not been required to undergo medical checks and were not required to register themselves. Before October 2000, brothel-keeping was technically illegal although it was tolerated, in that there were no prosecutions. The argument used in support of prostitution, and the legalisation thereof, is that sex work should be seen as an economic activity. In the Netherlands, prostitution is only considered to be illegal when there is some form of coercion. Sex work is otherwise accepted as a legitimate form of work in the Netherlands. Both women and men have the right to self determination in that they can choose their profession even if it involves the use of their bodies.

In October 2000, after a policy debate lasting almost two decades, brothels were formally legalised and placed on the same footing as any other business. By legalising brothels, and brothel keeping the Minister of Justice had the intention of providing control

and regulatory mechanisms, aimed mainly at providing greater protection for sex workers. However brothel owners themselves have been in the forefront in condemning the new law. According to one such owner: "The government has not thought this through properly, and brothel owners and prostitutes will suffer the consequences." [37]

Under the new law, prostitutes are classed as freelance workers, or entrepreneurial businesswomen. They therefore have the same rights as other businesspeople, such as the protection of labour laws and access to insurance policies and disability payments, and the same obligations, such as payment of taxes. One of the purposes behind the new law was to open up the world of commercial sex, to enable more effective combating of associated problems such as money laundering, drug dealing and the exploitation of minors and illegal immigrants. [38] As the Minister of Justice stated in Parliament, the goal of the new **regulatory approach** is to make prostitution "healthy, safe and transparent, stripped of criminal side-issues". [39]

Despite the fact that the Netherlands is considered to be very progressive, the stigma traditionally attached to sex workers remains. The large Dutch banking company ING, for example, refused to permit sex workers to open business banking accounts, stating, "It's not a moral judgement. Our decision is pure business." The bank argued that the sex industry is not stable, and that it is too difficult to calculate risk. [40] A sex workers' organisation known as Rode Draad (Red Thread) chose to take on the bank after many sex workers were refused equal treatment, by making a complaint to the Dutch Equality Commission. The ING backed down and lifted its ban on sex workers opening business accounts. [41] This incident shows that, despite the *de facto* and now *de jure* legality of commercial sex work, prostitutes continue to face hurdles in their work life.

The new law has had a direct impact on the working conditions of sex workers in the Netherlands. There are now legal safeguards against long working hours and unsanitary working conditions, sex workers can refuse customers, and they have the right to go to the police if they have a complaint. [42] However, not all of the changes have been embraced as good. All prostitutes are now expected to register with their local chambers of commerce. Prostitutes working in brothels and brothel-owners alike will now be expected to pay income tax. Moreover, the new openness means that local authorities are empowered to apply a range of health and safety regulations to brothels. But some of the new regulations make no real sense in the context of sex work. For example, brothels must have special no-smoking zones, as well as separate showers and changing rooms for women and men -- leading one former prostitute to comment: "Separate changing rooms… in a brothel?" [43] As another example, the law now requires that there be a pillow in each room used for the purpose of selling sex. As one brothel owner noted: "You don't want a pillow in your room. It's a murder weapon." [44]

A high degree of non-compliance with the new laws is expected. One prostitute suggested that the government should "sort out the illegal immigrants and just leave us to get on with things the way we always did". A representative of Amsterdam's Prostitute Information Centre commented: "Prostitution will always be a little bit hidden and will have to play a little bit by its own rules. That is part of its attraction." [45]

However, the new legal regime seems to have reduced the scope of sex work in the Netherlands. The "window" trade in Amsterdam has been reduced because the new legal approach has begun to weed out child prostitutes and illegal migrant workers. An estimated 35% of brothels and clubs have closed because they do not want to pay taxes

or adhere to the new regulations. [46] Ironically, this may mean that underage sex workers or those without immigration rights may be forced to abandon the relatively safe working environment of brothels for illegal sex trade on the streets.

Here is one assessment of the impact of the new law:

> *In The Netherlands, some sex workers do not wish to register their employment and many cannot because of other illegalities: they may be under age, use drugs illegally or work as illegal immigrants… Therefore, a significant proportion of sex workers in The Netherlands are likely to be excluded by the new system and may be adversely affected by this legislation insofar as they have to move underground and become effectively invisible to the authorities. Early reports suggest that mobility within The Netherlands and in neighbouring countries has increased as a direct result of the new policies being implemented in cities like Amsterdam. As far as harm minimization and health promotion are concerned, this new mobility and increasing invisibility causes social and health workers acute problems of access to sex workers. Moreover, vulnerable groups are likely to experience increasingly bad working conditions, with little concern from managers or clients about their occupational health and safety. In this way, a two tier system is being created with a legal sector, in which workers may win the same employment, civil and other rights as all other nationals of the European Union, and an illegal sector, in which workers are excluded from civil society and have few rights to health care, social benefits or protection at work, and little recourse to the law should they suffer abuse.*
>
> *… Although workers in legitimate businesses in The Netherlands will have better access to health care and promotion, a large proportion, probably the majority of sex workers, is likely to 'disappear'. …[S]ex workers will seek to avoid regulation or prosecution. This makes it more difficult for health workers to make contact with sex workers, and health promotion and care will suffer. According to Petra Urban, Chair of De Rode Draad, Dutch and EU sex workers recognize the benefits which accompany the new legislation such as better working conditions and a real opportunity to report violence and abuse, but they are also concerned that in return they may lose their anonymity. Illegal sex workers, whose presence has been tolerated until this point, are likely to be driven underground for fear of prosecution and/or deportation.* [47]

Trafficking in women for the purpose of the sex trade remains an offence in the Netherlands, and penalties have recently been increased. The prison sentence for trafficking is now six years, with an increase to ten years where the trafficked human being is under the age of 16 years or where there has been serious physical violence. [48] Victims of trafficking who are forced to work as prostitutes are allowed temporary residence in the Netherlands to give them a chance to access social, medical, legal and financial assistance. [49]

There have been criticisms that the new legislation that legalises sex work applies only to citizens of the European Union, and that foreign migrant prostitutes continue to be subject to unfair and violent treatment by brothel owners and pimps. Despite the fact that employment of such migrant workers in any capacity would be illegal due to lack of proper documentation, the government has made special efforts to ensure that migrant

prostitutes cannot be employed in the Netherlands. In times of worker shortage, migrants can normally apply for work permits. However, an exception to this rule has been created which denies the possibility of permit application by sex workers from outside the EU under all circumstances. [50] However, a recent case decided by the European Court of Justice has altered this situation, at least in respect of some countries (see box below).

There are an estimated 25 000-30 000 sex workers in the Netherlands, which is equal to about 1.6 sex workers for every 1000 members of the population. [51] Most, about 80%, work in clubs or "windows" -- the display windows fronting on public streets (backed by a private cubicle for the actual sexual transaction) that have become famous in Amsterdam's "Red Light" district. Street prostitution is rare, and banned by some local by-laws. In the larger cities, some 40-60% of sex workers are foreigners. [52]

PROSTITUTION AND THE EUROPEAN UNION
"Prostitutes Win Case Before European Court Of Justice"
Kathleen Knox, Prague, 22 November 2001

The European Court of Justice has ruled that prostitutes from Eastern European countries can work legally in any European Union country -- as long as they are self-employed and prostitution is tolerated there.

The case was brought before the European Court of Justice two years ago by four Czech and two Polish prostitutes working in the Netherlands. The women had rented "window rooms" in Amsterdam's red-light district -- a common practice that lets prostitutes sit on display to attract passing customers. They declared their salaries and paid tax on their monthly earnings of some 1,800 guilders, or $720.

But then, four years ago, the Dutch Justice Ministry refused to grant them work permits. The ministry argued that prostitution is not a socially acceptable form of work and therefore not a regular job. The authorities also doubted that one of the women was genuinely resident in the Netherlands, since she worked there for 10 days each month and returned home to the Czech Republic for the rest of the year.

The women filed a lawsuit with a Dutch court, which found in their favour. The court pointed out that the authorities had earlier given a residency permit to an Italian prostitute in order to allow her to work and had therefore recognized prostitution as an economic activity.

But the Justice Ministry again turned the women down. This time, they took their case to the European Court of Justice, the court of the European Commission.

Poland and the Czech Republic have association agreements with the EU that allow their citizens to legally set up businesses there. Poland signed its agreement in 1993, the Czech Republic in 1994. The other EU candidate countries with such agreements are Slovakia, Hungary, Bulgaria, Slovenia, Romania, Estonia, Lithuania, and Latvia.

If the agreements apply to other trades and services, the women argued, why not to prostitution, which the Netherlands has long tolerated and last year even legalized?

The court agreed.

The judges said prostitutes from candidate countries can work in any EU member state where prostitution is tolerated -- as long as they are genuinely self-employed, have the means to set up their business, and have a reasonable chance of success.

The judges said it is up to member states to decide whether to allow the practice of what might be considered an immoral activity.

In their judgment, the judges said: "The activity of prostitution pursued in a self-employed capacity can be regarded as a service provided for remuneration."

Radio Free Europe, http://www.rferl.org/nca/features/2001/11/22112001080356.asp

SEX SLAVES FOR SALE
***The Namibian*, 19 November 1999**

Highly organised Dutch criminals and syndicates in collaboration with some Africans, are tricking and trapping young African teenage girls into The Netherlands' booming prostitution and pornography industry.

The problem came to light in 1996 in the southern city of Eindhoven when the centre for young asylum seekers (unaccompanied minors) first raised the alarm. The situation has since spun out of control.

Between 1993-96 over 150 girls disappeared from the centre, most of them Nigerians. According to the Central Organisation of Asylum Seekers more than 400 girls from Nigeria, Liberia, Sierra Leone and Sudan have disappeared from asylum centres in the past three years. The disappearances were suspected to be linked to the teenage prostitution industry in The Netherlands.

This prompted the Dutch NGO, Terre des Hommes Nederland, to commission the Nigerian Democratic Movement in The Netherlands (NDMN) to carry out an investigation into the disappearance of the girls. They came up with the most disturbing news: the girls had become sex slaves in the country's red-light districts.

Further investigations revealed that at least 400 girls aged under 18, mostly Nigerian, have been smuggled into the country and forced into prostitution since 1996. In The Netherlands, the demand for these girls is particularly high and is growing. To match the demand, organised gangs and racketeers have turned to their foreign contacts (mainly West Africans) to supply these girls.

Most of the girls are purchased from Nigeria through dealers who sometimes are ex-prostitutes themselves (referred to as 'madams') or Nigerian drug dealers, self-made business men/ women and lots of ex-convicts. These criminal groups supply girls across Europe to centres in the Netherlands, Belgium, Italy, Greece. Germany, Cyprus and Switzerland.

The innocent girls are lured into the ring by promises of better jobs and a good life in Europe. They come mainly from poor families with no or little education. The dealers prefer young girls, not only because of the demand for them in Europe, but also because they are easy to manipulate and would engage in any type of sex the Europeans demanded of them.

The fate of the girls is decided on the day of their recruitment. Through local contacts in Nigeria, the girls are recruited based on their beauty and age, and then sold to a dealer for 10 000 Naira (roughly N$600). The dealers convince the victims and their parents that a life of bliss and good jobs awaits them in Europe.

Before leaving for Europe, the girls are subjected to voodoo rituals to ostensibly protect them from misfortune in Europe, but in reality it is to instil fear into them and make them even more submissive.

Once in Europe, the girls are forced to sign contracts promising to make as much as N$600 000 from prostitution, of which 90 per cent goes to the trafficker who smuggled them into Europe. In most cases, they are warned that their lives and those of their relatives back home in Africa would be in danger if they did not honour the contracts. Thus frightened out of their wits, the girls virtually become sex slaves. They are raped, forced to have unprotected sex, take part in sexual experiments and perform vulgar acts including having sex with dogs which their clients put on film and sell for a profit.

To get the girls into Europe, the traffickers use many ways – the most common is borrowing passports from Dutch-Ghanaian, Dutch-Surinamian or any Dutch-African teenage girls in the Netherlands. The trick is to recruit look-alike girls who fit the photos on the passports.

Another way is buying visas directly in Lagos. According to the NDMN, dealers pay about N$18 000 for a tourist or transit visa. The visa users do not have to go to the embassy in person. As soon as the money changes hands, the visas are issued.

The dealer (could be female or male) and his/ her new recruits embark on the journey to Europe. The safest route is through Ghana, Togo and Cote d'Ivoire; then to Spain, France or Portugal and by either train or plane to The Netherlands.

Those of them who arrive at Amsterdam's Schipol Airport usually have their passports taken away on the plane by the dealers. They then land at Schipol without travel documents and make up stories (following the dealers' script) that they are fleeing from conflicts in their home countries and want to seek political asylum.

Because of their tender ages and travelling unaccompanied by adults, the immigration authorities send them straight to special asylum centres for minors while they investigate their stories.

Once at the centres, the girls get reunited with the dealers. Soon they are confronted with the harsh realities of their new lives and broken promises. In no time, they disappear from the asylum centres into the den of the dealers where they are taken through rudimentary "training" in prostitution and weird sexual acts. Pornographic footage of bizarre sex acts is shown to them as part of the mental preparation for the "job" ahead. Their first "workplaces" are usually in brothels, on the streets, private bars, private homes and restaurants.

Then comes pay day. They pay a percentage of their weekly earnings to the "Madams" or the owners of their "workplaces".

If they refuse to "work", they are usually beaten up, abused verbally and physically. Some are re-sold to "Madams" and brothels in other European countries after gaining the necessary experience for the "job". According to NDMN estimates, the girls are asked to pay back between N$120 000 and N$300 000 to the dealers.

The majority of these girls stay silent. Those who brave the storm and speak out are threatened with death. Since April this year, seven people have been jailed for smuggling some of the girls into The Netherlands.

The Dutch government itself has come under criticism recently for failing to order detailed investigations into the disappearance of the girls from the asylum centres.

The Netherlands has a reputation for being liberal on the "sex trade" which is due to be legalised soon. Anyone visiting Amsterdam can pick up a brochure on "sex services" in the city from kiosks.

When the story of the African teenage prostitutes broke in late September, the Dutch government (more out of embarrassment than a rethink of its liberal attitude to prostitution), dispatched investigators to Lagos to look into the situation – and the outcome of the investigation has not yet been made public. – *courtesy NewAfrica.*

6.5 SWEDEN

"In 1998, Sweden – some twenty years after decriminalisation – voted to RECRIMINALIZE prostitution, unilaterally targeting the male customers."

Elizabeth Bernstein, "Why can't the US be like Sweden (or Holland) II? Europe as social policy utopia: Observing sex worker policies in Sweden and the Netherlands", Europe 2020: The 12th International Conference of Europeanists, organized by the Council for European Studies, http://www.europanet.org/conference2000/abstracts/bernstein.htm, 2000.

Currently, there are an estimated 2 500 prostitutes in Sweden, with about 650 of these being street prostitutes. [53] In a population of only 8.5 million, this translates into 0.3 sex workers for every 1 000 persons. [54] An estimated 125 000 men purchase sexual services in Sweden each year. [55]

Sweden has recently taken a unique and controversial legal approach to sex work in the *Act Prohibiting the Purchase of Sexual Services*, which took effect on 1 January 1999. The legislation is brief and states:

> *A person who obtains casual sexual relations in exchange for payment shall be sentenced - unless the act is punishable under the Swedish Penal Code - for* ***the purchase of sexual services*** *to a fine or imprisonment for at most six months.*

The Act further provides that an attempt to purchase sex is punishable under the penal code pursuant to the provisions dealing with attempts at committing crimes.

The penal code also provides further offences related to sex work, including trafficking [56], promoting or exploiting sex work [57], and sex with and involving minors. [58]

The uniqueness of the law lies in its criminalisation of the client's act, while the sex worker is exempt from penalisation despite his or her participation in the exchange. This approach has created a new model for sex work legislation, as Sweden is the first country in the world to criminalise *clients only*.[59]

According to a statement provided by the Swedish Government offices, all forms of sexual services are included "whether they are purchased on the street, in brothels, in so-called massage-institutes, etc". [60]

Prior to 1999, Swedish legislation on prostitution enacted in the early 1970s focused on penalising pimping and pandering activities, while decriminalising the prostitute-client transaction. [61] This strategy was complemented by the provision of government-funded social services to those wishing to leave the profession. This aspect of the pre-1999 strategy on sex work played such an important role that the former approach has been termed a "social service-centred approach" to decriminalisation. [62]

The enactment of the new legislation was a surprise to the international community, given that Sweden was a leader in sexual liberalisation in the 1970s. Furthermore, the legislation was introduced by social democrats as opposed to right-wing conservatives. [63] An increase in migrant prostitutes from developing countries provided the impetus for Sweden to reconsider its approach to sex workers in the early nineties. A 1993 investigation committee was created when police noted an increase in women entering Sweden to participate in sex work. [64] Migrant sex workers were particularly noted as coming from developing regions such as Eastern Europe, Latin America, West Africa, and South-East Asia. [65]

The Swedish legislation embraces the notion that sex work inherently exploits women and prohibits the act through criminalisation, but without punishing the prostitutes who are viewed as the victims. Sweden can be viewed as taking a form of an **abolitionist approach**, by means of client criminalisation, thus attempting to combine moral disapproval of prostitution with sympathy for the plight of the prostitutes themselves. [66]

This perspective is evident in a statement provided by the Government of Sweden.

> *This new prohibition marks Sweden's attitude towards prostitution. Prostitution is not a desirable social phenomenon. The government considers, however, that it is not reasonable to punish the person who sells a sexual service. In the majority of cases at least, this person is a weaker partner who is exploited by those who want only to satisfy their sexual drives...*
>
> *It is also important to motivate prostitutes to seek help to leave their way of life. They should not run the risk of punishment because they have been active as prostitutes.*
>
> *By prohibiting the purchase of sexual services, prostitution and its damaging effect can be counteracted more effectively than hitherto. The government is however of the view that* ***criminalisation can never be more than a supplementary element in the efforts to reduce prostitution and cannot be a substitute for broader social exertions.*** [67]

It is notable that the *Act Prohibiting the Purchase of Sexual Services* was enacted in conjunction with a number of statutes dealing with violence against women, as part of a general effort to strive towards greater gender equality. [68]

Sweden's new approach has not come without criticism. In a paper presented at the World Action Forum for Sex Work Rights, on 26 May 1998, Petra Ostergren attacks the new legislation (then in proposed form) for its traditional anti-prostitution feminist viewpoint and laments the exclusion of sex workers from discussions. She writes:

> *The new Act will make the situation worse for prostitutes. The streetworkers must find other ways to find their customers and once again become dependent on pimps that probably will not have high respect for them. They will be exposed to more abuse and have fewer opportunities to work towards preventing it. The arbitrary and illogical division of sex-related work that will be affected by the Act means that prostitutes will be alienated to an even greater extent from other forms of sex-related work which are still considered to be fairly clean - pornography, stripping, or selling sexual services on the phone. This will make it more difficult to start up common networks and pressure groups, since these parts of the sex industry will need to distance themselves from prostitutes so as not to risk being subjected to negative legislation themselves. The social stigmatization and prejudism* [sic] *will deepen. And on a very basic level - how shall they support themselves? They are forced to get welfare, and those* [sic] *money are not sufficient to live on.*
>
> *Sexworkers in Sweden are deeply worried about the situation. Not many others. The least worried is the women's movement. They are celebrating.*
>
> *When politicians are confronted with the negative effects of the new legislation they admit that they are aware that prostitution will not end because of this law. Sometimes they can even admit that it might worsen the situation for prostitutes BUT that we live in a society that thinks that prostitution is not a desirable social phenomena, and that this is a law that will be a marker of this, as well as a marker towards the men who want to "use" women. What the sellers and buyers of sex think of this marker does not seem to be relevant. People in favour for this Act frequently compare it with the law against child abuse (it is illegal to hit a child in Sweden) that was passed some years ago.*
>
> *So please do not believe feminists and politicians that claim that the sexworkers of Sweden welcome this law. They are lying.* [69]

Ostergren also makes the following criticisms of the current Swedish situation:

- Prostitutes are not protected by labour legislation. Although they are not illegal, they cannot pay taxes or register their businesses. This means that they are not eligible for the social insurance and retirement benefits which apply to other forms of employment.
- The laws on pimping force prostitutes to work alone, rather than in co-operatives or groups.
- Prostitutes are at risk of having their children put into the care of social authorities, as they are not considered suitable parents.
- Social stigmatisation remains, meaning that “no one can come out as a prostitute since that would be a complete social suicide”. [70]

Although Ostergren's comments may represent the attitude of a small minority in Sweden, her lament echoes that of sex work organisations in other countries which are striving for greater legitimisation of sex work.

Inherent flaws with respect to effective implementation of the new law have also been highlighted. In her comparison of Swedish and Dutch models, Elizabeth Bernstein states:

> *The first problem in Sweden is that prosecutors, police, and government officials say that the law is impossible to enforce, given that entrapment is illegal. For the police, the law has even become a bit of a joke, since despite their generous budget, they say that is impossible to make arrests. Since January, there have been only two convictions, both of whom apparently confessed after being literally caught in the act. (In one of the cases, the man went to the police himself after he claimed that a prostitute stole his car radio).* [71]

Socialstyrelsen is Sweden's National Board of Health and Welfare. The Board is responsible for official statistics on social services, public health, health care and medical services, and causes of death. Socialstyrelsen prepared a report of their findings after surveying the field of commercial sex work subsequent to the implementation of the new legislation. The organisation "distributed questionnaires to local police authorities, and police districts, all municipal social services, a selection of restaurants, hotels and similar companies, and the local offices of the Swedish Federation for Gay and Lesbian rights. A survey of Internet web sites related to prostitution was carried out and interviews were conducted with key informants in the police, social services and healthcare services, as well as with a number of purchasers of sexual services." The study did not find any radical changes in the profile of sex work as a result of the new legislation. However, it did note that "apart from the temporary disappearance of street prostitution, the meeting places and contact methods associated with hidden prostitution have increased somewhat." For example, Internet-based prostitution and prostitution carried out in apartments, restaurants and hotels appeared to have increased. However, the report notes that it is not possible to say if such changes "are solely the result of the legislation." It is clear that the number of known prostitutes has decreased in the three largest Swedish cities, while there have been no significant differences in the country as a whole. The analysis suggests that the change in the larger cities indicates that the law has most affected street workers who operate mainly in these areas.

The report concludes as follows:

> *To sum up, both positive and negative experiences of the effects of the prostitution law are expressed in the interviews with key informants within the police and social services. Most of them are in favour of the legislation. This is seen as an important point. However, many would like to see more resources for helping and providing treatment for both prostitutes and their customers. One obstacle pointed out by the interview subjects is the lack of resources and the fact that street prostitution is prioritized in this context, placing work involving other forms of prostitution at a disadvantage.* [72]

The new law may be having the effect of driving sex workers further underground. Many former street prostitutes have gone high-tech, now using cell phones and the Internet to

contact clients. Others say that they must work later and more irregular hours to contact clients without the scrutiny of police. Some streetworkers may be moving "indoors", but the vast majority of sex work in Sweden was already of the "indoor" variety. [73]

Another assessment of the impact of the new law made the following findings:

> *… the first visible effect of the Swedish legislation was an immediate tenfold decrease in the numbers of women working visibly on the streets in cities such as Stockholm and Gothenburg, from about 20-30 women per night to 1-3. According to reports, numbers are slowly increasing again but they have not reached the previous levels. This reduction in numbers is unlikely to reflect a move out of sex work altogether. It is more probable that both workers and customers have chosen less visible ways of making contact, so that the policy has led to a re-organisation of the sex industry. It is interesting to note that the numbers of male clients attending the KAST project, a project which offers advice, support and counselling to the buyers of sexual services, have not changed over the last year.*
>
> *In Sweden, during the first nine months since the new legislation was introduced, three clients were found guilty and fined. The women involved in these cases have not had to appear in court and have had their anonymity preserved. Both the introduction of the new law and the prosecution of the clients have elicited intense media interest both from within Sweden and around the world. Indeed, at one point immediately after the law came into effect, the streets were apparently the focus of frantic activity but from photographers and the media rather than sex workers and their clients.*
>
> *Crucial to the new Swedish policy has been the focus on women as victims rather than criminals. It is reported that this approach has encouraged collaboration and communication between the police and social services, resulting in more sensitive treatment of sex workers, who have felt happier reporting crimes to the police. Moreover, it is reported that there has been a decline in recruitment, particularly of young prostitutes, into the industry. Social support is available in the same way to sex workers as it is for other non-prostitutes (for example, in finding alternative work), unlike in other countries.* [74]

These assessments probably come too soon after the changes in the law to be a true indicator of the effect of the new legislative scheme. However, they do provide some perspective into the positive and negative impacts of Sweden's unique approach.

6.6 NEW ZEALAND

> *"This bill replaces moralistic law with fair law."*
> Tim Barnett, MP, sponsor of Prostitution Reform Bill, First Reading Speech

New Zealand is currently in the process of considering **a bill which would decriminalise prostitution**.

Prostitution in New Zealand is currently governed by several statutes [75] Although prostitution *per se* is not considered to be a criminal offence, certain activities associated

with the sex industry are illegal. For example, the *Summary Offences Act of 1991* prohibits soliciting. According to section 26 of this Act, it is an offence for a sex worker to offer sex for money in a public place, but it is not an offence to pay or to offer to pay for sex. This means that the sex worker can be convicted of soliciting, but the client has committed no offence. [76] The *Crimes Act of 1961* prohibits brothel keeping [77] and living off the earnings of prostitution. [78] In addition, the *Crimes Act* makes it a criminal offence to procure a woman or girl to have sexual intercourse with a man other than her husband. [79] Finally the *Massage Parlours Act of 1978* makes provision for the licensing of a massage parlour, but does not make any reference to commercial sexual services, which has caused much confusion.

The current laws on prostitution have been widely criticised in New Zealand, on the following grounds:

- The law as it now stands applies double standards of morality, in that sex workers can be arrested and convicted for soliciting, whilst the client remains untouched.
- The law facilitates the exploitation of sex workers. When massage parlours and escort agencies apply arbitrary and unfair work rules and practices, sex workers have no access to legal redress. Without legal support, sex workers in such environments are unable to refuse clients, and may be easily coerced into providing services they may not wish to provide.
- The current law creates barriers to sexual health education.
- The criminalisation of prostitution-related offences affects a sex worker's ability to obtain alternative employment, travel and obtain loans. The stigma of sex work effectively locks sex workers into the trade.
- The absence of legal support leaves sex workers vulnerable and with little protection. [80]

As a result, a male MP, Tim Barnett, has put forward a private member's bill called the *Prostitution Reform Bill*. According to Barnett:

> *The Bill is the product of a decade of discussion by politicians from across the political spectrum, supported by the New Zealand Prostitutes Collective and a coalition of women's and health organisations. It seeks to decriminalise soliciting and remove the rest of the industry from a legal grey area. It focuses on raising standards in the sex industry, with such innovations as obligatory promotion of safe-sex practices and outlawing of coercion of sex workers*. [81]

The Bill has five major aims:

- to decriminalise prostitution
- to safeguard the human rights of workers in the sex industry and protect them from exploitation
- to promote the welfare and occupational health and safety of sex workers
- to create an environment which is conducive to public health, and
- to protect children from exploitation in relation to prostitution. [82]

The existing sections of the legislation that specifically criminalise prostitution would be repealed by the *Prostitution Reform Bill*. The bill does not provide for their replacement, by other provisions, although it does make child prostitution illegal.

Sex worker rights would be protected by a provision making contracts for the provisions of commercial sexual services legally enforceable [83], and by a provision making coercion a crime:

> *(1) No person may coerce or attempt to coerce any person into providing commercial sexual services.*
> *(2) No persons may coerce any person into surrendering the proceeds of commercial sexual services provided by that person.* [84]

Coercion is given a broad definition, which includes supplying or withholding a controlled drug, to protect drug addicts from being victimised through their addictions.

The bill would also give sex workers an explicit right to refuse "to provide any commercial sexual service or, where the provision of that service has commenced, to continue to provide that service". No agreement which attempts to override this right of refusal will be enforceable. [85]

The bill proposes some unusual regulations for brothels, aimed at the promotion of safer sex practices. Anyone who operates a brothel or who otherwise has effective control of a business of prostitution would be required to

- take all practical steps to ensure that clients use condoms;
- provide information to sex workers and clients on safe sex practices and
- display information on safe sex practices prominently.

Brothels would be also explicitly prohibited from implying that a sex worker is free of sexually transmitted diseases on the basis that the sex worker has received a medical examination. [86]

Any form of involvement with commercial sexual services by a child (a person under the age of 18) is illegal, by everyone but the child in question. This would include the client, anyone involved in arranging the transaction or anyone who profits directly or indirectly. The law also specifically provides that it is *no defence* to have believed, reasonably or otherwise, that the child was over the age of 18. [87] (The more common approach is to allow such a defence.)

The decriminalisation of prostitution by this bill would mean that general labour legislation, such as the Health and Safety in Employment Act, would apply to sex workers.

It has been argued that the new bill acknowledges the power imbalance between sex workers and others involved in the sex trade. Sex workers in New Zealand are often young and without much life experience. They are increasingly new to the country, and may speak little or no English. Clients, and the operators of brothels and massage parlours, tend to have a higher social status. Thus, sex workers are often in a vulnerable negotiating position. They are also currently afraid to seek protection from exploitation, or to access health and other services, because of fear of prosecution. [88]

The *Prostitution Reform Bill* was introduced into Parliament on 21 September 2000. It has inspired a great deal of debate. Public attitudes seem to be somewhat contradictory:

> *…New Zealanders in general, while having little sympathy for sex workers, have tended to take a pragmatic view of sex work and the law. In response to the Department of Health's benchmark survey of public attitudes in 1986, 60% of respondents agreed that "prostitutes have only*

themselves to blame if they catch diseases", but 56% also agreed that "much more should be done to help prostitutes so they can avoid catching diseases". 65% agreed that "if we allow massage parlours, then we should be concerned for the health of the people who work there". Furthermore, 51% agreed with legalising prostitution if it would cut down on the spread of AIDS. Only 28% disagreed. [89]

As of April 2002, the Bill was still being considered by a Select Committee of Parliament.

6.7 AUSTRALIA

Australia operates under a parliamentary system in which powers are divided between the federal government and the states and territories. Each state is given the power to self-regulate and legislate a wide array of areas, including criminal law. As a result the laws governing prostitution in Australia differ from one state to another.

Australia's eight states and territories have a range of approaches to prostitution, with most jurisdictions having taken steps towards decriminalisation, or at least a greater degree of legalisation. [90] Australia was not a party to the 1949 United Nations Convention Against Trafficking in Persons, [91] and some of its states were international leaders in the move to legalise the sex industry. The Australian hospitality union was the first in the world to unionise legal sex workers and escort agency employees. [92]

This section will not survey the law in all Australian states, but will rather focus on the contrasting legislative initiatives currently in effect in the states of Victoria and New South Wales. [93]

6.7.1 Victoria

Prior to the 1980s there were many brothels throughout Victoria operating under the guise of massage parlours. Public complaints about the "brothels" and their attraction as "immoral havens for drugs and criminals" led to a report by the Victorian Government with respect to the location of massage parlours in Melbourne. [94] In 1984, the newly elected Labour Party responded to the review by **legalising prostitution in brothels**, provided a valid permit was obtained, **while leaving street prostitution illegal**. [95]

Legalisation came in the form of the *Victorian Planning (Brothels) Act of 1984*. The new legislation was part of a strategy of "harm minimization", meant to target "a highly visible massage parlour trade, … increasing street prostitution, criminal involvement and drug use…[as well as] sexually transmitted diseases." [96]

The legalisation process created unforeseen problems which had to be remedied.

Ongoing adjustment to legislation became necessary as state policy makers attempted to deal with a myriad of unforeseen issues that are not addressed by treating prostitution as commercial sex – child prostitution, trafficking of women, the exploitation and abuse of prostituted women by big business. The harms resulting from the sex industry constantly change and develop and have to be constantly readdressed. [97]

The laws were reviewed in the early nineties and replaced by the *Prostitution Control Act of 1994*, which came into effect on 14 June 1995. A comprehensive licensing system

was established for brothels and a board was set up to administer the licensing process. Accompanying amendments were made to the land planning regulations of Victoria under the Planning and Environment Act of 1997.

The *Prostitution Control Act* is a lengthy piece of legislation which is divided into seven parts. Part I, the preliminary part, includes the purpose of the legislation which is "*to seek to control prostitution in Victoria" and "to create a new offence related to child sex tourism".* This Part of the law includes a comprehensive definition section, dealing with such terms as "sexual services" in detail. [98]

Part 2 deals with Offences Connected with Prostitution, including the criminalisation of child prostitution, provisions making it a crime to force a person to become or continue to be a prostitute, and provisions controlling advertising by prostitution service providers. [99] Living on the earnings of a prostitute is illegal, but only if the prostitution service provider does not have the appropriate license or permit. [100] It is also an offence to enter or leave an unlicensed brothel. [101] Interestingly, offensive behaviour towards prostitutes is an offence:

> *A person must not in or near a public place with the intention of intimidating, insulting or harassing a prostitute--*
>
> *(a) behave in an indecent, offensive or insulting manner; or*
>
> (b) *use threatening, abusive or insulting words.*[102]

It is also an offence to permit a prostitute infected with a sexually-transmitted disease to work in a brothel or similar establishment, [103] or for a prostitute to work when he/she knows that he/she is infected with a sexually transmitted disease. [104] Notably, there is no similar offence applicable to clients who obtain sexual services when they know that they are infected with a sexual transmitted disease.

Street prostitution remains illegal in Victoria. [105] One cannot solicit or accost another person or loiter in a public place for the purposes of prostitution. [106] The penalties are harsher if the solicitation occurs near a place of worship, hospital, school, or other public place regularly frequented by children. [107]

Part 3 of the Act deals with the licensing system. It is worth mentioning some of the requirements set out in this portion of the Act as it demonstrates the numerous issues which must be addressed when prostitution is legalised.

A prostitution service provider (otherwise known as a brothel or escort agency) must have a license or permit in order to operate. Exemptions are made for small owner-operated businesses provided they fulfil the other relevant legal requirements. The Business Licensing Authority ("the Authority") is the body named by the Act to deal with applications for the licensing of brothels. Any person over the age of 18 can apply for a license to carry on business as a prostitution service provider. The application is to be made in writing, on a prescribed form. Certain other information, such as the name and address of the applicant and the owner of the premises in question, must also be submitted. [108] The applicant must even consent to having his or her fingerprints taken. [109]

The Authority must refuse the license if the applicant is "unsuitable to carry on business as a prostitution service provider" or if the applicant (or an associate person or corporation) has committed certain specified offences within the last five years.

Considerations to determine suitability include the applicant's character, whether the applicant's associates are of good character, and whether the applicant has adequate financial resources. The applicant cannot be denied a license merely on the basis that he or she is or was a prostitute. There are other provisions dealing in detail with amendments, suspensions and cancellations of licenses. A license fee must be paid annually.

There is a requirement that the brothel be supervised at all times by a manager who must be personally present at the brothel at all times when it is open for business. The manager must be approved by the licensing board.

A very detailed process of inspection and information production is set forth in the legislation, as a mechanism for ensuring compliance with the Act. There are also provisions dealing with the powers of police to enter a licensed or unlicensed premises.

Disciplinary action can occur against the licensee if the prescribed conditions of operation are breached. This is done through a tribunal which has the power to place added conditions on the license, or to suspend or cancel it. Licences are automatically cancelled if a license-holder is convicted of a drug offence, an offence relating to illegal immigration or various other crimes. [110]

One and two-person brothels operated by the sex workers themselves are exempted from the licensing requirements, as a means of encouraging “small owner-operated businesses”. [111]

Part 4 of the Act deals with "Planning Controls on Brothels". Matters such as the issuing of permits for land development or use for brothels are covered in this section. One of the relevant considerations is whether or not the operation of the proposed brothel will in any way affect children in the neighbourhood. [112]

The remainder of the Act deals with ancillary issues such as the consequences of running an unlicensed brothel and miscellaneous offences.

In terms of regulations issued under the Act, all sex workers employed in legal brothels must register and have regular health check-ups for HIV/AIDS and other STDs. [113]

Analysis of legalisation in Victoria

In 1997, the Attorney-General for Victoria said that the state’s prostitution industry was “a highly regulated, profitable, professional and incredibly well-patronised industry … that pays taxes.” [114] The Victorian government received almost 1 million Australian dollars in licensing fees from legalised prostitution between 1995 and 1998. [115]

As of 1999, there were an estimated 4 500 women and girls working as prostitutes in Victoria, out of a population of 3.5 million people. Each week Victorian men spend about $7 million on prostitution, with the legalised industry turning over more then $360 million annually. [116] It appears that sex work has increased in Victoria since the legalisation process began, instead of decreasing as many had hoped:

> *An investigative report by Victoria's Age newspaper in 1999, found an increase in the number of legal brothels from 40 a decade ago to 94 today, along with 84 escort agencies. Ironically, the real growth area is in the illegal sector. The over 100 unlicensed brothels outnumbered the*

'legitimate' sex businesses in 1999 and had trebled in 12 months. (*The Age,* 1 March 1999) [117]

The sex industry in Victoria is also reportedly expanding into new areas – such as tabletop dancing, peep shows, phone sex and pornography. [118]

Sex work has become so acceptable in Victoria that there an annual trade show in Melbourne called SEXPO where promoters of brothels, strip clubs, and other "adult" forms of entertainment showcase their female "products". One brothel has garnered media attention by showing special attention to the needs of disabled persons seeking commercial sex. [119]

One positive impact of legalisation has been the fact that it has opened the door to unionisation, with the goal being to eliminate exploitative work practices in the sex industry and to ensure that the laws on basic working conditions are applied (such as sick pay, annual leave, maternity leave and workers' compensation). Unions can also play a role in monitoring brothels and other sex industries. [120]

There are a number of criticisms of the approach to legalisation taken in Victoria.

The goal of eliminating the involvement of organised crime in sex work has not fully been achieved by legalisation. Although former pimps with criminal convictions are forbidden from operating legal brothels, such people continue to control brothels through front organisations.

The sex industry is dominated by large operators. Most brothels are located in expensive, capital-intensive buildings, and few sex workers have been able to set up businesses themselves. Brothel operators reportedly demand 50%-60% of the income of the sex workers based there. [121] It has been persuasively argued that Victoria's legalisation has not helped to remove sex workers from the control of third parties, but has in fact made them more vulnerable to exploitation by third parties:

> *The Victoria experiment has failed for two reasons. First because municipalities have complete control over giving or refusing licenses, the number of legal brothels has been sharply limited as communities seek to limit the existence of prostitution in their areas. This has caused a bidding war to erupt around the small number of permits available, guaranteeing that small and individual operators will be unable to practise legally, because they cannot afford the inflated licensing prices. As a result, there is a shortage of legal employment for the prostitutes in Victoria, forcing many of them to continue to practice illegally.*
>
> *Secondly, because legal prostitution has been limited to a very few businesses, brothel owners have gained extraordinary power over their staff as the supply of prostitutes wishing to work legally greatly exceeds the demand. This has translated into abominable working conditions for prostitutes "fortunate" enough to get legal employment.* [122]

It has also been argued that the legal regime has not advanced the goal of safe sex. A study by the Prostitutes Collective in Victoria found that one out of five clients continue to request unsafe sex. [123] Another study in 1998 found that 40% of clients failed to use condoms. [124] It is also asserted that the requirements for registration and mandatory health checks have failed to achieve their purpose. Women do not wish to identify

themselves as sex workers, so they are likely to avoid registration and shun health services. [125]

Attempts to address the health problems in sex work were made with the enactment of the *Brothel Health Regulation Act* in 1990. This law attempted to empower sex workers by giving them the right to refuse clients. It also required brothel owners to supply free condoms, lubricants and educational material. However, these amendments have not been effective because they place the onus on the sex worker to complain if the brothel owner fails to comply. It is reported that "those that do complain are physically and verbally abused by their employers and then 'sacked'." And the brothel owner always holds the trump card because sex work outside of brothels is illegal. [126]

The fact that street workers are, for the most part, left out of Victoria's legalised scheme has left them facing many of the same problems they experienced prior to legalisation, and has perhaps marginalized this type of sex worker even further. One Australian sex worker notes that "legalisation includes heavy criminalisation of prostitution that occurs outside the legal framework; thus the problems of illegal prostitution live on even though it's been legalised." [127]

Furthermore, despite the legalisation of prostitution in brothels in Victoria, it appears that street prostitution continues to thrive, partly because this form of sex work is linked to wider social problems such as homelessness or drug addiction. Some prostitutes work on the streets because they are underage, or because they do not wish to work for a brothel keeper. [128] A study done by the Sacred Heart Mission in Victoria found that of the 65 women they had contact with in one month, 35 were prostitutes.

> *Of these, all had been sexually abused as children. All were homeless or in unstable housing. None had ever worked other than in prostitution. All had left school early. All had been removed from home as children or had other contact with child welfare agencies. Of 15 whose mental state was known, 13 had been diagnosed as mentally ill. Twenty-two were current or former heroin users.* [129]

Those sex workers engaged in street prostitution may be more vulnerable to violence and harassment, and because street work remains illegal they cannot turn to police for protection. [130] A 1994 study of 24 street sex workers in Melbourne found that *all* had experienced abuse at the hands of clients (such as rapes, beatings and robbery), and *all* had been coerced to have sex without a condom. [131]

Since street walking is illegal and the operation of smaller one or two person-brothels is more difficult (because of the legal red tape involved), it is next to impossible for sex workers to be self-employed. Instead, to be legal they must be employed by others, which limits their ability to control their own lives. [132]

Those who work illegally, outside the area of "acceptable prostitution", are even more marginalised than before. Because they are viewed as having "chosen" the route of illegality, they are sometimes subjected to greater harassment and violence by police, clients and pimps. [133]

Finally, legalisation of sex work may lead to an increase in trafficking at an international level. Some Victorian businessmen are reportedly involved in a lucrative international sex trade controlled by organised crime syndicates. [134] However, as will be discussed

below, Australia has taken steps to stamp out this international trade by enacting laws which apply to the entire country.

After assessing the impact of legalisation in Victoria, abolitionist campaigners Mary Sullivan and Sheila Jeffreys make the following conclusions:

> *Legalisation allows men to feel more justified and confident in their prostitution behaviour... Prostitution is an industry that arises from women's low social status and the relegation of women to the role of sex objects. Legalising prostitution maintains that low status and makes it mush harder for women to assert that they should be treated with dignity and respect.* [135]

These writers believe that Victoria should have followed Sweden's example by making sex work illegal for the buyer rather than the seller, criminalizing clients only.

On the other hand, members of the Prostitute's Collective of Victoria have maintained that decriminalisation would be preferable:

> *All laws directed against the prostitute ought to be abolished. She is the victim. A woman has the right to be a prostitute as long as society fails to give her alternatives that she experiences as preferable.* [136]

According to the Prostitute's Collective of Victoria, the ideal system would include the following elements:

- *No more police powers; inability to make official complaints without fear of mistreatment and discrimination is the real issue here, not police access to sex workers;*
- *Police must focus on real community concerns of violence, coercion and nuisance;*
- *People must not be punished for victimless crimes;*
- *No mandatory testing for HIV;*
- *No individual registration of sex workers;*
- *That sex workers be granted immunity to prosecution under laws controlling prostitution while participating in the legal process (as a witness or victim/survivor);*
- *That convictions under previous legislation be removed from existing records.* [137]

6.7.2 New South Wales

In New South Wales, a new legal regime was applied to prostitution in 1979. [138] The law was amended in 1995, as a result of the discovery of widespread police corruption, to transfer some regulatory powers from police to local councils. [139] The New South Wales scheme is an example of **decriminalisation**. Sex work itself is legal. Any person over the age of 18 may provide sexual services to any person over the legal age of consent in exchange for money, goods or favour, without violating any law**. Sex work businesses such as brothels, however, are subject to a regulatory framework similar to that applied to other types of businesses**. [140]

The current laws are well summarized in a pamphlet prepared by the Sex Workers Outreach Program of New South Wales:

> *The major new laws regulating the sex industry in NSW state that:*
>
> - *Brothels are any premises used for the purposes of prostitution. This can include premises such as massage businesses, strip clubs, etc. where sexual services are also provided.*

- *Brothels are regulated by local councils.*
- *The definition of a brothel can include one worker working from their own home or premises.*
- *Prostitution is legal and by itself is no longer a reason to have a business closed.*
- *Support staff (receptionist/front of house, security, managers) can now be legally employed.*
- *No one can force or 'unduly influence' another person to become a sex worker.*

Laws on prostitution that remain unchanged are:

- *Support staff (friends, partners) for street workers can be charged with 'living off the earnings'.*
- *Street workers can be charged with soliciting and working near or within view of certain places.* [141]

According to the Sex Workers Outreach Program: "These reforms came about because it is well-recognised that prohibition drives brothels underground, making it impossible to regulate their location, ensure health and safety standards and provide a rational response to any community concerns. When brothels operate illegally it makes implementing effective HIV and other STD prevention strategies and ensuring health and safety standards very difficult." [142]

These changes were made by way of amendments to the *Disorderly Houses Act (1943)* which had the effect of legalising brothels. The *Environmental Planning and Assessment Act* of New South Wales was also amended. These changes placed the power to regulate brothels in the hands of local councils, and removed the powers that police had in the past.

The purpose of the *Disorderly Houses Act* is to declare certain premises to be "disorderly houses" and to penalise owners, occupiers and persons found within these establishments. [143] The Act specifically states that a declaration of "disorderly house" cannot be made solely because the premises is a brothel. [144] Where there are a sufficient number of complaints from residents or occupiers of premises in the area, an application can be made to the local council for an order that a brothel is situated in an inappropriate area. [145] The factors provided in the Act for the council to consider are open-ended and give the council much discretion in making their decision. These considerations include whether the brothel operates near a church, hospital, school, or other place regularly frequented by children, whether it causes a disturbance, whether off-street parking and suitable access have been provided, whether the business interferes with the "amenity of the neighbourhood", and any other relevant consideration.

Before exploring the regulatory structure further, it should be noted that there are still some provisions that criminalise certain aspects of prostitution, enforceable by police. These provisions are found in the *Summary Offences Act of 1988,* and the *Crimes Act of 1900*.

The *Crimes Act* makes it illegal to promote child prostitution. It is also illegal to be a client of a child prostitute. In contrast to the Prostitute Reform Bill in New Zealand, it is a defence to this charge in New South Wales if the person had a reasonable belief that the child was in fact over the age of 18. (However, for reasons which have not been

ascertained, this defence does not apply if the prostitute and the client are both male.) [146] It is furthermore illegal to obtain benefits from child prostitution, to allow premises to be used for child prostitution or to use a child for pornographic purposes. [147].

The *Summary Offences Act* criminalises massage parlours acting as brothels. Although brothels have been legalised, massage parlours, sauna baths, and other such similar facilities may not be used for the purpose of prostitution or for soliciting for prostitution. [148] The police can get a search warrant for these establishments if they have reasonable grounds for believing that this prohibition is being violated, or will be violated within 72 hours. [149]

Streetwalking continues to be criminalised if solicitation or the actual sexual act occurs within certain areas such as near or within view of a dwelling, school, church, or hospital. Both clients and sex workers can be charged under the relevant sections of the *Summary Offences Act* in such a case. [150] Prostitutes soliciting on the street can also be fined for loitering. [151]

Although one is entitled to live off the proceeds of prostitution in a brothel setting, it is illegal to do so in any other context. Thus, one who is living off the money earned by a street prostitute can be convicted of an offence. *[152]*

The *Sexual Offences Act* also contains prohibitions on advertising. [153] It is illegal to advertise that a premises or person is available for the purposes of prostitution, or to advertise to find prostitutes to become employees or for people to engage in prostitution. [154]

Causing or inducing prostitution is also a crime. The *Summary Offences Act* prohibits "coercive conduct or undue influence" which causes or induces one into prostitution. The Act also makes it illegal to cause another to surrender any proceeds from an act of prostitution. [155]

With the legalisation of sex work, a range of regulatory issues have arisen. According to the new laws, each council develops their own planning policies for brothels, which may have the effect of excluding brothels altogether, or creating rigid requirements which make operating such businesses next to impossible.

One who wishes to operate a brothel must make application to the local council for consent. [156] A Development Application accompanied by a fee must be provided to the council for its consideration of an application. A Statement of Environmental Effect is also required in which the details of the operation and impact of a brothel must be provided. This would include details relating to business size, parking, traffic, hours of operation, and the impact on the area both economically and socially. Floor plans and site plans must be provided. The property owner must sign the application. Zoning issues may become involved, in that local councils will have designated only certain zones for brothels, usually only within commercial and industrial zones. A refusal of consent may be appealed to the Land and Environment Court.

If a brothel is operating illegally, the local council is able to take action as it would against any other type of business operating without consent. With respect to sole operators, some councils waive the requirement of a Development Application but most impose the same restrictions as required for larger brothels.

The health and safety of sex workers fall under the regulatory sphere of WorkCover NSW. Along with the Department of Health, it has policies which promote general workplace health and safety, including worker's compensation. [157] WorkCover can send investigators to ensure that health and safety legislation is being followed in brothels. The promotion of safe sex practices is included in the concept of health and safety with respect to brothels. The responsibilities of the employer are stated as follows:

> *All employers must ensure the health, safety and welfare of their employees and other people in the workplace or they can be in breach of laws regulated by WorkCover…:*
>
> *Employers must protect the health of the worker by: Providing safe sex equipment free to an employee, including storage and disposal of safe sex equipment. Providing training to workers and information to clients which promote safe sex practices. Maintaining hygiene by changing and laundering bed linen and providing towels for staff and each client. Ensuring the cleaning and disinfecting of equipment used, such as sex aids (dildos, whips, etc), providing for safe disposal of contaminated human waste materials (used condoms, needles, swabs).*
>
> *Employers must protect the safety of the workers by: Providing security systems such as screening clients on arrival and panic buttons in rooms. Maintaining a workplace with safe entrances and exits for workers. Providing workers compensation insurance for a workplace based injury and illness. Reporting serious accidents or injury at work. Providing training for staff in health and safety procedures. Providing injury management programs for injured workers.*
>
> *Employers that do not protect the health and safety of workers, contractors, clients and visitors to the workplace can face legal action.* [158]

Furthermore, sex workers receive protection in the same way as other workers in the event of illness or injury, [159] and they are (like other employees) eligible for workers compensation. [160]

Analysis of legalisation in New South Wales

According to the Sex Workers Outreach Project, most sex workers in New South Wales (about 90%) choose to work in brothels or similar places (such as escort services, massage parlours, strip clubs, safe houses), rather than on the street. [161] The number of brothels in New South Wales has not changed substantially since the introduction of the new laws. [162] It has been reported that there is "an almost universal use of condoms and safe sex practices among sex workers", and that condom use is enforced by management in brothels. [163]

Decriminalisation appears not to have reduced the stigma of sex work:

> *Prejudiced attitudes towards sex workers, which do not recognize the legality and value of sex work nor the skills and abilities of sex workers, are found in the general community and amongst sex workers. These prejudices may affect a worker's ability to secure loans, child care, housing, employment, and also their social lives, persuasive moral arguments condemning sex workers can be effective in undermining workers' self-esteem and recognition of their legal rights.* [164]

This stigmatisation continues to prevent sex workers from reporting abuse to the police, despite their legal status. [165]

One Australian sex worker attributes a number of benefits to decriminalisation: a reduction in the involvement of organised crime in the sex industry, a reduction in pimping and trafficking in women, and a reduction in police corruption. [166]

One specific subject of criticism has been the discretion given to local councils in regulating sex work businesses. One commentator notes that while the laws may work perfectly well in a large city like Sydney, councils in the smaller towns that do not want brothels may make it difficult to meet the imposed standards. [167] The Sex Workers Outreach Project has made the following comment regarding this issue:

> *…[M]any councils are discouraging the sex industry from applying for DA's [Development Application] by openly opposing reforms. Some have developed policies which severely limit the potential locations within approved zones. Other councils reject DA's from brothels as a matter of course or fail to respond to applications within the statutory period for assessment. This forces brothel owners to pursue their case in Court. Some local councils initiate costly court cases, closing down brothels which have been operating without complaints for several years. In some cases Councils use development applications as evidence of the use of premises as a brothel.*
>
> *For example, a brothel had been operating in a business district for 18 years. There was no evidence of undesirable social impact. The brothel owner made an application and the Council did not respond within the statutory period. The brothel operator was forced to bring an application to the Court against the deemed refusal. The brothel operator's appeal was upheld and development consent granted.* [168]

The Sex Workers Outreach Project also observes: "Local regulatory frameworks which do not provide equitable pathways for sex industry businesses to seek compliance can lead to the creation of a two-tier sex industry consisting of approved and unapproved businesses". [169] There have also been complaints that the policy developed by some councils is to restrict brothels to industrial zones. Some brothels already in existence, operating without creating any sort of disturbance in business areas, are forced to move their location in order to gain consent. Such behaviour on the part of councils has deterred some brothel owners from applying for legal status.

On the other hand, the Sex Workers Outreach Project reports that "some local councils have developed sex industry regulation policies in consultation with the local industry which have been successful in striking a balance between the needs of the local sex industry, their clients (most of whom are local residents), and the local community". For example, the South Sydney Council adopted a brothel policy which has been popularised amongst communities and the industry. It received 56 Development Applications, of which 35 were approved. Almost all of the applications were from existing businesses seeking to legalise their status. [170]

This is the conclusion of the Sex Workers Outreach Project on the issue of brothel regulation:

> *Where councils have involved the industry and community in developing appropriate policies and processes to enable fair consideration of each application on planning grounds, brothel operators have been willing to effectively regulate and locate sex industry businesses.* [171]

6.7.3 Federal laws in Australia

There are federal laws that ban sexual slavery and servitude throughout Australia. The *Criminal Code Amendment [Slavery and Sexual Servitude] Act of 1999* establishes new offences for slavery, sexual servitude and deceptive recruiting, with heavy penalties attached. "Sexual servitude" occurs when a person provides sexual services and, because of force or threats, is not free to cease providing those services or to leave the place where the services are being provided. The law is designed to catch traffic both into and out of Australia, and persons who are neither Australian citizens nor residents can be prosecuted. Persons involved in a business can be guilty of an offence if they are intentionally or even recklessly involved in sexual servitude. [172]

According to the Minister for Justice and Customs, "In passing this legislation, Australia has led the world in protecting women who become victims of this inhumane trade and, at the same time, has sent a firm message to the organisers and recruiters that Australia will not be a destination for their trade". [173]

Despite the new legislation, trafficking in women is still reported to be a problem. As of 2001, it was reported that the Department of Immigration had found more than 600 women working illegally in brothels over the past three years. [174] However, according to the Sex Workers Outreach Program, contracts which enable women from other countries to come to Australia for the purposes of sex work are not always exploitative:

> *The contract is pre-arranged in the homeland with the agent and the worker. The agents who recruit the workers can be women who have been contract workers. Contracts generally provide workers with visa, airline ticket and passport arrangements in return for a set amount of money. It also details* [sic] *where the women are to work (guaranteed work) and accommodation arrangements. Not all women on contracts should be considered part of the 'sex slave trade'.* [175]

One innovative approach in Australia is a federal law called the *Crimes (Child Sex Tourism) Amendment Act 1994*, which came into force throughout Australia in July 1994. This Act makes it a criminal offence in Australia for an Australian citizen or resident to engage in sexual activity with a child under the age of 16 in another country. It is also an offence to encourage, benefit or profit from any activity that promotes sexual activity with children. The law applies to companies as well as to individuals. The penalty is a term of imprisonment of up to 17 years, or fines of up to $500 000. There have been at least 10 prosecutions and 7 convictions under this law. [176] Up to 20 countries have followed suit with similar legislation. [177]

6.8 ENGLAND & WALES

The approach of England and Wales towards sex work is **a regulatory approach which essentially constitutes prohibition**. The act of sex in exchange for money is not illegal, but acts incidental to this transaction are prohibited. For example, brothel-keeping, solicitation or loitering in a public place for the purpose of prostitution, and the advertisement of sex work services are all criminal offences.

The actual act of prostitution is not illegal, but it is illegal for a *female* sex worker "to loiter or solicit in a street or public place for the purpose of prostitution", in terms of the *Street Offences Act 1959*. Interpretation by the Courts of "a street or public place" have

included balconies, doorways or windows. [178] A woman cannot be charged with this offence unless she has been found to be a “common prostitute”. Such a designation occurs when the prostitute is shown to regularly operate as a prostitute and in most cases where she has had previous cautions by police or convictions. [179] It is usually proven by the issuance of a "prostitutes' caution" by a constable. [180] Notably, the designation of "common prostitute" applies only to women, not men. [181]

Solicitation by *male* sex workers falls under a separate law, the *Sexual Offences Act 1956*, which makes it an offence for men to persistently solicit or importune for an immoral purpose in a street or public place. [182] Persistence is usually shown by proving that a number of clients were approached, or that there was more than one invitation to a single client. [183] This law could presumably be applied to clients who make public advances to prostitutes as well.

“Kerb crawling” is an offence aimed towards the client as opposed to the sex worker. In terms of the *Sexual Offences Act 1985*, kerb crawling is "driving slowly in a car in a sex work area to attract the attention of sex workers". [184] In some places, such as London, the enforcement of the kerb-crawling law is taken very seriously. Police reportedly use advanced surveillance methods to catch kerb crawlers, including undercover officers, unmarked police cars and camera equipment. [185] Offenders may be cautioned or prosecuted. One effect of the law is that clients want sex workers to get into their cars more quickly, giving the sex worker less time to evaluate the client and assess risk factors. [186]

In contrast, it is not an offence for a client to be present in an illegal brothel, although details may be requested by police so that clients can be summonsed to give evidence in court. [187]

The *Sexual Offences Act 1956* deals with a range of other offences related to prostitution: [188]:

- It is an offence for both parties where a man knowingly lives on the earnings of (female) prostitution. [189]
- It is an offence for both parties where a woman, for purposes of gain, exercises control over a (female) prostitute. [190]
- It is an offence to detain a woman in a brothel or other premises. [191]
- It is an offence to permit a girl under age 16 to use premises for intercourse. [192]
- There are various offences related to brothel-keeping. [193]
- It is illegal to procure women by threats or false pretences, or to procure a girl under age 21 to become a prostitute, to have unlawful sexual intercourse in any part of the world, to detain a woman in a brothel, or to cause or encourage the prostitution of girl under 16. [194]

Media attention towards the issue of prostitution suggests problems with the present system. Recent articles by the BBC highlight the perceived problems of increased child prostitution in the UK, [195] the trafficking of non-English women for the purposes of sex work, [196] the lucrative nature of the illegal sex work industry (with an estimated £770m spent on prostitution every year), [197] and issues of violence against sex workers. [198]

Local policies

Enforcement of existing laws varies according to the policy of the particular police in the area:

> *Police action varies enormously in this area. "Police response in many areas seems to be a function of relatively autonomous local and indeed individual decisions rather than a product of a national publicly endorsed policy."* [199]
>
> *Some forces do not 'actively police' off-street prostitution, unless there is a complaint from a member of the public, and sex workers operating legally, alone in their own homes, find them sympathetic to calls for assistance in case of violence or robbery. Other forces target even the women working legally, enlisting help from planning authorities who can forbid the running of a 'business' in a residential zone.*[200]

At local levels, council governments have struggled with the prostitution issue in their areas, and many have adopted their own unique approaches to the control of sex work. For example, in Birmingham, the local government underwent an extensive study of prostitution and is considering the establishment of "tolerance zones" for sex workers to work legally. In Sheffield there was some support for legalising massage parlours, escort agencies, and similar establishments by way of a licensing system. [201] Ultimately, however, that approach was dropped and instead, the city created a pilot scheme attempting to get prostitutes off the street by offering "exit strategies" such as addiction treatment, contributions to housing costs, and protection from pimps. [202]

Some local authorities have focused on clients. In Leeds a Kerb Crawler Rehabilitation program was started where clients of prostitutes had the choice of attending an educational seminar about the social ills of prostitution and paying a fine towards the costs of the program, instead of going to court. [203] A "name and shame" strategy was implemented by the Greater Manchester police against kerb-crawlers, meaning that those caught kerb-crawling were publicly identified as a means of deterring such behaviour. However, local sex workers have criticized this policy as it removes many of their regular clientele and forces them to seek new clients with whom they are unfamiliar, putting them in increased danger. [204] In Liverpool, one initiative is the “ugly mugs scheme”, where sex workers are warned about dangerous clients. [205]

Child prostitution

Although it appears that England and Wales are a long way from reform of the laws on prostitution, the government has recently made particular efforts to deal with the issue of child prostitution. Guidelines on this topic were recently drafted for numerous public agencies including police, health, social services, and education agencies. The guidelines are contained in the government document, "Safeguarding Children Involved in Prostitution: Supplementary Guidance to Working Together to Safeguard Children". [206] This document acknowledges the fact that most children who become sex workers do so because of coercion or desperation, and that child prostitutes should be treated as victims rather than criminals. The government document also states:

> *…[S]ervices that come into contact with these children have a responsibility to safeguard and promote their welfare and to co-operate effectively to prevent children becoming involved in, and to divert children out of, prostitution. The identification of a child involved in prostitution, or at risk of being drawn into prostitution, should always trigger the agreed Local Area Child Protection Committee procedures to ensure the child's*

> *safety and welfare, and to enable the police to gather evidence about abusers and coercers.* [207]

Despite this effort, some feel that the measures taken have not gone far enough because young sex workers can still be prosecuted under the criminal system. The government guidelines clearly state that criminal law is necessary to control child prostitution and that if legalised, it may provide an incentive for children to become sex workers, as well as encouraging panderers. [208] One critic sees this as a problem and states:

> *Formally girls as young as eleven can be prosecuted for soliciting. It is possible that this distinction between child and adult will increase the vulnerability of younger sex workers, driving them into covert locations where they become invisible to health projects as well as the police, and into the control of 'adult' agents or managers.* [209]

Notably, however, the guidelines state that police should consider laying criminal charges only as a last resort.

"Carding"

Another matter which has recently become a focus of the British government is the issue of "carding", which is the advertisement of sex work services by placing cards in public places, most often phone booths:

> *These cards carry images of women (very occasionally men), a phone number (and occasionally an address) and a suggestion (sometimes more explicit than others) of the availability of sexual services.* [210]

An estimated 14 million cards are left in public telephone boxes each year. Media attention was recently given to the finding that some London children were actually exchanging these cards as they would Pokemon cards. [211] Recently, the British House of Lords made it a criminal offence to place these cards in a public place, subject to a penalty of a fine of up to £5000 or six months' imprisonment. Prior to the new law, ineffective civil remedies were the only option local governments could use to combat this practice. [212]

Critics of the new approach note that "carding" indicates that sex workers are operating indoors, as opposed to on the streets. [213] For example, the English Collective of Prostitutes defends the card system of advertising, warning that criminalizing it is likely to drive women back onto the streets. [214] Presumably, indoor work is safer for the sex workers and creates less of a nuisance in the community. Defending the crackdown, the Home Office Minister said that the cards were explicit and offensive: "They can be seen by children. They create a bad impression for overseas visitors and are very much part of the increasingly organised business of prostitution, which exploits and degrades women and children." [215]

Perhaps the crackdown upon "carding" can be attributed to a general perception of immorality by the British Parliament as well as a reluctance to leave any prostitution-related activities decriminalised. The Consultation Paper of the British Home Office entitled "New Measures to Control Prostitutes' Cards in Phone Boxes" provides a glimpse of this attitude when it discusses the undesirable nature of this practice and states that the "cards can be offensive, create a bad impression with foreign visitors and can be an inappropriate influence on young people". [216]

Assessments

In general, it has been suggested that "current British law on prostitution defeats its own objectives":

> *Where prostitutes are arrested and fined, they go back to the streets to earn the money to pay up. If they are imprisoned, they become less employable. Crackdowns make much needed medical checks difficult. Serious crimes, such as child prostitution, are harder to monitor in the general climate of criminality.* [217]

In 1996, an All Party Parliamentary Group on Street Prostitution reported:

> *There is considerable agreement that the current legislation relating to prostitution is not working well. Although there was disagreement between witnesses we were struck by the widespread agreement that there is an urgent need for a thorough overhaul of existing legislation. The legislation it was generally felt does not offer a coherent and integrated set of policies, but rather involves a piecemeal collection of statutes which has evolved over the years.* [218]

The following is another assessment of the position in the UK:

> *As in many other abolitionist states, policy is geared towards prosecution of the management of sex work rather than individual sex workers but, in practice, freelance sex workers on the streets are policed most effectively because they constitute the most visible part of the industry.* [219]

These criticisms are relevant to Namibia, which follows an abolitionist approach that is similar in many ways to the approach taken in England and Wales.

6.9 CANADA

"Canada practises a hybrid form of criminalisation in that although prostitution itself is theoretically legal in Canada, practising it is not."

Sylvia Davies and Martha Shaffer, "Prostitution in Canada: The Invisible Menace or the Menace of Invisibility?", http://www.walnet.org/csis/papers/sdavis.html, 1994

"We find ourselves in an anomalous, some would say bizarre, situation where almost everything related to prostitution has been regulated by the criminal law except the transaction itself."

Lamer, J, in *Re ss. 193 and 195.1(1)(c) of the Criminal Code (Man.)* [1990] 1 SCR 1123 at 1162

The Canadian *Federal Criminal Code* governs the law of prostitution in Canada, although there are some differences in approach between different provinces and regions of Canada. Canada is another example of **a regulatory approach which is essentially prohibitionist**. Although sex work itself is not illegal, there are a range of offences relating to brothels, procuration and street solicitation. The offences on solicitation in a public place apply to both sex workers and their clients, and (unusually) are enforced in practise with respect to both.

The Canadian offences can be divided into three broad categories: (1) "communicating", (2) "bawdy-houses" and (3) procuring.

It is an offence for a prostitute to stop or attempt to stop a vehicle, to stop someone on the street or to communicate with anyone in any way for the purpose of offering the services of prostitution. It is equally criminal for anyone to do any of these things for the purpose of *obtaining* the sexual services of a prostitute. Thus, sex workers and their clients are both at risk of arrest for the offence of "communicating"". These acts must be done in a "public place" to be offences. "Public place" is broadly defined as "any place to which the public have access" as well as "any motor vehicle located in a public place" and "any place open to public view". If no mention of the exchange of money is made until the client gets to the private room of the sex worker, there has not been a communication offence. But charges have been laid where the sex worker has merely nodded in response to questions about services and prices. Use of a telephone to arrange a meeting is not considered public, as private lines are used. However, the same may not be said for cellular phones (which utilise public airwaves) or public pay phones. [220]

There are several offences relating to "bawdy houses". A "bawdy house" is any place used for the purpose of prostitution or the practice of acts of indecency. This can include a house, an apartment, a room or even a parking lot, which is used by a single sex worker or a group, so long as it is used regularly. The definition is very broad and all-encompassing. A person can be charged if he or she is living in such a place, is the owner of the premises, the lessee of the premises, runs the operation of the bawdy-house, or is simply found inside a bawdy-house without lawful excuse. It is also an offence for a landlord to fail to ensure that any prostitution operation is discontinued after a conviction has been obtained against any person in respect of a bawdy-house. [221] Another more unusual and rarely-used offence is that of transporting a person to a bawdy-house. [222]

Procuring illicit sexual intercourse or prostitution is also an offence, including attempts to procure or solicit, enticing or attempting to entice, procuring a person to leave or enter Canada for the purpose of prostitution and living on the avails [proceeds] of prostitution. [223] Prosecution for "living on the avails of prostitution" is more common than prosecution under most of the other provisions encompassed in the concept of procuring. [224] The penalty available upon conviction of a procuration offence is imprisonment for a maximum of 10 years. If the accused is living on the avails of prostitution by a person under the age of eighteen years, the prison term may increase to a maximum of fourteen years. A more serious sentence is yet again imposed where the accused is living on the avails of a prostitute under the age of 18 years *and* where the accused encourages or compels the prostitute to carry on with prostitution, or where the accused uses or threatens to use violence, intimidation or coercion in respect of the prostitute. In such a case, the maximum sentence remains fourteen years, but a *minimum* prison term of five years is prescribed. It is also an offence to procure the sexual services of any person under the age of eighteen years. [225]

The Canadian Supreme Court considered the constitutionality of the provisions on communicating and the keeping of bawdy-houses in 1990, in a trio of similar cases: *Reference Re ss. 193 and 195.1(1)(c) of the Criminal Code (Man.), R v Stagnitta* and *R v Skinner*. [226]

In *Reference Re ss. 193 and 195.1(1)(c) of the Criminal Code (Man.),* a majority of the justices found that the provisions in question did not violate the Charter of Rights' guarantee of freedom of expression. They found that the communication offence was

aimed “at taking solicitation for the purposes of prostitution off the streets and out of public view” and at the nuisance which can result from public solicitation: “street congestion and noise, oral harassment of non-participants and general detrimental effects on passers-by or bystanders, especially children”. The majority found these objectives to be sufficiently important to justify a limitation on freedom of expression, and held that the restrictions in question were addressed precisely to the objectives they were intended to achieve. The Court also found that the provisions on communicating and keeping “bawdy-houses” were not unconstitutionally vague, given the benefit of judicial interpretation. It was further argued that the provisions in question infringe prostitutes’ right to liberty in not allowing them to exercise their chosen profession, and their right to security of the person, in not permitting them to exercise their profession to provide themselves with the basic necessities of life – on the grounds that, by criminalising so many aspects of prostitution, Parliament had restricted a legal activity to the point that that it was in fact impossible to engage in that activity. On this point, the majority held that the fact that the sale of sex for money it is not in itself a criminal act “does not mean that Parliament must refrain from using the criminal law to express society’s disapprobation of street solicitation” or to place prohibitions on the sale of sex in private settings. [227]

The two dissenting justices found that, while it was justified for the law to deal with the social nuisance arising from the sale of sex, the measures enacted were not sufficiently tailored to this objective – because the prohibition “is not confined to places where there will necessarily be lots of people to be offended or inconvenienced by it”, and because “no nuisance or adverse impact of any kind on other people need be shown, or even shown to be a possibility,” for the offence to apply. The dissenters also felt that the concept of “communication”’ should have been defined in some more limited way, instead of encompassing “every conceivable method of human expression”. The dissenters further felt that the penalty of imprisonment for the offence of “communication” was disproportionate to the objective involved: “Where communication is a lawful (and, indeed a constitutionally protected) activity and prostitution is also a lawful activity, the legislative response of imprisonment is far too drastic.” [228]

The case of *R v Stagnitta* followed the same lines. [229] In *R v Skinner,* the Court considered the additional question of whether the criminal provisions on communicating are an impermissible infringement of the right to freedom of association. The majority held that the prohibited conduct is “expressive conduct” and not conduct “of an associational nature”, since the provisions in question do not directly forbid agreements for the exchange of sex for money nor sexual relations between consenting individuals. Two dissenting justices again took a different view, saying that “so long as it remains lawful to sell sex for money, there is a right to associate with others, i.e. potential customers, in order to reach an agreement for this purpose”. In the opinion of these justices, while the nuisance which can be caused by street solicitation justifies some limits on both freedom of expression and freedom of association, the current legislation is excessively broad: “It is not reasonable to prohibit associational activity that harms no one on the basis that in some circumstances and in some areas a high concentration of that activity may give rise to a public or social nuisance.” [230]

The provisions on prostitution in the *Criminal Code* have the effect of making prostitution legal, while at the same time making it practically impossible to carry out. This has been the system in Canada for many years, but has it worked? There is still an abundance of street prostitution and bawdy-houses, mainly in the larger cities. Some of these cities

have recently decided to apply the law according to their own policies in an effort to make the law more effective, and it is instructive to see how those policies differ.

Focusing on clients

In an effort to reduce street prostitution, the Vancouver police department decided on a new strategy. It made the decision to stop arresting prostitutes. A representative of the vice squad said "the change shows officers now recognize sex trade workers are actually victims and police resources are better spent pursuing johns [clients] and pimps." It was further stated that the law as implemented before was clearly not a deterrent to the sex workers: "in that time period [between 1986 and 1992] 2045 men were charged with communicating for the purpose of prostitution, but only 44 repeated the offence…the recidivism rate for prostitutes was approximately 80%." In contrast, a representative of the police in Toronto, Ontario, found this policy incomprehensible, stating: "We see them as victims as well, but some of the older ones have full knowledge of what they are doing." [231]

"John schools"

A few areas have decided to experiment with "diversion programmes" for clients of sex workers – so-called "john schools". For example, in Edmonton, Alberta, if the men accused of "communicating" attend a one-day course, the charges against them are withdrawn. The course includes (a) lectures on STDs from health department officials (b) lectures from community activists on the problems caused by street prostitution (c) parents talking about the impact their daughters' prostitution has had on family life (d) former prostitutes talking about the shame attached to the work and (e) a psychologist advising on what steps men can take to avoid buying sex from prostitutes in future. [232]

Child prostitution

The Government of Alberta has recently enacted special legislation to counter child prostitution in the province. The *Protection of Children involved in Prostitution Act 1998*, as amended in 2000, enhances support to child prostitutes to ensure that their legal rights are maintained, and to offer alternatives to prostitution in order to break the cycle. In terms of this law, child prostitutes can be confined for up to five days for the purposes of enabling social workers to provide drug and alcohol counselling, psychological counselling, medical assistance, and life skills support. They are then to be placed in the care of their guardians (or other responsible adults), or in a safe house. [233] Similar provincial legislation has been considered in Ontario [234] and Saskatchewan. [235]

Incident rates of prostitution-related offences have varied over the years. A report by Statistics Canada on prostitution over the years 1986 to 1995 identifies some interesting trends. [236] It is apparent that incidents have, with some fluctuations, remained fairly regular over the years. It was noted by Statistics Canada that the fluctuations reflect changes not in the criminal activity level, but rather in the enforcement of the communicating law by police. [237]

Table: Prostitution incidents reported by police in Canada 1985-1995 (*)

Year	All offences	Communicating	Bawdy house	Procuring
1995	7165	6595	185	385
1994	5575	5090	164	321
1993	8517	7971	157	389
1992	10137	9616	212	309
1991	10567	9860	382	325
1990	10273	9686	256	331
1989	9717	8922	371	424
1988	10721	9965	297	459
1987	10457	9243	684	530
1986	7426	6439	614	373

(*) Excludes incidents where prostitution was not the most serious offence.
Source: Uniform Crime Reporting Survey

The report also collected information on the sex of those arrested on prostitution-related offences, and found that police have been targeting more clients in recent years. From 1977 to 1985, only 36% of those arrested under the soliciting provision were men. From 1986 to 1995, however, 47% of those arrested for communicating (which replaced the soliciting offence in 1985) were men. [238] However, it appears from the Statistics Canada report that women are often treated more harshly than men on conviction. With respect to the communicating offence, men were charged more often (56%), but women received stiffer sentences (receiving prison terms 39% of the time, while men received prison terms only 3% of the time). [239] Women also received longer probation periods where that was the most severe punishment handed down: the median length of time for women was one year, while men were given only six months. [240]

Critics of the Canadian scheme argue that the communication offences worsen working conditions for sex workers because of their fear of arrest. The broad definitions of "communicating" and of "public place" mean that it is easy for people to be charged and convicted for this crime. The law forces sex workers to work in dark and isolated places where they are more vulnerable to attack. They must make contact with clients quickly, thus minimising the time they have to "feel out" the risk factors. And, when sex workers have less control over the situation, they become more vulnerable to being forced into sexual interaction without a condom. Furthermore, because arrest and conviction are easy, almost everyone who practises street prostitution ends up with a criminal record, which narrows the options for leaving sex work. The process of arrest is also humiliating and degrading, thereby contributing to erosion of the self-esteem needed for a transition to another sort of life. It is further argued that the psychological and economic consequences of an arrest could increase a sex workers' vulnerability to drug or alcohol abuse. Even if the emphasis were switched to arresting clients only, this would still drive sex work underground. [241]

One commentator asks:

> *Why is it so crucial to keep prostitutes away from the public, if they are not causing a noticeable disturbance? It is believed that prostitutes, by their presence alone, bring crime, drugs and urban decay in their wake. This is why residents' groups with any clout insist on prostitutes being removed from their area.* [242]

Concerns about HIV transmission by sex workers are also misplaced, as studies show that prostitutes are actually lower-risk HIV carriers than their customers. [243]

Violence against sex workers is a problem in Canada, and the illegalities surrounding sex work create a climate in which police condone abuse or sometimes even participate in it. The legal regime creates a perception that sex workers are outside the normal scope of society, "second-class citizens" who are "less worthy of protection by the police". [244] Research shows that prostitutes are 60-120 times more likely to be murdered than the general public. [245]

The offences which are aimed primarily at third parties (the bawdy house and procuration provisions) fail to distinguish between exploitative and non-exploitative situations. A sex worker who has moved indoors to avoid the police is still acting illegally, even if she operates alone out of her own residence or from a rented hotel room. The law makes landlords liable for owning a bawdy house if the sex activities continue after a first offence against a lessee, with the result that convicted prostitutes are likely to be thrown out of rented accommodation.

Since both street soliciting and "bawdy houses" are illegal, sex workers sometimes work indoors but pay substantial amounts to club owners and hotel managers. Or, they may meet with their clients on the client's turf (such as his home or hotel), which can be potentially dangerous. If the 'date' has been made over the phone to avoid detection, then the prostitute is walking blind into a situation she cannot assess. [246]

The offence of purchasing sex from a child prostitute is rarely enforced. This is not surprising, since the child who has been propositioned would have to testify in order to obtain a conviction. However, police in some provinces have been lobbied to take a stronger stance on the enforcement of this aspect of the law. [247]

In Toronto, at one stage, one city councillor suggested that small "cottage-industry" brothels should be allowed, while another favoured a single "superbrothel" where prostitutes rent space and city officials provide the management. However, others caution that municipal by-laws regulating street prostitution and controlling brothels might be even stricter than the existing federal laws. [248]

One Canadian expert makes the following suggestion for law reform:

> *In the short term, we need to create choices for people who see prostitution as their only option for making a living, and develop programs of harm reduction for those who are involved. We should repeal all the prostitution laws, and start over. Four principles should guide the application of law to prostitution: 1) regard sexual procurement of children and youth as an abuse of power, not a prostitution contract; 2) use generic criminal laws to protect sex sellers from pimp coercion and customer violence; 3) facilitate systems of sex-seller self-employment, cooperatives, or non-profit management systems in appropriate locations; and 4) use generic criminal public disturbance laws and generic civil laws controlling street commerce to protect bystanders from nuisance.* [249]

"There is a substantial prostitution trade flourishing in every city in Canada, regulated by municipal licensing laws, and facilitated by the selective enforcement of the criminal statutes."

John Lowman, "Prostitution Law Reform in Canada", http://mypage/uniserve.ca/~lowman/Prolaw/prolawcan.htm, undated

6.10 ASIAN EXAMPLES

Several countries in Asia have been selected for a brief discussion highlighting a few of the issues relating to sex work in the region.

6.10.1 Thailand

"Prostitution in Southeast Asia has grown so rapidly in recent decades that the sex business has assumed the dimensions of a commercial sector, one that contributes substantially to employment and national income in the region."

"Sex industry assuming massive proportions in Southeast Asia", ILO Press Release, 19 August 1998, http://www.ilo.org/public/english/bureau/inf/pr/1998/31.htm

There are estimations that the number of sex workers in Thailand could be anywhere between 300 000 and 2.8 million, with up to 400 000 being minor children. [250] The laws concerning these sex workers have changed significantly over the last several years, although it is uncertain whether those changes have had the desired results. Commercial sex workers continue to be treated abhorrently by their managers or pimps, and in many cases they are sold into prostitution by their parents or boyfriends. Consider this excerpt from the UN Report on Violence against Women on the position of women trafficked into Thailand for sex work:

> *Women who are trafficked into other countries for the purpose of prostitution generally work out of the most abusive of brothels, bars and salons. The conditions faced by these women are appalling. Asia Watch and the Women's Rights Group conducted a comprehensive study of girls and women trafficked from Burma into Thailand. The study found that women trafficked into brothels in Thailand work between 10 and 14 hours a day, with an average of 10 clients per day. The average size of the rooms these women live and work out of measure two by two and a half metres. If they are lucky, they get a few days off during menstruation. The workers generally receive a little over a dollar a day from the brothel owner, although the clients pay much more directly to the brothel owner. They are expected to pay for their food and lodgings out of this money. Many of these women are held in debt-bondage as they are expected to repay the amount forwarded to their parents by the recruiting agents. They may also be illegally confined to the brothels, through the practice of withholding passports or through more physically abusive means. In one known incident, five girl prostitutes in Thailand were burned to death in a brothel because they had been chained to their beds and could not get away.*
>
> *…*

> *Women who are trafficked are usually smuggled across borders with the bribed complicity of the border guards. Victims of trafficking report extensive police usage of brothels for free. Their status as illegal immigrants is further disabling, rendering them highly vulnerable to sexual, economic and physical abuse. Health care is virtually non-existent for them, except for the provision of birth control pills or depo provera. Rehabilitation and deportation centres often serve as scouting grounds for corrupt police and brothel owners to recruit sex workers at inexpensive rates*. [251]

The first Thai legislation on prostitution was the *Venereal Disease Act* of 1909, which was intended to keep sex workers free from disease, to permit them to leave the work if they so desired, and to ensure that prostitutes were at least 15 years old. To carry out this mandate, registration was required but it was often ignored. In 1928, the *Trafficking in Women and Girls Act* was enacted. This legislation imposed prison sentences on those who illegally traded in women for the purposes of sex work. The fines were not significant (about US$30 in 1993 currency), and the girls detained following raids were sent to a reform house for a period of time, even though the law did not impose penalties on them.

Commercial sex work itself was first criminalised by the 1960 *Suppression of Prostitution Act*. Under that legislation, sex workers were subject to greater sentences and fines than the procurers and brothel operators whose activities were also criminalized. [252]

The *Entertainment Places Act* was passed in 1966, regulating nightclubs, dance halls, bars, massage and steam bath places. It has been said that it was enacted, "to pave the way for whorehouses to be legalized in the guise of massage parlours, bars, nightclubs, tea houses, etc." The passage of this legislation coincided with the desire of the Thai government to increase revenue from tourism. This meant increasing their revenue from sex tourism, using the large numbers of military personnel in Thailand around that time to accomplish this goal. [253] This desire is apparently still present, as 1995 statistics advise that the total revenue from prostitution in Thailand makes up an estimated 59–60% of the government's budget for that year. [254]

A further piece of legislation is the *Penal Code of 1956*, which criminalised procurement, whether forcible or otherwise, and provided higher penalties, particularly if the sex worker was under 18 years of age, or under 15 years of age *and* the accused held a position of authority. [255]

Several inconsistencies arose among these pieces of legislation, as all remained in force but provided for different offences and penalties. While the Penal Code penalised sex with minors, the *Suppression of Prostitution Act* did not; while the *Trafficking in Women and Girls Act* exempted victims from prison and fines, the *Suppression of Prostitution Act* imposed them; and while the *Suppression of Prostitution Act* penalized prostitution, the *Entertainment Places Act* indirectly regulated and taxed it. [256] Human rights groups pushed for legal reforms, and in 1996 a new law was passed: *The Protection and Suppression of Prostitution Act*.

The new legislation has severely increased penalties for soliciting, procuring, advertising, or offering prostitution in respect of anyone under the age of 18 years, and even more so for sex workers under 15 years. However, the penalty for prostitution with

an adult remains very low (maximum of 1000 Baht, which is equivalent to about N$195 [257]), and is seldom enforced. [258]

Interestingly, the new legislation makes it an offence to offer sex for money "openly and shamelessly". [259] The *Entertainment Places Act 1966* remains in force, and the new legislation appears to excuse transactions that would take place in such establishments. Furthermore, despite the fact that the new Act makes it an offence to associate with another person in a "prostitution establishment" for the purpose of prostitution, the *Entertainment Places Act* effectively exempts most places that would otherwise fall into the definition and be illegal. The result is that establishments such as bars, massage parlours, and entertainment centres, which often cater to foreigners, are legal and provide what are essentially prostitution services. [260]

Thus, the Thai government appears to have criminalised prostitution and it has provided severe penalties for child prostitution (although whether or not those are enforced is unknown). Yet, at the same time, the government is capitalizing on discreet adult prostitution and sex tourism, and the sex industry has become a vital part of the country's economy. It has been estimated that close to US$300 million is transferred annually to rural families from women working in the sex industry in urban areas – an amount which in many cases exceeds the budgets of government-funded development programmes. The revenues generated by the "sex sector" are crucial to the livelihoods of millions of people, not just the sex workers themselves. In addition to family members receiving remittances, there are several million workers earning an income from the elaborate sex industry which has been built around prostitution – from waitresses to cashiers to cleaners. Because the sex sector is such a highly-organised and well-entrenched industry, addressing it adequately will require far more than legal responses alone.

> *The ILO suggests that official recognition of the activity, including maintaining records about it, would be extremely useful in assessing, for example, the health impacts of the sector, the scope and magnitude of labour market policies needed to deal with workers in the sector and the possibilities for extending the taxation net to cover many of the lucrative activities associated with it. It is also important to recognize that policies for the promotion of tourism, the export of female labour for overseas employment, the promotion of rural-urban migration to provide cheap labour for export-oriented industrialization, etc., combined with growing income inequalities and the lack of social safety nets, could all indirectly contribute to the growth of the sex sector.* [261]

6.10.2 Nepal and India

> *Official records indicate that only a small fraction of traffickers are apprehended, let alone prosecuted, despite the thousands of women and girls who are trafficked from Nepal into India each year. Police collusion and bribery appear to be a major part of the problem, making victims and community members reluctant to come forward as witnesses due to fear of reprisals.*
>
> Voice of the Asia-Pacific Human Rights Network, "Nepal to India: Ending the Trafficker's Paradise", http://www.hrdc.net/sahrdc/.

Nepal has for years been a source of young women for India's prostitution business. In neither country is prostitution itself illegal. The legislation surrounding sex workers in these countries revolves around the trafficking of children and women. Young Nepalese girls are enticed, tricked, or simply abducted, and forced into a life of payback through prostitution. Often, they are promised marriage or a good job, and then taken to Bombay to pay off the debt they owe.

The brothels of India reportedly hold between 100 000 and 160 000 Nepalese women and girls, of whom 35% were taken to India on the false pretext of marriage or a good job. [262]

The laws relating to sex work in Nepal and India deal with trafficking, rather than prostitution itself. The situation of trafficking between these countries has remained a persistent problem for decades. Both countries are signatories or parties to the various international conventions relating to women and children's rights, and to the convention on the suppression of trafficking in human beings. [263]

India

India, in Article 23 of its Constitution, has declared that "traffic in human beings…and other similar forms of forced labour are prohibited". [264] India has also addressed trafficking in the *Suppression of Immoral Traffic in Women and Girls Act of 1956 (SITA)*, and a 1986 amendment, the *Immoral Traffic in Persons Prevention Act (ITPPA)*.[265] The ITPPA proved to be considerably stricter that its predecessor, however the lack of enforcement remains a problem.

In terms of these laws, prostitution itself is not illegal, but brothel-keeping and soliciting in public places are offences. [266]

SITA created the post of Special Police Officer, with powers to search brothel premises without a warrant. The ITPPA expanded the search capabilities of police officers raiding brothels and, recognizing the potential for abuses of such powers, established various safeguards for the sex workers. For example, two female officers must accompany a male officer in a warrantless search, and the questioning of sex workers must be undertaken by female officers. If a female officer is not available, the questioning may be done by a male officer but only in the presence of a female welfare organization worker. [267]

In Bombay, top politicians and police officials are reportedly in league with the mafia who control the sex industry, exchanging protection for cash payoffs and donations to party campaign funds. Many politicians seem to view prostitutes as an expendable commodity. [268] Trafficking continues, despite the legislation and heavy penalties.

Nepal

The Constitution of Nepal, adopted in 1990, states in Article 20, "Traffic in human beings, slavery, serfdom or forced labour in any form is prohibited. Any contravention of this provision shall be punishable by law. "[269] Further, the *Muluki Ain* (the Nepalese national legal code) provides heavy penalties for trafficking: a 20 year prison sentence for international traffic where the victim has been sold, and a 10 year prison sentence for an attempted sale. Along with those prison sentences is a fine equivalent to the amount of the transaction. Purchasers of trafficked human beings are subject to the same

penalties if they are found within the borders of Nepal. [270] The *Muluki Ain* also forbids pimping and solicitation. [271]

Although the *Muluki Ain* remains in force, a new piece of legislation was enacted in 1986 and, due to its more specific nature, it takes precedence over the *Muluki Ain*. The *Human Trafficking (Control) Act 1986* imposes greater punishment for a variety of offences, but retains the problem shared by all legislation in Nepal and India: it fails to be enforced by police officers and government officials.

The *Human Trafficking (Control) Act* makes all aspects of the sale of human beings criminal offences*:*

- selling a person
- taking a person to a foreign territory with the intention to sell that person
- involving any woman in prostitution by enticement, allurement, fraud, threat, coercion, or by any other ways or means
- abetting, assisting or conspiring and attempting to carry out any of the above mentioned acts. [272]

The penalties are heavy ones -- 10 to 20 years for selling a person, 5 to 10 years for taking a person to a foreign territory with the intention of selling them and 10 to 15 years for forcing a woman into prostitution. [273] But it is a rare occasion when an accused is actually subjected to the stated punishments. There is heavy reliance on the evidence of victim in these cases, even though no protection is offered to them. As a result, threats made by the offenders frighten them and they often decline to testify in court. [274]

It is often said that the *Human Trafficking (Control) Act* is a very poorly-enforced piece of legislation. Only 150 cases were reportedly investigated by the enforcement agency in the fiscal year 1994-95. This number has decreased in subsequent years, with only 133 cases being investigated in 1995-96 and 107 cases in 1996-97. According to the Government Attorney's office, out of the 150 cases reported in the fiscal year 1994-95, only 39 cases went to court. [275]

Trafficking between the two countries

The trade in women and girls from Nepal to India has flourished due to the lack of enforcement of the existing laws by police and the corruption among officials. An estimated 5 000 to 7 000 Nepalese women and girls are lured into trafficking networks each year. [276] Other sources indicate that the average age of young women entering India from Nepal has fallen from 14-16 years old to 10-14 years old. [277] With such a constant influx of new sex workers, few of whom have any knowledge of the rights they have under international law, there is no prospect of a reduction in trafficking.

Some sex workers in India have called for *more* rules and regulations to deal with prostitution and trafficking. They say that they do not want legalisation, which might require them to be openly licensed as sex workers, but they want laws which will stop extortion, trafficking, forced entry into sex work and child prostitution. [278]

> *"The issue is not whether prostitution is legal or not. The issue is that, like it or not, it is a business, and there must be rules."*
>
> sex work activist Nandini Bandopadhyaya, quoted in Saurabh Bhattacharya, "Rights-India: Sex Workers See Freedom in Rules and Regulations", http://www.oneworld.org/ips2/dec/india3.html

6.11 AFRICAN EXAMPLES

Having begun this comparative survey with Namibia's neighbour to the south, this section of the report will now take a look at the laws regulating sex work in some other African countries. As in the section above on Asia, this discussion makes no attempt to look at the situation of prostitution in Africa comprehensively, but instead provides a few examples to highlight issues that may be of relevance to Namibia.

6.11.1 Zimbabwe

> *"Theft, prostitution and child labour are some of the means hunger-stricken communities in Zimbabwe are using to cope with the effects of drought and food shortages, according to a recent United Nations report."*
>
> NAMPA-SAPA, "Theft, prostitution on rise as hunger bites", *The Namibian*, 12 July 2002

Zimbabwe recently introduced new legislation on sexual offences, in the *Sexual Offences Act 2001*. [279] The new law replaces the outdated *Criminal Law Amendment Act* which was enacted in 1900, and last amended in 1986. [280] Among other things, this new law makes the intentional transmission of HIV a criminal offence. [281]

Part IV of the Act deals specifically with the "Suppression of Prostitution." The Act defines "prostitute" as

> *a person who for money or reward –*
>
> *(a) habitually allows other persons to have extra-marital sexual intercourse with him or her; or*
>
> *(b) solicits other persons to have extra-marital sexual intercourse with him or her.* [282]

"Extra-marital sexual intercourse" means sexual intercourse otherwise than between husband and wife". [283]

The act does not criminalise prostitution in itself, but it bans a host of related activities, including solicitation and brothel-keeping.

A "brothel" is defined as "any place which is occupied or used for purposes of prostitution or for persons to visit for the purpose of having extra-marital sexual intercourse for money or reward." [284] The Act defines a brothel keeper broadly as

> *(a) any person who manages the brothel or assists in its management;*
>
> *(b) the owner of the brothel, if he uses the place as a brothel or knowingly allows it to be so used;*
>
> *(c) any person who knowingly receives the whole or part of any money taken in the brothel;*
>
> *(d) any person who resides in the brothel, unless he proves that he was ignorant of the character of the place;*
>
> *(e) any person found in the brothel who wilfully refuses to disclose the name and identity of the keeper or owner thereof."* [285]

Thus, the offences on brothel-keeping can be applied to all employees, not just to the owner or manager of the brothel.

The offences relating to brothels and pimping are broadly-framed and include living off the earnings of prostitution as well as actions relating to trafficking:

(1) Any person who—

(a) is the keeper of a brothel; or

(b) knowingly lives wholly or in part on the earnings of prostitution; or

(c) solicits or importunes other persons for immoral purposes; or

(d) demands from a prostitute money in consideration of his

(i) keeping, managing or assisting in the keeping of a brothel in which the prostitute is, or has been, living for immoral purposes; or

(ii) having solicited or importuned other persons for immoral purposes with the prostitute; or

(iii) having effected the prostitute's entry into a brothel for the purpose of prostitution; or

(iv) having brought or assisted in bringing the prostitute into Zimbabwe for immoral purposes; or

(v) present or past immoral connection with him;

shall be guilty of an offence and liable to a fine not exceeding ten thousand dollars or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(2) If, in a prosecution for an offence under paragraph (b) of subsection (1), it is proved that a person consorted or lived with or was habitually in the company of a prostitute, and has no visible means of subsistence, that person shall be deemed, unless the contrary is proved, to have been knowingly living on the earnings of prostitution. [286]

The Act further penalizes the use of a place as a brothel by making the lease agreement void and allowing for summary ejectment in these circumstances. [287]

Another offence around trafficking makes it an offence to procure a person for the purposes of prostitution inside or outside of the country:

Any person who procures any other person –

(a) to have sexual intercourse in contravention of section three, four or eight, whether inside or outside Zimbabwe; or

(b) to become a prostitute, whether inside or outside Zimbabwe; or

(c) to leave Zimbabwe with the intent that the other person may become a prostitute; or

(d) to leave his or her usual place of residence, not being a brothel, with the intent that he or she may become an inmate of or frequent a brothel else-where;

shall be guilty of an offence and liable to a fine not exceeding fifty thousand dollars and to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment." [288]

Other provisions aimed at trafficking and sex tourism make it an offence for any person *outside Zimbabwe* to conspire with or incite another person to commit a sexual offence against young persons or intellectually handicapped persons *in Zimbabwe*, [289] as well as making it an offence for a person who is a *citizen or resident of Zimbabwe* to commit,

incite or conspire to commit sexual offences against such vulnerable persons *in other countries*. [290]

Extra protection for children is provided by a provision which makes it a serious offence for the owner of a place to knowingly induce or allow a young person under the age of 16 to enter or be in that place for the purpose of extra-marital sexual intercourse with another person, or with other persons generally. [291]

Zimbabwe thus takes an approach to sex work similar to that taken under the current law in Namibia, but with strengthened provisions aimed at international manifestations of sex work and child prostitution.

6.11.2 Zambia

> *"Every time we are arrested, the police demand sex with us instead of taking us to court. We are tired to being abused and the government should just legalise prostitution."*
>
> Zambian sex worker, quoted in "Prostitutes want legalisation", SAPA, http://news24.com/News24/africa/Southern_Africa/

Prostitution is a criminal offence in Zambia. The penalty is a fine of K80000 (about US$20) or one month's imprisonment. Police often arrest sex workers at night and detain them for loitering in public places, or for indecent exposure. They are seldom charged with the crime of prostitution, which is difficult to prove in court. The men who are the sex workers' clients commit no offence. [292]

Sex workers complain that police sometimes abuse their powers. For example, one sex worker stated: "I was picked up by police at night and taken to the police station where three police asked me to have unprotected sex with them if I want to be released." [293] Sex workers also say that some officers regularly confiscate their night's earnings, in addition to demanding sex in exchange for freedom. [294]

Five police officers recently faced dismissal after prostitutes accused them of raping them as a bribe for their release from custody. This led to a protest march by sex workers. According to news reports, "A cross-section of society, including senior government officials, stunned by the prostitutes' revelation, condemned the police and called for harsh punishment for the culprits." [295]

The allegations of abuse were verified by the Deputy Minister of Community Development and Social Service, who took to the streets to verify the accusations and was herself accosted by a policeman and his cohorts. [296]

Some sex workers paint their relationship with the police in a slightly different light. One prostitute said in an interview that the relationship was a "symbiotic" one. She explained that both groups work on the streets, where there is a lot of danger. Prostitutes befriend police with sex or money. Police officers, who are poorly paid, are quick to take up such offers in exchange for providing protection against violent or non-paying clients, and for declining to make arrests. A policeman who was interviewed took the view that it is more worthwhile to accept bribes from the sex workers than to go through the laborious process of instituting legal proceedings. [297]

Looked at from any angle, the existing police-prostitute relationship seems an unhealthy one. In light of the evidence of police corruption, sex workers have demanded that the law prohibiting prostitution should be abolished. However, other members of the public who have condemned the actions of the police do not support these calls for legalisation. According to one pastor: "Zambia is a Christian country and we should never tolerate people who are calling for the legalisation of sin." [298]

There have been some efforts to reduce prostitution in Zambia, in the context of HIV prevention. However, with some 70% of the population living below the poverty line and an economy which presents limited employment opportunities, commercial sex work is the only option for some. A few years ago, a group called Tasintha (meaning "We have stopped") was formed by prominent Zambian women to help prostitutes leave the sex trade and learn alternative skills such as dress-making. It also provided food and support to approximately 600 women a week. However, this project fell dormant after suffering from a lack of funding. [299]

6.11.3 Malawi

> *"… the convictions … could not be supported and appeared discriminatory against women."*
>
> *Kaseka and 6 others v R*, Criminal Appeal Case 2 of 1999, High Court of Malawi

In Malawi, a 1999 court case emphasised the need to avoid gender discrimination in dealing with sex work. The Malawi *Penal Code* contains the following provision as part of the offence of idle and disorderly conduct:

> *[E]very person who in any public place solicits for immoral purposes… shall be deemed idle and disorderly persons and shall be liable for the first offence to a fine of K20 and to imprisonment for three months and for a subsequent offence to a fine of K50 and to imprisonment for six months.* [300]

In December 1998, police arrested seven women in a rest house and charged them with idle and disorderly conduct, alleging that they were there "to do immoral purposes". In the first place, the court found the assumptions of the police problematic, since presence in a rest house does not in itself provide evidence of an intent to commit any immoral activity. Furthermore, the court noted that while some of the women arrested had male companions, none of the men were arrested. Citing Article 23(1) of Malawi's Constitution, which prohibits gender discrimination, the court stated:

> *It seems to me that police action was rather discriminatory because only the appellants were arrested leaving their male companions free. Even those who had no male companions were not to be arrested just because they were suspected to be there for purposes of immoral activity.* [301]

The convictions were overturned on the grounds that they "appeared discriminatory against women". [302]

Attitudes about prostitution in Malawi are in a state of transition. In the year 2000, there was a drive to clear prostitutes and their clients off the streets:

> *In a new drive to curb HIV/AIDS, President Muluzi has launched a major crusade to clear prostitutes from the streets of major towns and cities. He has ordered the*

police to arrest women who loiter in the streets at night, including what he calls their "male collaborators". He has also asked religious leaders to educate their faithful on the dangers of promiscuity as a contributor to the AIDS scourge. Immediate action has been taken — during the last week of August [2000] the police have made a number of arrests, following the President's directive. A leading human rights organisation, the Civil Liberties Committee, has welcomed President Muluzi's initiative. Its executive director, Emmie Chanika, says Muluzi's call is in line with most human rights NGOs which have been calling for action to deal with the problem of prostitution effectively. [303]

On the other hand, the National Strategic Framework 2000-2003 of the National AIDS Commission of Malawi announces an intention to generate national debate on legalization of prostitution, as one action towards the objective of examining polices and laws relating to women's economic status which can affect the spread of HIV. [304] The government is reportedly contemplating the legalisation of prostitution in a bid to discourage the culture of secrecy that enhances the prevalence of AIDS. [305]

Trafficking of Malawian women and girls is a serious problem. A study by the University of Malawi's Centre for Social Research found that organised prostitution in Malawi was on the increase, with businesswomen from Malawi, Zambia and Tanzania involved in the "slave trade" of girls aged between 12 and 13 years. Malawi recently passed a law setting heavy sentences for anyone convicted of promoting, managing, or transporting any person into or out of the country with the purpose of engaging that person in prostitution. [306]

6.11.4 Senegal

"Prostitution… has been allowed since 1966, provided the women register with special clinics and submit to regular exams… Staffers say the system works well, providing a regular opportunity to discuss safe sex with the women, conduct tests and hand out free condoms… But there are chinks in the system, About 90 percent of prostitutes work clandestinely, with no access to government centres. Many are under 21, the minimum age for registering. Others want to avoid the stigma of being identified as prostitutes."

Alexander Zavis, "On Continent Ravaged by AIDS, West Africa's Senegal boasts Rare Achievements", *Associated Press*, http://www.stopgettingsick.com/templates/news_template.cfm/3748, 2001

According to Senegalese law, prostitution is legal only for those who are registered with the state. [307] Prostitutes must undergo regular health examinations and carry special health cards which identify them as prostitutes. The sex worker when confronted by the police can be asked to produce the card, and the police then have the right to check that the sex worker has been for regular check ups.

Soliciting is illegal. It is illegal to aid or abet a woman to enter prostitution, to live off the earnings of a prostitute or to run a brothel. There are also strict rules on where prostitutes may operate.

Prostitution exists predominantly in urban centres and is increasing due to economic hardship. Despite the fact that the country's legal policy recognises sex work openly, prostitutes are still considered social outcasts in this predominantly Muslim country.

Many women hide their work from their families, while those who are found out are often shunned.

Senegal is a busy regional crossroads, with large numbers of migrant workers, thus giving it a high risk profile for HIV. And yet Senegal's low HIV infection rate – about 1-2% of the adult population -- is the envy of other African nations. [308] While some credit the sex work registration programme for keeping the infection rate down in this sector, a closer examination of the situation indicates that the facts are much more complicated.

The registration of sex workers was instituted back in 1969, long before the first case of HIV, in an effort to control sexually–transmitted diseases. After the discovery of HIV/AIDS in the country in 1986, education and awareness promptly became a top priority for Senegal, and commercial sex workers were amongst the groups targeted. At their regular health examinations, sex workers are provided with information about HIV and other STDs and often given free condoms (although this is not always the case, due to shortages of condoms and disagreements about the policy on condom distribution). Sex workers also receive medical care for curable STDs, as well as counselling from physicians and social workers.

Some registered sex workers find their contact with the health clinic positive, while others say that they feel powerless in relation to health staff, who dictate their physical and mental health in many ways. Furthermore, if a registered sex worker tests positive for a curable STD, her registration is revoked until she receives a negative result. Thus, the registered prostitute will either lose her livelihood in such circumstances – or choose to practice prostitution illegally as a “clandos” (a clandestine prostitute). [309]

The sex work registration programme has been described as an integral part of monitoring the spread of HIV in the country. [310] However, many sex workers do not register. According to UNAIDS, "it is hard to know exactly how many unregistered sex workers there are. By some estimates there are as many again as there are registered sex workers." [311] In 1997, the head of the Dakar health clinic estimated that only about a quarter of the prostitutes in the city were registered. “Many women have sex for money in this society”, she said, “Most don’t recognise themselves as prostitutes.” [312] Some women refuse to register because of the social taboos around sex work, some because they are migrants and some because they are under the minimum age of 21 which applies to registered sex work. In 2001, one news article estimated that as many as *90% of prostitutes work without being registered*. [313]

Nationwide, it is estimated that between 9% and 35% of registered prostitutes are infected with HIV, depending on the region. [314] In Dakar, about 15% of registered sex workers are infected with HIV, a level which has held steady since about 1992. [315] And yet, significantly, a 2001 study of *unregistered* prostitutes in Dakar found a similar HIV prevalence rate of 14%. [316]

It is clear that there are many other factors which must be considered to explain Senegal’s low rate of HIV infection. For example, millions of dollars have been spent on Senegal's AIDS prevention programmes and awareness campaigns, including the promotion of condoms. Information has been distributed through television, radio, newspapers and posters. Schools teach about AIDS and other STDs, and major companies have set up programmes for their employees. AIDS groups have mobilised action throughout the country, aided by the strong tradition of community organisation in

the country. According to one analyst, “That is one of the biggest factors in Senegal’s success in the struggle against HIV”. [317]

Health officials say that between 1988 and 1997, the use of condoms increased from 700,000 to 8 million. Free condoms are supplied on demand. [318] In one location, there was a highly successful drive to distribute female condoms – about 10 000 were given away before the money for that project ran out. [319]

The conservative Muslim profile of the country is one influence. Islam sanctions polygamy, but demands fidelity from each spouse. The Muslim religion also forbids alcohol, which is often associated with casual sex. It has also been pointed out that Muslim men are circumcised, which may decrease their chances of infection. And Muslim clerics in Senegal have spoken about AIDS in crowded mosques with a frankness that is rare in the Islamic world.

HIV-2, a strain of HIV which is common in Senegal, is less virulent and less contagious than HIV 1. [320]

The national campaigns against AIDS have also benefited from decades of relative political stability.

Another factor is simply the greater openness brought about by the legalisation of sex work. Because of Senegal's long practice of registering commercial sex workers, "when HIV/AIDS came, it was easy to organize this core group of people, evaluate them, document them and train them." [321] Greater openness also means that support organisations have been able to reach out to sex workers, encouraging them to talk to each other and to build up support networks. Sex workers join such groups to safeguard their health, and they attend talks and other information sessions about HIV and AIDS. "We have been shown films and had things explained to us - where AIDS comes from and how you can catch it from so many sources of infection," says one sex worker. [322] There are reportedly over 30 sex worker support groups in existence. Some sex workers also act as outreach trainers and educators for other women in the sex trade, especially for those who may not have registered. [323]

Some say that legalisation empowers sex workers to insist on condoms with their clients, although Senegalese sex workers report that they still encounter clients who insist on sex without protection. However, in a 1998 study of prostitutes, 99% reported that they had used a condom with their most recent new client, and 97% with their most recent regular client.

Furthermore, condom use has been promoted in populations from which clients of sex workers (and consumers of casual sex) are drawn, such as migrant workers and mobile workers such as truck drivers.

Condom use in the country has risen in general. Before HIV became an issue, it was less than 1%. In contrast, a 1997 survey in Dakar found that more than two-thirds of the men and close to half of the women who had engaged in casual sex in the last month had used a condom with their most recent partner. [324]

6.12 CONCLUSION

There do not seem to be any ideal solutions to the issue of sex work. It exists in every country studied, and no legal regime seems to have succeeded in eliminating all of the problems that can be associated with it, for sex workers or for the communities where they live and work. However, some legal approaches are more sensitive than others to the human rights of sex workers. Chapter 8 will draw on the experience of other countries to make recommendations for Namibia.

CHAPTER 7- COMMERCIAL SEX WORK AND HIV/AIDS

"Generally, women and men working in the sex trade have been considered as vectors of transmission rather than as persons who for many reasons, including legal reasons, are vulnerable to contracting HIV: All over the world, prostitutes are being made the scapegoats for heterosexual AIDS."

P Alexander, *Response to AIDS: Scapegoating of Prostitutes*, National Task Force on Prostitution (San Francisco, California, 1988)

7.1 INTRODUCTION

In Namibia, the laws that currently govern sex work are aimed primarily at punishing those who work as sex workers and those involved in the management of sex work. [1] In the context of the HIV/AIDS epidemic in a society in which sex workers are seen as a vector for HIV infection, these laws have been justified on the mistaken assumption that outlawing sex work will reduce the risk of HIV transmission.

Namibia ranks as one of the six countries in the world most affected by HIV/AIDS, with an overall prevalence of 20% [2] among sexually active adults. This means that one in five Namibians aged 15-49 is infected and likely to die within the next seven years.

In August 2001, the Ministry of Health and Social Services (MOHSS) released its epidemiological report on HIV/AIDS for the year 2000, which indicates that a total of 14 691 new infections were reported to the Laboratory Services of the MOHSS in 2000, bringing the total number of HIV positive diagnoses to 82 887 by the end of 2000. [3] Recognising that reported cases are by far the minority of those that actually occur, both the Ministry of Health and Social Services and UNAIDS estimate that the actual number of Namibians living with HIV/AIDS at the end of 1999 was 160 000 (of which 150 000 fall within the age range of 15-49 years) out of a population of 1.6 million. [4]

AIDS has already caused life expectancy at birth in Namibia to fall from 58.8 years in 1995 to 43 years in 2000. [5] When costs associated with the rapidly increasing burden of medical care are added to the cost of years of productive economic life forgone, the financial burden of the epidemic is staggering. It is estimated that the indirect costs of HIV/AIDS added to the direct costs of medical care will mean a loss of over N$8 billion to the Namibian economy by the year 2001, which is equivalent to 20% of the GDP. [6]

According to the 2000 epidemiological report, a higher number of women than men were diagnosed with HIV in 2000. Women account for 56% of all reported new HIV cases, and women are also diagnosed at an earlier age: the median age of HIV diagnosis is 30 years for women and 35 years for men. Every two years an anonymous unlinked survey conducted among pregnant women gives the most reliable information on the HIV epidemic. Results of the 2000 survey indicate that the highest prevalence is observed in the urban areas of Katima Mulilo (33%), Windhoek (31%), Oshakati (28%) and Walvis Bay (28%). HIV prevalence is also high in rural sites close to main roads, such as Onandjokwe (23%), Engela (23%) and Oshikuku (21%). In some rural sites and districts, HIV prevalence is still relatively low: Gobabis (9%), Rehoboth (9%) and Opuwo (7%). It is estimated that 19,3% of pregnant women in Namibia are HIV positive.

Comparison with previous surveys shows that the HIV prevalence is still increasing in most sites. [7]

The number of reported deaths in the age group 15-49 years continues to increase and now accounts for 51% of all deaths in hospitals. [8] Underreporting of deaths due to HIV/AIDS is common, however, due to logistical constraints, reluctance on the part of patients to be tested for HIV and underreporting of HIV/AIDS as an underlying cause of death.

It is evident from the latest epidemiological statistics that HIV prevalence is on the increase as are the number of deaths attributed to HIV/AIDS in the economically active age group of 15-49 years. It is accordingly clear that HIV/AIDS does and will continue to impact both directly and indirectly on development in Namibia.

7.2 THE NATIONAL RESPONSE TO HIV/AIDS

The national response to HIV/AIDS in Namibia has largely been shaped by the provisions of Chapter 3 of the Namibian Constitution, which ensure the protection of the fundamental rights and freedoms of all persons in Namibia, including people living with HIV/AIDS.

In the context of HIV/AIDS, articles 8, 10, 13 and 21 of the Constitution are of particular relevance. Article 8(1) provides that *"the dignity of all persons shall be inviolable".*

Article 10 ensures equality and freedom from discrimination and provides:

> *(1) All persons shall be equal before the law.*
> *(2) No persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.*

Although Article 10 does not make specific reference to discrimination on the basis of HIV/AIDS, the Namibian Supreme Court has held that in giving effect to the protection of fundamental rights and freedoms enshrined by Chapter 3, a "right-giving" and "purposive" approach is to be followed and that the provisions of the Constitution are to be *"broadly, liberally and purposively interpreted so as to avoid the 'austerity of tabulated legalism' and so as to enable it to continue to play a creative and dynamic role in the expression and the achievement of the ideals and aspirations of the values bonding its people and in disciplining its Government."* [9] On this basis, it is submitted that the Namibian courts would have little trouble in finding discrimination on the basis of HIV status alone to be unconstitutional.

Article 13 of the Namibian Constitution protects the fundamental right to privacy, which includes, at the very least, the right to be free from intrusion by the state and others in one's personal life. This constitutional right to privacy strengthens the pre-existing common law right to privacy and in addition to constituting an infringement of a constitutional right, unjustified invasions of privacy remain actionable in common law. In the context of HIV/AIDS, testing for HIV without informed consent and the unauthorised disclosure of a person's HIV status to another both constitute examples of invasions of the right to privacy.

In terms of Article 21(1)(j), all persons have the right to practice any profession, or carry on any occupation, trade or business.

People living with HIV/AIDS in Namibia thus enjoy, in principle, constitutional protection of their rights to dignity, equality, privacy and freedom from discrimination and to practice any profession, occupation, trade or business, regardless of their HIV status.

Although the Namibian Constitution does not make provision for a fundamental right to health, the State is obliged, in terms of Article 95 to-

> *actively promote and maintain the welfare of the people by adopting, inter alia, policies aimed at the following:*
>
> > *(j) consistent planning to raise and maintain an acceptable level of nutrition and standard of living of the Namibian people and to improve public health.*

In addition, as a signatory to the International Covenant on Economic, Social and Cultural Rights, Namibia has an obligation to uphold the right to the highest attainable standard of health. [10]

Namibian policies relating to HIV/AIDS have recognised that people living with HIV/AIDS have constitutional rights to dignity, equality, privacy, freedom from discrimination and to carry on any occupation or trade. Namibian policies on HIV/AIDS have also recognised that the promotion and protection of human rights are essential in preventing the transmission of HIV and reducing the impact of HIV/AIDS. The protection and promotion of human rights are necessary both to the preservation of the inherent dignity of persons affected by HIV/AIDS and to the achievement of public health goals of reducing vulnerability to HIV infection, lessening the adverse impact of HIV/AIDS on those affected and empowering individuals and communities to respond to HIV/AIDS. On paper at least there is an acknowledgement that "rights relating to autonomy, information, education, food and nutrition, association, equality, participation and non-discrimination are integral and indivisible parts of the achievement of the highest attainable standard of health, just as the enjoyment of the right to health is inseparable from other rights, whether categorised as civil and political, economic, social or cultural". [11]

7.3 AN UNDENIABLE LINK BETWEEN HUMAN RIGHTS AND HEALTH

There is an undeniable link between human rights and health. The promotion and protection of human rights plays a crucial role in the impact of HIV/AIDS on a society and on the vulnerability of people to HIV infection.

People living with HIV or AIDS in Namibia face discrimination and stigma on a daily basis. In the home environment they face rejection by family, friends and partners, and in the work environment they face rejection by co-workers and even dismissal. They face daily violations of their fundamental rights to freedom from discrimination and equality before the law. This violation of their rights increases the negative impact of the epidemic on individuals because instead of people worrying only about their health and HIV status, they also have to worry about ongoing stigma and discrimination.

The violation of the right of people living with HIV or AIDS to freedom from discrimination also compromises the health of the general population. The fear of stigma and discrimination on the basis of HIV status is one of the biggest deterrents to voluntary HIV testing. Stigma and discrimination on the basis of HIV status deters people from finding out about their status and also leads to those affected actively avoiding detection and contact with health and social services. The result is that those most needing information, education and counselling are driven underground. In the case of sex workers the position is exacerbated by the fact of their illegal status.

Safeguarding human rights in the context of HIV/AIDS is thus not only vital in and of itself but also has a public health benefit. People are more likely to go for counseling and testing and to access information and education on HIV prevention if their right to freedom from discrimination is protected and upheld.

Promoting and protecting human rights is also a way of addressing underlying social, cultural and economic conditions that make people vulnerable to HIV infection. Some groups of people may be more vulnerable to HIV infection because of their legal or social or economic status. For example, women are more vulnerable to HIV infection as they often do not have equality of power within relationships to enforce safer sex decisions or to refuse unwanted sex.

Poverty forces both women and men into economic or social lifestyles that increase their vulnerability to HIV infection. Women are rendered particularly vulnerable as a result of the fact that they generally have a lesser access to economic resources than men, which makes them particularly dependent on men for access to such resources. This results in many poor women trading sex for survival. Bartering of sex for survival can take the form of sex work. More often however, it takes the form of a more informal bartering of sex for food or a job or for advancement in the educational sphere. In this type of situation women can often not insist on safer sex as this can result in loss of economic support.

Sex workers are more vulnerable to HIV infection as their illegal status places them in a weak bargaining position *vis a vis* their clients in respect of enforcing the use of a condom and also makes it difficult for them to access health services and information and education on HIV prevention. Male sex workers who have sex with men face a double jeopardy as a result of the illegal status of sex work and sodomy. Promoting and protecting the fundamental rights to freedom from discrimination, equality and the right to practice a trade or occupation will thus reduce the vulnerability of sex workers to HIV infection.

7.4 THE TRANSMISSION OF HIV THROUGH SEX WORK

In order to understand the linkages between HIV transmission and sex work, it is necessary to consider the following facts.

> **1. Sex workers in Namibia are mostly women, and women are at a higher risk of contracting HIV from men than vice versa.** According to UNAIDS, research shows that the risk of becoming infected with HIV during vaginal intercourse without a condom is as much as 2-4 times higher for women than men because of their biological differences. The vagina has a large surface area

of thin tissue which is vulnerable to infection compared with the penis. Furthermore, semen infected with HIV typically contains a higher concentration of virus than a woman's sexual secretions. This makes male-to-female transmission more efficient than female-to-male. Younger women are at even greater biological risk. Their physiologically immature cervix and lesser vaginal secretions provide less of a barrier to HIV. Women are also more vulnerable to other sexually transmitted diseases, which if untreated can increase the risk of HIV transmission by up to 10-fold. And STDs are more likely to go unnoticed in women because sores or other signs of disease are absent or harder to see. [12] This means that, instead of posing a health risk *to* their clients, sex workers are at more risk of contracting HIV *from* their clients.

2. Studies in other countries in Africa and other parts of the world have produced widely-varying evidence on the percentage of sex workers infected with HIV. [13] This means that there is no reliable evidence that sex workers are any more likely to be infected with HIV than other segments of the population.

3. Studies in other countries have shown that sex workers use condoms more consistently than other groups similar in age, race and sex. [14] This should not be surprising. Many sex workers approach their work as professionals who are well aware of the risks of sexually transmitted diseases and how to prevent them. Persons who are engaged in commercial sex work may also be more likely to perceive themselves as being at risk than persons who are engaged in other forms of casual sexual relationships. More than 67% of the sex workers interviewed in Namibia say that they always use condoms with their clients, while less than a third (28%) reported that they use condoms during intercourse with their regular partners in their private lives. [15] Studies in other countries have produced similar findings. [16] This indicates that sexual relationships outside of the context of sex work are likely to involve much higher risks of HIV transmission than sex work.

Despite these facts, the scapegoating of commercial sex workers as transmitters of HIV continues worldwide and is also taking place in Namibia. For example, Namibia's *National Progress Report on the Implementation of the Beijing Platform for Action* cites "some element of prostitution to meet economic needs" as one factor behind the rapid spread of HIV/AIDS in Namibia, but cites no evidence for this assertion. [17]

7.5 THE DANGERS OF MANDATORY TESTING

It has been suggested that Namibia should consider a system of registering all sex workers so that they could be counselled and regularly tested for HIV.

Namibia considers legalising sex work

NAMIBIA is mulling the idea of legalising sex work as part of a bid to stem the high prevalence of HIV-AIDS in the country. Health Minister Dr Libertina Amathila told health reporters attending a Commonwealth Press Union workshop in Windhoek yesterday that the Government was looking at the idea of registering all sex workers

in the country so that they could be counselled and tested for HIV - the virus that causes AIDS - regularly.

At the moment there are no records on the number of prostitutes in the country, their ages and where they carry out their business. Their activities are unregulated while some continue to practise unprotected sex which helps spread the deadly disease.

But yesterday Amathila said there was a need to face up to the linked problems of prostitution and AIDS. "I think that it is high time that we don't run away from that issue. We need to protect the nation. Let them (sex workers) be registered, counselled and protected and let us protect their clients," Amathila said during open and frank discussions with health reporters from five African countries.

About 180 000 Namibians are estimated to be living with HIV while statistics from the Health Ministry indicate that more than 2 100 Namibians died of AIDS last year alone. Amathila said one in every 16 children or six per cent of all newborn babies will be HIV positive this year…

The Namibian, 12 October 1999

But such a system would actually be more likely to increase the risk of HIV transmission through sex work.

1. Mandatory testing unfairly discriminates against sex workers. This adds to the disempowerment and stigmatisation of sex work. Furthermore, such an approach would undermine the concept of informed consent -- a person who is dependent upon sex work for survival would not be free to say yes or no to testing in any meaningful way if a mandatory testing law were enacted.

2. Laws requiring mandatory HIV testing of sex workers would drive sex work deeper underground and discourage sex workers from seeking HIV testing. For example, Greece reportedly has very strict regulations on the mandatory medical screening of registered prostitutes. This policy has simply made sex work more secret. In May 1999, only 600 women were registered as sex workers, out of an estimated 10 000 who are operating as such. [18] As another example, in one US state where the law requires mandatory testing, a sex worker who tests HIV positive will receive an extremely heavy sentence upon subsequent convictions for sex work, regardless of whether or not safe sex practices were used. Two sex workers prosecuted under this law were released from prison only on conditions that they agreed to electronic surveillance of their movements. [19] Such punitive approaches are counterproductive, as they inspire sex workers to avoid HIV tests at all costs. Public health officials would be perceived in a policing role, which would discourage sex workers from voluntarily seeking information about HIV or other STDs.

3. Meaningful enforcement would be impossible. Sex work is, by its nature, an invisible occupation. Sex workers on the street and in recognized brothels would be targeted for mandatory testing, but it would be all but impossible to enforce mandatory testing for those engaged in more secretive or informal forms of sex work. Attempts at widespread enforcement would also require an intense commitment of police and prosecutorial services. This would have the effect of deflecting state resources from other, more serious crimes – such as violence against women and children which is one contributing factor to the spread of HIV throughout society.

4. Mandatory testing of sex workers would do nothing to reduce the risk of HIV transmission, but would actually increase the risk of HIV transmission by discouraging safer sex practices. Under such a system, a negative HIV test would in effect give a sex workers a clean bill of health which would allow him or her to continue sex work until the appointed time for the next test. This would ignore the following factors:

- tests might be conducted during the "window periods" in which the HIV virus s present but undetectable
- single HIV tests can produce false negatives
- sex workers might contract HIV subsequent to the test
- negative test certificates might be forged. [20]

Thus, clients might be lulled into a false sense of security which would make them more likely to pressure sex workers to forego condoms, thus posing an increased health risk to both client and sex worker.

5. Sex workers who failed to comply with a mandatory testing requirement would be operating illegally and thus would be more vulnerable to abuse and exploitation. This would place them in an even weaker bargaining position with respect to safer sex practices.

6. Other countries have found information and education programmes to be more effective than punitive measures in reducing transmission of HIV and STDs amongst sex workers. For example, in Kenya a health programme was directed at a selected group of 1000 sex workers (of whom 80% were HIV positive). Sex workers were counselled in how to encourage clients to use condoms, free condoms were distributed, a special health clinic was established for the study group and they were asked to visit the clinic at 6-month intervals for health assessments. This approach proved to be very effective in reducing further transmission of HIV as well as other STDs. [21]

Thailand and Cambodia have both launched successful "100% condom use" campaigns. For example, a pilot programme in one part of Cambodia resulted in an increase of condom use in commercial sex by clients from amongst the military, police and motorbike taxi drivers, from a starting point of less than 55% to 65-75% after the programme had been in place for two years. [22] In Thailand, as a result of condom distribution and health education programmes targeting sex workers and their clients, condom use by brothel clients increased from 61% to 92,5% between 1991 and 1995. [23]

The Netherlands has had some success with outreach programmes due to its policy of restricting prostitution to specific areas. Police and social workers find it easier to make contact with sex workers in these designated areas, to protect them against abuse, to offer treatment for drug addiction, and to offer HIV information and counselling. Field workers also regularly visit brothels to offer health information and educational materials. There are also educational programmes aimed at clients, such as a light-hearted piece of street theatre with a safe sex message. Snack bars and tents where food is available have also been used in the "red light" districts to attract clients for discussion about safe sex. [24]

These factors all mitigate against mandatory testing and certification of sex workers as a means of reducing HIV transmission through sex work.

CAN SOLIDARITY AND GOVERNMENT POLICY REDUCE HIV RISK IN SEX WORK?
Dominican program increases condom use, lowers STI prevalence

In sex establishments participating in the Dominican Republic's 100 Percent Condom Program, it's not hard to find condoms. There are glass bowls filled with them in every room, and the walls display glow-in-the-dark posters reminding clients and sex workers to use them—"100 percent of the time." These hard-to-ignore prevention tools are among the most visible symbols of a year-long campaign in two Dominican cities to lower transmission rates of HIV and other sexually transmitted infections (STIs) among female sex workers and their clients. The Dominican 100 Percent Condom Program promotes solidarity among sex workers, sex establishment owners, managers and staff, and others in the sex work industry to build a collective commitment to condom use for every commercial sex act.

The concept of mandating 100 percent condom use was born in Thailand in 1991, when the government created a policy requiring universal condom use in all brothels. Health authorities used results of periodic STI tests of sex workers to determine whether sex establishments were complying with the program, and brothel owners were subject to sanctions and ultimately closure in the case of persistent noncompliance. The results were impressive: significant increases in reported condom use among sex workers and their clients in participating sex establishments (from 14 percent to more than 90 percent) and a 79 percent decrease in the number of STI cases among men frequenting sex establishments. The world took immediate notice of the program's success, and the desire to test its applicability to other settings inspired a second generation of interventions in the Dominican Republic and elsewhere. Early this year, results from the Dominican program revealed success in adapting key elements of the Thai experience, raising hopes that components of the 100 percent condom model can be implemented in other regions…

***

In the capital city of Santo Domingo, the program involves 34 sex establishments in solidarity- building activities among sex workers, owners, and staff, with the goal of creating an enabling environment where condom use becomes the norm for sex workers and their clients. In addition to promoting development of a collective commitment to HIV prevention and condom use, the program sponsors work-shop discussions on such sensitive issues as trust and intimacy between sex workers and regular clients and boyfriends, with whom condom use is often irregular. Compliance with the program in Santo Domingo is voluntary.

In Puerto Plata, on the northern coast of the country, these solidarity-building elements are implemented in 34 sex establishments together with a regional governmental policy requiring 100 percent condom use in all commercial sex acts. The policy is enforced with a graduated sanction system against sex establishment owners, including fines for repeated noncompliance. In both cities, easily accessible supplies of condoms and visible environmental cues such as 100 percent condom use posters provide support for sex workers as they negotiate with clients. Additionally, establishments that comply quarterly with the key intervention components in both cities receive certificates that they can post…

***

The data show that the intervention in Puerto Plata had a greater effect than in Santo Domingo on several study outcomes. For example, consistent condom use with regular partners (those partners known by sex workers) increased only slightly in Santo Domingo, from 15 percent to 18 percent; in Puerto Plata it more than doubled, from 13 percent to 29 percent…

"The data indicate that solidarity-building activities to create an enabling environment combined with government policy can result in greater changes in protective behavior and reductions

in HIV vulnerability among sex workers and their clients," said Deanna Kerrigan of Johns Hopkins University, a principal investigator of the study…

Horizons Report: HIV/AIDS Operations Research, May 2002

FROM HEALTH PROMOTION TO COMMUNITY DEVELOPMENT

Sex work studies find significant associations between social capital and safer sex

In downtown Rio de Janeiro [Brazil], street-based sex workers often drop by a small second-floor office when they need a break. Equipped with comfortable chairs, a refrigerator, and telephones, the Fio da Alma (Soul's Thread) Drop-in Center offers something new in this part of town: a place for sex workers to unwind, eat an unhurried lunch, and escape the competitiveness of life on the street by socializing with peers. Staffed by sex workers, the center's daily schedule includes meetings and workshops on everything from negotiating condom use with clients to improving reading skills to assembling plastic flowers as a second income source. It also serves as rehearsal space for the ten-woman Fio da Alma choir, which performs at festivals. This new facility represents a real breakthrough for a population that until now has enjoyed little cohesion and few resources. It was created as part of an ongoing Horizons intervention study of the effectiveness of community development as a strategy for decreasing the vulnerability of sex workers to HIV and other STIs. The study is one of the first to test the tenets of community development in sex work and to examine the value of building collective identity as a strategy to protect the sexual health of sex workers and reduce their vulnerability.

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The study found that "Women who felt a sense of support from other sex workers were ten times more likely to report consistent condom use with clients."

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Horizons Report: HIV/AIDS Operations Research, May 2002

7.6 LAWS ON SEX WORK & THEIR IMPACT ON HIV TRANSMISSION

Current law

Whilst in general the national response to HIV/AIDS has illustrated a recognition of the need to promote and protect individual human rights in order to reduce vulnerability to HIV infection, sex work is an area that requires attention. The laws currently in place that outlaw sex work and sodomy increase sex workers' vulnerability to HIV infection. The illegal status of sex work and sodomy mean that sex workers who are abused by their clients are less able to report their abusers. It also makes it difficult for them to insist on condom use with their clients and thus increases their risk of becoming infected with HIV. As a group their collective illegal status makes it difficult for them to access appropriate health services, information and education programmes and materials on HIV prevention as they fear detection and prosecution. Once prosecuted and convicted, sex workers have a criminal record that reduces the employment opportunities of those who choose to leave the sex industry. Criminalisation of sex work has thus driven sex workers underground to a place where any attempts to address vulnerability to HIV infection are negated. Current laws regulating sex work thus substantially contribute to the vulnerability of sex workers to HIV and thus to the spread of HIV.

"Female prostitutes in particular are perceived as the bridge between an HIV-infested "underworld" and the "general population"… according to policy-makers and the media, the protection of public health justifies draconian legal measures and moral intolerance. Few if any of these measures reduce a prostitute's own risk of contracting HIV. Research has indicated that punitive measures to control the sex trade – such as increased criminal penalties, mandatory testing and electronic monitoring – will further erode prostitutes' ability to negotiate safe sex and further alienate them from public health initiatives. As a result, HIV risks will be increased rather than reduced."

Canadian HIV/AIDS Policy & Law Newsletter, Vol 2, No 2 (January 1996)

Alternative legal approaches

The reduction of the vulnerability of sex workers to HIV will only be achieved in an environment where sex workers are empowered to take more effective control over the terms and conditions on which they trade in sex. Rather than subjecting sex workers and sex work to punitive legislation, consideration should thus be given to the decriminalisation of sex work and the promotion and protection of the rights of sex workers to practice their profession and to enjoy the same rights and protections with regard to their working conditions as people in other occupations enjoy.

Decriminalisation means repealing the laws relating to sex work and making it subject to the same laws and controls that regulate other businesses. The advantages of this approach in the context of HIV/AIDS are undeniable and include:

- sex workers having the same status in law as their clients;
- health promotion work taking place openly throughout the sex industry;
- labour laws and health and safety regulations being openly applied; and
- sex workers having increased ability to enforce safer sex decisions.

An alternative to decriminalisation is the ***legalisation*** of sex work. This involves making sex work legal under certain conditions and typically involves establishing a system of licensed sex workers in licensed premises. The advantages of this approach are:

- it avoids the pretence involved with current laws, e.g. pretending that sex work is not taking place at massage parlours;
- it provides a defined system of controls;
- it allows for health promotion messages in licensed brothels.

There are however difficulties with this approach, particularly in that it leaves the power and control in the hands of the clients and brothel managers and operators, while reinforcing the vulnerability of the sex workers. This is because licensing typically creates a two-tier system. Those who work in legal brothels face exploitation by clients or brothel operators with the threat of dismissal, which forces them into the illegal sector. In addition, the larger number of sex workers in "legalised" sex work systems are in any event those who work in the illegal sector. As such they carry an illegal status that makes them as vulnerable to HIV as the current system in which sex work is criminalized.

It is also frequently a characteristic of "legalised" sex work systems that sex workers are required to undergo periodic mandatory health checks for HIV and other STDs. As explained above, this creates an unhealthy situation in which increasing numbers of clients assume there is no longer a risk of HIV infection because sex workers are

certified disease-free, which in turn leads to an increase in the demands of clients for unsafe sex. This clearly undermines the ability of sex workers to enforce safer sex practices and increases their vulnerability to HIV. [25]

Recommendation

On balance then, decriminalisation as opposed to legalisation of sex work is the preferred strategy insofar as it may impact on reducing the vulnerability of sex workers to HIV and creating an environment in which HIV prevention interventions will prove more effective.

> *"Successful interventions to prevent HIV infection associated with prostitution…have been most effective where prostitutes are empowered to determine their working conditions. A major effect of legal and social restrictions on prostitution has been to generate low self-esteem among sex workers and the belief that they cannot control their lives. Restrictive laws and adverse working conditions inhibit their ability to negotiate with clients and/or managers for adequate health care and safer sex practices."*
>
> World Health Organisation, *Global Programme on AIDS and Programme on STDs*, 1989

> *"There is a real question as to what business it is for the law to be attempting to stamp out consensual adult sexual activity. Such laws will never succeed. In the attempt they will arm police and a whole host of officials and others with powers of oppression, intimidation, blackmail, humiliation and harassment. They will tend to drive the sex industry underground. They will promote oppression of sex workers. And they will impede the struggle against HIV."*
>
> Judge Michael Kirby, *Sex, Drugs and the Family*,[Australian] *National AIDS Bulletin* 1994, 7(12): 20-22.

CHAPTER 8- RECOMMENDATIONS FOR NAMIBIA

The vast majority of prostitutes are women. The vast majority of clients are men. … Ultimately, however it is told, the story of prostitution is fundamentally a story about women and their position in society.

Submissions on Behalf of the South African Commission for Gender Equality
Jordan and Others v State

8.1 INTRODUCTION

There is no perfect solution to the problem of prostitution. Any option which is proposed will be controversial, and any option will have some pros and cons. Because the legal treatment of sex work is likely to inspire a significant amount of public debate, this chapter will examine several alternatives, pointing out some of their pros and cons.

Something needs to be done, because Namibia's existing approach makes no sense. **The current situation is simply insincere. Sex work itself is not illegal, but almost every action related to it is against the law. At the same time, sex work takes place openly in many of Namibia's major urban centres and is seemingly tolerated.** We cannot pretend that it does not exist when we have seen reports on sex workers in virtually all of the major media over the last year.

There seem to be almost no sex workers in Namibia who have chosen the job freely – almost every sex worker interviewed would prefer another job. Most seem to have turned to sex work out of necessity – because of poverty, lack of support structures, sudden twists of fate (such as a death in the family or the loss of another job), or the absence of maintenance from their own fathers or the fathers of their children. Many are supporting a range of dependents, both older and younger than themselves.

Sex workers suffer abuse, violence and exploitation at the hands of clients and law enforcement officers. The existing situation undermines safer sex practices, as sex workers who are forced by clients to have unprotected sex have no legal recourse. Child prostitution, at least in major urban centres, appears to be an enormous problem. Trafficking has fortunately not yet become a widespread problem in Namibia, but this could change in future.

The problems faced by sex workers in Namibia have been raised at the international level. In response to Namibia's first country report made under CEDAW, in 1997, the Committee which monitors the Convention made the following statement: "*The Committee expressed concern that prostitutes had insufficient access to health care."* [1] Namibia was asked to report back on this concern in its next country report. [2] Also, Namibia's National Progress Report on the Implementation of the Beijing Platform for Action mentions "forced prostitution" as an example of "violence and torture in the Namibian society", although no details concerning this statement were provided in the report. [3]

Sex work is widely condemned by the public, although most public criticism focuses on those who sell sex and says little or nothing about the clients who are the other half of the transaction. Clients are never arrested, and the current law means that sex workers who are abused by clients seldom feel that they can turn to the police for help. The current imbalance of power between sex worker and client also encourages situations where clients try to pressure sex workers to agree to unsafe sex practices. And yet the clients escape both public condemnation and arrest.

The interviews with sex workers reveal a high level of hypocrisy, with tales of law enforcement officers who "had sex with us yesterday" and then "come today and arrest us". The current situation also encourages corruption, giving police an opportunity to exchange "free sex" for protection. Many sex workers also seem to have experienced arrest without ever being informed of the charges against them, and often without ever appearing in court.

Only a tiny handful of individuals have made any effort to help the many sex workers who have turned to prostitution because of a desperate lack of other options. Little has been done to assist the burgeoning number of child prostitutes, despite the fact that almost everyone would agree that such children deserve help as the innocent victims of circumstance.

Thus, the current approach is an ineffective system of condemnation without compassion. It has done little in practice to discourage sex work or to advance the prevention of sexually-transmitted diseases. It has not helped to get children off the streets, nor has it provided any protection against abuse for sex workers of any age. Law reform is clearly needed.

8.2 CONSTITUTIONAL ISSUES

Aspects of the current law on prostitution are almost certainly unconstitutional. They are badly drafted, ridiculously overbroad and biased toward the mostly female sellers of sex rather than addressing the mostly male purchasers. The High Court of Namibia is expected to give a ruling on some of the provisions of the Combating of Immoral Practices Act in the near future, and it would serve no purpose to try to anticipate that ruling.

But would a new and well-drafted law outlawing various aspects of commercial sex work be unconstitutional?

In the *Fantasy* case, which dealt with the application of the Obscene Photographic Matter Act 1967 to a "sex shop", Namibia's High Court stated that the objective of the Act was "to introduce measures to uphold standards of decency and morality in society". The court found this to be "a permissible objective of sufficient importance to justify a limitation of the right to freedom of speech and expression". However, the court went on to state that "instead of addressing the legislative object with precision, caution and sensitivity to the fundamental rights of those who would be affected by the law, it was written with the bold and sweeping stroke of a legislative pen unconcerned with constitutional censure by the Courts." [4] The Court found that the relevant sections of this Act were overbroad and unconstitutional.

In a new law on sex work, a number of Constitutional rights might be implicated:

- respect for human dignity (Article 8)
- the right to freedom from sex discrimination (Article 10)
- the right to privacy of the home and communications (Article 13)
- freedom of speech and expression (Article 21)
- freedom of association (Article 21)
- freedom to practise any profession or carry on any occupation, trade or business (Article 21).

None of these rights are absolute. Furthermore, our Supreme Court has said that Namibia's Constitution must be interpreted in light of the "contemporary norms, aspirations, expectations, sensitivities, moral standards, relevant established beliefs, social conditions, experiences and perceptions of the Namibian people as expressed in their national institutions and constitution". [5] However, the Court has also endorsed the view that -

> *the value of public opinion will differ from case to case, from fundamental right to fundamental right and from issue to issue. In some cases public opinion should receive very little weight, in others it should receive considerable weight. It is not a question of substituting public opinion for that of the Court…* [6]

In any event, the telephone survey conducted for this report indicates that the majority of Namibian hold contradictory views on sex work – the public disapproves of prostitution on moral grounds, but is at the same time concerned about health issues and the human rights of sex workers.

It would thus be difficult to be sure in advance where our courts would draw the line between permissible regulation of sex work and impermissible interference with the constitutional rights of sex workers. Laws on prostitution-related offences have been upheld against Constitutional challenge in Canada, while South Africa has upheld some such provisions and struck down others. **It seems clear that any new law on sex work in Namibia will have to be narrowly tailored to its objectives in order to withstand constitutional scrutiny.**

> *"Indeed, it is probably true to say that commercial sex, unlike rape or incest, is socially beneficial, providing a service to persons in need of sexual gratification who for one reason or another cannot obtain it within a conventional romantic sexual relationship. The fact that prostitution has existed for as long as it has indicates that it is a service for which there is a real and appreciable social need. A person who becomes a prostitute simply provides this service; they exercise the fundamental human right to choose what work one will do. To deny that choice in the case of prostitutes for paternalistic or purely moral reasons is a gross violation of human freedom and dignity."*
>
> JRL Milton, "Prostitution: Current Debates" in S Jagwanth, PJ Schwikkard and B Grant (eds), *Women under the Criminal Justice System,* 1993 at 148

8.3 POSSIBLE LEGAL APPROACHES FOR NAMIBIA

There are several possible approaches to sex for reward between consenting adults.

OPTION A: DECRIMINALISATION

Repeal the provisions relating to sex work in the Combating of Immoral Practices Act and all similar municipal regulations. Enact a new law to deal with the problems of child prostitution and trafficking. Provide no special regulations for street solicitation and brothels, but regulate and limit these activities in a reasonable way under general laws relating to business activities, nuisances and loitering within local authorities.

Consequences

►Sex workers employed in brothels would be employees subject to labour laws and eligible to register with the Social Security Commission. Self-employed sex workers would have the option of registering with social security schemes if they wish.

►Any sex workers who earned sufficient income would be liable to pay taxes, although this would be difficult to enforce. Similarly, VAT might be technically applicable, but would probably be unrealistic to apply in practice. Even in a climate of full decriminalisation, sex work is unlikely to lend itself to receipt books and financial records on the part of individual sex workers. However, brothels would be expected to run on the lines of any other business.

►Current laws on advertising and pornography would need to be re-examined to see if they are sufficient to prevent offensive or obscene advertisements of sex work, like the "cards" which are placed in telephone boxes in England. New prohibitions to cover obscene advertisements could be enacted if necessary.

►Zoning laws of local authorities would apply to brothels in the same way as any other businesses. Laws on nuisance and noise would also be applied as necessary, to prevent public disturbances from brothels. Small local authorities might find it inappropriate to allow any brothels within their boundaries, if the nuisance value to the community would outweigh other considerations.

►Contracts between sex workers and clients, or between sex workers and their employers would be enforceable in court, unless some limitation was placed upon this by a new law.

Pros

►This is considered to be the best approach for preventing the spread of HIV, because it brings sex work out in the open. Sex workers and their clients can be identified for education initiatives around STDs, including HIV, and they will feel more free to access health care services.

►Similarly, sex workers with alcohol or drug problems will be more free to seek help if they do not have to worry about the illegality of their work.

►State resources are freed up to concentrate on other priorities, such as abuse and violence against women and children.

►The possibilities for corruption are greatly reduced. Police would not be tempted to suggest sex in exchange for freedom from arrest, as has happened in Zambia.

►Sex workers would have greater protection against abuse and violence, because they would not have to be afraid to report crimes to the police.

►Decriminalisation would make it possible for safer working environments to be created – such as clubs and brothels – thus meeting one of the needs articulated by many sex workers who are currently on the streets.

►Decriminalisation would facilitate access to vocational training programmes and transitions to other jobs.

Cons

►Complete absence of regulation is likely to make sex work more visible, which may offend members of the community who view this activity as an immoral one.

►It is possible that decriminalisation might increase the numbers of person involved in sex work, particularly given the high rate of unemployment and poverty levels in Namibia. This is not certain, however. Decriminalisation could open up opportunities for assisting sex workers to find other alternatives, if there is a political will to do so.

►Tourism is a significant part of Namibia's economy. Many of those who are interested in sex tourism share detailed information about the legal position of sex work in various countries on the Internet. Complete decriminalisation might identify Namibia as a sex tourism destination. This could, in turn, lead to problems involving trafficking. However, strong laws on these aspects of commercial sex work could prevent such problems.

►The removal of legal restrictions on sex work will not fully remove the stigma attached to sex work in Namibia. The fact that many will continue to condemn prostitutes could undermine some of the advantages of the approach.

►Local authorities may apply regulations to street solicitation and brothels in a manner which defeats the objective of decriminalisation. For example, as has already happened in Windhoek, sex workers could be targeted for arrest on charges such as loitering. To avoid this problem, decriminalisation would have to be accompanied by policy guidelines about a national approach to sex work.

Would it not be better to legalise the prostitution of the poor in order to control the health of these sex workers? We cannot control the poverty by jail sentences. We better alleviate poverty, because this is the cause of the evil.

Father Hermann Klein-Hitpass, "Report on single mothers on the streets, in Windhoek, selling themselves to make ends meet", as updated February 2002

OPTION B: REGULATION

Repeal the provisions relating to sex work in the Combating of Immoral Practices Act and all similar municipal regulations. Place national restrictions on the times and/or places for public solicitation, or allow local authorities to do this within certain parameters. Regulate brothels, but do not forbid brothels altogether as many sex workers say that they would be safer if they had a place to work "indoors" instead of in the veld or at a place chosen by the client. Consider requirements about the availability of condoms and the provision of information about safer sex practices to sex workers and clients in brothels. Formal registration should not be contemplated as part of a regulatory system. Some Namibian sex workers are opposed to identifying themselves in this way, and such a requirement is likely to be unenforceable.

Consequences

►The consequences would be essentially the same as those listed under 'Decriminalisation'.

Pros

►The introduction of some regulatory controls would probably make a decriminalisation option more popularly acceptable, and would help to allay fears about an explosion of sex work in Namibia.

►Some direct regulation could help to prevent sex work from becoming so open that it had a negative impact on residents and visitors alike. No one is likely to want Namibia to turn into a place where sex workers pursue their trade aggressively, as has happened in some other developing countries.

►Thoughtful regulations could be used to enhance working conditions for sex workers, such as regulations about the availability of condoms in brothels.

Cons

►Most of the "cons" which apply to a pure system of decriminalisation are equally applicable to a system which applies some limited regulation.

►The possibility of police corruption would appear again in the enforcement of regulations.

►Regulations about acceptable times and places for solicitation are likely to force some street sex workers back into the shadows, thus creating a two-tier system of legal and illegal workers. The advantages of decriminalisation would then be undercut for the illegal underclass of sex workers.

►Laws aimed at general issues such as zoning laws, nuisance offences and loitering offences could accomplish many of the goals of regulation with fewer disadvantages.

OPTION C: ABOLITION

Acknowledge that most sex workers in Namibia are driven into the trade by necessity, and are thus victims of circumstance and poverty. Remove the prohibitions on individual solicitation in the existing law, and criminalise the purchase of sex but not the sale of sex (as in Sweden). Retain and perhaps strengthen the provisions on the involvement of third parties, and on brothels. Such a law would target demand instead of the supply of sex work by individual sex workers. It would also make the involvement of third parties illegal.

Consequences

►Most of the existing problems experienced by sex workers would continue, although they would in theory be more free to approach police for protection and easier to target for appropriate support services since they would no longer be committing crimes through their work.

Pros

►The approach would allow the government to condemn sex work through the law without penalising the sex worker directly. It has little else to recommend it.

Cons

►Abolition does not work. There appears to be no society in the world which has eliminated prostitution.

►Existing laws criminalising the involvement of third parties are seldom invoked. Meaningful enforcement of offences such as "pimping" and living off the earnings of prostitution is not likely to take place without an intense commitment of resources. In practise, such an approach is likely to be only a symbolic one.

►If clients were criminalised as part of an abolitionist approach, as in Sweden, this would drive sex work underground just as if sex work were illegal for the prostitute. This would make sex workers more vulnerable to exploitation and abuse, and cut them off from needed services. It would make it harder to target sex workers and clients for HIV education and advocacy. Also, in a hidden industry, it is harder to protect children and to take action against other problems such as illegal immigrants and illegal drug traffic.

► "Indoor" sex work in an environment such as a club or a brothel can be safer for the sex worker than "outdoor" work on the streets. Many sex workers interviewed in Windhoek expressed a desire for a safe place to carry out their work. Abolition would make it impossible to meet this need, as all of those who support or organise prostitution would be criminalized.

►Sex for reward between consenting adults is a victimless crime. It has been argued that the sale of sex commodifies sexuality and is thus bad for society. This is probably true, but that does not make criminal law an appropriate or effective vehicle for dealing with the problem.

►This approach is likely to be unpopular with the public, because of the strong moral disapproval of sex work. The public is unlikely to be receptive to the idea that the client can be committing a crime, but not the sex worker.

"*Prostitution is a social fact deplorable in the eyes of moralists, sociologists and, we believe, the great majority of ordinary people. But it has persisted in many civilisations throughout the centuries, and the failure of attempts to stamp it out by oppressive legislation shows that it cannot be eradicated through the agency of the criminal law.*"

Report of the Committee on Homosexual Offences and Prostitution (Wolfenden Committee, UK) 1957

OPTION D: PROHIBITION

Make sex work illegal for everyone involved. Namibia's existing approach to sex work is essentially prohibitionist, but it could be improved. Remove gender bias and make sex work equally illegal for both sex workers and clients, instead of just for sex workers and third parties. Tailor offences more narrowly to avoid constitutional problems.

Consequences

►The existing problems experienced by sex workers would continue.

Pros

►This option seems to be a popular one with the general public, and would probably be a reflection of the prevailing moral view in Namibia.

►Criminalising all parties involved would at least remove the present gender bias, and remind the public that both supply and demand are required to sustain sex work. It would also avoid the possibility of the law being struck down on the grounds of sex discrimination.

►Criminalising both sex worker and client would bring the law on sex work in line with laws on other illegal buying and selling. For example, in terms of the Diamond Act, it is illegal both to sell and to purchase unpolished diamonds without proper permits, and the penalties for illegal buyers and sellers are identical. [7] Buyers and sellers are both criminalized in transactions involving illegal drugs as well. The Abuse of Dependence-Producing Substances and Rehabilitation Centres Act does not mention "buying" specifically, but possession of illegal drugs is a crime parallel to that of "dealing in" these drugs, thus criminalizing both sides of the transaction. [8]

Cons

►Like abolition, prohibition does not work. Sex work is here to stay, regardless of how severe the laws are.

►Real enforcement of prohibition is very difficult. The actual act of prostitution will almost always take place in private, meaning that convictions will be difficult to obtain without entrapment. Even prohibitions on solicitation are difficult to enforce. Namibia's

existing law on sex work is hardly ever invoked in practice, but its existence makes sex workers vulnerable.

►Enforcement would be likely to be selective, targeting (mostly female) sex workers rather than (male) clients. For example, a sex worker standing on the street looking for business is an easier target than a passing client in a car. Criminalising sex work for clients would thus be likely to create an illusion of gender neutrality which would not be realised in practice.

►Most sex workers in Namibia say that they are driven by necessity rather than by choice. Who amongst us can really say for certain that we would not engage in sex work if our circumstances were sufficiently dire and our options sufficiently few? Sex workers driven to sell sex for survival deserve assistance and compassion rather than punishment.

►As in the case of abolition, prohibition would simply drive sex work underground, thus making it harder to engage in positive interventions.

"The real purpose of prohibiting prostitution is… the enforcement of the moral views of a section of society."

Submissions on Behalf of the South African Commission for Gender Equality, *Jordan and Others v State*

8.4 RECOMMENDATION FOR NAMIBIA: DECRIMINALISATION & DISCOURAGEMENT

We recommend DECRIMINALISATION combined with a policy of compassionate DISCOURAGEMENT as the best option for Namibia. Decriminalising sex work does not have to mean the approval of sex work by Namibian society. There is probably no one who would like to encourage young women in Namibia to consider sex work as a career option. None of us would probably like to see the streets lined with scantily-clad sex workers harassing visitors at Namibia's premier tourist destinations. Namibian society would undoubtedly disapprove of showy "red light" districts packed with topless bars. *But decriminalisation does not have to mean any of these things.*

DECRIMINALISATION is most consistent with a respect for the human rights of sex workers. Many members of the public who strongly disapprove of sex work believe that there is a need to protect sex workers from harm. The recommended option is the best framework for accomplishing this.

Decriminalisation will advance the goal of HIV prevention. It would mean that sex workers can openly access health services. They and their clients can be openly targeted for safer sex campaigns. Decriminalisation will place sex workers in a stronger position to resist demands that they engage in unsafe sex for a higher price, or to avoid violence.

Decriminalisation should also reduce the general level of violence in sex work, because it will mean that sex workers can report abuse and coercion to the police, without being afraid that they will end up being the ones who are arrested. It will also re-focus law enforcement energies on problems such as child prostitution and exploitation.

It is undeniable that most members of the Namibian public do not approve of sex work. This is why we recommend a policy of compassionate **DISCOURAGEMENT** to go hand-in-hand with decriminalisation. The number of brothels and similar establishments could be limited by local authorities in the same way that they already limit the number of bars and clubs in their jurisdictions. Existing laws on public nuisances and loitering could be invoked to regulate sex work in a reasonable fashion, without unfairly targeting sex workers for harassment. In the context of decriminalisation, sex workers can be enrolled in training programmes which will help them to move into other lines of work. They can be assisted to utilise the maintenance courts, or to access state grants where necessary, to provide them with alternative means of supporting themselves or their dependents. **Namibia can reduce sex work by helping sex workers rather than by arresting them.**

Decriminalisation would be criticised on moral grounds from some quarters. However, it need not imply approval of sex work. For example, adultery is forbidden by Christian religions, but it is not a crime in Namibia. Another example is gambling. Many people disapprove of this activity, but Namibia has nevertheless licensed a number of legal gambling establishments. All laws reflect some moral or ethical vision of the world, but not all aspects of morality can or should be enforced by law. Prostitution could be discouraged with positive, compassionate assistance rather than through the threat of criminal punishment.

As discussed below, regardless of what legal approach is adopted, there should be **no mandatory HIV testing for sex workers** as this actually mitigates *against* safer sex practices.

Any legal approach, including decriminalisation, should have strong prohibitions pertaining to **child prostitution**, **sex tourism, trafficking** and various forms of **abuse and coercion**. These topics, on which there is likely to be more public agreement, are dealt with separately below.

8.5 NO MANDATORY HEALTH TESTING FOR HIV AND STDs

No legal regime chosen by Namibia should include any mandatory testing of sex workers for HIV, for the simple reason that it does not work. As the situation in Senegal shows, sex workers (who are used to working in secret) can avoid registration and testing very effectively. Meaningful enforcement of a registration and testing requirement would be unrealistic.

As discussed in detail in Chapter 7, such requirements have the effect of giving clients a false sense of security and so can actually decrease safer sex practices. Even *daily* HIV checks would be useless -- the window period in which the virus is undetectable could lead to inaccurate results, and there would be no way of telling whether the sex worker had just contracted HIV from his or her previous encounter.

What about mandatory testing with the goal of making it illegal for a sex worker who is infected with HIV to engage in sex work? This requirement would simply mean that all sex workers would avoid voluntary testing, or try even harder to evade mandatory testing.

Such requirements would also increase the scapegoating of sex workers as vectors of HIV transmission, when in fact sexual biology results in female sex workers being at far more risk of acquiring HIV from their male clients (or their husbands or boyfriends) than their clients are at risk from them.

As the experience of other countries shows, education about HIV/AIDS and other STDs and the promotion of safer sex practices amongst sex workers *and their clients* is a far more effective approach to reducing HIV transmission through sex work.

8.6 CHILD PROSTITUTION AND CHILD SEX TOURISM

Child prostitution and child sex tourism should be dealt with in a way which recognises the child as a victim and not a criminal.

We recommend that the following actions be criminalized in respect of children below the age of 18:

- committing any sexual act or having any sexual contact with a child for any financial or other reward to the child or to any other person
- inviting, persuading or inducing a child to allow such sexual conduct
- making a child available for such sexual conduct
- recruiting, transporting, transferring, receiving or harbouring any child who is transported across a national border, or from one part of Namibia to another, for the purposes of such sexual conduct
- allowing any property owned or controlled by the person in question to be knowingly used for the purposes of such sexual conduct
- detaining or coercing a child by means of force, threat, deception or abuse of power or authority for the purpose of such sexual conduct
- promoting, encouraging or facilitating such sexual conduct
- printing or publishing any information intended to promote such sexual conduct
- participating in such sexual conduct with the child (ie the client), as an offence which is additional to the potential offences that might also have been committed in terms of the Combating of Rape Act with children under 14, or in terms of section 14 of the Combating of Immoral Practices Act with children under 16.
- knowingly receiving any financial benefit from such sexual conduct
- making or organising any travel arrangements for or on behalf of any other person, whether that other person is resident inside or outside Namibia, with the intention of facilitating such sexual conduct, whether or not the sexual conduct actually takes place.

There should be a clear exemption for persons who provide counselling, health care or advice to a child who is engaged in child prostitution. Such conduct should be viewed as helping the child, and not as facilitating sex work by the child. (New Zealand's proposed law has such an exemption.)

Following international examples on this issue, Namibia should have extra-territorial jurisdiction in respect of these offences, in two directions. Firstly, it should be an offence for a citizen or resident of Namibia to engage in the prohibited conduct in any country, regardless of whether or not the conduct is illegal in the country where it took place. Secondly, it should be illegal for any person outside Namibia to conspire or otherwise participate in any way with conduct which constitutes a child prostitution offence in respect of a child inside Namibia. This would target people outside of Namibia who might promote child sex tourism to Namibia, for example. To avoid "double punishment", the law could provide that a person who has already been prosecuted and convicted in another country for the actions in question would not be prosecuted again in Namibia.

All of these offences should be applicable to companies and other entities, as well as to individuals.

We also recommend that it should continue to be an offence, as it is now, for a parent, guardian or other primary caretaker to allow, encourage, or facilitate the prostitution of a child in his or her care.

A child who is found in child prostitution should be dealt with as a child in need of care in terms of the general law on children. In other words, what the child needs is not punishment but assistance. Arresting a child who is on the streets is not going to do anything to stop child prostitution – it is probably just going to make that child feel even more helpless and desperate. A social worker should investigate the child's situation to see if the child should be removed from the home environment, or if the entire family is in need of social assistance to deal with the factors which have led to the prostitution of the child -- such as hunger or other hardship.

8.7 ADULT SEX TOURISM

Following on the example of offences aimed at child sex tourism, we recommend further that **adult sex tourism should also be prohibited**. It should be an offence for any person to make or organise any travel arrangements for or on behalf of any other person, whether that other person is resident inside or outside Namibia, with the intention of promoting adult prostitution.

It might seem odd to make this an offence in the recommended context of decriminalisation, but national and international health concerns support such a distinction. Such a provision would be aimed at organized sex tourism, which would be likely to increase sex work in Namibia by artificially expanding the "local demand". Discouraging international sex tourism with Namibia as a destination would discourage sex work in Namibia without penalising sex workers driven to the job by poverty.

8.8 TRAFFICKING

Any person who traffics in persons (men, women or children) for the purposes of sexual exploitation should be guilty of an offence, with serious penalties attached. Such a criminal offence should be based on the definitions of trafficking and exploitation in the relevant international conventions. Australia's federal laws on trafficking could be

used as a model for this issue, along with the proposals on trafficking which are currently under discussion in South Africa.

Offences on trafficking should not be limited to trafficking which crosses international borders, but should also apply to situations where a person is trafficked from one part of Namibia to another.

It should be noted that international concerns about trafficking are not restricted only to trafficking for the purposes of prostitution, but also to trafficking for other purposes. Thus, Namibia might want to consider a broader law on trafficking, outside of the context of sex work.

8.9 EXPLOITATION AND MISTREATMENT

We suggest that there should be provisions which prohibit exploitation and mistreatment of persons engaged in sex work.

It should be a criminal offence to coerce or attempt to coerce any person to provide commercial sexual services, or to force someone to surrender money obtained through sex work to another person. This would target abusive "pimping", without making it impossible for sex workers to work together or under the protection of a third party in a non-exploitative situation for their own safety.

Contracts for the provision of commercial sexual services should be enforceable, and not void on the grounds of public policy, provided that they do not encompass any child prostitution offences. This would give sex workers legal recourse against clients who do not pay, or against clients who try to dispense with an agreed-upon condom at the last minute. We are unlikely to see a flood of court cases against clients, because of the social stigma which will undoubtedly continue to exist for some time. But such a provision would increase the power to sex workers to negotiate safer sex and to protect themselves against unfair treatment by clients. Clients could also invoke contract law if they wished, in a case where a sex worker "took the money and ran". **But such a law should specifically state that a sex worker has the right at any time to refuse to provide a particular commercial sexual service or to discontinue a sexual service. No one should be allowed to enter into an enforceable contract which takes away the right to bodily integrity and safety.**

8.10 PROMOTING SAFER SEX

Brothels which operate legally could be required to adhere to a national code of practice that covers hygiene, the provision of condoms and Femidoms, the distribution of educational material on sexually-transmitted diseases and the promotion of safer sex practices. Such a promotional and cooperative approach is likely to be more effective than criminal sanction in this area.

In some countries, it has been proposed that it should be a criminal offence to provide or receive commercial sexual services of a penetrative variety without using a prophylactic. However, such a provision would be unlikely to be enforceable because of the problem of lack of evidence. (There are unlikely to be witnesses to the moment of penetration,

and there will be no complainant if the parties have agreed to have unsafe sex.) The provision on coercion proposed in the section above would be a better way to protect sex workers against clients who try to insist on unsafe practices.

8.11 CONCLUSION

No law has ever succeeded in stopping prostitution. Namibia could stick with the current approach, which allows the country to legally 'disapprove' of prostitution without really doing anything meaningful about it. Or it could take a stand on health issues and the human rights of sex workers by *decriminalising* sex work while at the same time *discouraging* it with policies aimed at getting children out of prostitution altogether and helping adults to find better alternatives. Decriminalisation would also set the stage for more effective HIV/AIDS campaigns targeting sex workers and clients, and would thus be the most effective way to reduce HIV transmission in this area. **Choosing the option of decriminalisation will take a great deal of political courage in a socially conservative country like Namibia, but we believe that it is the only sensible and compassionate choice.**

ENDNOTES

CHAPTER 1-INTRODUCTION

1 Julia O'Connell Davidson, "Prostitution" (received via email from author).
2 *The Concise Oxford Dictionary* (1995).
3 Abraham Flexner, *Prostitution in Europe* (1913).
4 Sheila Jeffreys, *The Idea of Prostitution* (1997) at 4.
5 Definition from the proposed *Convention against Sexual Exploitation* being promoted by CATW.
6 Fernando Henriques, *Prostitution and Society* (1966) at 17.
7 Julia O'Connell Davidson, *Prostitution, Power and Freedom* (1998) at 9.
8 See JRL Milton, "Prostitution: Current Debates" in S Jagwanth, PJ Schwikkard & B Grant (eds), *Women and the Law* (1994) at 137-ff.
9 O'Connell Davidson, "Prostitution" (n 1).
10 *Id*, quoting a statement of the Dutch criminologist W.A.Bonger made in 1916.
11 Eunice Iipinge and Debie LeBeau, *Beyond Inequalities: Women in Namibia* (1997) at 35-36.
12 Kamala Kempadoo, "Introduction: Globalising Sex Workers' Rights" in Kamala Kempadoo & Jo Doezema, *Global Sex Workers: Rights, Resistance and Redefinition* (1998) at 1-ff; Jo Bindman, "An International Perspective on Slavery in the Sex Industry" in *Global Sex Workers: Rights, Resistance and Redefinition* (1998) at 65.
13 Kempadoo (n 12) at 1-ff, quote drawn from page 5.
14 Bindman (n 12) at 65-66.
15 Kempadoo (n 12) at 1-ff.
16 Jeffreys (n 4) at 5.
17 *Id* at 161-195.
18 Kempadoo (n 12) at 7, citing studies by the International Labour Organisation.
19 Judith Hermann, *Father-Daughter Incest* (1981) at 4, quoted in Jeffreys (n 4) at 257.
20 See, for example, O'Connell Davidson (n 7) at 163-4.
21 O'Connell Davidson (n 7) at 163-ff.
22 Deborah L Rhode, *Justice and Gender* (1989) at 257.
23 Personal communication. See also Michael Kaufman, *Cracking the Armour: Power, Pain and the Lives of Men* (1993) at 97-158.
24 Jeffreys (n 4) at 219.
25 O'Connell Davidson (n 7) at 134-6.
26 See O'Connell Davidson (n 7) at Chapter 8.
27 Sven-Axel Mansson, "International Prostitution and Traffic in Persons from a Swedish Perspective" in Marieke Klap, Yvonne de Klerk and Jaqueline Smith (eds), *Combatting Traffic in Persons* (1995) at 122.
28 Jeffreys (n 4) at 259, 249.
29 *Id* at 274.
30 UNESCO and Coalition Against Trafficking in Women, *The Penn State Report: International Meeting of Experts on Sexual Exploitation, Violence and Prostitution* (1992) at 33.
31 See, for example, Kathleen Barry, *The Prostitution of Sexuality* (1995) at 66.
32 See, for example, Ann Jones, *Next Time She'll Be Dead: Battering and How to Stop It* (1994) at 14, cited in Jeffreys (n 4) at 138.
33 See Jeffreys (n 4) at 139.
34 Jo Doezema, "Forced to Choose: Beyond the Voluntary v. Forced Prostitution Dichotomy" in Kamala Kempadoo & Jo Doezema, *Global Sex Workers: Rights, Resistance and Redefinition* (1998) at 39.
35 Jo Bindman (n 14) at 686.
36 Julia O'Connell Davidson, "Prostitution" (n 1).
37 Jo Doezema (n 34) at 41.
38 Id at 42, 45. Another stereotype which can result from the dichotomy is a view that the typical "voluntary" prostitute is a Western sex worker who is capable of making independent decisions about whether or not to

sell sexual services, while the typical "forced" prostitute is more likely to be portrayed as a sex worker from a developing country who is passive, naïve and easy prey for exploitation.

39 O'Connell Davidson (n 7) at 4-5.

40 Julia O'Connell Davidson, "Prostitution" (n 1).

41 See Angelita Abad, Marena Briones, Tatiana Cordero, Rosa Manzo and Marta Marchan, "The Association of Autonomous Sex Workers, Ecuador"" in Kamala Kempadoo & Jo Doezema, *Global Sex Workers: Rights, Resistance and Redefinition* (1998) at 172-ff.

42 Kamala Kempadoo (n 12) at 17.

43 Description of trafficking from Anti-Slavery International, http://www.antislavery.org/selection.htm.

44 Quoted in Alison Murray, "Debt-Bondage and Trafficking: Don't Believe the Hype" in Kamala Kempadoo & Jo Doezema, *Global Sex Workers: Rights, Resistance and Redefinition* (1998) at 53.

45 As quoted by Anti-Slavery International, http://www.antislavery.org/selection.htm.

46 *Id.*

47 Article 1, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (supplementing the United Nations Convention Against Transnational Organised Crime).

48 Report of the UN Special Rapporteur on Violence against Women to the Commission on Human Rights, E/CN.4/1997/47 at part IV.

49 Julia O'Connell Davidson (n 7) at 79 (references omitted).

CHAPTER 2-INTERNATIONAL OBLIGATIONS

1 Article 144 of the Namibian Constitution reads as follows: "Unless otherwise provided by this Constitution or Act of Parliament, the general rules of public international law and international agreements binding upon Namibia under this Constitution shall form part of the law of Namibia."

2 Katarina Tomasevski, *Women and Human Rights,* 1993 at 102.

3 Sheila Jeffreys, *The Idea of Prostitution,* 1997 at 12.

4 The 1904 International Agreement for the Suppression of the White Slave Trade bound parties to gather information concerning trafficking in women and children, and to provide for the observation of certain stations and ports for procurers of women and children for the purpose of prostitution. The convention also required the voluntary repatriation of women and girls who wished to return to their home countries, as well as the provision of employment agencies to assist the individuals to obtain 'regular' work. It was ratified by 13 countries.

5 The 1910 International Convention for the Suppression of the White Slave Trade went one step further by punishing those who '"to gratify the passions of another person" enticed or procured a woman or girl under the age of twenty, "even with her consent", or a woman or girl over twenty by violence, threats, fraud or any compulsion. It was ratified by 13 countries.

6 Jeffreys (n 3) at 12.

7 The relevant parts of the article read as follows: "Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League: ….(c) will entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs."

8 This was the 1921 Convention for the Suppression of Traffic in Women and Children.

9 The 1933 International Convention for the Suppression of the Traffic in Women of Full Age required states parties to punish trafficking in adult women, regardless of the woman's consent.

10 Resolution 317(IV) of 2 December 1949.

11 Jo Bindman, *Redefining Prostitution as Sex Work on the International Agenda,* 1997 at 6

12 See Bindman (n 11) at 6.

13 Preamble of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

14 Articles 4 and 8.

15 Jo Doezema, "Forced to Choose: Beyond the Voluntary v. Forced Prostitution Dichotomy" in Kamala Kempadoo and Jo Doezema (eds), *Global Sex Workers, Rights, Resistance and Redefinition,* 1998 at 38.

16 Report of the UN Special Rapporteur on trafficking in women, women's migration and violence against women, E/CN.4/2000/68 at paragraph 22.

17 The Convention "applies to women and men of all ages whereas the earlier international instruments specifically protected women from exploitation." Norah Gallagher, *Sexual Exploitation: A Form of Slavery?* (1999) at 4 (http://www.derechos.org/koaga/viii/gallagher.html).

18 Report of the UN Special Rapporteur on Violence against Women to the Commission on Human Rights, E/CN.4/1997/47 at part IV.

19 See Report of the UN Special Rapporteur on trafficking in women, women's migration and violence against women, E/CN.4/2000/68 at paragraph 26.

20 Doezema (n 15) at 36. The 1967 Declaration on the Elimination of Discrimination against Women (General Assembly resolution 2263 (XXII) of 7 November 1967) included an article calling for action against trafficking and "exploitation of prostitution", but without elaboration: "*Article 8*: All appropriate measures, including legislation, shall be taken to combat all forms of traffic in women and exploitation of prostitution of women."

21 Doezema (n 15) at 38.

22 Global Gender Agenda and the United Nations, published by the UN Department of Public Information – DPI/1890—February 1997 (www.un.org/ecosocdev/geninfo/women/gender.htm).

23 At this conference, the Nairobi Forward-Looking Strategies for Women were adopted by government delegates of 157 countries.

24 Global Feminism, Feminist Majority Foundation, *Summary of US and UN Platforms for Action for Women, 1975-1995* (http://www.feminist.org/global/beijing3.html).

25 Charlotte Bunch and Samantha Frost, *Women's Human Rights: An Introduction,* 1997 (http://www.cwgl.rutgers.edu/whr.html).

26 Doezema (n 15) at 39.

27 Feminist Majority Foundation's website, http://www.feminist.org/global/beijing3d.html.

28 Excerpt from "World Conference of the United Nations Decade for Women (United Nations, 1980)", reprinted in Gudmundur Alfredsson and Katarina Tomasevski (eds), *A Thematic Guide to Documents on the Human Rights of Women*, The Raoul Wallenberg Institute Human Rights Guides, Volume I.

29 Vienna Declaration, paragraph 38.

30 *Id,* paragraph 21.

31 Boutros Boutros-Ghali, then Secretary General of the UN, from a statement read by him on the concluding day of the Fourth World Conference on Women, Beijing, 1995.

32 Beijing Declaration and Platform for Action, Strategic Objectives and Actions, paragraph 5.

33 Beijing Declaration and Platform for Action, paragraph 107(a).

34 *Id*, paragraph 107(q).

35 *Id*, paragraphs 113(a) and (b).

36 *Id*, paragraph 114.

37 *Id*, paragraph 122.

38 *Id*, paragraph 224.

39 *Id*, paragraph 230(n).

40 *Id*, paragraphs 41, 95, 230, 239, 277(d), 283(d).

41 *Further actions and initiatives to implement the Beijing Declaration and Platform for Action* at paragraph 14.

42 *Ibid*.

43 *Id*, paragraph 15.

44 Id, paragraph 19.

45 *Id*, paragraph 95(b).

46 *Id*, paragraph 41.

47 This means that Namibia when signing the Convention undertook to abide by all of its Articles unconditionally.

48 Doezema (n 15) at 39.

49 General Recommendation No.19 (11th session, 1992). At the 10th session of the committee, it was decided to discuss and study Article 6. This was done in anticipation of the 1993 World Conference on Human Rights that was scheduled to take place (see General Assembly Resolution 45/155 of 18 December 1990).

50 General Recommendation No. 19 (11th session, 1992) at paragraph 21.

51 General Recommendation No. 24 (20th session, 1999) at paragraph 6.

52 *Id,* paragraph 18.

53 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (supplementing the United Nations Convention Against Transnational Organised Crime), Article 2.

54 As quoted at http://www.inet.co.th/org/gaatw/SolidarityAction/HRSLetter.htm.

55 Report of the UN Special Rapporteur on trafficking in women, women's migration and violence against women, E/CN.4/2000/68 at paragraph 12.

56 *Id*, paragraph 17.

57 See Janice G. Raymond, *Guide to the New UN Trafficking Protocol*, Coalition on the Trafficking of Women (2001) at 6; Comments of United Nations High Commissioner on Human Rights on the Trafficking Protocol, in A/AC.254/16 (June 1999) at paragraph 8. As a point of comparison, the UN Special Rapporteur on Violence Against Women and Children proposed the following definition:

> *Trafficking in persons means the recruitment, transportation, purchase, sale, transfer, harbouring or receipt of a person:*
>
> > *(i) by threat or use of violence, abduction, force, fraud, deception or coercion (including the abuse of authority), or debt bondage, for the purpose of:*
> > *(ii) placing or holding such person, whether for pay or not, in forced labour or slavery-like practices, in a community other than the one in which such person lived at the time of the original act described in (i).*

Report of the UN Special Rapporteur on trafficking in women, women's migration and violence against women, E/CN.4/2000/68 at paragraph 13.

58 Article 9(5).

59 See, for example, the comments of Mary Robinson, United Nations High Commissioner on Human Rights on the Trafficking Protocol, in A/AC.254/16 (June 1999).

60 Article 7.

61 Article 6.

62 Report of the UN Special Rapporteur on trafficking in women, women's migration and violence against women, E/CN.4/2000/68 at paragraph 98.

63 Bindman (n 11) at 10.

64 Article 8. This would apply also to trafficking, as in the past, forced prostitution and trafficking were referred to under the term "slave trade". Evidence of this is the fact that in the late 19th century there was a congress on the "White Slave Trade", which referred specifically to prostitution and trafficking.

65 Article 9 on Slavery and Forced Labour reads in relevant part: "*(1) No persons shall be held in slavery or servitude. (2) No persons shall be required to perform forced labour.*"

66 Declaration on the Elimination of Violence against Women (Resolution 48/104), Article 2, emphasis added.

67 Lin Lean Lim (ed), *The Sex Sector: The economic and social bases of prostitution in Southeast Asia (*1998) at Preface, page v.

68 *Ibid*.

69 *Id* at 1 and 213.

70 "The Case of Jana", European Court of Justice, ruling issued on 20 November 2001.

71 Universal Declaration of Human Rights, Article 1.

72 International Covenant on Economic, Social and Cultural Rights, Article 6.

73 International Covenant on Civil and Political Rights, Article 1.

74 Constitution of the Republic of Namibia, Article 21.

75 See Bindman (n 15) at 39.

76 Namibian Constitution, Article 10: "*(1) All persons shall be equal before the law. (2) No persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.*"

77 Report of the UN Special Rapporteur, *Promotion and protection of the rights of children: Sale of children, child prostitution and child pornography*, Doc. A/50/456 (1995) at 5-6.

78 See Lim (n 67) at 170.

79 See UN Convention on the Rights of the Child, Article 1.

80 Lim (n 67) at 170.

81 See Lim (n 67) at 175-ff.

82 Lim (n 67) at 174, citing Vitit Muntarbhorn, former UN Special Rapporteur to the Commission of Human Rights on the Sale of Children, Child Prostitution and Child Pornography.

83 *Id* at 171.

84 *Id* at 183-ff.

85 See Lim (n 67) at 176-7, quoting Muntarbhorn.

86 Lim (n 67) at 177, citing ILO and WHO reports.

87 UN General Assembly resolution 1990/68 of 7 March 1990.

88 Commission on Human Rights resolution 1992/74 of 5 March 1992.

89 See *The Yokohama Global Commitment 2001* (available at http://www.unicef.org/events/yokohama/outcome.html). The 1996 World Congress defined the broader concept of 'commercial sexual exploitation of children' as comprising 'sexual abuse by the adult and remuneration in cash or kind to the child or a third person or persons'. See South African Law Commission, Discussion Paper 85, *Sexual Offences: The Substantive Law*, 1999 at 3.7.1.8.

90 Namibia committed itself to the Stockholm Declaration and Agenda for Action on 28 August 1996 (information from ECPAT International, http://www.wcpat.net/).

91 A/RES/54/263 of 25 May 2000. This followed on the UN Commission on Human Rights' 1992 Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography.

92 Article 2(b).

93 Article 3.

94 Article 8.

95 Article 9.

96 UNICEF website, http://www.unicef.org/crc/oppro.htm.

97 www.globalmarch.org/press-releases/action-week.htm.

98 WILDAF news "The African Charter on Human and People's Rights and the additional protocol on Women's Rights" (undated), http://www.wildaf.org.zw/news4.

99 The process of drafting the additional protocol began in March 1995, and the first draft of the Additional Protocol on Women's Rights was completed in April 1997. See WILDAF news, "The African Charter on Human and People's Rights and the Additional Protocol on Women's Rights" (undated), http://www.wildaf.org.zw/news4.

100 Draft Additional Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, CAB/LEG/66.6/Rev.1 (as adopted by the Meeting of Government Experts in Addis Ababa on 16 November 2001).

101 It includes the following general commitments:

- the achievement of a target of at least 30% women in political and decision making structures
- promoting women's full access to, and control over productive resources to reduce the level of poverty among women;
- repealing and reforming all laws, amending constitutions and changing social practices which still subject women to discrimination;
- taking urgent measures to prevent and deal with the increasing levels of violence against women and children.

102 The proceedings at this conference are documented in Gail Pheterson (ed), *A Vindication of the Rights of Whores*, 1989.

103 Gail Pheterson (ed), *A Vindication of the Rights of Whores*, 1989 at Introduction, as quoted at www.sexuality.org/l/davids/cn56.html.

104 Kamala Kempadoo, "Introduction: Globalising Sex Workers' Rights" in Kamala Kempadoo and Jo Doezema (eds), *Global Sex Workers: Rights, Resistance, and Redefinition,* 1988 at 20.

105 Shane A Patzer and Gordon M Issacs, "SWEAT: The Development and Implementation of a Sex Worker Advocacy and Intervention Program in Post-Apartheid South Africa" in Kamala Kempadoo and Jo Doezema (eds), *Global Sex Workers: Rights, Resistance, and Redefinition* (1998) at 195; Hansje Verbeek and Terry van der Zijden, "The Red Thread: Whores Movement in Holland" in Frederique Delcoste and Priscilla Alexander (eds), *Sex Work*, as reprinted at www.mtholyoke.edu/~jlschrei/prostitution.html.

CHAPTER 3-PROSTITUTION IN NAMIBIA IN COLONIAL TIMES

1 Nsekuye Bizimana, *White Paradise: Hell for Africa?* (1989).

2 Amitava Kumar, "A Bang and a Whimper" in *Transition 88*: 114-131 (2001).

3 Jad Adams, "I know what you did last summer: review of Ian Littlewood, *Sultry Climates*", *Guardian Weekly*, 28 June–4 July 2001 at 15.

4 Martha Mamozai, *Schwarze Frau, Weisse Herrin* (1989) at 128.

5 David T Courtwright, *Violent Land: Single Men and Social Disorder from the Frontier to the Inner City,* (1996).

6 The current research by Henrichsen and Hartmann will undoubtedly significantly increase our understanding of these dynamics.

7 Israel Goldblatt, *History of South West Africa* (1971) at 188-190; Harry Marshall Schwinck, *Violence, race and the law in German South West Africa 1884-1914* (1998) at 341-2.

8 Lora Wildenthal, *Colonizers and citizens: Bourgeois women and the Woman Question in the German colonial movement,* Ph.D dissertation, University of Michigan (1994).

9 APJ Beris, *From Mission to Local Church* (1996) at 134-5.

10 Schwinck (n 7) at 346; NAN A 394/13 League of Nations, Child Welfare, Protection of Illegitimate Children.

11 Theodor Leutwein, *Elf Jahre Governeur in Suedwest-Afrika* (1907), reprinted by Windhoek, Namibia Scientific Society, 1997 at 232-35.

12 Wildenthal (n 8).

13 Leutwein (n 11) at 412.

14 See, for example, ZBU 2024 WII, b.2, vol 2, Bethanien annual report 30/11/1911, Ernst Stals, *Duits-Suidwes-Afrika na die Groot Opstande,* Argiefjaarboek 46(2), Staatsdrukker, Pretoria (1984) at 135.

15 ZBU 2055, W.IV.a.5, vol 1, Stals (n 14) at 135.

16 Stals (n 14) at 138.

17 Mauritz Bonn, *Wandering Scholar* (1948) at 145.

18 Cynthia Cohen, *Administering Education in Namibia* (1994) at 66-67.

19 Karla Poewe, *The Namibian Herero* (1985) at 84.

20 Viktor Lebzelter, "Ueber Khoisanmischlinge in Suedwestafrika" in *Zeitschrift fuer Morphologie und Anthropologie* 34 213-231 (1934) at 214.

21 H Vedder, "The Nama" in C Hahn, H Vedder & L Fourie, *The Native Tribes of South West Africa* (1928) at 135.

22 BA Tindall (ed), *The Journal of Joseph Tindall, Missionary in South-West Africa, 1839-55* (1959).

23 Gordon Gibson, "Bridewealth and other Forms of Exchange among the Herero" (1962) at 619-20.

24 Francis Galton, *Narrative of an Explorer in Tropical South Africa* (1889); Charles John Andersson, *Lake Ngami* (1856) at 179.

25 Edwin Loeb, "In Feudal Africa", *International Journal of American Linguistics* 28 (3) July 1962, Part 11 at 76; Maija Tuupainen, "Marriage in a matrilineal African tribe: A social anthropological study of marriage in the Ondanga tribe in Ovamboland", Licentiate Social Sciences, University of Helsinki, 1968.

26 Hermann Tonjes, *Ovamboland* (1996) at 123.

27 See, for example, Iztvan Todorov, *The Conquest of America* (1977).

28 Jack Goody, *The Development of the Family and Marriage in Europe* (1983). See also Mary Ann Glendon, *The Transformation of Family Law* (1989).

29 WP Steenkamp, *Is the South-West African Herero Committing Race Suicide?* Cape Times, nd [circa 1937] at 11-12.

30 *Id* at 18-19.

31 *Id* at 21.

32 Government of South Africa, *Report of the South West Africa Commission*. Government Printer, Pretoria, 1936 at 24. Farson provides further reminiscences to support this view, as does Poewe. Negley Farson, *Behind God's Back* (1941); Poewe, (n 19).

33 H Vedder, "The Berg Damara" in C Hahn, H Vedder & L Fourie, *The Native Tribes of South West Africa* (1928) at 53.

34 H Vedder, *Die Bergdama* (1923).

35 D Altman, *Global Sex* (2001).

36 Robert Rotberg and Theodore Rabb (eds), *Marriage and Fertility: Studies in Interdisciplinary History* (1980).

37 John Iliffe, *The African Poor* (1987); Janet Bujra, "Women 'Entrepreneurs' of Early Nairobi" in C. Sumner (ed), *Crime, Justice and Underdevelopment* (1982).

38 See section 2.2 above.

39 ZBU 785 Massregeln gegen geschlechtliche... specialia; BKE 197 *Prostitution in Seeheim*; BRE 100 Massregeln gegen geschlechtliche Ausschweidfungen, *Prostitution und Maedchenhandel;* H De Leeuw, *Sinful Cities of the Western World,* (1934); Charles van Onselen, *New Babylon* (1982).

40 Stals (n 14) at 134.

41 ZBU 160 A.IV.u.4 vol 1, *Jahrebericht 1911/12 fuer Keetmanshoop*.

42 ZBU 2024 WII. b.2. vol 2, *Bethanien annual report 30/11/1911*.

43 Poewe (n 19) at 90-93.
44 ZBU 2024 WII. b.2. vol 2, *Bethanien annual report 30/11/1911*.
45 Stals (n 14) at 90. By 1908 newspapers like the Swakopmund based *Deutsch-Suedwestafrikanische Zeitung* (4 January 1908) were carrying ads for Syphilis cures (Quicksilbervergiftungen). (Thanks to Jeff Gaydish for this reference.)
46 H Vedder (n 34).
47 Marion Wallace, "'A person is never angry for nothing': Women, VD & Windhoek" in P Hayes, J Silvester, M Wallace & W Hartmann (eds), *Namibia under South African Rule* (1998).
48 Marcia Klotz, *White women and the dark continent: Gender and sexuality in German colonial discourse from the sentimental novel to the Fascist film*, dissertation, Stanford University (1995).
49 Stals (n 14) at 141.
50 Pogge von Strandmann, personal comment.
51 22 /3/1916. ADM 137 "Prostitution".
52 This Proclamation was repealed only on the eve of Namibia's first free and fair elections, by AG Proclamation 14 of 1989.
53 See, for example, "The Native" in *The Windhoek Advertiser,* 24 November 1926.
54 "Black and White", *Windhoek Advertiser*, 3 March 1926.
55 Patricia Hayes, "The 'Famine of the Dams'" in P.Hayes, J.Silvester, M.Wallace & W.Hartmann (eds), *Namibia under South African Rule* (1998) at 143.
56 For a brief discussion of the "pass laws" see Robert J Gordon, "Vagrancy, law and 'Shadow Knowledge'" in P Hayes, J Silvester, M Wallace & W Hartmann (eds), *Namibia under South African Rule* (1998) at 54-59. It is important to note that African females were exempt from these laws and this raises important questions about why they were legally "invisible", or more ominously, beyond the realm of law.
57 SWAA A50/28/8 1953.
58 See, for example, P Hayes, J Silvester, M Wallace & W Hartmann (eds), *Namibia under South African Rule* (1998).
59 Dian Joubert, *Met Iemand van 'n Ander Kleur* (1974) at 25-31.
60 SWAA A176/2 Application to South West Africa of the Provisions of the Immorality Act.
61 Technically, this Proclamation re-enacted certain provisions of the Immorality Act in respect of South West Africa, rather than stating that these portions of the South African Act were applicable to Namibia.
62 Cited in Wallace (n 47) at 85.
63 Poewe (n 19) at 200-211; Wallace (n 47).
64 SWAA A198/3/4 Anthropological Research, Hoernle to Sec 14/4/1923.
65 A Olpp, 188/4.
66 H Vedder, "The Berg Damara", "The Nama" and "The Herero" in C Hahn, H Vedder & L Fourie, *The Native Tribes of South West Africa* (1928).
67 SWAA A 73/11, Nelson to Sec, 21/2/1931.
68 SWAA A 73/11, Jarvinen to Nelson 18/2/1931; SWAA A50/88.
69 SWAA A 73/11, Gotthardt to Sec. 20/6/1931.
70 See SWAA A 50/88 Native Affairs, Child Marriage and Prostitution.
71 Tonjes (n 26) at 148.
72 Loeb (n 25) at 239.
73 Percival Kirby, "A Secret Musical Instrument: The Ekola of the Ovakuanyama of Ovamboland", *South African Journal of Science* XXXVIII: 345-351 (1942) at 349.
74 5/12/1950 SWAA A50/88.
75 Gunther Wagner, *Ethnic Survey of South West Africa, Part 1 District of Windhoek*, mimeo (nd) at 169.
76 *Id* at 173.
77 *Id* at 170.
78 Fernando Henriques, *Prostitution and Society* (1966) at 172.
79 At the same time this informal service industry remains problematic for feminists because of its ambiguous enclosure of sexual freedom, female autonomy and sexual exploitation. See Bujra (n 37) at 145.
80 Altman (n 35) at 38-39.

CHAPTER 4-THE CURRENT LAW IN NAMIBIA

1 *S v Jordan and Others* 2002 (1) SACR 17 (T) at 20f. Adultery (which would have applied to paid sex with a married client) was once a common law crime, but this offence was found in 1914 to have become obsolete by virtue of disuse. *Green v Fitzgerald and Others* 1914 AD 88.

2 This is in contrast to the position in South Africa, for example, where section 20(1)(aA) of the Sexual Offences Act 23 of 1957 reads as follows:

> *Any person who has unlawful carnal intercourse, or commits an act of indecency, with any other person for reward … shall be guilty of an offence.*

3 Preamble, Act 21 of 1980.

4 It is possible in theory that the act of engaging in sex for reward in private would be punishable for either party under the common law concept of "unlawful sexual intercourse". See, for example, JRL Milton, "Prostitution: Current Debates" in S Jagwanth, PJ Schwikkard & B Grant (eds), *Women and the Law* (HSRC Publishers, Pretoria), 1994, at 135-ff. However, this possibility has not been utilised in Namibia.

5 This is in contrast to the South African Sexual Offences Act 23 of 1957, which makes it an offence to have unlawful intercourse or commit an act of indecency "with another person for reward" (section 20(1)(aA)).

6 It might also be possible in theory for the client to be charged as an accomplice to some of the offences applied to prostitutes, although this would require rather strained interpretations of the relevant provisions.

7 There was until recently a provision of the Act criminalizing sexual offences with girls under the age of sixteen (section 14). This was amended by Act 7 of 2000, so that it is now an offence to commit a sexual act with a boy or a girl under age 16, where there is an age gap of more than three years between the parties. The original provision provided a specific defence if the court finds "that the girl at the time of the commission of the offence was a prostitute, that the person so charged was at the said time under the age of twenty-one years and that it is the first occasion on which he is so charged." This original conceptualisation reinforces the notion of a conceptual split between "good" girls who deserve protection and "bad" girls who do not, rather than a general concern about child prostitution.

8 Section 1(i), Act 21 of 1980.

9 *Hendricks and Others v Attorney General of Namibia and Others.*

10 For example, the Namibian Police report that four women were arrested for solicitation in 1994, and that there were a very small number of arrests on other prostitution-related charges in that year. Republic of Namibia, First Country Report under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (December 1995) at 48.

11 Section 2(1) reads as follows: "Any person who keeps a brothel shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding three years or to such imprisonment and to a fine not exceeding three thousand rand."

12 Section 10(a) reads as follows: "any person who – (a) knowingly lives wholly or in part on the earnings of prostitution ….shall be guilty of an offence and liable on conviction to a fine not exceeding three thousand rand or to imprisonment for a period not exceeding three years or to both such fine and imprisonment."

13 The applicants were also charged with dealing in liquor without a licence, under section 140(a) of Ordinance 2 of 1969.

14 Section 25(1)(b) of the Namibian Constitution was invoked, the relevant parts of which read as follows: "any law which was in force immediately before the date of Independence shall remain in force until amended, repealed **or declared unconstitutional.** If a competent Court is of the opinion that such law is unconstitutional, it may either set aside the law, or allow parliament to correct any defect in such law, in which event the provisions of Sub-Article (a) hereof shall apply." Sub-Article 25(a) empowers a competent court to refer certain laws which may be in conflict with the Constitution to Parliament, any subordinate legislative authority, the Executive or the agencies of government.

15 Applicants' Heads of Argument at paragraph 1.4.

16 The 1994 amendments replace similar provisions of the initial 1930 regulations dealing with loitering. The 1994 provision on soliciting is a new one, with no precedent in the initial 1930 regulations. (As a matter of historical interest, the 1930 regulations which have been repealed included regulations forbidding the beating of carpets and rugs in the street, with an exception for doormats beaten before eight in the morning. Section 29. They also mandated that streets and sidewalks must be sprinkled before being swept, to minimise dust. Section 36.)

17 Werner Menges, "Prostitution charges face High Court challenge" in *The Namibian*, 9 April 2002 at 3. See also Werner Menges, "Prostitutes rounded up in Windhoek" in *The Namibian*, 3 April 2002 at 1.

18 1966 (2) SA 333.

19 CR Snyman, *Criminal Law* (3rd edition), 1995 at 351-2 (discussing the South African Sexual Offences Act). Examples of entrapment techniques can be found in *S v H* 1986 (4) SA 1095 (T) and *S v C* 1992 (1) SACR 174 (W).

20 *Report of the ad hoc committee of the State President's Council on the Immorality Act* (1985), par 4.13, as quoted in Snyman (n 19) at 351-2.

21 *S v H* 1986 (4) SA 1095 (T) at 1096D.

22 *Rex v V* 1951 (2) 179 (EDLD) at 180C-D, interpreting Act 36 of 1902 (Cape) which made it an offence for a *male person* to "in any public place persistently solicit or importune for immoral purposes". *R v J* 1958 (4) SA 1958 (A) at 492D and *R v F* 1958(4) SA 300 (T) at 304H-305C, both interpreting the Immorality Act 23 of 1957. See also *Rex v C* 1952 (1) SA 635 (C), *R v E* 1952 (2) SA 554 (C), *R v V* 1958 (4) SA 49 (T) and *R v W* 1959 (4) SA 477 (A).

23 See *R v G* 1961 (4) SA 718 (T) at 720F-H.

24 *R v F* 1958(4) SA 300 (T) at 306A-B.

25 *Id* at 180F.

26 *Rex v C* 1952 (1) SA 635 (C) at 640A-B (citation omitted).

27 *S v M and Another* 1977 (4) SA 886 (A) at 895G, commenting on virtually identical provisions in the South African Immorality Act 23 of 1957.

28 1977 (4) SA 886 (A) at 897G-H.

29 At 895G-H.

30 1961 (2) SA 381 (T) at 385A, endorsed in *S v M and Another* 1977 (4) SA 886 (A) at 895H.

31 See, for example, *S v P* 1975 (4) SA 68 (T).

32 *S v H* 1977 (2) SA 955 (A). The interpretation of what constitutes a brothel was also considered in *National Director of Public Prosecutions v Phillips and Others* 2001 (2) SACR 542 (W) at 574-5.

33 *S v D* 1975 (2) SA 835 (T) examines the issue of *mens rea* in respect of persons who are deemed to keep a brothel by virtue of the fact that they manage or assist in the management of the brothel.

34 *S v F* 1975 (3) SA 167 (T) at 172. The wording of the provisions in question is almost identical to the corresponding provisions of the Combating of Immoral Practices Act. On the other hand, in the case of *S v F* 1967 (3) SA 500 (N) two woman were convicted of the offence of keeping a brothel on facts showing that they shared a flat which they used independently for their own prostitution, with each of them keeping the money from her own sex work. An appeal was noted against the sentence, but not the conviction, so the question of whether or not the facts supported the conviction was not examined.

35 1977 (4) SA 886 (A) at 896B. The absence of management functions was the basis of a decision overturning a conviction on the offence of "keeping a brothel" in *S v B* 1993 (A) SACR (C) which held that the performance of routine or menial functions do not amount to "managing" a brothel.

36 *Id* at 897F-H.

37 *Id* at 898H.

38 *S v Jordan and Others* 2002 (1) SACR 17 (T) at 23E-24A.

39 1986 (4) 1095 (T) at 1097I, 1098D-E and 1098J, confirmed on appeal in *S v H* 1988 (3) SA 545 (A). In South Africa, this holding led to an amendment to the Sexual Offences Act 23 of 1957 to criminalise the act of prostitution directly, at least for the prostitute, by making it illegal to have unlawful carnal intercourse, or to commit an act of indecency, with any other person "for reward" (section 20(a)(aA)). This provision was subsequently found to be unconstitutional in *S v Jordan and Others* 2002 (1) SACR 17(T) (which at the time of writing has not yet been confirmed by the Constitutional Court).

CHAPTER 5-SEX WORK IN NAMIBIA TODAY

1 Refer to the section on *Training of fieldworkers* in part 5.4 below.

2 This term was suggested by Dr Willem Schurink who assisted RFS with approach and methodology.

3 The condoms were provided for the project at a reduced price by NaSoma.

4 This figure was supplied by Telecom Namibia.

5 Legal Assistance Centre, *Namibia Domestic Violence and Sexual Abuse Service Directory,* 1999. This directory contains information about appropriate services sorted by type and region.

6 The term "transgendered" refers to a person who is biologically male but lives as female, or vice versa.

7 Field workers were trained to lend a sympathetic ear and provide contact numbers of institutions providing support to those who need it.

8 Shebeens are informal drinking houses.

9 *Pretty Woman* is the title of a movie starring Julia Roberts as a sex worker who falls in love with a rich client (Richard Gere) and marries him in a fairy-tale ending.

CHAPTER 6- LEGAL APPROACHES TO SEX WORK IN OTHER COUNTRIES

1 See *Report of the UN Special Rapporteur on Violence against Women to the Commission on Human Rights*, E/CN.4/1997/47 at part IV(B); Marjan Wijers, "Women, Labour, and Migration" in Kamala Kempadoo and Jo Doezema (eds), *Global Sex Workers: Rights, Resistance, and Redefinition,* 1988 at 72-74.

2 The following explanation of Project 107 on Sexual Offences appears on the South African Law Commission website (http://wwwserver.law.wits.ac.za/salc/discussn/sexsum.html), as of July 2002:

> *The South African Law Commission was requested to investigate sexual offences by and against children and to make recommendations to the Minister of Justice for the reform of this particular branch of the law. A Project Committee was appointed and an issue paper on sexual offences against children was published for general information and comment in May 1997. The issue paper was workshopped extensively.*
>
> *It became clear during the course of the investigation that any proposed changes to the law relating to sexual offences will have a far-reaching effect on the position not only of children but of adults as well. As a result and because of various requests the Commission decided to expand the scope of the investigation to include sexual offences against adults. The investigation was subsequently renamed 'sexual offences'.*
>
> *As part of an incremental approach the Commission is releasing this discussion paper on the substantive law relating to sexual offences, the first of a three-part series, for general information and comment. The second discussion paper will deal with matters of process and procedure, while the third will address the controversial issues of adult commercial sex work (prostitution) and adult pornography. Both these discussion papers should be released later this year.*

3 Section 20(1)(aA).

4 Ted Leggett, "The Least Formal Sector: Women in Sex Work", *Indicator Project South Africa*, 1998, http://www.und.ac.za/und/indic/archives/crime/issue13/legfina2.html.

5 2002 (1) SACR 17 (T).

6 At 21E.

7 At 21F.

8 See "What the prostitutes say", *Sunday Times*, 5 August 2001.

9 See, as an example, "Streets are still not safe for sex trade", *Cape Argus*, 3 August 2001.

10 Henry Ludski, "Red lights flash as SA ponders next step", *Sunday Times*, 5 August 2001.

11 *National Director of Public Prosecutions v Phillips and Others* 2001 (2) SACR 542 (W) at 596E-F.

12 See Ted Leggett, *Rainbow Vice: The Drugs and Sex Industries in the New South Africa,* 2001 at 163-4.

13 *National Director of Public Prosecutions v Phillips and Others* 2001 (2) SACR 542 (W) at 560-ff.

14 See, for example, Tuli Nlapo, "Time to decriminalise sex for sale industry", *Mail & Guardian*, 11-17 August 2000; "Decriminalisation of Commercial Sex Work in South Africa – an Exploratory Survey", Lawyers for Human Rights (Pietermaritzburg), 1996; "Decriminalization of Sex Work in South Africa", a report compiled by the Task Team, Gauteng Province (undated); Janet Wohjjcicki, "Race, class and sex: the politics of the decriminalisation of sex work", *Agenda 42*, 1999; Naomi Webster, "Scrap the Sexual Offences Act", *Agenda 28*, 1996.

15 See South African Law Commission (Project 107), *Discussion Paper 85, Sexual Offences: The Substantive Law*, 1999 and South African Law Commission (Project 107), *Discussion Paper 102, Sexual Offences: Process and Procedure*, 2002.

16 See South African Law Commission, Project 107 (n 15), and South African Law Commission (Project 110), *Discussion Paper 103, Review of the Child Care Act*, 2002 at section 13.7.

17 South African Law Commission (Project 110) (n 16) at sections 13.7.4 and 22.5.4.

18 *Id* at section 22 5.4.

19 *Id.*

20 "Sex work-Germany", *femmigration: Legal Agenda for Migrant Prostitutes and Trafficked Women*, http://www.femmigration.net/work_germany.html.

21 Section 180b and Section 181 of the *Criminal Code (Strafgesetzbuch, StGB)* as promulgated on 13 November 1998 (Federal Law Gazette I) prohibit trafficking in Human Beings and Serious Trafficking in Human Beings, respectively.

22 Section 176 and Section 176a, *Criminal Code (Strafgesetzbuch, StGB)* as promulgated on 13 November 1998 (Federal Law Gazette I.)

23 Section 180, *Criminal Code (Strafgesetzbuch, StGB)* as promulgated on 13 November 1998 (Federal Law Gazette I) states:

(1) Whoever abets the commission of sexual acts of a person under sixteen years of age or in front of a third person or sexual acts of a third person on a person under sixteen years of age:
1. by acting as an intermediary; or
2. by furnishing or creating an opportunity,
shall be punished with imprisonment for not more than three years or a fine. Sentence 1, Number 2 shall not be applicable if the person responsible for the care of the person acts; this shall not apply if the person responsible for the care of the person grossly violates a duty to provide upbringing in thus abetting.

(2) Whoever induces a person under eighteen years of age to commit sexual acts on or in front of a third person for compensation, or allows them to be committed on the person by a third person, or whoever abets such acts by acting as an intermediary, shall be punished with imprisonment for not more than five years or a fine.

(3) Whoever induces a person under eighteen years of age, who is entrusted to him for upbringing, education or care in leading his life, or who is subordinated to him within the framework of an employment or work relationship, to commit sexual acts on or in front of a third person, or to allow them to be committed on the person by a third person, while abusing a dependency connected with the upbringing, education, care, employment or work relationship, shall be punished by imprisonment for no more than five years or a fine.

(4) In cases under subsections (2) and (3) an attempt shall be punishable.

24 Section 171, *Criminal Code (Strafgesetzbuch, StGB)* as promulgated on 13 November 1998 (Federal Law Gazette I).

25 Section 181a provides:

(1) Whoever:
1. exploits another person who engages in prostitution; or
2. for a material benefit supervises anther person's engagement in prostitution, determines the place, time, extent or other circumstance of the engagement in prostitution, or takes measures to prevent the person from giving up prostitution, and in that regard maintains a relationship with the person which goes beyond a particular case,
shall be punished with imprisonment from six months to five years.

(2) Whoever professionally promotes another person's engagement in prostitution by procuring sexual traffic, and in that regard maintains a relationship with the person which goes beyond the particular case, shall be punished with imprisonment for not more than three years or a fine.

(3) Whoever commits the acts named in subsection (1), numbers 1 and 2 or the promoting indicated in subsection (2) in relation to his spouse, shall also be punished pursuant to subsections (1) and (2).

26 Section 180a states:

(1) Whoever professionally maintains or manages an operation in which persons engage in prostitution and in which:
1. they are held in personal or financial dependency; or
2. the exercise of prostitution is promoted by measures which go beyond merely furnishing a dwelling, a place to stay or a residence and the additional services normally associated therewith, shall be punished with imprisonment for not more than three years or a fine.

(2) Whoever:
1. furnishes a dwelling, or a place to stay or residence for professional use to a person under eighteen years of age for the exercise of prostitution; or
2. urges another person, for whom he has furnished a dwelling for the exercise of prostitution, to engage in prostitution or exploits the person in relation thereto, shall be similarly punished.

27 Daniela Danna, *Papers from Workshop 12: Copenhagen Joint Sessions 2000 on Prostitution & Trafficking as Political Issues,* European Consortium for Political Research, www.essex.ac.uk, 2000.

28 "Germany prepares to recognise prostitution", *The Namibian*, 11 May 2001; *hindustantimes.com* at www.hindustantimes.com, 8 May 2001; "Ver.di seeks to give prostitutes a voice", *european industrial relations observatory online*, http://eiro.eurofound.ie/2002/03/Feature/DE0203202F.html.

29 Rob Broomby, "Germany to reform sex industry", *BBC NEWS online*: http://news.bbc.co.uk/hi/english/world/europe, 11 May 2001.

30 Clifford Coonan, "German Law Gives Prostitutes New Rights", *Reuters*, 19 October 2001; Emma Thompson, "Prostitutes in Germany not keen on reform", *Taipei Times online*, http://taipeitimes.com/news/2002/05/06, 6 May 2002.

31 "Ver.di seeks to give prostitutes a voice", *european industrial relations observatory online*, http://eiro.eurofound.ie/2002/03/Feature/DE0203202F.html; "Sex work-Germany", *femmigration: Legal Agenda for Migrant Prostitutes and Trafficked Women*, http://www.femmigration.net/work_germany.html.

32 Rob Broomby, "German prostitutes get new rights", *BBC NEWS online:* http://news.bbc.co.uk/hi/english/world/europe, 20 December 2001.

33 See, for example, Coonan (n 30), quoting Andrea Petch of the sex worker lobby group Hydra; Thompson (n 30).

34 Thompson (n 30).

35 Rob Broomby, "Berlin Prostitution no longer immoral" *BBC NEWS online:* http://news.bbc.co.uk/hi/english/world/europe, 28 December 2000. In the case in question, the owner of a Berlin bar used as a meeting place for sex workers and their clients appealed successfully when the local authority tried to take away her liquor and restaurant license on this basis. "Germany to legalise prostitution", posted 29 January 2001, *iafrica.com*; Craig Francis, "German brothel given legal all-clear", *CNN.com*, http://www.cnn.com/2000/WORLD/europe/germany/, 28 December 2000.

36 See, for example, "Ver.di seeks to give prostitutes a voice", *european industrial relations observatory online*, http://eiro.eurofound.ie/2002/03/Feature/DE0203202F.html; "Prostitution Finds Legal Protection", *Germany Spells Business: The Business to Business Webzine for Germany*, www.germanyspellsbusiness.com/webs/politics/politics1126.shtml, 9 July 2002; Thompson (n 30); Coonan (n 30); "Germany prepares to recognise prostitution", *The Namibian*, 11 May 2001; "Moral: Rente im Rotlichtmilieu", *Der Spiegel,* 19/2001, http://www.spiegel.de/spiegel/0,1518,132181,00.html; Craig Francis, "German brothel given legal all-clear", *CNN.com*, http://www.cnn.com/2000/WORLD/europe/germany/, 28 December 2000; "Das älteste Gewerbe der Welt soll legalisiert werden Prostitution", *cnn.de*, http://www.n-tv.de/2274779.html, 11 May 2001.

37 Julian Coman, "Legalisation brings bureaucracy to oldest profession in the world", *The Telegraph Newspaper*, http://www.walnet.org/csis/news/world_2000/telegraph-001105.html, 5 November 2000.

38 Suzanne Daly, "New Rights for Dutch Prostitutes, but No Gain", *New York Times*, http://www.walnet.org/csis/news/world_2000/nytimes-010812.html, 12 August 2001.

39 Joyce Oodshoorn, "Legalizing Prostitution as Sexual Service: the Case of the Netherlands", Copenhagen ECPR Joint Sessions, WS 12 (undated) at 15.

40 Emma Clark, "Dutch prostitutes fight for banking rights", *BBC News Online*, http://news.bbc.co.uk/hi/english/business/newsid_1481000/1481892.stm, 10 August 2001.

41 "Dutch Bank Lifts Ban On Sex Trade Accounts", see www.passionvillage.com/archives/dailies/sexinthenews/sexinthenews.php3.

42 Keith B. Richburg, "Oldest Profession Gets New Legal Protection", *The Washington Post Online*, http://www.washingtonpost.com/, 9 July 2001.

43 Coman (n 37).

44 Daly (n 38).

45 Coman (n 37).

46 Elizabeth Bernstein, "Why can't the US be like Sweden (or Holland) II? Europe as social policy utopia: Observing sex worker policies in Sweden and the Netherlands", Europe 2020: The 12th International Conference of Europeanists, Organized by the Council for European Studies, http://www.europanet.org/conference2000/abstracts/bernstein.htm, 2000.

47 J Kilvington, S Day and H Ward, Coordinators of the *European Network for HIV/STD Prevention in Prostitution* 1998-2000, "European Prostitution Policy: a time of change?", http://www.med.ic.ac.uk/divisions/60/europapnew/final/eu_policy.htm, undated, citations omitted.

48 Marie-Victoire Louis, "Legalizing Pimping, Dutch Style," *Le Monde Diplomatique*, www.uri.edu/artsci/wms/Hughes/catw/netherl.htm, 8 March 1997.

49 US Department of State, *The Netherlands Country Report on Human Rights Practices for 1998*, 26 February 1999.

50 *Stop-traffic*, see http://fpmail.friends-partners.org/pipermail/stop-traffic/2000-October/000196.html.

51 Kilvington *et al* (n 47).

52 See, for example, T van der Helm, S Biersteker, L van Mens, A van den Hoek, *Country Report of the Netherlands*, http://allserv.rug.ac.be/~rmak/europap/rapned.html.

53 Donna M Hughes, Laura Joy Sporcic and Nadine Z. Mendelsohn, "Factbook on Global Sexual Exploitation", Coalition Against Trafficking in Women, http://www.uriedu/artsci/wms/hughes/catw/sweden.htm, citing Belinda Goldsmith, "Swedish sex buyers feel law's weak slap", *Reuters*, 14 June 1998.

54 Kilvington *et al* (n 47).

55 Hughes *et al* (n 53), citing Belinda Goldsmith, "Swedish sex buyers feel law's weak slap", *Reuters,* 14 June 1998.

56 Chapter 4, Section 3 of the Swedish Penal Code states:

> *A person who otherwise than as stated in Section 1 or 2, by unlawful coercion or deceit, causes the entry of someone into military or work service or other similar condition of restraint or induces someone to go or remain in a place abroad where he or she may be in danger of being exposed to persecution* ***or exploited for casual sexual relations*** *or otherwise fall into distress, shall be sentenced for placing a person in a distressful situation to imprisonment for at least one and at most ten years.*
>
> *If the crime is of a less serious nature, a fine or imprisonment for at most two years shall be imposed.* (Law 1998: 393) [emphasis added].

57 Section 8 of Chapter 4, On Sexual Crimes, in the Swedish Penal Code provides that:

> *A person who promotes or improperly financially exploits the casual sexual relations for payment of another person shall be sentenced for* ***procuring*** *to imprisonment for at most four years.*
>
> *A person who, holding the right to the* ***use of premises****, grants the right to use them to another in the knowledge that the premises are wholly or to a substantial extent used for casual relations for payment and omits to do what can reasonably be expected to terminate the granted right, he or she shall, if the activity continues or is resumed at the premises, be considered to have promoted the activity and shall be sentenced in accordance with the first paragraph.* (Law 1998: 393) [emphasis added].

Section 9 states that if the crime provided in section 8 is a gross one, imprisonment for at least two and at most six years shall be imposed for gross procuring. In assessing whether it is gross, it shall be considered whether payment was on a large scale or whether the perpetrator ruthlessly exploited another.

58 Sections 4, 7, 10, of Chapter 4, On Sexual Crimes, in the Swedish Penal Code create offences for the sexual exploitation of a minor, sexual molestation, and seduction of youth, which may overlap with the Act Prohibiting the Purchase of Sexual Services.

59 Bernstein (n 46).

60 Ministry of Labour in cooperation with the Ministry of Justice and the Ministry of Health and Social Affairs, *News and Information from the Swedish Government Offices on issues related to violence against women,* http://www.kvinnofrid.gove.se/regeringen/faktaeng.htm.

61 Bernstein (n 46).

62 Bernstein (n 46).

63 Sheila Jeffreys, "Prostitution Conference in Sweden", Coalition Against Trafficking in Women Australia, http://www.skyboom.com/catwa/swedishconference.htm, 12 February 2001.

64 Belinda Goldsmith, "Swedish move to outlaw buying sex stirs debate," *Reuters*, 4 August 1998.

65 Bernstein (n 46).

66 Danna (n 27).

67 Ministry of Labour (n 60), emphasis added.

68 Bernstein (n 46). The package of legislation widened the definition of rape, increased social services for victims of domestic violence, and stiffened penalties for female genital mutilation and sexual harassment.

69 Petra Ostergren, "Paper presented at the World Action Forum for Sexwork Rights, May 26th 1998", http://www.whoreact.net/swedendecrim.html.

70 *Id.*

71 Bernstein (n 46).

72 Socialstyrelson, "Knowledge of Prostitution 1998-1999", http://www.sos.se/SOS/PUBL/REFERENG/003005e.HTM.

73 Bernstein (n 46).

74 Kilvington *et al* (n 47), citations omitted.

75 Included are the *Massage Parlours Act of 1978*, the *Summary Offences Act of 1991*, and the *Crimes Act of 1961*. In the *Massage Parlours Act of 1978*, for example, prostitution is defined as "the offering by a man or woman of his or her body for purposes amounting to common lewdness for payment."

76 Case law has interpreted locked massage rooms to be 'public places' where sex workers 'solicit' their clients. In two Court of Appeal cases, prostitution has been defined as "a woman offering herself as a participant in physical acts of indecency for the gratification of men in return for money" (*R v Robinson* [1978] 1 NZLR 209 and *R v Fray* [1984] 2 NZLR 4 CO.) This seems to imply that all prostitutes are women, and that all sexual transactions are initiated by the prostitute.

77 Section 147.

78 Section 148.

79 Section 149.

80 "Prostitution Law Reform", a briefing paper from the Prostitution Law Reform Campaign, http://homepages.ihug.co.nz/~wmncentr/newsletr/200010/prostlaw.htm.

81 "Prostitution Reform Bill launched", press release, http://vic-uniq.tripod.com/reform.htm#top, 20 September 2000.

82 "Prostitution Law Reform" (n 80).

83 Clause 5.

84 Clause 7. Subclause (3) sets a penalty of up to 7 years imprisonment for the crimes in question.

85 Clause 8.

86 Clause 6.

87 Clause 9.

88 http://www.hrc.co.nz/org/research/2001/february 2001/ProstitutionReformBill.htm.

89 Public Health Association of New Zealand, Submission on the Prostitution Reform Bill, www.pha.org.nz/phadocs/ Policy%20Prostitution%20decrim%20FINAL%2001(rtf).rtf, March 2001, citations omitted.

90 Information from Dr Graham Neilsen, sexual health physician, South African Conference on Commercial Sex Work, 19-20 February 2001.

91 Mary Sullivan and Sheila Jeffreys, "Legalising Prostitution is not the answer: the example of Victoria, Australia", Coalition Against Trafficking in Women – Australia, undated.

92 Kasia Dybowska, "Victoria, Australia: On the Brink of Unionizing Prostitution", *The Trincoll Journal*, http://www.trincoll.edu/zines/tj/tj9.12.96/articles/cover.html, 12 September 1996.

93 The varying legal approaches can be briefly summarised as follows:

Western Australia: There is a "toleration and containment" policy that allows a limited number of brothels and escort agencies to operate. However, new laws are cracking down on the public face of prostitution by providing increased penalties for street solicitors and even harsher ones for their clients.

South Australia: All forms of sex work are illegal, but enforcement is selective, creating opportunities for corruption.

Northern Territory: The only legal forms of sex work are hotel-based escort services operating with certificates approved by the police.

Tasmania: In the past, sex work from one's own home was legal, but brothels have been prohibited. Law reform which would liberalise this position is reportedly underway.

Queensland: Prostitutes could previously work alone from their own premises, but no other form of prostitution (including street solicitation) was legal. However, a new law which came into force on 1 July 2000 made it possible for brothels to be legally licensed.

Victoria: Brothels can obtain legal licences, but street soliciting is illegal.

New South Wales: Street soliciting has been decriminalised and brothels can obtain legal licences.

Australian Capital Territory: Public solicitation is illegal, but brothels and escort agencies can register for legal operation. They are required to take all reasonable steps to ensure that no

prostitutes who are infected with STDs work on the premises, and that condoms are used for all penetrative acts. It is an offence for both prostitutes and clients who are infected with STDs to engage in commercial sexual services.

Because the laws in many Australian jurisdictions are in a state of flux, this summary may not capture all of the most recent developments. (Information from Dr Graham Neilsen (n 90); Decriminalise Prostitution Now Coalition, http://www.sexwork.com/coaliation/australia.html; Queensland Parliamentary Library, "Research Note: The Prostitution Bill 1999", No 6/99, December 1999; ACT Prostitution Act 1992.)

94 Prostitutes Collective of Victoria, "The History of the PCV", http://www.arts.unimelb.edu.au/amu/ucr/student/1996/m.dwyer/pcvhome.html.

95 Sullivan & Jeffreys (n 91).

96 *Id.*

97 *Id.*

98 The following definitions are notable:

> *"prostitution" means the provision by one person to or for another person (whether or not of a different sex) of sexual services in return for payment or reward;*
>
> *"prostitution service provider" means a person carrying on a business of a kind referred to in the definitions in this section of "brothel" and "escort agency";*
>
> *"sexual services" includes --*
>
> *(a) taking part with another person in an act of sexual penetration; and*
>
> *(b) masturbating another person; and*
>
> *(c) permitting one or more other persons to view any of the following occurring in their presence --*
>
> *(i) two or more persons taking part in an act of sexual penetration;*
>
> *(ii) a person introducing (to any extent) an object or a part of their body into their own vagina or anus;*
>
> *(iii) a person masturbating himself or herself or two or more persons masturbating themselves or each other or one or more of them --*
>
> *in circumstances in which--*
>
> *(iv) there is any form of direct physical contact between any person viewing the occurrence and any person taking part in the occurrence; or*
>
> *(v) any person viewing the occurrence is permitted or encouraged to masturbate himself or herself while viewing --*
>
> *and, for the purposes of this definition, a person may be regarded as being masturbated whether or not the genital part of his or her body is clothed or the masturbation results in orgasm.*

99 It is an offence to cause or induce a child to take part in prostitution (section 5), to obtain payment for sexual services provided by a child (section 6), to enter into an agreement in terms of which a child is to provide sexual services in exchange for payment or drugs (section 7), and for the owner of any premises to allow a child to take part in prostitution (section 11). Section 8 makes it an offence to force an adult into prostitution by means of assault, intimidation, falsehood or the supply of addictive drugs. Sections 17 and 18 deal with advertising and include prohibitions on describing services offered, broadcasting or televising advertisements, advertisements seeking prostitute employees, or using terms which suggest that a prostitution service provider is a massage parlour.

100 Section 10.

101 Section 15.

102 Section 16. The penalty for this offence is 30 penalty units or imprisonment for 3 months.

103 Section 19.

104 Section 20.

105 Sections 12, 13, and 14; Sullivan & Jeffreys (n 91).

106 Section 13(2). The penalty for street prostitution is on a sliding scale, with 5 penalty units or one month's imprisonment for a first offence, 15 penalty units or imprisonment for 3 months for a second offence and for any subsequent offence 25 penalty units or imprisonment for 6 months.

107 Section 13(1).

108 The applicant, according to section 33(b)(i) must state "the name, address, occupation and date of birth", of both the applicant him or herself as well as the owner of the premises from which the applicant intends running his/her business. The applicant must also furnish the Authority with the address from which the proposed business will be run, whether or not the applicant will be a sole proprietor or will be in partnership with someone, and any other matter that can be prescribed by the licensing authority. The application must be signed by the applicant, and the prescribed fee must be attached.

109 Section 33(3).

110 Section 47.

111 Section 21.

112 Considerations such as whether there is another brothel in the area, and whether children frequent the area, set planning issues pertaining to brothels apart from other businesses. However, most of the other relevant considerations named in the Act are similar to those found for "ordinary" businesses, such as provision for parking, number of employees, etc.

113 Sullivan & Jeffreys (n 91).

114 Quoted in Sullivan & Jeffreys (n 91).

115 *The Age*, 28 February 1999, quoted in Sullivan & Jeffreys (n 91).

116 *Id.*

117 *The Age*, 1 March 1999, as quoted in Sullivan & Jeffreys (n 91).

118 Sullivan & Jeffreys (n 91).

119 Mary Sullivan, "Marketing Women's Sexual Exploitation in Australia" in Donna M Hughes and Claire Roche (eds), *Making the Harm Visible: Global Sexual Exploitation of Women and Girls*, 1999.

120 Dybowska (n 92).

121 Sullivan & Jeffreys (n 91).

122 Sylvia Davies and Martha Shaffer, "Prostitution in Canada: The Invisible Menace or the Menace of Invisibility?", http://www.walnet.org/csis/papers/sdavis.html, 1994.

123 *The Age*, 28 February 1999, quoted in Sullivan & Jeffreys (n 91).

124 Sullivan & Jeffreys (n 91).

125 *Id.*

126 Davies & Shaffer (n 122).

127 "Comment: Decriminalization of Prostitution in Australia", reprinted at World Sex Guide, http://www.worldsexguid.org/australia_legal.txt.html.

128 Sullivan & Jeffreys (n 91).

129 *Id.*

130 *Id.*

131 *The Age*, 4 September 1996, www.arts.unimelb.edu.au/amu/ucr/student/1996/m.dwyer/.

132 Sullivan & Jeffreys (n 91).

133 Davies & Shaffer (n 122).

134 Sullivan & Jeffreys (n 91).

135 *Id.*

136 Ruth Frenzel, Prostitutes Collective, quoted in Dybowska (n 92).

137 http://www.arts.unimelb.edu.au/amu/ucr/student/1996/m.dwyer/newlaw.html#ideal.

138 Information from World Sex Guide on Australia, http://www.worldsexguide.org/australia_legal.txt.html.

139 Andrew Miles, "The Sex Industry Legal Kit for Service Providers and Regulators", compiled by the Sex Workers Outreach Project, NSW, http://www.swop.org.au/ressilk2.html. Police corruption took the form of police officers accepting bribes to administer the law selectively, with the result that sex workers were forced to seek the protection of organised crime networks. Raylene Frances, "The History of Female Prostitution in Australia", in R Perkins, G Prestage, R Sharp and F Lovejoy (eds), *Sex Work and Sex Workers in Australia* (1994), reprinted at http://www.infoxchange.net.au/wise/HEALTH/Pros3.htm.

140 Miles (n 139).

141 *Id.*

142 Sex Workers Outreach Project, "Unfinished Business: achieving effective regulation of the NSW sex industry", http://www.swop.org.au/acon.html.

143 Section 16. A determination of a "disorderly house" is made if it is found that drunkenness, disorderly or indecent conduct, or entertainment of demoralizing character takes place on the premises, liquor is unlawfully sold, or a reputed criminal (or his or her associates) are found to resort there and are likely to resort to the premises again. Furthermore, a premises would be found to be disorderly if run by a reputed criminal (or his or her associates), or someone who has controlled other disorderly houses, or other establishments where persons of notoriously bad character frequent or unlawful drugs or alcohol are supplied. Section 3.

144 "Brothel" is defined in the Disorderly Houses Act to be

> *premises habitually used for the purposes of prostitution, or that have been used for that purpose and are likely to be used again for that purpose. Premises may constitute a brothel even though used by only one prostitute for the purpose of prostitution.* (Section 1)

145 Section 17.

146 Section 91D.

147 Sections 91E-G.

148 Sections 16 and 17 of the Summary Offences Act. The penalty is a maximum of 5 penalty units or imprisonment for 3 months. Similarly, owners, occupiers, managers, or assistants to management may not permit these sorts of businesses to be used for prostitution or its solicitation, subject to a maximum penalty of 50 penalty units or imprisonment of 12 months for breaching this offence.

149 Section 21 of the Summary Offences Act.

150 Section 19 criminalizes solicitation by prostitutes and provides a maximum penalty of 6 penalty units or 3 months imprisonment. Section 19A criminalizes solicitation by clients and provides a maximum penalty of 6 penalty units or 3 months imprisonment. Section 20 deals with public acts of prostitution, or rather engaging in sexual activity for money in or within view of a dwelling, school, church, hospital, or public place. Sexual activity includes sexual intercourse (encompassing oral and anal sex), or masturbation of another person, either of the same or opposite sex. The courts have interpreted masturbation of another to include hand jobs and body slides.

151 Miles (n 139). Prohibitions on loitering are found in local council regulations.

152 Section 15 of the Sexual Offences Act. The maximum penalty under this section is 10 penalty units or 12 months imprisonment. Section 15(3) specifically excludes brothel owners from the prohibition on living off the earnings of prostitution. Subsection 3 states:

> *A person does not contravene subsection (1) by living wholly or in part on earnings derived from a brothel if the person owns, manages, or is employed in the brothel.*

153 Sections 18 and 18A.

154 The maximum penalty for either offence is 6 penalty units or imprisonment for 3 months.

155 Section 15A. The maximum penalty is 50 penalty units or imprisonment for 12 months or both.

156 Sex Workers Outreach Program provides a useful summary of the process involved in obtaining consent from local council in their publication "Getting Development Consent for a Brothel: For Current, Potential Owners, Managers and Workers in Brothels and Massage Parlours". The facts in this paragraph are taken from the publication information provided online at www.swop.org.au/brothel.html.

157 Sex Workers Outreach Program, "Regulating the Sex Industry", http://www.swop.org.au/part2.html.

158 *Id* (emphasis added).

159 If a worker contracts an illness or disease or sustains an injury because of their employment, they should inform the employer as soon as possible, preferably by completing a Notice of Injury. This form must be made available by the employer. If a worker suffers a work-related injury or illness that needs medical attention a doctor should be consulted, even if time off work is not required. The employer who may be liable for compensation must forward the claim form to their workers' compensation insurer within seven days, who must process the claim within twenty-one days. If a worker feels the claim form has not been forwarded within seven days, they can forward the claim themselves. A client who contracts an illness or disease or sustains an injury as a result of their use of the service may also seek compensation. *Id.*

160 Employers may be held liable for fines if they do not carry workers compensation insurance policies. *Id.*

161 Miles (n 139).

162 Sex Workers Outreach Project, "Unfinished Business" (n 142).

163 *Sydney Morning Herald*, 1 July 1995, reprinted in World Sex Guide on Australia, http://www.worldsexguid.org/australia_legal.txt.html.
164 Miles (n 139).
165 *Id.*
166 "Comment: Decriminalization of Prostitution in Australia" (n 127).
167 *Id.*
168 Sex Workers Outreach Project, "Unfinished Business" (n 142).
169 Miles (n 139).
170 Sex Workers Outreach Project, "Unfinished Business" (n 142).
171 *Id.*
172 Parliament of Australia, Bills Digest No. 167, 1998-99, http://www.aph.gov.au/library/pubs/bd/1998-99/99bd167.htm.
173 "New Law to Combat International Sex Trade", Media Release: Minister for Justice & Customs, 11 August 1999.
174 Mark Forbes, "Life as a commodity, to be bought and sold", *The Age*, http://www.theage.com.au/news/natinoal/2001/06/05/FFXZIOK4JNC.html, 5 June 2001.
175 Miles (n 139).
176 ECPAT-Childwise: Ending Child Prostitution, Pornography and Trafficking, "Child Sex Tourism Law", http://www.ecpat.org/legislation.htm (undated).
177 Andrew Nette, "Paedophiles still get away with overseas crimes", IPS, 4 September 1998, reprinted at http://www.catwinternatinoal.org/fb/aus.html.
178 Jo Bindman, "Redefining Prostitution as Sex Work on the International Agenda", Anti-Slavery International, with the participation of Jo Doezema, Network of Sex Work Projects, 1997, http://www.walnet.org/csis/papers/redefining.html.
179 Comment provided in the legal section for the UK on the World Sex Guide website, http://www.worldsexguide.org/uk_legal.txt.html.
180 Department of Health, Home Office, Department of Education and Employment, National Assembly for Wales, "Safeguarding Children Involved in Prostitution: Supplementary Guidance to Working Together to Safeguard Children", http://www.asem.org/Documents/UnitedKingdom/Dept_of_Health at 13.
181 Kilvington *et al* (n 47).
182 Section 32.
183 Department of Health (n 180) at 3.
184 Sexual Offences Act 1985; Bindman (n 178).
185 Email posted to World Sex Guide, http://www.worldsexguide.org/uk_legal.txt.html.
186 Bindman (n 178).
187 Email posted to World Sex Guide (n 185).
188 Department of Health (n 180) at 35.
189 Section 30. The maximum penalty for this offence, either way, is 7 years' imprisonment.
190 Section 31. The maximum penalty for this offence, either way, is 7 years' imprisonment.
191 Section 24. The maximum penalty is 2 years' imprisonment.
192 Sections 25-26. The maximum penalty where the girl is under 13 is life imprisonment, and where the girl is under 16, 2 years imprisonment. In the latter case, both parties have committed an offence.
193 Sections 33, 34, 35 and 36.
194 Sections 2, 3, 22, 23, 24 and 28. The maximum penalty for all of these offences is 2 years' imprisonment.
195 Angus Stickler, "Child Prostitution Crisis", *BBC News Online*, http://www.news.bbc.co.uk/hi/english/uk/newsid_1462000/146228.stm, 29 July 2001.
196 "Prostitute rackets rife in UK", *BBC News Online*, http://www.news.bbc.co.uk/hi/english/uk/newsid_646000/646105.stm, 17 February 2000.
197 "Prostitution is £700m industry", *BBC News Online*, http://www.news.bbc.co.uk/hi/english/uk/newsid_1271000/1271028.stm, 11 April 2001.
198 Kirsty Scott, "Prostitutes 'left at risk of attack'", *Guardian Unlimited,* http://www.society.guardian.co.uk/socialcare/storey/0,78900,445337,00.html, 2 March 2001; "Attacks on prostitutes 'ignored'", *BBC News Online*, http://www.news.bbc.co.uk/hi/english/health/newsid_1196000/1196256.stm, 2 March 2001, where it is stated

that researchers from Glasgow University found that half of all prostitutes working on the streets and a quarter of those working in saunas or flats were routinely attacked by clients.

199 Bindman (n 178), quoting C Benson and R Matthews, *National Vice Squad Survey*, School of Sociology and Social Policy, Middlesex University, Enfield, UK, 1995 at 25.

200 Bindman (n 178).

201 Kilvington *et al* (n 47).

202 Kath Grant, "Street Wiser", *Guardian Unlimited*, http://www.society.guardian.co.uk/practice/story/0,8115,447320,00.html, 7 March 2001.

203 Kilvington *et al* (n 47). Attendance at these educational sessions has been small, and it is likely that they will be discontinued in the future.

204 Helen Carter, "Crackdown forces out prostitutes", *Guardian Unlimited*, http://society.guardian.co.uk/socialcare/story/0,7890,430322,00.html, 29 January 2001. This article also states that members of the police force have indicated that crime in the city reduced by 20% on account of the "name and shame" program.

205 Kilvington *et al* (n 47).

206 Department of Health (n 180).

207 *Id* at 9.

208 *Id* at 10. A panderer is another word for a pimp.

209 Kilvington *et al* (n 47).

210 Home Office of the Government of the United Kingdom, "Consultation Paper: New Measures to Control Prostitutes' Cards in Phone Boxes", http://www.homeoffice.gov.uk/cpd/sou/cards.htm.

211 "Sex card crackdown", *BBC News Online*, http://www.news.bbc.co.uk/hi/english/uk_politics/newsid_1067000/1067250.stm, 12 December 2000.

212 Home Office of the Government of the United Kingdom (n 210).

213 Alan Travis, "Phone box ads for sex to be outlawed", *Guardian unlimited*, http://www.society.guardian.co.uk/local govt/story/0,7890,480757,00.html, 28 April 2001.

214 "Sex card crackdown" (n 211).

215 Travis (n 213).

216 Home Office of the Government of the United Kingdom (n 210).

217 *The Economist*, 6-12 January 2001.

218 Quoted in Kilvington *et al* (n 47).

219 Kilvington *et al* (n 47).

220 Section 213. Davies & Shaffer (n 122).

221 Section 210. The penalty for a conviction of keeping (or operating) a common bawdy-house, pursuant to section 210(1), is a term of imprisonment not exceeding two years. The penalty under section 210(2-4), which relates to landlords, inmates and clients, is a maximum of six months in prison, or a $2000 fine, or both (the standard penalty for any summary conviction offence).

222 Section 211. The penalty for this offence is six months in prison, a $2000 fine, or both.

223 Section 212.

224 While some believe that the offence of "living off the avails" of prostitution can be used against family members, courts have held that the relationship in question must be "parasitic" before the offence applies. John Lowman, "Prostitution Law Reform in Canada", http://mypage/uniserve.ca/~lowman/Prolaw/prolawcan.htm, undated.

225 Section 212(4). The maximum term of imprisonment for this offence is five years.

226 *Reference Re ss. 193 and 195.1(1)(c) of the Criminal Code (Man.)* [1990] 1 S.C.R. 1123 (sometimes referred to as the "*Prostitution Reference Case*"); *R v Stagnitta* [1990] 1 S.C.R. 1226; *R v Skinner* [1990] 1 S.C.R. 1235.

227 *Reference Re ss. 193 and 195.1(1)(c) of the Criminal Code (Man.)* [1990] 1 S.C.R. 1123. Concurring Justice Lamer found similarly that section 195.1(1)(c) of the Code constitutes a reasonable limit upon freedom of expression. He found that the section was aimed at the nuisances caused by the public solicitation of prostitutes and their customers, including "impediments to pedestrian and vehicular traffic, as well as the general confusion and congestion that is accompanied by an increase in related criminal activity such as possession and trafficking in drugs, violence and pimping". He found that further objectives were to prevent persons who are not interested in prostitution from being propositioned as either prostitutes or potential customers, as well as "minimizing the public exposure of an activity that is degrading to women with the hope

that potential entrants in the trade can be deflected at an early stage and of restricting the public blight that is associated with public solicitation for the purposes of prostitution".

228 *Id.*

229 The opinion of the majority states that "'this appeal fails for the reasons I have set out in detail in *Reference Re ss. 193 and 195.1(1)(c) of the Criminal Code (Man.)"*.

230 [1990] 1 S.C.R. 1235.

231 Kim Pemberton, "Policy not to arrest prostitutes first in Canada", *Vancouver Sun*, http://www.walnet.org/csis/news/vancouver_97/vansun-970218.html, 18 February 1997.

232 Lowman (n 224).

233 Government of Alberta News Release, "Amended PChIP Act to become law March 15", http://www.gov.ab.ca/can.200102/10340.html, 7 February 2001. The Constitutionality of the legislation was upheld in *Alberta (Director of Child Welfare) v K.B.*, 2000 ABQB 976, 21 December 2000.

234 Act to Protect Children involved in Prostitution, Bill 6:1999 (Ontario); Rescuing Children from Sexual Exploitation Act, 2001 (Ontario).

235 Saskatchewan Party Caucus News Release, www.skcaucus.com/news/1999/feb/020399.htm, 3 February 1999.

236 Statistics Canada, "Street Prostitution, 1995", http://www.statcan.ca/Daily/English/970213/d970213.htm.

237 *Id* at 2.

238 *Id* at 3.

239 *Id* at 4.

240 *Id* at 4.

241 Davies & Shaffer (n 122). It is not possible to distinguish between male clients and male sex workers in the statistics that are available.

242 *Id.*

243 *Id.* In Canada, as of 1994, studies pointed to needle use rather than prostitution as the main source of HIV transmission.

244 *Id,* quoting a 1985 report from a Special Committee on Pornography and Prostitution in Canada.

245 Research by Dr John Lowman, reported in Paul Dillon, "Life on the Streets is Dangerous", *Survey Leader*, http://www.uri.edu/artsci/wms/hughes/catw/canada.htm, 17 May 1998.

246 Davies & Shaffer (n 122).

247 Lowman (n 224).

248 Alexander Highcrest, "Toronto's Prostitution Debate: One step forward, two steps back?", *eye*, http://www.eye.net/News/NV/1995/nv0713.htm, 13 July 1995.

249 Lowman (n 224).

250 Thailand Prostitution Statistics, http://www.codewan.com.ph/salidumay/discussions/articles/stats_prostitution.htm.

251 Report of the UN Special Rapporteur on Violence against Women and Children, E/CN.4/1995/42, http://www1.umn.edu/humanrts/commission/thematic51/42.htm, 22 November 1994, at paragraphs 212-213.

252 Asia Watch, Women's Rights Project, *A Modern Form of Slavery: Trafficking of Burmese Women and Girls into Brothels in Thailand*, 1993 at 20-23.

253 *Id* at 24-25.

254 See http://www.codewan.com.ph/salidumay/discussions/articles/stats_prostitution.htm.

255 Asia Watch (n 252) at 26.

256 *Id* at 27.

257 Prevention and Suppression of Prostitution Act B.E. 2539 (1996), section 5.

258 http://www.xaap.com/english/resource/article/main_list_article.asp?catid=7832&rid=2363 at 3.

259 Section 5.

260 http://www.xaap.com/english/resource/article/main_list_article.asp?catid=7832&rid=2363 at 2.

261 "Sex industry assuming massive proportions in Southeast Asia", ILO Press Release, 19 August 1998, http://www.ilo.org/public/english/bureau/inf/pr/1998/31.htm. See also Lin Lean Lim (ed), *The Sex Sector: The Economic and Social Bases of Prostitution in Southeast Asia,* ILO, 1998.

262 Gustavo Capdevila, 'Human Rights: Trade in Women Fed by Poverty", *InterPress Service*, http://www.oneworld.org/ips2/apr/women.html, 2 April 1997, citing UN Special Report on Violence Against Women compiled by Radhika Coomaraswamy.

263 India is a signatory to the Convention of the Suppression of Trafficking and of the Exploitation of the Prostitution of Others, which Nepal has not ratified; both have ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC); India is a signatory and Nepal is party to the International Covenant on Civil and Political Rights (ICCPR). Human Rights Watch/Asia. *Rape for Profit: Trafficking of Nepali Girls and Women to India's Brothels,* 1995 at 70.

264 *Id* at 72.

265 *Id*.

266 The ITPPA added several conditions upon which prison sentences could be handed down. These include brothel keeping, abetting in brothel keeping, living off brothel earnings, procuring, detaining, activity in the vicinity of a public place, seducing, or soliciting. Sentences vary depending on the offence, whether it is a first or second conviction, and the age of the sex worker. The ITPPA makes distinctions between "major" (adult, over 18 years old), "minor" (anyone between the ages of 16 and 18, and "child" (anyone under the age of 16 years). It is interesting to note that while there exists a presumption of innocence with respect to minors and children, majors are required to bear the burden of proving their own innocence. *Id* at 72-74.

267 *Id* at 75.

268 Robert I Freidman, "India's Shame: Sexual Slavery and Political Corruption Are Leading to An AIDS Catastrophe," *The Nation*, http://www.uri.edu/artsci/wms/hughes/catw/india.htm, 8 April 1996.

269 Asia Watch (n 263) at 79.

270 *Id* at 79.

271 *Id* at 79-80.

272 Section 7. See http://www.celrrd.com/html/ootlot.html at 1.

273 Section 8. *Id*.

274 *Id* at 2.

275 *Id* at 3.

276 HRDC and SAHRDC, "Nepal to India: Ending the Trafficker's Paradise", http://www.asem.org/News/NepalIndia.htm.

277 CATW - Asia Pacific, *Trafficking in Women and Prostitution in the Asia Pacific,* http://www.uri.edu/artsci/wms/hughes/catw/india.htm.

278 Saurabh Bhattacharya, "Rights-India: Sex Workers See Freedom in Rules and Regulations", http://www.oneworld.org/ips2/dec/india3.html.

279 Act No 8 of 2001. The purpose of the Act is to "amend the criminal law in regard to sexual offences; to make further provision for the suppression of brothels and prostitution; to discourage the spread of the human immuno-deficiency virus; to appeal the Criminal Law Amendment Act…and to provide for matters connected with or incidental to the foregoing".

280 "Broad-ranging Sexual Offences Bill now ready", *Herald*, 9 March 2001.

281 "PART V: PREVENTION OF SPREAD OF HIV

15 Deliberate transmission of HIV

(1) Any person who having actual knowledge that he is infected with HIV, intentionally does anything or permits the doing of anything which he knows or ought reasonably to know –

(a) will infect another person with HIV; or

(b) is likely to lead to another person becoming affected with HIV

shall be guilty of an offence, whether or not he is married to that other person, and shall be liable to imprisonment for a period not exceeding twenty years."

282 Section 2.

283 *Id*.

284 *Id*. "Owner", in relation to any place, includes "a person who lets or sublets or permits the occupation of the place, whether in his own right or on behalf of another person", and "place" includes any premises, enclosure, vehicle or boat or any part thereof."

285 *Id*.

286 Section 9.

287 Sections 13 and 14.

288 Section 11.

289 Section 6.

290 Section 5.

291 Section 7.

292 "Sex workers 'raped' by Zambian police", *BBC News Online*, http://news.bbc.co.uk/hi/English/world/Africa/newsid_1946000/1946…, 23 April 2002; Dickson Jere, "Zambian sex workers demand to be legalised", *The Namibian*, 29 April 2002 (NAMPA-AFP); Zarina Geloo, "Sex Workers Fed Up Sharing with Cops", *The Namibian*, 3 May 2002 (IPS-Misanet).

293 "Sex workers 'raped' by Zambian police" (n 292).

294 Geloo (n 292).

295 Jere (n 292).

296 Geloo (n 292).

297 *Id.*

298 Jere (n 292), quoting Pastor John Mwanza from a Pentecostal Church.

299 M Farley, I Baral, M Kiremire and U Sezgin, "Prostitution in Five Countries: Violence and Post-Traumatic Stress Disorder", *Feminism & Psychology*, 1998, Volume 8(4): 405-426; Geloo (n 292); Jere (n 292).

300 Section 180(e), Penal Code.

301 *Kaseka and 6 others v Republic*, Malawi High Court, Case 75/390, 22 January 1999. Thanks to Jennifer Khor, a Canadian intern based at the Malawi Human Rights Resource Centre, for supplying this case to the Legal Assistance Centre.

302 *Id.*

303 *Ham. Vokhiwa, ANB-BIA, Malawi, http://www.peacelink.it/anb-bia/week_2k/2k0914c.htm,* 8 September 2000.

304 National Strategic Framework 2000-2003 of the National AIDS Commission of Malawi, Annex 1, Component 3, paragraph 3.7, http://www.aidsmalawi.org/framework/.

305 See "In recognition of the oldest profession in the world", African News Service, 11 June 2000.

306 See US State Department, "Country Reports on Human Rights Practices – Malawi, 2001", http://www.state.gov/g/drl/rls/hrrpt/2001/af/8390.htm, 4 March 2002.

307 Yoshie Furuhashi, "A Prostitute Community's Response to AIDS in Urban Senegal", http://csf.colorado.edu/soc/m-fem/2000/msg01406.html, 17 September 2000 (book review).

308 Ofeibea Quist-Arcton, "Prostitution – Frontline of the War to Contain HIV", *allAfrica.com*, http://allafrica.com/stories/200106290227.html, 29 June 2001; Alexander Zavis, "On Continent Ravaged by AIDS, West Africa's Senegal boasts Rare Achievements", *Associated Press*, http://www.stopgettingsick.com/templates/news_template.cfm/3748, 2001.

309 Furuhashi (n 307).

310 "Senegal's Success", *Online NewsHour*, http://www.pbs.org/newshour/bb/health, 17 May 2001.

311 Ofeibea Quist-Arcton (n 308).

312 David Hecht, "Senegal Population: 'Risky Behaviour' Does Not always Equal AIDS", InterPress News Service, http://www.aegis.com/news/ips/1997/IP970304.html, 24 March 1997.

313 Zavis (n 308).

314 *Id.*

315 Hecht (n 312); "AIDS Prevention in Senegal", *PBS Religion & Ethics Newsweekly*, http://www.pbs.org/wnet/religionandethics/week430/cover.html, 19 July 2002. Another source puts the rate for sex workers in Dakar as being stable at about 17% since 1993. UNECA, "Lessons Africa has learnt in 15 years of responding to HIV/AIDS – Working Paper", http://www.uneca.org/adf2000/theme2somethingforall.htm, 2000.

316 "Unregistered night ladies have 14 percent HIV prevalence", UNAIDS Inter-Country Team for West and Central Africa, International Partnership against AIDS: Monthly News Bulletin on HIV/AIDS, *Panafrican News Agency*, www.onusida-aoc.org/Eng/Publications/ Bulletin%20AIDS%20March%202001.doc, March 2001, quoting "the latest edition of Senegal's health ministry epidemiological bulletin".

317 Zavis (n 308), quoting Dr Abdel Bacha of Third World Environment and Development.

318 Ofeibea Quist-Arcton (n 308).

319 Chris Simpson, "Fighting AIDS is a Fight against Poverty", *SHAAN online: IPS e-zine on Gender and Human Rights*, http://ipsnews.net/hivaids/section2_1.shtml, 2001.

320 Hecht (n 312).

321 Ofeibea Quist-Arcton (n 308), quoting Dr Souleymane Mboup, Professor of Microbiology at the University of Dakar, Senegal. See also Ofeibea Quist-Arcton, "'This is My Whole Life' – A Scientist's Dedication To Defeating AIDS", *allAfrica.com*, http://allafrica.com/stories/200107050030.html, 4 July 2001.

322 Ofeibea Quist-Arcton (n 308).

323 *Id*; UNECA (n 315).
324 UNECA (n 315).

CHAPTER 7- COMMERCIAL SEX WORK AND HIV/AIDS

1 See Chapter 4 above.
2 UNAIDS, *Report on the Global HIV/AIDS Epidemic*, June 2000 at 124.
3 Ministry of Health and Social Services, Epidemiological Report on HIV/AIDS for the Year 2000, August 2001 at 1.
4 UNAIDS (n 2) at 124.
5 United Nations Development Programme, *Namibia Human Development Report 2000*.
6 United Nations Development Programme, *Namibia Human Development Report 1998* at 30.
7 Ministry of Health and Social Services (n 3) at 1.
8 *Ibid*.
9 *Government of the Republic of Namibia and Another v Cultura 2000 and Another* 1994 (1) SA 407 (NmSC) at 418F-J.
10 Article 12.
11 V Leary, "The Right to Health", *Health and Human Rights*, 1 (1994): 28 as quoted in D Tarantola, *Building on the Synergy between Health and Human Rights: A Global Perspective*, 2000.
12 See, for example, http://www.who.int/HIV_AIDS/Nursesmidwivesfs/fact-sheet-10/index.html (published by WHO and UNAIDS) and http://www.medguide.org.zm/aids/womaids.htm (quoting *Women and AIDS: UNAIDS Best Practice Collection Point of View*, June 1997).
13 See *Jordan and Others v State*, Submissions on behalf of the Commission for Gender Equality.
14 See *Canadian HIV/AIDS Policy & Law Newsletter,* Vol. 2, No. 2 (January 1996).
15 See Chapter 5.
16 See JB Cohen et al, *Antibody to HIV in Female Prostitutes*, MMWR March 27, 1987, Vol 36, No. 11 at 158, quoted in *Jordan and Others v State*, Submissions on behalf of the Commission for Gender Equality. Husbands or boyfriends of sex workers in a multicentre collaborative study were found to be much less likely to use condoms during vaginal intercourse than clients (16% as compared to 78%).
17 *Namibia National Progress Report on the Implementation of the Beijing Platform for Action* (Office of the President, Department of Women Affairs, July 1999) at 35.
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19 See *Canadian HIV/AIDS Policy & Law Newsletter* (n 14).
20 See AIDS Law Project, Centre for Applied Legal Studies, *Memorandum for Submission to the Task Group for Decriminalisation of Sex Work in respect of (A) Mandatory Testing for HIV/AIDS and (B) Criminal Sanctions for Unsafe Sex* (undated).
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23 Leggett (n 18).
24 T van der Helm, S Biersteker, L van Mens, A van den Hoek, *Country Report of the Netherlands*, http://allserv.rug.ac.be/~rmak/europap/rapned.html.
25 "Prostitution Law Reform", New Zealand Prostitutes Collective at http://www.nzpc.org.nz/lawrefor.htm.

CHAPTER 8- RECOMMENDATIONS FOR NAMIBIA

1 Committee on the Elimination of Discrimination Against Women, CEDAW/C/1997/II/L.1/Add.2 (14 July 1997) at paragraph 38.
2 *Id* at paragraph 63.
3 Namibia National Progress Report on the Implementation of the Beijing Platform for Action (Office of the President, Department of Women Affairs, July 1999) at 45.

4 *Fantasy Enterprises v Minister of Home Affairs and Another/ Nasilowski and Others v Minister of Justice and Others* 1998 NR 96 at 102F, 104I-105A.

5 See *Chairperson of the Immigration Selection Board v Frank and Another*, Namibian Supreme Court, Case No. SA 8/99, at section 3 of the majority opinion by O'Linn, J.

6 *Id* at section 3.2 (vi) of the majority opinion, quoting *S v Vries* 1996 (2) SACR 638 (Nm).

7 Diamond Act 13 of 1999, sections 31, 32 and 33.

8 Abuse of Dependence-Producing Substances and Rehabilitation Centres Act 41 of 1971. "Dealing in" illegal drugs includes "performing any act in connection with the collection, importation, supply, transhipment, administration, exportation, cultivation, sale, manufacture, transmission or prescription thereof" (section 1).

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COMPARATIVE LAW

NEW ZEALAND PROSTITUTION REFORM BILL

1949
CONVENTION FOR THE SUPPRESSION OF THE TRAFFIC IN PERSONS AND OF THE EXPLOITATION OF THE PROSTITUTION OF OTHERS

entered into force July 25, 1951

PREAMBLE

Whereas prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community,

Whereas, with respect to the suppression of the traffic in women and children, the following international instruments are in force:

> *(1) International Agreement of 18 May 1904 for the Suppression of the White Slave Traffic, as amended by the Protocol approved by the General Assembly of the United Nations on 3 December 1948,*
>
> *(2) International Convention of 4 May 1910 for the Suppression of the White Slave Traffic, as amended by the above-mentioned Protocol,*
>
> *(3) International Convention of 30 September 1921 for the Suppression of the Traffic in Women and Children, as amended by the Protocol approved by the General Assembly of the United Nations on 20 October 1947,*
>
> *(4) International Convention of I I October 1933 for the Suppression of the Traffic in Women of Full Age, as amended by the aforesaid Protocol,*

Whereas the League of Nations in 1937 prepared a draft Convention extending the scope of the above-mentioned instruments, and

Whereas developments since 1937 make feasible the conclusion of a convention consolidating the above-mentioned instruments and embodying the substance of the 1937 draft Convention as well as desirable alterations therein:

Now therefore The Contracting parties hereby agree as hereinafter provided:

Article I

The Parties to the present Convention agree to punish any person who, to gratify the passions of another:

(1) Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person;

(2) Exploits the prostitution of another person, even with the consent of that person.

Article 2

The Parties to the present Convention further agree to punish any person who:

(1) Keeps or manages, or knowingly finances or takes part in the financing of a brothel;

(2) Knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others.

Article 3

To the extent permitted by domestic law, attempts to commit any of the offences referred to in articles 1 and 2, and acts preparatory to the commission thereof, shall also be punished.

Article 4

To the extent permitted by domestic law, international participation in the acts referred to in articles 1 and 2 above shall also be punishable.

To the extent permitted by domestic law, acts of participation shall be treated as separate offences whenever this is necessary to prevent impunity.

Article 5

In cases where injured persons are entitled under domestic law to be parties to proceedings in respect of any of the offences referred to in the present Convention, aliens shall be so entitled upon the same terms as nationals.

Article 6

Each Party to the present Convention agrees to take all the necessary measures to repeal or abolish any existing law, regulation or administrative provision by virtue of which persons who engage in or are suspected of engaging in prostitution are subject either to special registration or to the possession of a special document or to any exceptional requirements for supervision or notification.

Article 7

Previous convictions pronounced in foreign States for offences referred to in the present Convention shall, to the extent permitted by domestic law, be taken into account for the purpose of:

(1) Establishing recidivism;

(2) Disqualifying the offender from the exercise of civil rights.

Article 8

The offences referred to in articles 1 and 2 of the present Convention shall be regarded as extraditable offences in any extradition treaty which has been or may hereafter be concluded between any of the Parties to this Convention.

The Parties to the present Convention which do not make extradition conditional on the existence of a treaty shall henceforward recognize the offences referred to in articles I and 2 of the present Convention as cases for extradition between themselves.

Extradition shall be granted in accordance with the law of the State to which the request is made.

Article 9

In States where the extradition of nationals is not permitted by law, nationals who have returned to their own State after the commission abroad of any of the offences referred to in articles 1 and 2 of the present Convention shall be prosecuted in and punished by the courts of their own State.

This provision shall not apply if, in a similar case between the Parties to the present Convention, the extradition of an alien cannot be granted.

Article 10

The provisions of article 9 shall not apply when the person charged with the offence has been tried in a foreign State and, if convicted, has served his sentence or had it remitted or reduced in conformity with the laws of that foreign State.

Article 11

Nothing in the present Convention shall be interpreted as determining the attitude of a Party towards the general question of the limits of criminal jurisdiction under international law.

Article 12

The present Convention does not affect the principle that the offences to which it refers shall in each State be defined, prosecuted and punished in conformity with its domestic law.

Article 13

The Parties to the present Convention shall be bound to execute letters of request relating to offences referred to in the Convention in accordance with their domestic law and practice.

The transmission of letters of request shall be effected:

(1) By direct communication between the judicial authorities; or

(2) By direct communication between the Ministers of Justice of the two States, or by direct communication from another competent authority of the State making the request to the Minister of Justice of the State to which the request is made; or

(3) Through the diplomatic or consular representative of the State making the request in the State to which the request is made; this representative shall send the letters of request direct to the competent judicial authority or to the authority indicated by the Government of the State to which the request is made, and shall receive direct from such authority the papers constituting the execution of the letters of request.

In cases 1 and 3 a copy of the letters of request shall always be sent to the superior authority of the State to which application is made.

Unless otherwise agreed, the letters of request shall be drawn up in the language of the authority making the request, provided always that the State to which the request is made may require a translation in its own language, certified correct by the authority making the request.

Each Party to the present Convention shall notify to each of the other Parties to the Convention the method or methods of transmission mentioned above which it will recognize for the letters of request of the latter State.

Until such notification is made by a State, its existing procedure in regard to letters of request shall remain in force.

Execution of letters of request shall not give rise to a claim for reimbursement of charges or expenses of any nature whatever other than expenses of experts.

Nothing in the present article shall be construed as an undertaking on the part of the Parties to the present Convention to adopt in criminal matters any form or methods of proof contrary to their own domestic laws.

Article 14

Each Party to the present Convention shall establish or maintain a service charged with the coordination and centralization of the results of the investigation of offences referred to in the present Convention.

Such services should compile all information calculated to facilitate the prevention and punishment of the offences referred to in the present Convention and should be in close contact with the corresponding services in other States.

Article 15

To the extent permitted by domestic law and to the extent to which the authorities responsible for the services referred to in article 14 may judge desirable, they shall furnish to the authorities responsible for the corresponding services in other States the following information:

(1) Particulars of any offence referred to in the present Convention or any attempt to commit such offence;

(2) Particulars of any search for any prosecution, arrest, conviction, refusal of admission or expulsion of persons guilty of any of the offences referred to in the present Convention, the movements of such persons and any other useful information with regard to them.

The information so furnished shall include descriptions of the offenders, their fingerprints, photographs, methods of operation, police records and records of conviction.

Article 16

The Parties to the present Convention agree to take or to encourage, through their public and private educational, health, social, economic and other related services, measures for the prevention of prostitution and for the rehabilitation and social adjustment of the victims of prostitution and of the offences referred to in the present Convention.

Article 17

The Parties to the present Convention undertake, in connection with immigration and emigration, to adopt or maintain such measures as are required, in terms of their obligations under the present Convention, to check the traffic in persons of either sex for the purpose of prostitution.

In particular they undertake:

(1) To make such regulations as are necessary for the protection of immigrants or emigrants, and in particular, women and children, both at the place of arrival and departure and while en route;

(2) To arrange for appropriate publicity warning the public of the dangers of the aforesaid traffic;

(3) To take appropriate measures to ensure supervision of railway stations, airports, seaports and en route, and of other public places, in order to prevent international traffic in persons for the purpose of prostitution;

(4) To take appropriate measures in order that the appropriate authorities be informed of the arrival of persons who appear, prima facie, to be the principals and accomplices in or victims of such traffic.

Article 18

The Parties to the present Convention undertake, in accordance with the conditions laid down by domestic law, to have declarations taken from aliens who are prostitutes, in order to establish their identity and civil status and to discover who has caused them to leave their State. The information obtained shall be communicated to the authorities of the State of origin of the said persons with a view to their eventual repatriation.

Article 19

The Parties to the present Convention undertake, in accordance with the conditions laid down by domestic law and without prejudice to prosecution or other action for violations there under and so far as possible:

(1) Pending the completion of arrangements for the repatriation of destitute victims of international traffic in persons for the purpose of prostitution, to make suitable provisions for their temporary care and maintenance;

(2) To repatriate persons referred to in article 18 who desire to be repatriated or who may be claimed by persons exercising authority over them or whose expulsion is ordered in conformity with the law. Repatriation shall take place only after agreement is reached with the State of destination as to identity and nationality as well as to the place and date of arrival at frontiers. Each Party to the present Convention shall facilitate the passage of such persons through its territory.

Where the persons referred to in the preceding paragraph cannot themselves repay the cost of repatriation and have neither spouse, relatives nor guardian to pay for them, the cost of repatriation as far as the nearest frontier or port of embarkation or airport in the direction of the State of origin shall be borne by the State where they are in residence, and the cost of the remainder of the journey shall be borne by the State of origin.

Article 20

The Parties to the present Convention shall, if they have not already done so, take the necessary measures for the supervision of employment agencies in order to prevent persons seeking employment, in particular women and children, from being exposed to the danger of prostitution.

Article 21

The Parties to the present Convention shall communicate to the Secretary-General of the United Nations such laws and regulations as have already been promulgated in their States, and thereafter annually such laws and regulations as may be promulgated, relating to the subjects of the present Convention, as well as all measures taken by them concerning the application of the Convention. The information received shall be published periodically by the Secretary-General

and sent to all Members of the United Nations and to non-member States to which the present Convention is officially communicated in accordance with article 23.

Article 22

If any dispute shall arise between the Parties to the present Convention relating to its interpretation or application and if such dispute cannot be settled by other means, the dispute shall, at the request of any one of the Parties to the dispute, be referred to the International Court of Justice.

Article 23

The present Convention shall be open for signature on behalf of any Member of the United Nations and also on behalf of any other State to which an invitation has been addressed by the Economic and Social Council.

The present Convention shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

The States mentioned in the first paragraph which have not signed the Convention may accede to it.

Accession shall be effected by deposit of an instrument of accession with the Secretary-General of the United Nations.

For the purposes of the present Convention the word "State" shall include all the colonies and Trust Territories of a State signatory or acceding to the Convention and all territories for which such State is intentionally responsible.

Article 24

The present Convention shall come into force on the ninetieth day following the date of deposit of the second instrument of ratification or accession.

For each State ratifying or acceding to the Convention after the deposit of the second instrument of ratification or accession, the Convention shall enter into force ninety days after the deposit by such State of its instrument of ratification or accession.

Article 25

After the expiration of five years from the entry into force of the present Convention, any Party to the Convention may denounce it by a written notification addressed to the Secretary-General of the United Nations.

Such denunciation shall take effect for the Party making it one year from the date upon which it is received by the Secretary-General of the United Nations.

Article 26

The Secretary-General of the United Nations shall inform all Members of the United Nations and non-member States referred to in article 23:

(a) Of signatures, ratifications and accessions received in accordance with article 23;

(b) Of the date on which the present Convention will come into force in accordance with article 24;

(c) Of denunciations received in accordance with article 25.

Article 27

Each Party to the present Convention undertakes to adopt, in accordance with its Constitution, the legislative or other measures necessary to ensure the application of the Convention.

Article 28

The provisions of the present Convention shall supersede in the relations between the Parties thereto the provisions of the international instruments referred to in subparagraphs 1, 2, 3 and 4 of the second paragraph of the Preamble, each of which shall be deemed to be terminated when all the Parties thereto shall have become Parties to the present Convention.

FINAL PROTOCOL

Nothing in the present Convention shall be deemed to prejudice any legislation which ensures, for the enforcement of the provisions for securing the suppression of the traffic in persons and of the exploitation of others for purposes of prostitution, stricter conditions than those provided by the present Convention.

The provisions of articles 23 to 26 inclusive of the Convention shall apply to the present Protocol.

PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

(G.A. res. 55/25, annex II, 55 U.N. GAOR Supp. (No. 49) at 60, U.N. Doc. A/45/49 (Vol. I) (2001).

Preamble

The States Parties to this Protocol,

Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights;

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons;

Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected;

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, *inter alia*, an international instrument addressing trafficking in women and children;

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime;

Have agreed as follows:

I. General provisions

Article 1

Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.

2. The provisions of the Convention shall apply, *mutatis mutandis*, to this Protocol unless otherwise provided herein.

3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2

Statement of purpose

The purposes of this Protocol are:

(a) To prevent and combat trafficking in persons, paying particular attention to women and children;

(b) To protect and assist the victims of such trafficking, with full respect for their human rights; and

(c) To promote cooperation among States Parties in order to meet those objectives.

Article 3

Use of terms

For the purposes of this Protocol:

(a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) "Child" shall mean any person under eighteen years of age.

Article 4

Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

Article 5

Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

(a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;

(b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and

(c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

II. Protection of victims of trafficking in persons

Article 6

Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, *inter alia*, by making legal proceedings relating to such trafficking confidential.

2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:

(a) Information on relevant court and administrative proceedings;

(b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

(a) Appropriate housing;

(b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;

(c) Medical, psychological and material assistance; and

(d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 7

Status of victims of trafficking in persons in receiving States

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Article 8

Repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.

3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.

4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.

6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

III. Prevention, cooperation and other measures

Article 9

Prevention of trafficking in persons

1. States Parties shall establish comprehensive policies, programmes and other measures:

(a) To prevent and combat trafficking in persons; and

(b) To protect victims of trafficking in persons, especially women and children, from revictimization.

2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

Article 10

Information exchange and training

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:

(a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;

(b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and

(c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should

encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11

Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 12

Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13

Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

IV. Final provisions

Article 14

Saving clause

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Article 15

Settlement of disputes

l. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 16

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of

ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 17

Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 18

Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the

provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 19

Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 20

Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

STOCKHOLM AGENDA

DECLARATION AND AGENDA FOR ACTION FROM THE WORLD CONGRESS AGAINST THE COMMERCIAL EXPLOITATION OF CHILDREN

Stockholm, Sweden, 27-31 August 1996

Declaration

1. We, gathered in Stockholm for the World Congress against Commercial Sexual Exploitation of Children, representing the Governments of 122 countries, together with non-governmental organizations, the End Child Prostitution in Asian Tourism (ECPAT) campaign, UNICEF and other agencies within the family of the United Nations, and other concerned organizations and individuals worldwide, hereby commit ourselves to a global partnership against the commercial sexual exploitation of children.

The Challenge

2. Every day, more and more children around the world are subjected to sexual exploitation and sexual abuse. Concerted action is needed at the local, national, regional and international levels to bring an end to the phenomena.

3. Every child is entitled to full protection from all forms of sexual exploitation and sexual abuse. This is reaffirmed by the Convention on the Rights of the Child, an international legal instrument of universal significance (of which there are 187 State parties). States are required to protect the child from sexual exploitation and sexual abuse and promote physical and psychological recovery and social reintegration of the child victim.

4. According to the Convention on the Rights of the Child , the best interests of the child shall be a primary consideration in all actions concerning children, and their rights are to be enjoyed without discrimination of any kind. In all matters affecting the child, the views of the child should be given due weight, in accordance with the age and maturity of the child.

5. The commercial sexual exploitation of children is a fundamental violation of children's rights. It comprises sexual abuse by the adult and remuneration in cash or kind to the child or a third person or persons. The child is treated as a sexual object and as a commercial object. The commercial sexual exploitation of children constitutes a form of coercion and violence against children, and amounts to forced labour and a contemporary form of slavery.

6. Poverty cannot be used as a justification for the commercial sexual exploitation of children, even though it contributes to an environment which may lead to such exploitation. A range of other complex contributing factors include economic disparities, inequitable socio-economic structures, dysfunctioning families, lack of education, growing consumerism, urban-rural migration, gender discrimination, irresponsible male sexual behaviour, harmful traditional practices, armed conflicts and trafficking of children. All these factors exacerbate the vulnerability of girls and boys to those who would seek to procure them for commercial sexual exploitation.

7. Criminals and criminal networks take part in procuring and channeling vulnerable children toward commercial sexual exploitation and in perpetuating such exploitation. These criminal elements service the demand in the sex market created by customers, mainly men, who seek unlawful sexual gratification with children. Corruption and collusion, absence of and/or inadequate laws, lax law enforcement, and limited sensitization of law enforcement personnel to the harmful impact on children, are all further factors which lead, directly or indirectly, to the commercial sexual exploitation of children. It may involve the acts of a single individual, or be organized on a small scale (e.g. family and acquaintances) or a large scale (e.g. criminal network).

8. A wide range of individuals and groups at all levels of society contribute to the exploitative practice. This includes intermediaries, family members, the business sector, service providers, customers, community leaders and government officials, all of whom may contribute to the

exploitation through indifference, ignorance of the harmful consequences suffered by children, or the perpetuation of attitudes and values that view children as economic commodities.

9. The commercial sexual exploitation of children can result in serious, life-long, even life threatening consequences for the physical, psychological, spiritual, moral and social development of children, including the threat of early pregnancy, maternal mortality, injury, retarded development, physical disabilities and sexually transmitted diseases, including HIV/AIDS. Their right to enjoy childhood and to lead a productive, rewarding and dignified life is seriously compromised.

10. While laws, policies and programmes exist to counter the commercial sexual exploitation of children, greater political will, more effective implementation measures, and adequate allocation of resources are needed to give effect to the spirit and letter of these laws, policies and programmes.

11. The primary task of combating the commercial sexual exploitation of children rests with the State and families. The civil society also has an essential role to play in preventing and protecting children from commercial sexual exploitation. It is imperative to build a strong partnership between Governments, international organizations and all sectors of society to counter such exploitation.

The Commitment

12. The World Congress reiterates its commitment to the rights of the child, bearing in mind the Convention on the Rights of the Child, and calls upon all States in cooperation with national and international organizations and civil society to:

- Accord high priority to action against the commercial sexual exploitation of children and allocate adequate resources for this purpose;
- Promote stronger cooperation between States and all sectors of society to prevent children from entering the sex trade and to strengthen the role of families in protecting children against commercial sexual exploitation;
- Criminalize the commercial sexual exploitation of children, as well as other forms of sexual exploitation of children, and condemn and penalize all those offenders involved, whether local or foreign, while ensuring that the child victims of this practice are not penalized;
- Review and revise, where appropriate, laws, policies, programmes and practices to eliminate the commercial sexual exploitation of children;
- Enforce laws, policies and programmes to protect children from commercial sexual exploitation and strengthen communication and cooperation between law enforcement authorities;
- Promote adoption, implementation and dissemination of laws, policies, and programmes supported by relevant regional, national and local mechanisms against the commercial sexual exploitation of children;
- Develop and implement comprehensive gender-sensitive plans and programmes to prevent the commercial sexual exploitation of children, to protect and assist the child victims and to facilitate their recovery and reintegration into society;
- Create a climate through education, social mobilization, and development activities to ensure that parents and others legally responsible for children are able to fulfill their rights, duties and responsibilities to protect children from commercial sexual exploitation;
- Mobilize political and other partners, national and international communities, including intergovernmental organizations and non-governmental organizations, to assist countries in eliminating the commercial sexual exploitation of children; and
- Enhance the role of popular participation, including that of children, in preventing and eliminating the commercial sexual exploitation of children.

13. The World Congress adopts this Declaration and Agenda for Action to assist in protecting child rights, particularly the implementation of the Convention on the Rights of the Child and other relevant instruments, to put an end to the commercial sexual exploitation of children worldwide.

Agenda for Action against Commercial Sexual Exploitation of Children

1. The Agenda for Action aims to highlight existing international commitments, to identify priorities for action and to assist in the implementation of relevant international instruments (see Annex I). It calls for action from States, all sectors of society, and national, regional, and international organizations, against the commercial sexual exploitation of children.

2. Coordination and Cooperation:

i) Local/National Levels

a) urgently strengthen comprehensive, cross-sectoral and integrated strategies and measures, so that by the year 2000 there are national agenda(s) for action and indicators of progress, with set goals and time frame for implementation, targeted to reducing the number of children vulnerable to commercial sexual exploitation and nurturing an environment, attitudes and practices responsive to child rights;

b) urgently develop implementation and monitoring mechanism(s) or focal point(s) at the national and local levels, in cooperation with civil society, so that by the year 2000 there are data bases on children vulnerable to commercial sexual exploitation, and on their exploiters, with relevant research and special attention to disaggregating data by age, gender, ethnicity, indigenous status, circumstances influencing commercial sexual exploitation, and respect for confidentiality of the child victims especially in regard to public disclosures;

c) foster close interaction and cooperation between the government and non-government sectors to plan, implement and evaluate measures against the commercial sexual exploitation of children, coupled with campaigns to mobilize families and communities to protect children from commercial sexual exploitation, and with adequate allocation of resources;

ii) Regional/International Levels

d) promote better cooperation between countries and international organizations, including regional organizations, and other catalysts which have a key role in eliminating the commercial sexual exploitation of children, including the Committee on the Rights of the Child, UNICEF, ILO, UNESCO, UNDP, WHO, UNAIDS, UNHCR, IOM, the World Bank/IMF, INTERPOL, UN Crime Prevention and Criminal Justice Division, UNFPA, the World Tourism Organization, the UN High Commissioner for Human Rights, the UN Centre for Human Rights, the UN Commission on Human Rights and its Special Rapporteur on the Sale of Children, and the Working Group on Contemporary Forms of Slavery, each taking guidance from the Agenda for Action in their activities in accordance with their respective mandates;

e) advocate and mobilize support for child rights, and ensure that adequate resources are available to protect children from commercial sexual exploitation; and

f) press for full implementation of the Convention on the Rights of the Child by State Parties, including requirements for reporting to the Committee on the Rights of the Child in accordance with existing deadlines, and encourage follow-

up of countries' progress towards full realization of child rights in the context of other relevant United Nations organs, bodies and mechanisms, including the UN Commission on Human Rights and its Special Rapporteur on the Sale of Children.

3. Prevention:

a) provide children with access to education as a means of improving their status and make primary education compulsory and available free to all;

b) improve access and provide relevant health services, education, training, recreation and a supportive environment to families and children vulnerable to commercial sexual exploitation, including those who are displaced, homeless, refugees, stateless, unregistered, in detention and/or in state institutions;

c) maximize education on child rights and incorporate, where appropriate, the Convention on the Rights of the Child into formal and non-formal education for all communities, families and children;

d) initiate gender-sensitive communication, media and information campaigns to raise awareness and educate government personnel and other members of the public about child rights and the illegality and harmful impact of the commercial sexual exploitation of children, and promote responsible sexual attitudes and behaviour in society, in keeping with the child's development, sense of dignity and self-esteem;

e) promote child rights in family education and family development assistance, including an understanding that both parents are equally responsible for their children, with special intervention to prevent sexual violence against children;

f) identify or establish peer education programmes and monitoring networks to counter the commercial sexual exploitation of children;

g) formulate or strengthen and implement gender-sensitive national social and economic policies and programmes to assist children vulnerable to commercial sexual exploitation, families and communities in resisting acts that lead to the commercial sexual exploitation of children, with special attention to family abuse, harmful traditional practices and their impact on girls, and to promoting the value of children as human beings rather than commodities; and reduce poverty by promoting gainful employment, income generation and other supports;

h) develop or strengthen, implement and publicize relevant laws, policies and programmes, to prevent the commercial sexual exploitation of children, bearing in mind the Convention on the Rights of the Child;

i) review laws, policies, programmes and practices which lead to or facilitate the commercial sexual exploitation of children and adopt effective reforms;

j) mobilize the business sector, including the tourism industry, against the use of its networks and establishments for the commercial sexual exploitation of children;

k) encourage media professionals to develop strategies which strengthen the role of the media in providing information of the highest quality, reliability and ethical standards concerning all aspects of commercial sexual exploitation of children; and

l) target those involved with commercial sexual exploitation of children with information, education and outreach campaigns and programmes to promote behavioural changes to counter the practice.

4. Protection:

a) develop or strengthen and implement laws, policies and programmes to protect children and to prohibit the commercial sexual exploitation of children, bearing in mind that the different types of perpetrators and ages and circumstances of victims require differing legal and programmatic responses;

b) develop or strengthen and implement national laws to establish the criminal responsibility of service providers, customers and intermediaries in child prostitution, child trafficking, child pornography, including possession of child pornography, and other unlawful sexual activity;

c) develop or strengthen and implement national laws, policies and programmes that protect child victims of commercial sexual exploitation from being penalized as criminals and ensure that they have full access to child-friendly personnel and support services in all sectors, and particularly in the legal, social and health fields;

d) in the case of sex tourism, develop or strengthen and implement laws to criminalize the acts of the nationals of the countries or origin when committed against children in the countries of destination ("extra-territorial criminal laws"); promote extradition and other arrangements to ensure that a person who exploits a child for sexual purposes in another country (the destination country) is prosecuted either in the country of origin or the destination country; strengthen laws and law enforcement, including confiscation and seizure of assets and profits, and other sanctions, against those who commit sexual crimes against children in destination countries; and share relevant data;

e) in the case of trafficking of children, develop and implement national laws, policies and programmes to protect children from being trafficked within or across borders and penalize the traffickers; in cross border situations, treat these children humanely under national immigration laws, and establish readmission agreements to ensure their safe return to their countries of origin accompanied by supportive services; and share relevant data;

f) identify and strengthen or establish networks between national and international law enforcement authorities, including INTERPOL, and civil society to monitor against the commercial sexual exploitation of children; set up special units among law enforcement personnel, with adequate resources and child-friendly facilities, to counter the commercial sexual exploitation of children; appoint liaison officers aimed at guaranteeing child rights in police investigations and judicial procedures for the exchange of key information; and train all law enforcement personnel on child development and child rights, in particular the Convention on the Rights of the Child, other relevant human rights standards and national legislation;

g) identify and encourage the establishment of national and international networks and coalitions among the civil society to protect children from commercial sexual exploitation; foster action and interaction among communities, families, non-governmental organizations, the business sector, including tourist agencies, the World Tourism Organization, employers and trade unions, computer and technology industry, the mass media, professional associations, and service providers to monitor and report cases to the authorities, and to adopt voluntary ethical codes of conduct; and

h) create safe havens for children escaping from commercial sexual exploitation, and protect those who provide assistance to child victims of commercial sexual exploitation from intimidation and harassment.

5. Recovery and Reintegration:

a) adopt a non-punitive approach to child victims of commercial sexual exploitation in keeping with the rights of the child, taking particular care that judicial procedures do not aggravate the trauma already experienced by the child and that the response of the system be coupled with legal aid-assistance, where appropriate, and provision of judicial remedies to the child victims;

b) provide social, medical, psychological counseling and other support to child victims of commercial sexual exploitation, and their families, paying particular attention to those with sexually transmitted diseases, including HIV/AIDS, and with a view to promoting the self-respect, dignity and rights of the child;

c) undertake gender-sensitive training of medical personnel, teachers, social workers, non-governmental organizations and others working to help child victims of commercial sexual exploitation on child development and child rights, bearing in mind the Convention on the Rights of the Child and other relevant human rights standards;

d) take effective action to prevent and remove societal stigmatization of child victims and their children; facilitate the recovery and reintegration of child victims in communities and families; and where institutionalization of the child is necessary, ensure that it is for the shortest possible period in accordance with the child's best interests;

e) promote alternative means of livelihood with adequate support services to child victims and their families so as to prevent further commercial sexual exploitation; and

f) adopt not only legal sanctions against the perpetrators of sexual crimes against children, but also socio-medical and psychological measures to create behavioural changes on the part of the perpetrators.

6. Child Participation:

a) promote the participation of children, including child victims, young people, their families, peers and others who are potential helpers of children so that they are able to express their views and to take action to prevent and protect children from commercial sexual exploitation and to assist child victims to be reintegrated into society; and

b) identify or establish and support networks of children and young people as advocates of child rights, and include children, according to their evolving capacity, in developing and implementing government and other programmes concerning them.

Annex I

The Agenda for Action refers to many international instruments, recommendations and targets which have bearing on children and their families. They include the following:

- the 1930 ILO Convention No. 29 concerning Forced or Compulsory Labour;
- the 1948 Universal Declaration of Human Rights;
- the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others;
- the 1957 ILO Convention No. 105 concerning the Abolition of Forced Labour;
- the 1966 International Covenant on Civil and Political Rights;
- the 1966 International Covenant on Economic, Social and Cultural Rights;

- the 1973 ILO Convention No. 138 concerning Minimum Age for Admission to Employment;
- the 1979 Convention on the Elimination of All Forms of Discrimination against Women;
- the 1989 Convention on the Rights of the Child;
- the 1990 World Declaration on the Survival, Protection and Development of Children and its Plan of Action;
- the 1992 Programme of Action of the United Nations Commission on Human Rights for the Prevention of the Sale of Children, Child Prostitution and Child Pornography;
- the 1993 Vienna Declaration and Programme of Action of the World Conference on Human Rights;
- the 1993 United Nations Declaration on the Elimination of Violence against Women;
- the 1994 Cairo Declaration and Programme of Action of the World Conference on Population and Development;
- the 1995 Copenhagen Declaration and Plan for Action of the World Summit on Social Development;
- the 1995 Beijing Declaration and Platform for Action of the Fourth World Conference on Women;
- the 1996 Programme of Action of the United Nations Commission on Human Rights for the Prevention of the Traffic in Persons and the Exploitation of the Prostitution of Others.

The Agenda for Action takes note of the recommendations of the Committee on the Rights of the Child and the Special Rapporteur on the Sale of Children. It acknowledges the initiatives of many international and regional organizations, including INTERPOL, World Tourism Organization (in particular, the 1995 World Tourism Organization Statement on the Prevention of Organized Sex Tourism) and the Council of Europe (in particular, the 1991 Recommendation No. R91 11 concerning Sexual Exploitation, Pornography and Prostitution of, and Trafficking in Children and Young Adults). It is also recognizes the process of evolving a possible Optional Protocol on the sale of children, child prostitution and child pornography.

www.ilo.org/public/english/comp/child/ standards/resolution/stockholm.htm

THE YOKOHAMA GLOBAL COMMITMENT 2001

I. Our Follow-Up:

1. We, representatives from governments, intergovernmental organizations, non-governmental organizations, the private sector, and members of civil society from around the world, have gathered together in Yokohama, Japan, at the Second World Congress against Commercial Sexual Exploitation of Children (17-20 December 2001) ("The Yokohama Congress"). Five years after the First World Congress against Commercial Sexual Exploitation of Children held in Stockholm, Sweden in 1996, we have reviewed developments as a follow-up process to strengthen our commitment to protect children from sexual exploitation and sexual abuse.

2. We reaffirm, as our primary considerations, the protection and promotion of the interests and rights of the child to be protected from all forms of sexual exploitation, and we welcome the following developments, visible in a number of countries, since the First World Congress:

• the greater emphasis on the rights of the child and the call for more effective implementation of the Convention on the Rights of the Child by State Parties to create an environment where children are able to enjoy their rights;

• the increasing mobilization of governments, local authorities and the non-governmental sector, as well as the international community, to promote and protect the rights of the child and to empower children and their families to safeguard their future;

• the adoption of multi-faceted, inter-disciplinary measures , including policies, laws, programmes, mechanisms , resources and dissemination of the rights of the child, to ensure that children are able to grow up in safety and dignity;

• enhanced actions against child prostitution, child pornography and trafficking of children for sexual purposes, including national and international agendas, strategies or plans of action to protect children from sexual exploitation, and new laws to criminalize this phenomenon, including provisions with extra-territorial effect;

• the promotion of more effective implementation/enforcement of policies, laws and gender-sensitive programmes to prevent and address the phenomenon of sexual exploitation of children, including information campaigns to raise awareness, better educational access for children, social support measures for families and children to counter poverty, action against criminality and the demand for sexual exploitation of children, and prosecution of those who exploit children;

• the provision of child-sensitive facilities such as telephone helplines, shelters, and judicial and administrative procedures to prevent violations of the rights of the child and to provide effective remedies;

• the comprehensive, systematic and sustained involvement of the private sector, such as workers' and employers' organizations, members of the travel and tourism industry, the communications industry, including Internet service providers, and other businesses, in enhancing child protection, including their adoption and implementation of corporate policies and Codes of Conduct to protect children from sexual exploitation;

• greater participation by children and young people in promoting and protecting their rights, notably through young people's networks and forums and the involvement of young people as peer communicators and counselors;

• the development of international and regional standards to protect children from sexual exploitation through new instruments, including the following: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (2000); and the Convention on Cybercrime (2001), while noting relevant provisions of the Rome Statute of the International Criminal Court (1998);

• the entry into force of the International Labour Organization (ILO)'s Convention No.182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (complemented by ILO Recommendation No.190) on 19 November 2000, and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography on 18 January 2002;

• the progress made in the preparations for the forthcoming Special Session of the General Assembly on Children, including its outcome document;

• the emergence of a broader partnership among and between local and national governments, intergovernmental organizations, non-governmental organizations, regional/sub-regional and international organizations, communities, and other key actors, and closer linkage between the United Nations and other monitoring mechanisms on the issue, especially the Committee on the Rights of the Child and the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography of the Commission on Human Rights under the United Nations Commission on Human Rights.

3. We take into account with appreciation the regional consultations held in Bangkok, Thailand; Rabat, Morocco; Dhaka, Bangladesh; Montevideo, Uruguay; Budapest, Hungary; and Philadelphia, United States of America (see Annex); and various national seminars leading up to the Yokohama Congress, and related activities, including those with young people's participation, and their conclusions and recommendations enriching the content of our follow-up action, and we encourage their effective implementation by governments that have participated in them in partnership with all stakeholders, including non-governmental organizations, intergovernmental organizations, and young people.

4. We recognize that much more needs to be done to protect children globally and express our concerns at the delays in the adoption of needed measures in various parts of the world.

II. Our Global Commitment:

5. We have come together to:

reiterate the importance and the call for more effective implementation of the Convention on the Rights of the Child by State parties and related instruments, and underline our belief in the rights of children to be protected from commercial sexual exploitation in the form of child prostitution, child pornography and trafficking of children for sexual purposes;

encourage early ratification of the relevant international instruments, in particular, ILO Convention No.182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography;

reaffirm our commitment to build a culture of respect for all persons based upon the principle of non-discrimination and to eliminate commercial sexual exploitation of children, in particular by sharing the lessons learnt since the First World Congress, and by improving cooperation in this regard;

recommit to the Declaration and Agenda for Action of the First World Congress ("The Stockholm Declaration and Agenda for Action"), and in particular to developing national agendas, strategies or plans of action, designated focal points and comprehensive gender-disaggregated data collection, and effective implementation of measures, including child-rights based laws and law enforcement;

reinforce our efforts against commercial sexual exploitation of children, in particular by addressing root causes that put children at risk of exploitation, such as poverty, inequality, discrimination, persecution, violence, armed conflicts, HIV/AIDS, dysfunctioning families, the demand factor, criminality, and violations of the rights of the child, through comprehensive measures, including improved educational access for children, especially girls, anti-poverty programmes, social support measures, public awareness-raising, physical and psychological recovery and social reintegration of child victims, and action to criminalize the commercial sexual exploitation of children in all its forms and in accordance with the relevant international instruments, while not criminalizing or penalizing the child victims;

emphasize that the way forward is to promote closer networking among key actors to combat the commercial sexual exploitation of children at the international, inter- regional, regional/sub-regional, bilateral, national and local levels, in particular, among communities and the judicial, immigration and

police authorities, as well as through initiatives interlinking the young people themselves;

ensure adequate resource allocation to counter commercial sexual exploitation of children, and to promote education and information to protect children from sexual exploitation, including educational and training programmes on the rights of the child addressed to children, parents, law enforcers, service providers and other key actors;

reiterate that an essential way of sustaining global action is through regional/sub-regional and national agendas, strategies or plans of action that build on regional/sub-regional and national monitoring mechanisms and through strengthening and reviewing existing international mechanisms with a monitoring process, to improve their effectiveness as well as the follow-up of their recommendations, and to identify any reforms that may be required;

take adequate measures to address negative aspects of new technologies, in particular, child pornography on the Internet, while recognizing the potential of new technologies for the protection of children from the commercial sexual exploitation, through dissemination and exchange of information and networking among partners;

reaffirm the importance of the family and strengthen social protection of children, young people and families through awareness-raising campaigns and community- based surveillance/monitoring of commercial sexual exploitation of children;

commit ourselves to promoting cooperation at all levels and to combining efforts to eliminate all forms of sexual exploitation and sexual abuse of children worldwide;

declare that the sexual exploitation of children must not be tolerated and pledge to act accordingly.

[Appendix containing explanatory statements not reproduced here]

OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000

The States Parties to the present Protocol,

Considering that, in order further to achieve the purposes of the Convention on the Rights of the Child and the implementation of its provisions, especially articles 1, 11, 21, 32, 33, 34, 35 and 36, it would be appropriate to extend the measures that States Parties should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography,

Considering also that the Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development,

Gravely concerned at the significant and increasing international traffic in children for the purpose of the sale of children, child prostitution and child pornography,

Deeply concerned at the widespread and continuing practice of sex tourism, to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography,

Recognizing that a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation and that girl children are disproportionately represented among the sexually exploited,

Concerned about the growing availability of child pornography on the Internet and other evolving technologies, and recalling the International Conference on Combating Child Pornography on the Internet, held in Vienna in 1999, in particular its conclusion calling for the worldwide criminalization of the production, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography, and stressing the importance of closer cooperation and partnership between Governments and the Internet industry,

Believing that the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking in children,

Believing also that efforts to raise public awareness are needed to reduce consumer demand for the sale of children, child prostitution and child pornography, and believing further in the importance of strengthening global partnership among all actors and of improving law enforcement at the national level,

Noting the provisions of international legal instruments relevant to the protection of children, including the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, the Hague Convention on the Civil Aspects of International Child

Abduction, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, and International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists for the promotion and protection of the rights of the child,

Recognizing the importance of the implementation of the provisions of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography and the Declaration and Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children, held in Stockholm from 27 to 31 August 1996, and the other relevant decisions and recommendations of pertinent international bodies,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Have agreed as follows:

Article 1

States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

Article 2

For the purposes of the present Protocol:

(a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;

(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;

(c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

Article 3

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:

(a) In the context of sale of children as defined in article 2:

(i) Offering, delivering or accepting, by whatever means, a child for the purpose of:

a. Sexual exploitation of the child;

b. Transfer of organs of the child for profit;

c. Engagement of the child in forced labour;

(ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;

(b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;

(c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.

2. Subject to the provisions of the national law of a State Party, the same shall apply to an attempt to commit any of the said acts and to complicity or participation in any of the said acts.

3. Each State Party shall make such offences punishable by appropriate penalties that take into account their grave nature.

4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, such liability of legal persons may be criminal, civil or administrative.

5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

Article 4

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, when the offences are commited in its territory or on board a ship or aircraft registered in that State.

2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases:

(a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory;

(b) When the victim is a national of that State.

3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the aforementioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.

4. The present Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 5

1. The offences referred to in article 3, paragraph 1, shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties and shall be included as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in such treaties.

2. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider the present Protocol to be a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.

3. States Parties that do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4.

5. If an extradition request is made with respect to an offence described in article 3, paragraph 1, and the requested State Party does not or will not extradite on the basis of the nationality of the offender, that State shall take suitable measures to submit the case to its competent authorities for the purpose of prosecution.

Article 6

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 3, paragraph 1, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 7

States Parties shall, subject to the provisions of their national law:

(a) Take measures to provide for the seizure and confiscation, as appropriate, of:

(i) Goods, such as materials, assets and other instrumentalities used to commit or facilitate offences under the present protocol;

(ii) Proceeds derived from such offences;

(b) Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (a) (i) and (ii);

(c) Take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.

Article 8

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

(a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;

(b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;

(c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;

(d) Providing appropriate support services to child victims throughout the legal process;

(e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;

(f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.

3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.

4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.

5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.

6. Nothing in the present article shall be construed to be prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

Article 9

1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to such practices.

2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.

3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.

4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

5. States Parties shall take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.

Article 10

1. States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.

2. States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.

3. States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.

4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

Article 11

Nothing in the present Protocol shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

(a) The law of a State Party;

(b) International law in force for that State.

Article 12

1. Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.

2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the present Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of the present Protocol.

Article 13

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.

2. The present Protocol is subject to ratification and is open to accession by any State that is a party to the Convention or has signed it. Instruments of ratification or accession shall be deposited with the Secretary- General of the United Nations.

Article 14

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after its entry into force, the Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 15

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary- General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any offence that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee on the Rights of the Child prior to the date on which the denunciation becomes effective.

Article 16

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments they have accepted.

Article 17

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

INTERNATIONAL LABOUR ORGANISATION

C182 WORST FORMS OF CHILD LABOUR CONVENTION, 1999

Convention concerning the Prohibition and Immediate Action
for the Elimination of the Worst Forms of Child Labour

Date of adoption: 17 June 1999

The General Conference of the International Labour Organization

- Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 87th Session on 1 June 1999,
- Considering the need to adopt new instruments for the prohibition and elimination of the worst forms of child labour, as the main priority for national and international action, including international cooperation and assistance, to complement the Convention and the Recommendation concerning Minimum Age for Admission to Employment, 1973, which remain fundamental instruments on child labour,
- Considering that the effective elimination of the worst forms of child labour requires immediate and comprehensive action, taking into account the importance of free basic education and the need to remove the children concerned from all such work and to provide for their rehabilitation and social integration while addressing the needs of their families,
- Recalling the resolution concerning the elimination of child labour adopted by the International Labour Conference at its 83rd Session in 1996,
- Recognizing that child labour is to a great extent caused by poverty and that the long-term solution lies in sustained economic growth leading to social progress, in particular poverty alleviation and universal education,
- Recalling the Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989,
- Recalling the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th Session in 1998,
- Recalling that some of the worst forms of child labour are covered by other international instruments, in particular the Forced Labour Convention, 1930, and the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956,
- Having decided upon the adoption of certain proposals with regard to child labour, which is the fourth item on the agenda of the session,
- Having determined that these proposals shall take the form of an international Convention,

adopts this seventeenth day of June of the year one thousand nine hundred and ninety-nine the following Convention, which may be cited as the Worst Forms of Child Labour Convention.

Article 1
Each Member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.

Article 2
For the purposes of this Convention, the term *child* shall apply to all persons under the age of 18.

Article 3
For the purposes of this Convention, the term *the worst forms of child labour* comprises:

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Article 4
1. The types of work referred to under Article 3(d) shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, taking into consideration relevant international standards, in particular Paragraphs 3 and 4 of the Worst Forms of Child Labour Recommendation, 1999.
2. The competent authority, after consultation with the organizations of employers and workers concerned, shall identify where the types of work so determined exist.
3. The list of the types of work determined under paragraph 1 of this Article shall be periodically examined and revised as necessary, in consultation with the organizations of employers and workers concerned.

Article 5
Each Member shall, after consultation with employers' and workers' organizations, establish or designate appropriate mechanisms to monitor the implementation of the provisions giving effect to this Convention.

Article 6
1. Each Member shall design and implement programmes of action to eliminate as a priority the worst forms of child labour.
2. Such programmes of action shall be designed and implemented in consultation with relevant government institutions and employers' and workers' organizations, taking into consideration the views of other concerned groups as appropriate.

Article 7
1. Each Member shall take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention including the provision and application of penal sanctions or, as appropriate, other sanctions.
2. Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to:

(a) prevent the engagement of children in the worst forms of child labour;
(b) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;
(c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour;
(d) identify and reach out to children at special risk; and
(e) take account of the special situation of girls.

3. Each Member shall designate the competent authority responsible for the implementation of the provisions giving effect to this Convention.

Article 8
Members shall take appropriate steps to assist one another in giving effect to the provisions of this Convention through enhanced international cooperation and/or assistance including support for social and economic development, poverty eradication programmes and universal education.

Article 9
The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 10
1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.
2. It shall come into force 12 months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member 12 months after the date on which its ratification has been registered.

Article 11
1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 12
1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and acts of denunciation communicated by the Members of the Organization.
2. When notifying the Members of the Organization of the registration of the second ratification, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention shall come into force.

Article 13
The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations, for registration in accordance with article 102 of the Charter of the United Nations, full particulars of all ratifications and acts of denunciation registered by the Director-General in accordance with the provisions of the preceding Articles.

Article 14
At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 15

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides --

(a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 11 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 16

The English and French versions of the text of this Convention are equally authoritative.

COMBATING OF IMMORAL PRACTICES ACT, 1980

(Afrikaans text signed by the Administrator-General on 27 *October* 1980)

ACT

To provide for the combating of brothels, prostitution and other immora1 practices and for matters connected therewith.

BE IT ENACTED by the National Assembly of South West Africa, as follows: -

Definitions.

1. In this Act, unless the context indicates otherwise

(i) "brothel" includes any house or place kept or used for purposes of prostitution or for persons to visit for the purpose of having unlawful carnal intercourse or for any other lewd or immoral purpose;

(ii) "house" includes a dwelling-house, flat, building, room, out-house, shed or tent or any part thereof;

(iii) "owner" includes any person who lets or sublets or permits the occupation of any house or place whether in his own right or that of another;

(iv) "place" includes any premises, field, enclosure, space, vehicle or boat or any part thereof;

(v) "police officer" means any member of any police force established under any law;

(*) "sexual act" means a sexual act as defined in section 1(1) of the Combating of Rape Act, 2000;

[inserted by Act 7 of 2000]

(vi) "unlawful carnal intercourse" means carnal intercourse between persons who are not married or who are not partners in a customary union in terms of the traditional laws and customs applied by a particular population group referred to in section 3 of the Representative Authorities Proclamation, 1980 (Proclamation AG. 8 of 1980).

Keeping of brothel

2. (1) Any person who keeps a brothel shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding three years or to such imprisonment and to a fine not exceeding three thousand rand.

(2) The following persons shall for the purposes of subsection (1) be deemed to keep a brothel, namely -

(a) any person who lives in a brothel unless he proves that he was ignorant of the character of the house or place;

(b) any person who manages or assists in the management of any brothel;

(c) any person who knowingly receives all the money or any share of the money taken in a brothel;

(d) any person who is the tenant or occupier of any house or place and who knowingly permits it to be kept or used as a brothel;

(e) any person who is the owner of any house or place and who lets it or allows it to be let or to continue to be let, with the knowledge that such house or place is to be kept or used or is being kept or used as a brothel;

(f) any woman found in a brothel who refuses to disclose the name and identity of the keeper or manager thereof;

(g) any person whose wife keeps or lives in or manages or assists in the management of a brothel, unless he proves that he was ignorant thereof or that he lives apart from her and did not receive all the money or any share of the money taken therein.

(3) When in any prosecution in terms of this Act it is proved -

(*a)* that any house or place is kept or used as a brothel and that, having regard to the locality and accommodation thereof, the rent to be paid or paid or being paid for the house or place concerned is exorbitant, it shall be presumed, until the contrary is proved, that the accused knew that the house or place concerned was kept or used as a brothel;

(b) that a notice in writing has been given to the accused by a police officer of or above the rank of sergeant or by two householders living in the vicinity of the house or place concerned, that the house or place concerned is kept or used as a brothel, it shall be deemed that the accused knew that the house or place concerned was kept or used as a brothel.

Effect of lease in relation to house or place kept or used as brothel

3. (1) Any lease to let any house or place to be kept or used as a brothel shall be null and void.

(2) Any lease to let any house or place which subsequently to the making of such lease becomes a brothel shall as from the date of such event be determined and become null and void: Provided that upon proof by the owner of his ignorance that the house or place was so kept or used he shall be entitled to recover the rent up to the date upon which he became aware that the house or place was being kept or used as a brothel.

(3) The owner of any house or place kept or used as a brothel shall be entitled to apply to the magistrate of the district in which such house or place is situated for the summary ejectment of any person who keeps or uses such house or place as a brothel and such magistrate shall be entitled after such enquiry as he may deem necessary or expedient to order the summary ejectment of such person.

Proceedings upon submission of statement that house or place is used as brothel

4. (1) When an affidavit or affidavits, as the case may be, is submitted to a magistrate by any police officer of or above the rank of sergeant or by a social worker registered under section 33 of the National Welfare Act, 1965 (Act 79 of 1965), or by not less than two persons of good repute being the occupiers of different houses in the vicinity concerned wherefrom it appears that a house or place is being kept or used or is presumably being kept or used as a brothel, such magistrate may -

(a) issue a warrant for the arrest of the person alleged to be the keeper of such brothel; or

(b) issue a warrant authorising a police officer of or above the rank of sergeant to enter, at any time within such period as shall be stated in such warrant, such house or place -

(i) to ascertain the name and identity of the keeper or user of such house or place;

(ii) to interrogate and demand the name and address of any person found in such house or upon such place;

(iii) to demand, to search for and to seize any account book, receipt, paper, document or thing likely to afford evidence of the commission by any person of an offence in terms of this Act; and

(iv) to make any further investigation as he may deem necessary in connection with the commission of an offence in terms of this Act.

(2) Any person found in such house or upon such place who, when called upon to do so by the police referred to in subsection *(*1*)(b),* refuses or fails to furnish his name or address or furnishes a name or address which is false or misleading in any material respect, or refuses or fails to disclose the name or identity of the keeper or user of such house or place or to produce or hand over any account book, receipt, paper, document or

thing which he has in his possession or custody or under his control or to render such police officer such other assistance as such police officer may demand from him in connection with any investigation referred to in subsection (1)*(b)*(iv), shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred rand or to imprisonment for a period not exceeding six months.

(3) The issue of a warrant under paragraph *(b)* of subsection (1) shall not in any way affect the power of a magistrate to issue, at any time, a warrant under paragraph (a) of the said subsection (1) or under any other law.

Procuration

5. Any person who -

(a) procures or attempts to procure any female to have unlawful carnal intercourse with any person other than the procurer or in any way assists in bringing about such unlawful carnal intercourse; or

(b) inveigles or entices any female to a brothel for the purpose of unlawful carnal intercourse or prostitution or conceals any female so inveigled or enticed in a brothel; or

(c) procures or attempts to procure any female to become a prostitute; or

(d) procures or attempts to procure any female to become an inmate of a brothel; or

(e) applies, administers to or causes to be taken by any female any drug, intoxicating liquor, matter or thing with intent to stupefy or overpower her so as thereby to enable any person other than the procurer to have unlawful carnal intercourse with such female,

shall be guilty of an offence and liable on conviction to imprisonment for a period no exceeding five years.

Assistance for purposes of unlawful carnal intercourse

6. Any person who, with intent that any male may have unlawful carnal intercourse with a female, whether a particular female or not, performs any act or does anything or furnishes any information which is calculated or likely to enable such male to communicate with or to establish the whereabouts of or to trace any such female, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years.

Enticing to commission of immoral acts

7. Any person who

(a) in any public street or place entices, solicits or importunes or makes any proposals to any other person for immoral purposes;

(b) wilfully and openly exhibits himself in an indecent dress or manner at any door or window or within view of any public street or place or in any place to which the public have access,

shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand rand or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Committing of immoral acts

8. Any person who in public commits any immoral act with another person shall be guilty of an offence and liable on conviction to a fine not exceeding three thousand rand or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

Permitting of offence in terms of this act by owner or occupier of premises

9. Any person who is the owner or occupier of any house or place or has or acts or assists in the management or control thereof, knowingly permits the use of such house or place for the purpose of committing any offence in terms of this Act shall be liable on conviction to imprisonment for a period not exceeding two years or to such imprisonment and to a fine not exceeding one thousand rand.

Living on earnings of prostitution and assistance in relation to commission of immoral acts

10. Any person who -

(a) knowingly lives wholly or in part on the earnings of prostitution; or

(b) in public or in private in any way assists in bringing about, or receives any consideration for, the commission by any person of any immoral act with another person,

shall be guilty of an offence and liable on conviction to a fine not exceeding three thousand rand or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

Warrant to search house or place used for prostitution and to arrest persons living on earnings of prostitution

11. When it appears to any magistrate on sworn information that there is reason to suspect that any house is used by a female for purposes of prostitution and that any person residing in or frequenting the house is living wholly or in part on the earnings of prostitution, the magistrate may issue a warrant authorising any police officer of or above the rank of sergeant to enter and search the house and to arrest that person.

Presumptions

12. (1) When in any prosecution in terms of this Act the question arises whether any carnal intercourse between a male and a female was unlawful such intercourse shall be presumed, until the contrary is proved, to have been unlawful carnal intercourse.

(2) When in any prosecution in terms of this Act a person is proved to live in a brothel or to live with or to be habitually in the company of a prostitute and has no visible means of subsistence, it shall be presumed, until the contrary is proved, that such person lives wholly or in part on the earnings of prostitution.

(3) When in any prosecution in terms of section 6 it is proved that the accused has performed any act or has done anything or has furnished any information, which was calculated or likely to enable any male to communicate with or to establish the whereabouts of or to trace any female in respect of whom the accused had reason to suspect to be a prostitute, it shall be presumed, until the contrary is proved, that the accused have performed such act or have done such thing or have furnished such information as the case may be, with intent to enable such male to have unlawful carnal intercourse with such female.

Detention for purposes of unlawful carnal intercourse

13. (1) Any person who

> *(a)* takes any female to any house or place or detains her there against her will so that any male, whether a particular male or not, may have unlawful carnal intercourse with her; or
>
> *(b)* takes any female to a brothel or detains her there against her will,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding seven years.

(2) When in any prosecution in terms of subsection (1) it is proved that a female was in any house or at any place so that any male, whether a particular male or not, could have unlawful carnal intercourse with her, or was in any brothel, it shall be deemed that she was taken or detained there against her will –

(a) if she is under the age of sixteen years; or

(b) if she is sixteen years or older but under the age of twenty-one years, and was taken thereto or is detained therein against her will or against the will of her father or mother or any person having the lawful care or charge of her.

Sexual offences with youths ~~girls under 16 years~~

14. (1) Any person who –

(a) commits or attempts to commit a sexual act with a child under the age of sixteen years; or

(b) commits or attempts to commit an indecent or immoral act with such a child; or

(c) solicits or entices such a child to the commission of a sexual act or an indecent or immoral act

and who-

(i) is more than three years older than such a child; and

(ii) is not married to such a child (whether under the general law or customary law),

shall be guilty of an offence and liable on conviction to a fine not exceeding N$40 000 or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

[substituted by Act 7 of 2000]

~~14. (1) Any male who –~~

~~*(a)* has or attempts to have unlawful carnal intercourse with a girl under the age of sixteen years; or~~

~~*(b)* commits or attempts to commit with such a girl an immoral or indecent act; or~~

~~*(c)* solicits or entices such a girl to the commission of an immoral or indecent act~~

~~shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding six years with or without a fine not exceeding three thousand rand in addition to such imprisonment.~~

~~(2) It shall be a sufficient defence to any charge in terms of this section if it appears to the court –~~

~~*(a)* that the girl at the time of the commission of the offence was a prostitute, that the person so charged was at the said time under the age of twenty-one years and that it is the first occasion on which he is so charged; or~~

~~*(b)* that the person so charged was at the said time under the age of sixteen years; and~~

~~*(c)* that the girl or person in whose charge she was, deceived the person so charged into believing that she was over the age of sixteen years at the said time.~~

Sexual offences with female idiots or imbeciles

15. Any person who -

(a) has or attempts to have unlawful carnal intercourse with any female idiot or imbecile in circumstances which do not amount to rape; or

(b) commits or attempts to commit with such a female any immoral or indecent act; or

(c) solicits or entices such a female to the commission of any immoral or indecent act,

shall if it be proved that such person knew such female was an idiot or imbecile, be guilty of an offence and liable on conviction to imprisonment for a period not exceeding six years with or without a fine not exceeding three thousand rand in addition to such imprisonment.

Use of certain means to stupefy or overpower female for immoral purposes

16. Any person who applies, administers to or causes to be taken by any female any drug, intoxicating liquor, matter or thing with intent to stupefy or overpower her so as thereby to enable him to have unlawful carnal intercourse with her, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years.

Manufacture, sale or supply of article intended to be used to perform unnatural sexual act

17. (1) Any person who manufactures sells or supplies any article which is intended to be used to perform an unnatural sexual act, shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand rand or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(2) For the purposes of subsection (1) “sell” includes to offer for sale to keep for sale or to keep in a place where goods are sold or are offered or kept for sale.

Repeal of laws

18. The laws specified in the Schedule are hereby repealed to the extent set out in the third column of the Schedule.

Short title

19. This Act shall be called the Combating of Immoral Practices Act, 1980.

SCHEDULE

No. and year of law	Short title	Extent of repeal
Proclamation 27 of 1920	Police Offences Proclamation, 1920	Section 6
Proclamation 28 of 1921	Girls' and Mentally Defective Women's Protection Proclamation, 1921	The whole
Ordinance 15 of 1962	Police Offences Proclamation Amendment Ordinance, 1962	Section 4
Ordinance 18 of 1962	Girls' and Mentally Defective Women's Protection Proclamation Amendment Ordinance, 1962	The whole

ADULT COMMERCIAL SEX WORK IN NAMIBIA: SEX WORKER QUESTIONNAIRE

MAY 2001

IMPORTANT MESSAGE TO THE RESPONDENT:

The Legal Assistance Centre of Namibia has appointed Research Facilitation Services (RFS), an independent market research organisation situated in Windhoek, to conduct a survey for them on the topic of sex work in Namibia. The LAC is concerned about the protection of commercial sex workers, including children. The aim of this research is to establish a sound basis of information about sex work in Namibia and the situation of sex workers.

We are therefore asking for some of your precious time to grant us an interview.

PLEASE REST ASSURED THAT ALL INFORMATION IS TREATED AS HIGHLY CONFIDENTIAL AND THAT YOUR NAME WILL NOT BE DISCLOSED TO ANYONE. WE ONLY NEED IT TO DO CHECKS ON THE QUALITY OF OUR QUESTIONNAIRES AND MAKE SURE THAT ALL THE INFORMATION HAS BEEN CORRECTLY CONVEYED TO US. HOWEVER, YOU MAY REFUSE TO GIVE IT TO US SHOULD YOU BE MORE COMFORTABLE THAT WAY! WE DO NOT WORK FOR THE GOVERNMENT OR ANY POLITICAL PARTY OR INTEREST GROUP.

Should you have any queries please feel free to phone Ms Erna Keulder of RFS at 061 246830 or Ms Dianne Hubbard at LAC 061 223356. Thank you again for your valuable time!

Name of interviewer; date and place of interview

.....

First name of respondent :INTERVIEWER THIS DOES NOT HAVE TO BE REAL NAME BUT RESPONDENT HAS TO SIGN FOR MONEY RECEIVED FOR RFS PURPOSES)

.....

Q1 QUESTIONNAIRE NUMBER

Q2 NAME OF AREA

Q3 REGION

SECTION 1 BIOGRAPHICAL DETAILS

VERY IMPORTANT: INTERVIEWER PLEASE READ THE FOLLOWING OUT TO RESPONDENT BEFORE STARTING THE INTERVIEW:

We want you to know that we respect the fact that there are different kinds of people and that we respect these differences. We also do not wish to exclude anyone but cannot explicitly word each question to include all these differences. Therefore we want you to feel free to talk about yourself honestly in the way that you see yourself: whether you are straight or gay, male, female or transgendered. We have not asked for your real name and your confidentiality is guaranteed.

Q4 Sex of respondent

Male	1
Female	2

Q5 Do you see yourself as any of the following:

Straight (heterosexual)	1
Gay (male homosexual)	2
Lesbian (female homosexual)	3
Transgender (men who live as women or vice versa)	4
Transsexual (somebody who has had a physical sex change)	5

Q6 Please tell us how old you are

Q7 What is your marital status at the moment?

Married	1
Single, never married	2
Separated but not divorced	3
Divorced	4
Living together but not married	5
Living with same sex partner	6
Widowed	7
Other:	

Q8 Where were you born? Please tell us the name of the town or area.

Q9 What language do you speak at home?

a) LANGUAGE MOSTLY SPOKEN:	
b) OTHER LANGUAGES SPOKEN:	

Q10 What is the highest level of schooling that you have completed?

Q11 Do you have any dependants? *With a dependant we mean somebody who relies on you for money, clothing, housing, school fees, etc.*

Yes	1	GO TO Q12
No	2	GO TO Q13

Q12 Please tell us more about your dependants. Start with the youngest and move on to the oldest one.

No	Name of dependant (***INTERVIEWER: THIS IS A WAY OF HELPING THE RESPONDENT TO SORT THE ANSWERS: THE REAL NAME DOES NOT HAVE TO BE RECORDED***)	Age	Own child=1 Not own child=2 Parent = 3 Sibling = 4 Other person: WRITE DOWN IF OTHER	Living with me all of the time=1 Living with me some of the time=2 Not living with me=3	Receiving **regular** contributions such as money or any other support from somebody for this dependant Yes=1 No=2
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					

Q13 What type of house or dwelling do you live in?

Formal structure built with bricks	1
Informal structure built with material other than bricks	2
Other:	

Q14 Do you own or rent the house or dwelling you live in?

I own it	1
I rent it	2
I do not pay rent	3
Other:	

SECTION 2 SEXUAL HISTORY AND CHILDHOOD

Q15 Let us talk about your childhood. Please tell us where and with whom you lived, think about this time of your life.

Q16 Now try to think back to the first time you had sex with anyone. How old were you then?

I can't remember how old I was	1
I was …….years old	

Q17 Can you still remember this person's relationship to you, for example a boyfriend or girlfriend?

Q18 Were you under the influence of alcohol or drugs when you had your first sexual experience?

Yes	1
No	2

Q19 Was this sexual experience out of your own free will or was it forced upon you?

It was out of my own free will	1
It was forced upon me	2

Q20 Were you ever abused as a child? One example of abuse is physical abuse where someone attacks you. Then there is verbal abuse where someone insults you or says things that hurt you. We would like to know if you experienced such things as a child, but TELL US ONLY WHAT YOU ARE COMFORTABLE WITH!

SECTION 3 GENERAL ISSUES

Q21 How long have you been doing sex work?

Q22 Do you do sex work part-time or full-time?

A full-time sex worker	1	GO TO Q24
A part-time sex worker	2	GO TO Q23

Q23 If you do sex work part-time, what do you do the rest of the time for an income or for an occupation?

a)	
b)	

Q24 What would you say is your average income from sex work per month? (N$)
WHICH ONE IS HIGHEST?

	N$ INCOME	**OFFICE CODE: 1 HIGHEST 2 LOWEST**
a) Income from sex work		
b) Income from other job		

Q25 Do you have a regular sexual partner now (not a client)?

Yes	1	GO TO Q26
No	2	GO TO Q27

Q26 Does this partner know and/or approve of the work you do?

Q27 Have you had other jobs before?

Yes	1
No	2

Q28 Can you remember how old you were when you started doing sex work?

I can't remember how old I was	1
I was …….years old	

Q29 Can you still remember the reasons you went into sex work? Please tell us about this time of your life.

Q30 Can you still remember, apart from the reasons, also the way you went into sex work? Perhaps someone told you about it, or you saw it happening? Could you tell us more please.

Q31 What would you say are the most serious problems facing you as a sex worker?

Q32Have you experienced any abuse in your adult life, or in your work as a sex worker? Abuse could include blackmail by police or friends for example, or physical and mental abuse by clients or by a spouse or partner. Please tell us by whom the abuse is and how often.

Q33 If you have children or are looking after children, is childcare a problem for you? What can you tell us about it?

Q34 Have you noticed any children doing sex work? Tell us some more about this. How old do you think they are, and how do they operate?

SECTION 4 MODUS OPERANDI AND CLIENTS

Q35 AN IMPORTANT PART OF YOUR JOB IS CONTACTING CLIENTS, AND THEM CONTACTING YOU. PLEASE TELL US SOME MORE ABOUT THE FOLLOWING:

a) How do clients normally contact you?	
b) Do you work alone or not?	
c) If anybody works with you or helps to attract or contact clients, do you split earnings?	
d) Where does the sexual act normally take place? Do you have to pay for the venue?	

Q36 COULD WE NOW TALK ABOUT YOUR CLIENTS?

a) Please tell us about your "typical" client. You can describe the client in any way that you think is best.	

b) Do you have regular clients, meaning clients who only come to you repeatedly and do not wish to go to someone else?	
c) Why do you think clients make use of sex workers in general?	
d) Could you give us some idea of the sexual acts which sex workers that you know perform and what they earn for these acts?	

SECTION 5 NAMIBIAN LAWS ON SEX WORK

As you probably know, sex work is against the law in Namibia. However, only sex workers can be prosecuted and not clients. Let us discuss this situation and its implications for you as a sex worker.

Q37 Firstly, do you think the laws should remain the way they are now?

Yes	1	GO TO Q38
No	2	GO TO Q39

Q38 If you feel the law should STAY THE SAME, please tell us why you feel that way.

Q39 If you feel the laws SHOULD BE CHANGED, please tell us why you feel this way.

Q40 In some countries the following are enforced upon legal sex workers. How would you feel about each of the following?

	Negative and will refuse to do	Positive and will welcome it
a) Having to register myself as a sex worker	1	2
b) Having to register myself as a tax payer	1	2
c) Having to undergo regular HIV tests and undergo pre-and post-test counselling	1	2
d) Having to undergo regular testing for STD's (Sexually transmitted diseases)	1	2
e) Enforced use of condoms with all clients	1	2
f) Having a certificate to prove that I am a legal sex worker	1	2

Q41 COULD WE DISCUSS YOUR INTERACTION AND/OR RELATIONSHIP WITH THE FOLLOWING GROUPS, WHETHER IT IS POSITIVE OR NEGATIVE?

a) Police officers	
b) Soldiers or special field forces	
c) Social workers	

d) The church: In this case you could also tell us whether you attend church or not.	
e) Any other support systems, such as friends or family members	
f) Where do you go first if you need any help with problems relating to sex work?	
g) Have you ever been to a Woman Child Protection Unit? If you have, could you tell us a little bit more about it?	

SECTION 6 HEALTH

Q42 As someone doing sex work, what are your biggest health concerns?

Q43 Do you currently use any of the following on a REGULAR basis?

a) Alcohol	1
b) Drugs (eg Dagga, Heroin, Ecstacy, Cocaine, sniffing glue, etc)	2
c) Painkillers (can be bought at pharmacies or obtained at clinics)	3
d) Anything else: Please name	

Q44 Do you use condoms during sex with a client?

Yes	1
No	2
It depends on the client	3
Other comments:	

Q45 Do you have any say about the use of a condom during sex with a client?

Yes	1	GO TO Q47
No	2	GO TO Q46

Q46 IF NO TO Q45, what do you think would improve your ability to negotiate safer sex with a client?

Q47 Do you use condoms during sex with your partner (NOT YOUR CLIENTS)?

Yes	1
No	2
Other comments :	

Q48 What do you do to avoid any or all of the following?

	Nothing	I do the following:
a) Getting pregnant	1	
b) Getting HIV	1	
c) Getting STD's	1	

Q49 Have you ever had an HIV test? I am interested to know only if you have had the test, I will not ask you about the results.
(*INTERVIEWER: DO NOT ASK FOR THE RESULT! ONLY WHETHER THE PERSON HAS EVER HAD A TEST OR NOT*!)

Yes	1
No	2

Q50 Do you discuss what you do for a living with other people? This would include your dependants, friends and others.

No, I do not discuss it with anyone	1
Yes, I discuss it with the following people:	

Q51 Have you ever recommended sex work to anyone?

Yes	1	GO TO Q53
No	2	GO TO Q52

Q52 IF you never have in the past, would you recommend it to anyone in the future? Please tell us under which circumstances you would do so.

Q53 Could you tell us how you would define sex work or prostitution, depending on which term you prefer? For example, sex worker or prostitution is when .....

Q54 Is there anything else about your job you would like to discuss with us? Even if it is about things that are affecting other sex workers that you know you may still tell us about it. IF you have any ideas on how to improve the situation please tell us about it!

INTERVIEWER TO HAND OVER THE PACKAGE CONTAINING FEMIDOMS AND CONDOMS AND SPEND A FEW MINUTES GOING THROUGH EVERYTHING INCLUDING THE ADDRESSES AND NAMES SUPPLIED. NOW ASK WHETHER HE/SHE IS AWARE OF ANY INFORMATION AND EDUCATION ON HIV AND WHETHER HE/SHE KNOWS OF ANY SUPPORT SYSTEMS IF ANYONE (STRESS HERE THAT THIS INCLUDES SEX WORKERS - MAKE SURE THEY UNDERSTAND THAT) BECOMES HIV POSITIVE.
Interviewer write down the comments of the respondent.

THANK THE RESPONDENT AGAIN FOR PARTICIPATING AND REASSURE HIM/HER ABOUT THE CONFIDENTIALITY AND ANONIMITY OF THE INTERVIEW.

ADULT COMMERCIAL SEX WORK IN NAMIBIA: CLIENT QUESTIONNAIRE

MAY 2001

IMPORTANT MESSAGE TO THE RESPONDENT:

The Legal Assistance Centre (LAC) of Namibia has appointed Research Facilitation Services (RFS), an independent Market research organisation situated in Windhoek, to conduct a survey for the LAC on the topic of sex work in Namibia. The aim of this research is to establish a sound basis of information about sex work in Namibia and the situation of sex workers.

We would like to hear your opinion on the topic, and we are therefore asking for some of your precious time to grant us an interview.

PLEASE REST ASSURED THAT ALL INFORMATION IS TREATED AS HIGHLY CONFIDENTIAL AND THAT YOU NEED NOT SUPPLY YOUR NAME. WE DO NOT WORK FOR THE GOVERNMENT OR ANY POLITICAL PARTY OR INTEREST GROUP.

Should you have any queries please feel free to phone Ms Erna Keulder of RFS at 061 246830 or Ms Dianne Hubbard at LAC 061 223356. Thank you again for your valuable time!

Name of interviewer; date and place of interview

.....

First name of respondent (Does not have to be real name of respondent)

.....

Q1 QUESTIONNAIRE NUMBER

Q2 NAME OF AREA

Q3 REGION

SECTION 1 BIOGRAPHICAL DETAILS

VERY IMPORTANT: INTERVIEWER PLEASE READ THE FOLLOWING OUT TO RESPONDENT BEFORE STARTING THE INTERVIEW:

We want you to know that we respect the fact that there are different kinds of people and that we respect everybody. We also do not wish to exclude anyone but cannot explicitly word each question to include all these differences. Therefore we want you to feel free to talk about yourself honestly in the way that you see yourself: whether you are straight or gay, male, female or transgendered. We have not asked for your real name and your confidentiality is guaranteed.

Q4 Sex of respondent

Male	1
Female	2

Q5 Do you see yourself as any of the following:

Straight (heterosexual)	1
Gay (male homosexual)	2
Lesbian (female homosexual)	3
Transgender (men who live as women or vice versa)	4
Transsexual (somebody who has had a physical sex change)	5

Q6 Please tell us how old you are

Q7 What is your marital status at the moment?

Married	1
Single, never married	2
Separated but not divorced	3
Divorced	4
Living together but not married	5
Living with same sex partner	6
Widowed	7
Other:	

Q8 What languages do you speak at home?

a) LANGUAGE MOSTLY SPOKEN:	
b) OTHER LANGUAGES SPOKEN:	

Q9 What is the highest level of schooling that you have completed?

Q10 In which income category do you fall? Think of your monthly income.

No income	1
Up to N$100	2
N$101-500	3
N$501-1000	4
N$1001-3000	5
N$3001-5000	6
N$5001-10 000	7
More than N$10 000	8
Refuse to answer	9
Uncertain / don't know	10

SECTION 2: FIRST EXPERIENCE WITH A SEX WORKER

INTERVIEWER READ OUT:
PLEASE BE REMINDED AGAIN AT THIS POINT THAT EVERYTHING YOU TELL US IS HIGHLY CONFIDENTIAL AND AS YOU CAN RECALL WE DID NOT RECORD YOUR NAME.

Q11 Could we talk about the FIRST TIME you approached a sex worker for sex. How old were you then?

I can't remember how old I was	1
I was …….years old	

Q12 Can you still remember WHY you decided to approach a sex worker? Please tell us about this time of your life and your motivation for this.

Q13 How did you pay for this sex? Was it with money or food or something else?

It was with money	1
It was with food or some other favour	2
Other:	

Q14 Were you under the influence of alcohol or drugs when you first paid for sex?

Yes	1
No	2

SECTION 3: CURRENT INTERACTION WITH SEX WORKERS

Q15 Are you CURRENTLY using alcohol or drugs on a regular basis?

Yes	1
No	2

Q16 Do you normally use alcohol or drugs when having paid sex?

Q17 If you think of the present, are your reasons for buying sex now, still the same as the first time or have they changed? If they have, in what way have they changed?

a) My reasons have not changed	1
b) Record reasons if they have changed:	

Q18 How often do you buy sex?

Q19 Do you always go to the same sex worker or not?

Q20a) Do you pay the sex worker with money or do you reward him/her with something other than money such as food?

I pay with money	1
I pay with something other than money such as food	2
A combination of the above	3
Other:	

Q20b) How much money (approximately) would you spend in a month or year on sexual services?

N$	Write down month or year	OFFICE CODES

Q21 How do you normally contact a sex worker? Please give us as much detail as you can, for example whether you have to travel a distance, can you phone a sex worker, and so forth.

SECTION 4 LEGAL ASPECTS

As you probably know, sex work is against the law in Namibia. However, only sex workers can be prosecuted and not clients. Let us talk about this legal situation and issues surrounding it.

Q22 How do you feel about the following statements? Please tell us whether you agree with each statement or not.

STATEMENT: Sex workers should.....	YES, I AGREE	NO, I DO NOT AGREE
a) Be allowed to work as sex workers	1	2
b) Have the right to protection from abuse	1	2
c) Have the right to insist on the use of condoms and other protective devices	1	2
d) Register as sex workers	1	2
e) Have certificates proving that they are registered as sex workers	1	2
f) Be obliged to go for regular STD/HIV tests	1	2

Q23 Just thinking of the laws as they are currently, do you think they should.....CIRCLE ONLY ONE ANSWER

Stay as they are currently	1	GO TO Q23
Be changed to legalise sex work	2	GO TO Q24

Q24 If you feel the laws should stay as they are, please tell us why you feel this way.

Q25 If, on the other hand, you feel the laws should be changed to make sex work legal, please tell us why you feel this way.

SECTION 5: HEALTH ISSUES

Q26 Have you ever had unprotected sex with a sex worker?

Yes	1
No	2

Q27 Do you NORMALLY use a condom when having sex with a sex worker?

Yes, always	1
Most of the time but not always	2
No, never	3
Other comments:	

Q28 Do you use a condom when having sex with your partner?

Yes, at all times	1
Most of the time but not always	2
No, never	3
No, I do not have a partner	4
Other comments:	

Q29 Have you ever had an HIV test? I am interested to know only if you have had the test, I will not ask you about the results.
(INTERVIEWER: DO *NOT ASK FOR THE RESULT!* ONLY WHETHER THE PERSON HAS EVER HAD A TEST OR NOT!)

Yes	1
No	2

Q30 Do you know of anyone else who uses the services of sex workers?

Yes	1
No	2

Q31 Do you discuss your activities with sex workers with anyone?

Yes	1
No	2

Q32 Could you tell us a little bit more about this please? Do you feel that you have to hide it or do you have someone you can discuss it with?

Q33 Could you tell us how you would define sex work or prostitution, depending on which term you prefer? For example, sex work or prostitution is when…

Q34 Is there anything else about sex workers that you would like to discuss with us? Even if it is about things that you have heard of but have not experienced yourself, you may still tell us about it.

THANK THE RESPONDENT AGAIN FOR PARTICIPATING.

ADULT COMMERCIAL SEX WORK IN NAMIBIA: HOUSEHOLD QUESTIONNAIRE

MAY 2001

IMPORTANT MESSAGE TO THE RESPONDENT:

The Legal Assistance Centre (LAC) of Namibia has appointed Research Facilitation Services (RFS), an independent market research organisation situated in Windhoek, to conduct a survey for the LAC on the topic of sex work in Namibia. The aim of this research is to find out how you as a member of the public feel about current laws in Namibia regarding sex work.

We would like to hear your opinion on the topic, and we are therefore asking for some of your precious time to grant us an interview. **WE WILL NOT TAKE MORE THAN 15 MINUTES OF YOUR TIME.**

PLEASE REST ASSURED THAT ALL INFORMATION IS TREATED AS HIGHLY CONFIDENTIAL AND THAT YOU NEED NOT SUPPLY YOUR NAME. WE DO NOT WORK FOR THE GOVERNMENT OR ANY POLITICAL PARTY

Should you have any queries please feel free to phone Ms Erna Keulder of RFS at 061 246830 or Ms Dianne Hubbard of the LAC, at 061 223356. Thank you again for your valuable time!

Name of interviewer; date of interview

.....

TELEPHONE NUMBER (NOT TO BE RECORDED ON DATA SET)

AREA CODE		TEL NO	

Q1 QUESTIONNAIRE NUMBER

Q2 TOWN OR AREA NAME - AS PER TEL DIRECTORY

Q3 REGION

Q4 Sex of respondent

Male	1
Female	2

Q5 Please tell us how old you are

Q6 What is your marital status at the moment?

Married	1
Single, never married	2
Separated but not divorced	3
Divorced	4
Living together but not married	5
Living with same sex partner	6
Widowed	7
Other:	

Q7 What languages do you speak mostly at home?

a) Language MOSTLY spoken	
b) OTHER languages spoken	

Q8 What is the highest level of schooling that you have completed?

Q9 In which income category do you fall? Think of your monthly income. INTERVIEWER DO NOT READ OUT BUT CIRCLE THE CATEGORY IN WHICH THE INCOME FALLS.

No income	1
Up to N$100	2
N$101-500	3
N$501-1000	4
N$1001-3000	5
N$3001-5000	6
N$5001-10 000	7
More than N$10 000	8
Refuse to answer	9
Uncertain / don't know	10

Q10Could you tell us how you would define sex work or prostitution, depending on which term you prefer? For example "Sex work is when……

Q11 Could you tell us in your own words how you feel about sex work or prostitution in general?

Q12a In your opinion, is sex work legal or illegal in Namibia?

Legal	1
Illegal	2

Q12b INTERVIEWER NOTE: IF RESPONDENT HAS SAID ANYTHING ABOUT SEX WORKERS HAVING TO REGISTER ALREADY PLEASE TICK THE BOX BELOW:

RESPONDENT MENTIONED SOMETHING ABOUT REGISTERING ALREADY	*1*

INTERVIEWER: NOW READ OUT THE FOLLOWING:

Thank you for your previous answer. Regardless of what you told us, we would like to read the following statement of fact to you: "Sex work is currently against the law in Namibia. However, only sex workers can be prosecuted and not clients."

Q13 Do you think the laws should....
INTERVIEWER READ OUT ALL FOUR OPTIONS BUT CIRCLE ONLY ONE ANSWER

Be changed to make sex work legal	1
Remain the same so that sex work continues to be illegal for the sex worker	2
Be changed to make sex work illegal for both the client and the sex worker	3
Be changed to make sex work illegal for the client but not for the sex worker	4

Q14 Now we would like to read out specific statements to you and we would like you to tell us whether you agree with each statement or not.

STATEMENT: **Sex workers should.....**	**YES, I AGREE**	**NO, I DO NOT AGREE**
a) Be allowed to work as sex workers	1	2
b) Have the right to protection from abuse	1	2
c) Have the right to insist on the use of condoms and other protective devices	1	2
d) Register as sex workers	1	2
e) Have certificates proving that they are registered as sex workers	1	2
f) Be required to go for regular STD/HIV testing	1	2
g) Be restricted to working in certain areas only	1	2

Q15 Now please tell us how you feel about each of the following:

	Strongly against	Against	In between	In favour of	Strongly in favour of
a) Sex before marriage	1	2	3	4	5
b) Pornography	1	2	3	4	5
c) Interracial sex and marriages	1	2	3	4	5
d) Live-in relationships outside of marriage	1	2	3	4	5
e) Brothels and other institutions supplying sex	1	2	3	4	5
f) Same-sex (homosexual) relationships	1	2	3	4	5
g) Casual sex	1	2	3	4	5
h) Education programmes in schools on issues such as sex, family planning and HIV/AIDS	1	2	3	4	5

Q16 Thank you for your patience. Finally, we would like to read out a few statements to you and ask you how you feel about each of them.

STATEMENT	Strongly agree	Agree	Do not agree or disagree	Disagree	Strongly disagree
a) To legalise prostitution/sex work would undermine our community's norms and values.	1	2	3	4	5
b) To legalise prostitution/sex work would extend human rights to sex workers, which is a good thing.	1	2	3	4	5
c) Prostitution/sex work is against my religion and should therefore not be legalised.	1	2	3	4	5
d) Sex workers, like all other citizens, are entitled to protection by the law and law enforcement agencies.	1	2	3	4	5
e) Like all other citizens, sex workers should be allowed to work in the job of their choice without breaking the law.	1	2	3	4	5
f) To legalise sex work/prostitution would undermine our nation’s norms and values.	1	2	3	4	5
g) Prostitution/sex work is causing a health risk to our community and country and should remain illegal.	1	2	3	4	5

h) By regulating prostitution/sex work, we will have more control over serious health issues such as the spread of HIV and other sexual transmitted diseases.	1	2	3	4	5
i) Prostitution/sex work is a threat to marriages and family values and should not be legalised	1	2	3	4	5

Q17 Now you may tell us if there is anything we didn't ask you that you feel you want to mention.

THANK THE RESPONDENT AGAIN FOR PARTICIPATING.

NEW ZEALAND

Prostitution Reform Bill

2000, No. 66—1

Member's Bill

Explanatory note

Overview

This Bill recognises the need to reform the law relating to prostitution in New Zealand. The aims of the Bill are to decriminalise prostitution, to safeguard the human rights of sex workers and protect them from exploitation, to promote the welfare and occupational health and safety of sex workers, to create an environment which is conducive to public health, and to protect children from exploitation in relation to prostitution.

New Zealand's existing laws pertaining to prostitution are designed to criminalise the sex worker while offering legal protection to the client. Under the current legislation, sex workers are vulnerable to violence and exploitation, with few opportunities for legal redress. This Bill will remove the legal impediments to the creation of an environment which will protect the occupational health and safety of sex workers and their clients, thereby enhancing public health.

Currently sex industry workers are reluctant to promote safer sex products, in case they are used to contribute to a pattern of evidence to achieve a prostitution-related conviction. The passage of the Bill will reduce the existing climate of fear, allowing sex industry workers greater freedom to participate in community education programmes promoting sexual health and reduction of STDs (sexually transmitted diseases) or HIV.

Prostitution reform

The Bill includes measures to protect children up to the age of 18 from sexual exploitation or sexual abuse in the context of prostitution—a right recognised in the United Nations Convention on the Rights of the Child, which New Zealand has ratified.

Legislative options

The international literature on prostitution law reform draws clear distinctions between the options of *legalisation* and *decriminalisation*, and attributes specialised meanings to both these terms.

Legalisation involves making prostitution legal under certain, State-specified conditions. This has typically resulted in a two-tiered system (for example, in Victoria, Australia) within which some participants are legal and others are forced to remain illegal, thus stimulating the growth of underground criminal activities. In practice, therefore, this model has failed to achieve the desired level of regulatory control, and has been counterproductive to the interests of workers and clients in the sex industry.

This Bill seeks *decriminalisation*, which involves repealing many existing laws and penalties relating to prostitution. This will bring the industry within the scope of existing legislation (for example, the Employment Relations Act 2000, the Resource Management Act 1991, and the Health and Safety in Employment Act 1992), enabling the application of controls and regulations that govern the operation of other businesses.

The sex industry will still be subject to laws designed to ensure public safety and security. These include provisions in the Crimes Act 1961 and Summary Offences Act 1981 prohibiting street harassment, money laundering of ill-gotten gains, and acts of violence. The Misuse of Drugs Act 1975 will still be available to address drug abuse and misuse in the industry, and the provisions of the Resource Management Act 1991 remain to address any potential nuisance caused by the siting of a sex work venue. Decriminalisation will allow these provisions and protections to be applied more effectively.

Clause by clause analysis

Clause 1 is the title clause.

Clause 2 is the commencement. This Bill comes into force on the day after the date on which it receives the Royal assent.

Clause 3 sets out the purpose of the Bill, which is to decriminalise prostitution, and thus to create a framework which safeguards the human rights of sex workers, protects them from exploitation, and promotes occupational safety and health. It also protects children from exploitation in relation to prostitution.

Clause 4 defines the terms central to this Bill. Key terms defined include "brothel", "business of prostitution", and "commercial sexual services".

Clause 5 declares that no contract for the provision of commercial sexual services is illegal or void on public policy or other similar grounds.

Clause 6 requires operators of brothels and those running businesses of prostitution to take active steps to ensure the use of prophylactic sheaths and to make available information on safe sex practices. The clause also places an obligation on operators not to use attendance of a sex worker at a medical examination to imply that the sex worker is free of a sexually transmitted disease.

Clause 7 makes it an offence to coerce any person into either providing commercial sexual services or surrendering the proceeds of any commercial sexual services provided by that person.

Clause 8 provides sex workers with the right to decline to provide, or continue to provide, commercial sexual services.

Clause 9 prohibits any person from contracting for or being a party to the provision of commercial sexual services by a child under the age of 18. At the same time, the clause allows people to continue to provide necessary counselling and health advice to a child under 18, provided that such persons do not otherwise encourage or facilitate that child's participation in the sex industry.

Clause 10 effectively decriminalises the sex industry by repealing the key statutory and regulatory provisions.

Clause 11 provides for the consequential repeal of the enactments listed in the *Schedule*.

Tim Barnett

Prostitution Reform Bill

Member's Bill

Contents

1 Title
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Repeals

10 Repeals
11 Consequential repeals

The Parliament of New Zealand enacts as follows:

1 Title—
This Act is the Prostitution Reform Act 2000.

2 Commencement—
This Act comes into force on the day after the date on which it receives the Royal assent.

3 Purpose—
The purpose of this Act is to decriminalise prostitution, and to create a framework which safeguards the human rights of sex workers and protects them from exploitation, ensures the legislative framework of welfare and occupational health and safety protections is able to apply to sex workers, creates an environment which is conducive to public health, and protects children from exploitation in relation to prostitution.

4 Interpretation—
In this Act, unless the context otherwise requires,—

"brothel" means any house, room, set of rooms, or place of any kind kept or habitually used for the purposes of prostitution; but does not include premises at which accommodation is normally provided on a commercial basis if any prostitution that occurs at those premises occurs under an arrangement initiated elsewhere

"**business of prostitution**" means—

(a) any firm, organisation, body of persons in the nature of a partnership within the meaning of the Partnership Act 1908 (whether incorporated or not), which; or

(b) any person who,—

carries on a business of providing commercial sexual services

"child" means a person who is under 18 years

"coerce" means knowingly to act to prevent another person from exercising freedom of choice or action, or to induce or compel another person to undertake any action against his or her will, including actual, or implied or explicit threats of,—

(a) physical harm:

(b) sexual or psychological abuse:

(c) intimidation; including—

(i) the improper use of any power or authority arising out of any occupational or vocational position held by any person; or

(ii) the making of an accusation or disclosure (whether true or false) about the misconduct of any person that is likely to damage seriously the reputation of the person against or about whom the accusation or disclosure is made:

(d) harassment:

(e) damage to that person's property:

(f) supplying a controlled drug within the meaning of the Misuse of Drugs Act 1975:

(g) withholding supply of a controlled drug within the meaning of the Misuse of Drugs Act 1975:

(h) withholding money or property owed to that person:

(i) imposing any pecuniary or other penalty, or taking disciplinary action, otherwise than in accordance with a person's agreed conditions of employment or service

"commercial sexual services" means sexual services provided for monetary or material reward (irrespective of whether the reward is, or is to be, paid or given (directly or otherwise) to the

person who provided the sexual services)

"prostitution" means the provision of commercial sexual services

"safer sex practices" includes actions to minimise the risk of acquiring or transmitting sexually transmissible diseases

"sex worker" means a person who personally provides commercial sexual services, including, but not exclusively, services provided as part of the business of a brothel or business of prostitution.

5 Contract for provision of commercial sexual services not void—

Subject to the provisions of this Act, no contract for the provision of commercial sexual services is illegal or void on public policy or other similar grounds.

6 Operators of brothels and businesses of prostitution to promote safer sex practices—

(1) Every person who operates a brothel or who has effective control of a business of prostitution, must—

(a) take all practical steps to ensure the use of prophylactic sheaths by clients of that brothel or business of prostitution; and

(b) give information on safer sex practices to sex workers operating in or from, and clients of, that brothel or business of prostitution; and

(c) display information on safer sex practices prominently in any premises used as part of the business of the brothel or business of prostitution; and

(d) not use the fact of a sex worker's attendance at a medical examination, or the result of such an examination, for the purpose of inducing a person to believe the sex worker is not infected with a sexually transmissible disease.

(2) Every person commits an offence and is liable to a fine not exceeding $10,000 who contravenes subsection (1).

(3) For the purposes of this section,—

(a) a person operates a brothel if he or she controls or manages, or takes part in the control or management of, the brothel:

(b) a person has effective control of a business of prostitution if he or she personally supervises, manages and controls the conduct of the business of prostitution.

7 Coercion—

(1) No person may coerce or attempt to coerce any person into providing commercial sexual services.

(2) No person may coerce any person into surrendering the proceeds of commercial sexual services provided by that person.

(3) Every person commits an offence and is liable to imprisonment for a term not exceeding 7 years who contravenes subsection (1) or subsection (2).

8 Right to refuse to provide commercial sexual service—

Every sex worker may at any time refuse to provide any commercial sexual service or, where the provision of that service has commenced, to continue to provide that service, and any agreement purporting to remove the right to refuse to provide or refuse to continue to provide such a service is void.

9 No person to contract for or be party to provision of commercial sexual services by a child—

(1) No person may cause a child to provide, or assist a child in the provision of, commercial sexual services.

(2) No person may enter into a contract or arrangement as a result of which any person receives or is to receive commercial sexual services provided by a child.

(3) No person may receive a payment or other reward that he or she knows, or could reasonably be

expected to have known, is derived, directly or indirectly, from commercial sexual services provided by a child.

(4) Every person commits an offence and is liable to imprisonment for a term not exceeding 7 years who contravenes subsection (1) or subsection (2) or subsection (3).

(5) No person commits an offence against this section who provides counselling or health advice to a child, but who does not otherwise encourage or facilitate the provision of commercial sexual services by that child.

(6) No child may be charged as a party to an offence committed upon or with that child against this section.

(7) It is no defence to a charge against this section that the child consented or that the person charged believed, reasonably or otherwise, that the child was 18 years or over.

Repeals

10 Repeals—

The following enactments are repealed:

(a) sections 147 to 149 of the Crimes Act 1961:

(b) Massage Parlours Act 1978:

(c) section 26 of the Summary Offences Act 1991:

(d) Massage Parlours Regulations 1979 (SR 1979/35):

(e) Massage Parlours Regulations 1979, Amendment No 1 (SR 1987/52):

(f) Massage Parlours Regulations 1979, Amendment No 2 (SR 1991/193).

11 Consequential repeals—

The enactments specified in the Schedule are consequentially repealed.

Schedule

s 11

Enactments repealed

Building Act 1991 (1991 No 150)
So much of the Fourth Schedule as relates to the Massage Parlours Act 1978.

Fees Regulations 1989 { sic ? 1987 } (SR 1987/68)
So much of the Schedule as relates to the Massage Parlours Regulations 1979, Amendment No 1.

Homosexual Law Reform Act 1986 (1986 No 14)
Section 6(2).

Summary Offences Act 1981 (1981 No 113)
So much of the First Schedule as relates to the Massage Parlours Act 1978.



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