

THE LEGALIZATION OF PROSTITUTION: A Violation of International Law

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Introduction

“The prostitution of women and girls for profit is one of the fastest growing global enterprises, ...”¹ It is now ranked by the United Nations as number two in international crime, tied with illegal arms sales and only trailing illegal drug sales.² “ Trafficking in women and children is a growing worldwide problem that needs to be tackled on a global and national level.

Women and children are particularly vulnerable to this modern form of slavery. Of the estimated 600,000 to 800,000 people trafficked across international borders each year approximately 80 percent are women and girls and up to 50 percent are minors.

The rate of paid-for sex with women has doubled in a decade, reveals research in *Sexually Transmitted Infections*. The findings are based on the results of two national surveys of 11,000 British adults in 1990 and 2000 (Natsal). Respondents were asked about their sexual lifestyles and attitudes to sex. Men were asked if they had ever paid for sex. In 1990, 5.6 percent of the men said they had paid for sex at some time during their lives, with two percent saying they had done this within the previous five years, and 0.5 percent within the past year. Ten years later, the comparable figures were twice as high.³ The increase in trafficking and prostitution coincides with more countries suggesting that legalization and thus normalization of prostitution is permissible.

But for a different view, Vendredi’s responds to prostitution in Canada: ⁴

What would decriminalization of prostitution mean for our communities?

Decriminalization of prostitution means that all laws regarding prostitution would be removed. In other words, buying a woman would be socially and legally equivalent to buying cigarettes. Prostitution in all its forms - street, brothel, escort, massage - would be legally welcomed. Pimps the world over would become our communities' new businessmen.

¹Eckberg, Gunilla ,The Swedish Law that Prohibits the Purchase of Sexual Services: Best Practices for Prevention of Prostitution and Trafficking in Human Beings, *Violence Against Women*, Vol. 10 No 10, October 2004, 1187-1218.

² CWA press release, 6 December 2005.

³ Thu, 01 Dec 2005 04:35 PM CST, ENGLAND (myDNA News)

⁴ Myths and Facts about Decriminalization of Prostitution, Vendredi, <<http://www.cmaq.net/fr/node.php?id=22571>>, 21/10/2005 - 14:57.

Decriminalization of prostitution would increase legal, illegal, semi-legal and all prostitution. Decriminalization will make no difference in the physical and the emotional safety of women in prostitution. Regardless of its legal status, prostitution is extremely harmful to those in it.

There is little difference for the prostitute between legalized and decriminalized prostitution. They are both state-sponsored prostitution. In legal prostitution, the state is the pimp, collecting taxes. In decriminalized prostitution, the pimps remain in control, whether they are bar pimps, stripclub pimps, taxi driver pimps, or street pimps. In both legalized and decriminalized prostitution, the john is welcomed as legitimate consumer. Decriminalization of the pimping of women and the buying of women is in effect the promotion of and profiting from childhood sexual abuse, rape and sex trafficking.

There is no way of making prostitution "a little bit better" any more than it is possible to make slavery "a little bit better." Prostitution is a profoundly harmful institution. Who does it harm the most? The woman or child who is prostituting is hurt the worst. She is hurt psychologically as well as physically. There is a much evidence for this.

A progressive response to a community's concerns about prostitution

The recommendations about to be tabled by a federal multi-party task group on prostitution including MPs from the NDP, the Liberals and the Bloc québécois risk endorsing the interests of the "sex industry" under the cynical guise of helping women avoid the stigma of arrest. The real beneficiaries of an across the board decriminalization would be johns, pimps, and traffickers. Should we arrest women in prostitution? No, absolutely not. Almost all women in prostitution are there as a last resort, they don't "choose" the paid rapes of prostitution the way someone chooses a career as an x-ray technician.

The research of psychologists such as Dr. Melissa Farley, PhD (Prostitution Research&Education - <http://www.prostitutionresearch.com/>) document that 95% of those in prostitution urgently want to escape it. It is time for our society to offer women and men and youths in prostitution real choices. They tell us that they need stable housing, social services, medical treatment, and job training. That's what they should receive not decriminalization of those who exploit them. Should we arrest and sanction the pimps, johns, procurers and traffickers who use women in prostitution and profit from selling them? Yes. These are the perpetrators of sexual exploitation and abuse who should be arrested, not the women themselves.

A society where full gender equality exists cannot at the same time support the idea that women are commodities that can be bought, sold, and sexually exploited. In Sweden, prostitution is officially acknowledged as violence against women and a tool of oppression. The root cause is identified as men's demand for the use of women for sexual exploitation. "Legalization of prostitution means that the state imposes regulations with which they can control one class of women as prostituted".⁵ "Prostitution requires a devalued class of

⁵ Ibid, The Swedish Law ...p. 1190.

women ... Prostitution is colonization of women ...”⁶ When violence is directed at half the world’s population – women – it undermines the entire structure of human rights. Legalization is approval of that violence, of that control, of that devaluation, of that colonization. Prostitution is not only individual discrimination, exploitation or abuse by an individual man, but also a structure reflecting and maintaining inequality between men and women.

This paper will argue that the legalization of prostitution violates international law, especially the Convention on the Elimination of all Forms of Discrimination Against Women, and therefore legalization by State parties is prohibited. The paper will first look at the facts about prostitution and its connection with crime and trafficking. Secondly it will look at applicable international jurisprudence. Third it will look specifically at how legalization violates Article 5 and 6 of CEDAW. Last, it will look at the real problem and real solutions.

Prostitution is Violence Against Women

The violence against prostituted women is equivalent to and in many cases greater than the violence experienced by victims of torture who have been recognized as such under international law. Torture is not only conduct against the law; it is conduct that challenges the very existence of the law because it violates all the necessities of good governance including the consent of the governed. It attacks the legitimacy of the State, provokes social conflict, and undermines peace. It is the practice of social control taken to its violent extreme.⁷ To suggest that prostitution of women is torture is not a new idea. Catherine MacKinnon said just that in 1993. In fact women are bought and sold precisely to be humiliated and degraded—a goal of torture.⁸ In a study covering five countries, researchers found an extensive array of violence against prostituted women and the consequences did not differ among countries.⁹ More violence occurred in street prostitution than in brothels, but the incidence of Post Traumatic Stress Disorder (PTSD) did not change. The level of PTSD was higher in prostituted women than in people seeking refugee from state-organized violence. The psychological damage stems from the act itself, and no amount of “improvement” to the conditions of prostitution will eliminate the harm.

When asked if legalizing would make it safer, large majorities of prostituted women said no, because prostitution itself embodies physical and sexual assault. Virtually all of the women surveyed (92%) wanted to leave prostitution. Their lives consisted of being hunted, dominated, assaulted, and battered while facing sexual harassment, economic slavery, discrimination, racism, classism and bodily invasions – the equivalent of torture. Three women who worked in a brothel in the U.S. said their lives were unbearable. According to one survivor, prostitution is paid rape.¹⁰ In Thailand, the Empower group is a collective of prostituted women, who say, “We have 2000 members who are sex workers and none of them

⁶ Farley, M. and Lynne., J (2005) Prostitution of Indigenous Women: Sex Inequality and the Colonization of Canada’s First Nations Women, Fourth World Journal, Vol 6 No 1, pp. 1-29, entire text available at <http://www.cwis.org/fwj/61/prostitution_of_indigenous_women.htm>

⁷ Nagan, Winston P. and Atkins, Lucie ,The International Law of Torture: From Universal Proscription to Effective Application and Enforcement, , Harvard Human Rights Journal, Volume 14, Spring 2001.

⁸ MacKinnon, Catherine A, Prostitution and Civil Rights, , Michigan Journal of Gender and Law, 1993, Volume 1: 13-31.

⁹ Farley, Melissa, Baral Isin, Kiremire, Merab and Sezgin,Ufuk, Prostitution in Five Countries: Violence and Post-Traumatic Stress Disorder, Feminism and Psychology, 1998, Volume 8(4): 406-426.

¹⁰ Prostitution is Sexual Violence, Farley, Melissa, Psychiatric Times, October 2004, Vol. XXI, Issue 12.

sees this as a real profession. But most of them have a very limited education and are either forced into prostitution by poverty and ignorance or lack of other opportunities.”¹¹

The five-country study describes some of the actual physical acts women are forced to endure: pinching, verbal abuse, squeezing her breasts, ejaculating on her face, beating, black eyes, pulling hair, beaten on the head, cut with knives, burned with cigarettes, and gang raped.¹² This reality differs little from a complaint filed in Canada in which the victim alleged the pimp controlled her movements, took her money, told her he owned her forever, made her strip, threatened her, burned her with a cigarette, told her he would cut off her arms, legs and tongue and poke out her eardrums, kill her mother and brother, and made her lick his anus.¹³ Victims of torture, especially in the international tribunals in Rwanda and in the former Yugoslavia, described very similar acts.

In addition to the physical violence, the study describes the psychological damage. The women suffer from depression, lethal suicidality, mood disorders, anxiety disorders, dissociative disorders and chemical dependence. Norwegian researchers found the same thing in 1986. Violence against prostituted women in the study ranged from a low of 40% to a high of 94% in more than a dozen countries around the world. Two-thirds of the women in the study had symptoms of PTSD that rivaled those of refugees from state-organized torture. Traumatic brain injury similar to that found in other torture victims results in significant health problems. Many of the chronic symptoms are similar to the long-term consequences of torture.¹⁴

This reality is the same worldwide. Women in Korea report they were beaten, raped, humiliated and threatened to “season” them and break down their resistance.¹⁵ Once in prostitution, they endured routine beatings, humiliation, threats, sexual harassment and rape to keep them in line. In the long term, the victim of prostitution suffers psychological trauma similar to torture victims – flashbacks, depression, suicidal tendencies, insomnia, stress, and anxiety. A 1985 Canadian report found that prostituted women had a mortality rate 40 times higher than the national average. Homicide is a frequent cause of death.¹⁶ A Canadian study found that a high rate of poverty and housing instability was related to a high rate of prostitution. If women’s wages can be kept low, they are forced to sell their own exploitation to survive. Of the women, mostly First Nations, 82% had a history of childhood abuse, 90% were physically assaulted in prostitution, 67% said that they were forced into pornography, 75% had injuries such as stabbing, beating, and broken bones, 50% had head injuries, 88% suffered verbal abuse and 95% wanted to leave prostitution.¹⁷ In August 2005, Greece police arrested one man and issued warrants for four others for torturing Nigerian women to force them to work as prostitutes.¹⁸ The estimated thirty women had burns inflicted with an iron and boiling water. The average life span for a woman after entering prostitution is four years. No population of women had a higher death rate due to murder, which accounts for 50% of the deaths.¹⁹

¹¹ Williams, Louise, *Wives, Mistresses and Matriarchs: Asian Women Today*, Weidenfeld & Nicolson, London, 1998, p. 161.

¹² Farley, Melissa, Baral Isin, Kiremire, Merab and Sezgin, Ufuk, *Prostitution in Five Countries: Violence and Post-Traumatic Stress Disorder*, *Feminism and Psychology*, 1998, Volume 8(4): 406-426.

¹³ Canada, *R. v. Patterson*, 2003 CanLII 303300 (ON. C.A.) 2003-04-23, Docket C34572.

¹⁴ Farley, Melissa, Baral Isin, Kiremire, Merab and Sezgin, Ufuk, *Prostitution in Five Countries: Violence and Post-Traumatic Stress Disorder*, *Feminism and Psychology*, 1998, Volume 8(4): 406-426

¹⁵ Seo, Hilary Sunhee, *Prostitution: Reality versus Myth*, CATW.

¹⁶ Op Cit, *Psychiatric Times*.

¹⁷ Melissa Farley and Lynne J, (2005) *Prostitution of Indigenous Women*, *ibid*.

¹⁸ “Nigerian women tortured by prostitution ring in Greece”, *Associated Press World Stream*, August 15, 2005.

¹⁹ Op Cit. *Prostitution in Five Countries*.

A study in Indonesia, the Philippines, Thailand, Venezuela and the United States found much the same.²⁰ Violence against women was endemic in prostitution with rates of repeated violence ranging from almost 70% to 100%. In Indonesia, the violence included use of belts, wooden sticks, fists, hands, rape, isolation, working through the night even if ill and use of law enforcement or military to protect the brothels. In the Philippines, the women were to do what they were told, were guarded and could not leave, 60-70% reported repeated violence such as objects thrown, hit with whip and objects, kicked, hands tied with barbed wire, burned, slapped, tossed off a stage, dragged, pinched, biting nipples, tied up, use of guns, truncheons, batons and knives, forced to use methamphetamines and cocaine, being fed only once or twice a day to keep them thin, and punishment by detention and lock up in a padlocked room naked and cold for a week without the ability to communicate with anyone. In Thailand, their names were changed, they were denied money and documents were confiscated; they had no control over the choice of client, pace of work or nature of activity; they were raped, drugged and gang raped. One woman said, “She is the shared property of any male who can pay a price for sex and for her body.”²¹ In Latin America and Venezuela, the women suffered from money withheld, they were pushed, hit with objects, punched, isolated, had guns and knives used on them, had their movements controlled, and were forced to have sex with law enforcement and immigration officials. In the U.S., 84-100% of the women surveyed reported physical violence including being beaten, hit, burned with cigarettes, chased, choked, crushed, dragged, hit with objects including shoes and a liquor bottle, punched, pinched including breasts, scratched, shoved, smacked, strangled with a bandana, stripped, thrown out of a car, twisted, hair pulled, urinated on, sodomized, objects inserted into the vagina and anus, bestiality, filmed, money withheld, weapons used such as sticks, knives and guns, and forcible injections of drugs. In spite of all the physical torture, what they reported hating most was being broken physically and spiritually.

Prostituted women in the United States reported their injuries as bruises, mouth and teeth injuries, vaginal bleeding, other bleeding, internal pain, head injuries and broken bones. Most women reported higher rates of injury for other woman than for themselves. Even those brothels that had so called “safety policies” did not protect women from harm from both customers and pimps and their friends.²²

Whether legal or illegal, prostituted women are held in captivity – in Turkey they are in walled-off complexes, in Nevada brothels are ringed with barbed wire or electric fencing, and in Bangladesh women and children are locked inside a brothel that is literally a prison.²³ In Atlanta, Georgia and other U.S. cities, the sex businesses flourish with barbed wire fencing often enclosing the locations.²⁴ These are women and children who have committed no crime except being poor.

²⁰ Raymond, Janice G, D’Cunha, Jean, Dzuhayatin, Siti Ruhaini, Hynes, H. Patricia, Rodriquez, Zoraida Ramirez, Santos, Aida, *A Comparative Study of Women Trafficked in the Migration Process: Patterns, Profiles and Health Consequences of Sexual Exploitation in Five Countries*, Coalition Against Trafficking in Women, 2000.

²¹ *Ibid*, *A Comparative Study*, page 63.

²² Hynes, H. Patricia and Raymond, Janice G. , “Put in Harms Way: The Neglected Health Consequences of Sex Trafficking in the United States”, in Silliman Jael and Bhattacharjee (Eds), *Policing the National Body, Sex, Race and Criminalization*, South End Pass, Cambridge, Mass. 2002, Chapter 8.

²³ Farley, Melissa, “Bad for the Body, Bad for the Heart”: Prostitution Harms Women Even if Legalized or Decriminalized, *Violence Against Women*, Vol. 10 No 10, October 2004, 1087-1125, p. 109.

²⁴ Hynes, H. Patricia and Raymond, Janice G. , “Put in Harms Way: The Neglected Health Consequences of Sex Trafficking in the United States”, in Silliman Jael and Bhattacharjee (Eds), *Policing the National Body, Sex, Race and Criminalization*, South End Pass, Cambridge, Mass. 2002, Chapter 8.

In the U.S. sample, one half the women from the Newly Independent States (NIS) thought they would be killed in the brothel in spite of alleged monitoring and “bouncers”. When asked if they thought prostitution should be legalized, 96% of Filipino women said no, 50% of Venezuelans said no and 21% had no response, 56% of NIS women said no and the rest had no opinion or did not know, and 85% of U.S. women said no. As shown in Australia, the normalization of prostitution results in more demand and more bizarre and brutal exploitation. Pregnant women and breast milk have become sellable items in Victoria.²⁵ A teacher who was moonlighting as a prostituted woman at night could not be terminated from her job nor could a male teacher who frequents a brothel.²⁶ If it’s legal, then even those in charge of educating our children cannot be prohibited from it. In Germany and New Zealand, women fear that they will be denied unemployment benefits if they don’t “consent” to work as a prostitute. In 2005, a woman who was a qualified IT worker, was threatened by a government agency that her unemployment benefits would be terminated if she did not take a job in a legalized brothel.²⁷

Notably, even in countries that have legalized prostitution in a misguided effort to reduce its harms, rates of assault and rape against prostituted persons remain extremely high.²⁸ Survivors of the prostitution industry report that the trauma associated with physical danger is matched by the trauma associated with constant sexual degradation, with having one’s body sold as a commodity. One survivor described the experience in this way:

It was horrible, they’d look you up and down. That moment, when you felt them looking at you, sizing you up, judging you . . . It used to make me furious, but at the same time I was panic-stricken, I didn’t dare speak . . . I was the thing he came and literally bought. He had judged me like he’d judge cattle at a fairground, and that’s revolting, it’s sickening, it’s terrible for the women. You can’t imagine it if you’ve never been through it yourself.²⁹

Women and girls are so commodified as products for sale that you can access a “consumer guide” to buy women on the web. The men “consider themselves connoisseurs of fine women,” like fine wine or fine chocolates. These users of women wanted a way to complain if their “products” didn’t meet the mark. Because the men might post a bad review, the women are forced to do as the men want.

”The sites represent the ultimate commodification of women, who are impersonally rated by anonymous men in much the same way they would judge a sports car or a racehorse. Some find it demeaning, but most acknowledge that it’s a fast, easy way to build a reliable client base. “It’s a double-edged sword,” said Helen, a \$350-an-hour escort in a Western state, who said she was in the business to make enough money to go to graduate school so she could teach.” So long as there is prostitution, why should we have to provide women students support to finish their education? Robyn Few, a former prostitute who lobbies to decriminalize prostitution as executive director of the Sex Workers Outreach Project in San Francisco, said that on a personal level, “I hate it” that women are “being reviewed and rated like some subhuman.” (see footnote 99)

²⁵ Op Cit, A Comparative Study . . . , page 216-217.

²⁶ Sex work allowed for teacher: Booth, The Courier-Mail; <<http://www.thecouriermail.news.com.au/printpage/0,5942,17176566,00.html>>, 8 Nov 2005.

²⁷ May 26, 2010, 10:32 AM [Human Rights Examiner](#) Youngbee Dal.

²⁸ I. Vanwesenbeeck et al, “Professional HIV risk taking, levels of victimization, and well-being in female prostitutes in the Netherlands” in *Archives of Sexual Behavior* 24(5), 503-515 (1995).

²⁹ C. Jaget, *Prostitutes—Our Life* (1980).

Many survivors have reported that, in order to cope with the psychological degradation of prostitution, they developed a dissociation response—a sense of splitting off a part of the self, of “leav[ing] my body,” of going “someplace else mentally.”³⁰ The aftermath of this coping mechanism is the high incidence of dissociative disorders diagnosed in individuals emerging from prostitution.³¹

The health effects of prostitution are wide-ranging and severe and commonly include tuberculosis, sexually transmitted diseases, frequent viral illness, vaginal infections, backaches, pelvic pain, substance abuse, sleeplessness, depression, headaches, eating disorders, cervical cancer, hepatitis, broken bones, brain injury resulting from head trauma, anxiety disorders, dissociative disorders, infertility, and early mortality.³² HIV/AIDS infection is rampant among prostituted persons and is a leading cause of death.³³

The harms of prostitution are so profoundly linked to gender, class, and racial inequality as to make the prostitution industry one of the world’s most extreme systems of discrimination. Its victims are overwhelmingly female and overwhelmingly poor.³⁴ They are made vulnerable by the disadvantaged status of women in many regions, by the childhood sexual abuse for which girls are disproportionately targeted, and by the desperation induced by poverty.³⁵ Once in prostitution, their status falls even lower and their life prospects are more sharply curtailed.³⁶ Trafficking and sex tourism have contributed to the already-strong role of racial and ethnic discrimination in prostitution, with men from richer industrialized countries purchasing women from developing or impoverished regions.³⁷ Among prostituted women, it is often undocumented women trafficked from poor countries who suffer the worst exposure to the most harmful and unsafe practices within prostitution.³⁸ Prostitution is both cause and effect of cruel and entrenched inequalities.

Acceptance of prostitution justifies violence against women. The men who engage in it have more discriminatory attitudes against women and are more accepting of prostitution and rape

³⁰ See, e.g., C. Hoigard and L. Finstad, *Backstreets: Prostitution, Money and Love* (1986) (“Regardless of the variations in the type of prostitution, women feel that they have to rent out the most intimate parts of the body to anonymous strangers to use as a hole to jerk off in. The women try to keep themselves as unharmed as possible from this massive invasion by maintaining a distance from the customer.”); E. Giobbe, “Prostitution: Buying the right to rape” in A.W. Burgess (Ed.), *Rape and Sexual Assault III: A Research Handbook*, 143-160 (1991) (“I would numb my feelings. I wouldn’t even feel like I was in my body. I would actually leave my body and go somewhere else with my thoughts and with my feelings until he got off, and it was over with. I don’t know how else to explain it except that it felt like rape. It was rape to me.”); J.L. Williams, *Sold Out: A Recovery Guide for Prostitutes Anonymous* (available from P.O. Box 3279, North Las Vegas, NV 89036)(1991) (“I would just go someplace else mentally as well as emotionally. Soon I just lost track of days at a time. When I was awake, I started feeling ‘invisible.’ When I would come back home from a call, I used to stand in front of a mirror and pinch myself just to see if I was real. Spending months with people just looking at your body can make you wonder if ‘you’ exist at all.”).

³¹ C.A. Ross, M. Farley, and H.L. Schwartz, “Dissociation Among Women in Prostitution” in M. Farley (Ed.), *Prostitution, Trafficking, & Traumatic Stress* 199-212 (2003).

³² M. Farley, “‘Bad For the Body, Bad for the Heart’: Prostitution Harms Women Even if Legalized or Decriminalized,” *Violence Against Women* Vol. 10 No. 10, 1097 (2004); M. Farley et al, “Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder” in *Journal of Trauma Practice* Vol. 2 No. 3/4, 52-53 (2003).

³³ “AIDS stalks imported sex slaves,” *South China Morning Post*, Nov. 10, 2003.

³⁴ D. Leidholdt, “Prostitution and Trafficking in Women: An Intimate Relationship,” *Journal of Trauma Practice* Vol. 2 No. 3/4, 167-183 (2003).

³⁵ *Id.*

³⁶ W. Freed, “From Duty to Despair: Brothel Prostitution in Cambodia” in *Journal of Trauma Practice* Vol. 2, No. 3/4, 133-146 (2003).

³⁷ D. Leidholdt, “Prostitution and Trafficking in Women: An Intimate Relationship,” *Journal of Trauma Practice* Vol. 2 No. 3/4, 167-183 (2003).

³⁸ *Id.*

myths as well as more violent themselves.³⁹ A thriving sex industry increases child prostitution and other sex crimes⁴⁰ and has a negative effect on how women are regarded by men.⁴¹

Violence is a criminal act - “consent” is no defense

Some people try to make a distinction between “voluntary” and “forced” prostitution. However, violence is often the precursor to women entering into any prostitution. Pimps and customers use the same methods as other abusers: denial, economic abuse, isolation, verbal abuse, threats and intimidation, physical and sexual assault, and captivity. The only difference between the behavior of pimps and johns and a recognized crime is that money is paid. But a criminal cannot avoid prosecution because he paid the victim or the victim allegedly “consented”. A criminal act is so defined as against societal norms as well as the specific victim in particular. So no amount of alleged victim “consent” can overturn the societal norm that represents the baseline of acceptable behavior.

The public nature of criminal law is also reflected in the nature of criminal wrongs which involve interference with the victim’s fundamental rights (life, personal integrity, privacy etc.), *i.e.* rights in relation to which the state has a duty of protection. The State is normally deemed to have a ‘duty of protection’ in relation to fundamental rights protected by the various international instruments such as European Convention on Human Rights and the various Protocols thereto. Such rights usually entail right to life, protection from torture, inhuman and degrading treatment and punishment, protection of human dignity and integrity, protection of fundamental political freedoms and protection of property (i.e., the very basic protection granted to individuals in a democratic polity). Criminal law is one of the most efficient tools to ensure such protection of fundamental rights. This is so in particular given the fact that its enforcement is fully in the hands of the state and private individual is normally not entitled to interfere with it. In some systems, interference with enforcement of criminal law (criminal justice) is criminalized.⁴²

Criminal law should be used to protect women from the inhuman and degrading treatment and physical and mental harm they endure. They cannot “consent” to such harm as it violates basic societal values that are internationally and Constitutionally protected.

Consent means more than just agreeing to do an act. There must be informed consent and available options. Without knowledge of the reality of prostitution, women cannot make an informed judgment about their willingness to enter into the arrangement. However, that is rarely the question. More often is the lack of available options. Most prostituted women were sexually abused within the family.⁴³ The average age of entry into prostitution is fourteen. At fourteen a girl is not able to drive a car or sign a contract, yet somehow she is adult enough to give consent to enter into violent sex acts. In Arizona, minors cannot consent to have sex, yet children under ten are being arrested for prostitution. This is a legal impossibility – if they cannot consent to sex, then they cannot have the *mens rea* necessary to commit prostitution. It’s child abuse for which the child is arrested.

³⁹ Op Cit, Prostitution is Sexual violence...

⁴⁰ Raymond, Janice G, 10 Reasons for Not Legalizing Prostitution.. Journal of Trauma Practice, 2, 2003, 315-332; Farley, Melissa (Ed.), Prostitution, Trafficking and Traumatic Stress, Binghamton; Haworth Press, 2003, and Bad for the Body ...

⁴¹ Op Cit, The Swedish Law...

⁴² David Reingewirtz and Helena Dolezalova of Wilmer Hale, Brussels, Dec. 2005.

⁴³ Op Cit. 10 Reasons. ..

Homelessness is the impetus for many women to enter prostitution. Poverty stricken Central American women desperately fleeing to the U.S. are often forced into prostitution when smugglers steal their money and border authorities deport them back to Mexico. One woman caught in this deadly cycle asks, “What else can I do now?” Another asks, “I can’t go home, and I can’t tell my family where I am ... What choice did I have?”⁴⁴ Victims are subjected to repeated violence, and once she understands that she cannot escape, then it is claimed she has “consented”. Even law enforcement officers and social service providers know that women do not enter prostitution voluntarily.⁴⁵

The Special Rapporteur of the UN on Trafficking pointed out in her 2005 report⁴⁶ that the issue of demand remained a salient point and found that:

29. The issue of demand is of crucial importance in addressing trafficking of women and children from a human rights perspective, and was recognized as a crucial issue in the Protocol.

30. Preliminarily, the Special Rapporteur wishes to condemn the continued practice of source countries turning a blind eye to sex trafficking as well as to the debt bondage and slavery-like conditions suffered by trafficking victims within their borders and abroad.

She also made specific findings about the irrelevance of “consent”:

The irrelevance of consent

37. As a matter of legal interpretation, article 3 (b) of the Protocol significantly widens the scope and meaning of trafficking. Thus, any recitation of the Protocol definition must include mention of article 3 (b) in order to convey the agreed-upon scope and meaning of trafficking.

38. As noted above, it is logically impossible under the Protocol definition to have a case of adult trafficking in which one or more of the means set forth in subparagraph (a) have not been used. At least one of the means set forth in subparagraph (a) must be used, or else the act in question does not count as an act of trafficking.

39. In other words, the second clause of article 3 (b) (“where any of the means set forth in subparagraph (a) have been used”) will be satisfied in 100 per cent of adult trafficking cases, because it is a logical prerequisite to establishing that a case of adult trafficking has occurred.

40. It should now be clear that the second clause of article 3 (b) is referential to the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. It does not limit the universe of cases in which consent is deemed irrelevant. Simply put, the victim’s consent to the intended exploitation set forth in subparagraph (a) is irrelevant in all trafficking cases under the Protocol definition.¹

41. The Protocol does not necessarily require States to abolish all possible forms of prostitution.² It does, however, require States to act in good faith towards the abolition of all forms of child prostitution and all forms of adult prostitution in which people are recruited, transported, harboured, or received by means of the threat or use

⁴⁴ Mary Jordan, “Shame and Survival”, The Washington Post, reprinted in The Cambodia Daily, Saturday and Sunday, December 18-19, 2004.

⁴⁵ Raymond, Janice G. , 10 Reasons for Not Legalizing Prostitution, Journal of Trauma Practice, 2, 2003, 315-332; Farley, Melissa (Ed.), Prostitution, Trafficking and Traumatic Stress, Binghamton; Haworth Press, 2003.

⁴⁶ United Nations, Report of the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, Sigma Huda*E/CN.4/2006/62, 20 February 2006.

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 one person having control over another, for the purpose of exploiting that person's prostitution.

42. For the most part, prostitution as actually practised in the world usually does satisfy the elements of trafficking. It is rare that one finds a case in which the path to prostitution and/or a person's experiences within prostitution do not involve, at the very least, an abuse of power and/or an abuse of vulnerability. Power and vulnerability in this context must be understood to include power disparities based on gender, race, ethnicity and poverty. Put simply, the road to prostitution and life within "the life" is rarely one marked by empowerment or adequate options.

43. Thus, State parties with legalized prostitution industries have a heavy responsibility to ensure that the conditions which actually pertain to the practice of prostitution within their borders are free from the illicit means delineated in subparagraph (a) of the Protocol definition, so as to ensure that their legalized prostitution regimes are not simply perpetuating widespread and systematic trafficking. As current conditions throughout the world attest, States parties that maintain legalized prostitution are far from satisfying this obligation.

Making the least bad of bad choices is commonly the only "choice" available to those who have been traumatized or oppressed. It is no more a "free choice" than to cut oneself or drink to numb psychic pain are choices freely made. Would we say that a concentration camp survivor who collaborated with the guards to get food and stay alive had consented to his abuse? Would we say an enslaved African in the Americas who became the house servant had done so voluntarily? Of course we would not. Prostitution is no different.

Legalization Does not Eliminate Violence in Prostitution

Research has shown that legalization does not protect women nor eliminate the violence against them.⁴⁷ Dutch women do not think legalization has helped them nor do women in Colombia, Germany, Mexico, South Africa, Washington, D.C, or Zambia. Some women in the U.S. and New Zealand actually felt safer on the streets where they could reject customers and write down license plate numbers. German women do not register under the prostitution laws, because they don't want to be labeled as a "prostitute" for the rest of their lives, and because they feared that the zoned areas were more dangerous. Protesting to a pimp about mistreatment can result in more violence or firing. A Scotland police officer noted that women have less control in brothels because the owners control what they do and with whom, and thus they are exposed to even more violence.⁴⁸

A study in Cambodia,⁴⁹ found:

Sex work is not criminalised in Cambodia. However, most street sex workers are frequently harassed and abused in various ways, merely because of their occupation. This research attempts to discover the real needs and vulnerabilities of such sex workers and make constructive recommendations to legislators and policymakers to ensure the protection of their rights.

⁴⁷ Farley, Melissa, "Bad for the Body, Bad for the Heart": Prostitution Harms Women Even if Legalized or Decriminalized, *Violence Against Women*, Vol. 10 No 10, October 2004, 1087-1125.

⁴⁸ Op Cit, *Bad for the Body* ...

⁴⁹ Nakagawa, Kasumi, *Sex Workers on the Street – Living with Violence* – January 2006, VAWCC, funded by DanChurch Aid.

The research team conducted in-depth interviews with a total of 24 street sex workers. Strikingly, 21% of respondents to the research were girls under 18 years old; 41% were divorced with one or two children. In addition to street sex workers, 59 non-sex workers, including students and market vendors, were interviewed, in order to obtain the perception of Cambodian society towards sex workers based on the street. Almost all the sex workers said their final decision to enter the sex industry was driven by extreme poverty and the lack of any other opportunity to generate income. A common scenario was that one of the sex worker's parents had become ill and had incurred significant debt from the medical treatment. As 'good daughters', they came to Phnom Penh to support their parents and pay back the family debt.

Almost all the sex workers complained to the research team that they had suffered considerably from some form of violence by clients; they are often beaten, kicked and raped. Gang rape by groups of young students is particularly common. Sex workers, however, have kept silent regarding this suffering. Despite frequent violence and fear of potential violence, street sex workers are still determined to work, because they are in urgent need of money to support their impoverished rural families.

Most of the sex workers suffer from low self-esteem and social discrimination. Some insist that they can never reveal their current occupations to their family, especially to their parents, because they fear that their parents will be ashamed or will abandon them, accusing them of becoming 'broken girls'. Even though most of them are willing to quit when they can save sufficient money to support their family, the lack of adequate skills to make a living makes it difficult for them to take this step.

Legalization does not assist women in bringing criminal or civil claims for the harm done to them. Theoretically any violence against a prostituted woman could have been criminally prosecuted before the legalization. The problem is not the law; it's the attitude. But that attitude is not likely to change just because a law makes prostitution legal, as is illustrated by the Australian examples above. In fact, law enforcement is then less likely to charge a criminal act since it is "legal".

Research in the U.K. found:

Research published in 2001 showed that almost two-thirds of prostitutes in three cities said their main reason for selling sex was to fund a drug habit, and the Home Office estimates that 95 per cent of street prostitutes use heroin or crack cocaine. Most prostitutes in Britain come from poor backgrounds, more than two-thirds enter the sex trade before the age of 18, and half have suffered sex abuse at home before being taken up by pimps. None of this supports the arguments of those who claim that prostitutes and trafficked women are making a free choice or that the answer to both problems is regulation - legalising some or all aspects of the sex trade.

Far from containing it, legalisation would allow thousands more women and girls to be drawn into prostitution without any demonstrable decrease in violence or involvement of criminal gangs. The European countries that have experienced the biggest increases in numbers are those where there are elements of legalisation, namely Germany, the Netherlands, Denmark and Italy; in the Australian state of Victoria, often cited by campaigners for legalisation, the number of prostitutes is said to have doubled between 1994 and 2002. (Australia and the Netherlands also have the world's highest number of sex tourists per capita, supporting the proposition that legalisation normalises the act of buying sex.) There is evidence, too, that legalisation

acts as a "pull factor" for traffickers; in 2003 Amsterdam city council decided to close down its street tolerance zone, the mayor declaring that "it appeared impossible to create a safe and controllable zone for women that was not open to abuse by organised crime".⁵⁰

No amount of legalization can change the fact that sexual violence and physical assault are the norm for women in prostitution resulting in long term physical and psychological harm no matter if the assault was "legal" or illegal. In fact, even those advocating for prostitution admit the violence. Sex Workers Education and Advocacy Taskforce (SWEAT) distribute safety tips on how to check for knives, handcuffs, rope or weapons. A brothel owner in the Netherlands admits that pillows in a room are murder weapons. The Australian Occupation and Safety Codes recommend self-defense training and classes in hostage negotiation skills.⁵¹ Clearly the State knows that prostitution means violence for women. There are other jobs that are known to be dangerous – mining, oil drilling, construction – and recommendations are also made on how to avoid injury. But the anticipated injuries are not crimes as they are in prostitution. Law enforcement does make recommendations about how to avoid criminal acts too, but those recommendations never include to deliberately place yourself in the line of fire as they do in prostitution. Would we suggest that we improve slavery by removing the whips from the overseers? Would we suggest teaching hostage negotiation skills to concentration camp prisoners? Why do we do so in prostitution?

Extensive documentation in the CEDAW Committee Shadow Report, 2005, from Australia shows:

Legalization does not mean, for example, that parties in prostitution will stop engaging in unprotected sex.⁵² Because buyers are willing to pay more money for sex without condoms, extremely risky sex acts "can always be purchased."⁵³ Nor can legalization protect prostituted persons from violent attacks by buyers. In an upscale legal brothel in Australia rooms are equipped with panic buttons, but a bouncer reports that the women's calls for help can never be answered quickly enough to prevent violence by johns, which occurs regularly.⁵⁴

Nor does legalization stop any of the other abuses associated with illegal prostitution, such as brutal physical violence against prostituted persons by pimps, the influence of organized crime in the sex industry, or the trafficking of women for purposes of prostitution. Indeed, countries where prostitution has been legalized in an effort to reduce its harms have experienced quite the opposite result: huge growth in the illegal sex industry. Following legalization of prostitution in Victoria, Australia, legal brothels proliferated, but the greatest expansion was in *illegal* brothels, which

⁵⁰ Joan Smith, Why British men are rapists, Cover story - The New Statesman, , research by Sam Alexandroni, Monday 23rd January 2006.

⁵¹ Op Cit., Bad for the Body, p. 1103

⁵² From the amicus brief filed in Alliance for Open Society International and OSI v. USAID and Andrew Natsios, 05 CV 8209, USDC – SD, USA filed by CATW and Equality Now, December 2005.

⁵³ B. Loff, C. Overs, and P. Longo, "Can Health Programmes Lead to Mistreatment of Sex Workers?" in *Lancet*, 36 1982-1983 (2003). See also H.P. Hynes and J. Raymond, "Put in Harm's Way," *Policing the National Body: Sex, Race, and Criminalization*, 217 (2002)(discussing the high percentage of sex industry buyers unwilling to use condoms and willing to pay extra for sex without condoms, the high physical and economic vulnerability of prostituted women and their corresponding low bargaining power regarding condoms, and the high percentage of prostituted women who have experienced condom breakage).

⁵⁴ S. Jeffreys, "The Legalisation of Prostitution: A Failed Social Experiment" in *Women's Health Watch Newsletter* 64 8-11 (2003)(available at <<http://www.womens-health.org.nz/publications/WHW/whwapr03.htm#legalisation>>).

increased by 300% in one year.⁵⁵ This is because legalizing prostitution creates a hospitable environment for sex tourists and other buyers, thus driving up demand. Local women constitute an inadequate supply, so women and girls are trafficked in to meet the demand. There will always be buyers seeking women and girls who are younger, cheaper, and easier to control. The result is that legalization not only places the imprimatur of the state on violence and abuse intrinsic to the prostitution industry, but also increases both legal and illegal prostitution.⁵⁶

Australia's state of New South Wales decriminalized prostitution in 1995. A report by the think-tank Maxim Institute states: "Decriminalization of prostitution not only fails to deliver, it contributes to worsening the problems inherent in the sex industry." It points to the 3,700 children working Australia's streets and says the majority works in Victoria, where prostitution was legalized, and New South Wales, where it was decriminalized. The report also said the rate of gonorrhea has "soared" since Australia's laws changed and drugs "saturate" 85 per cent of the industry.

Prostitution was decriminalized in New Zealand in 2003. A July 2005 report by Manukau city council said the nuisance factor escalated and street workers quadrupled despite bylaws regulating the location of brothels. "It was widely expected that the outcome of legalizing prostitution would be that sex trade workers would generally operate from safe, regulated and legal brothels. In Manukau, that has not been the case," says the report. New Zealand police, meanwhile, say organized crime groups are involved in many aspects of prostitution.

A lawyer in New Zealand is braving serious criticism to say that the prostitution law is a disaster. He alleges there is an explosion of teenage prostitution and cites murders of two women. The supporters of the law not only attack him for claims they say can't be true because the law was designed to prevent that, but claim that the murder of the two women is not the issue, rather the issue is how good is the police relation with the community. Many times laws do not in fact do what they are designed to do and surely prevention of the murders would have been far preferable to a cozy relationship.⁵⁷

For a case in point, the following is a description of the legalization of prostitution in Australia, again from the CEDAW Committee Shadow Report 2005.

How the legalization of prostitution has occurred in Australia⁵⁸

Brothel prostitution was legalised in the states of Victoria in 1984 (with the current model of legalisation introduced in 1994), the Australian Capital Territory in 1992, and Queensland in 1999. Legalisation involves a licensing system with compliance regulations. New South Wales decriminalised brothel prostitution and street prostitution in some areas in 1995 (i.e. brothels were to be treated as any other business with no need for licenses).

In all states and territories brothel prostitution is subject to planning laws that can forbid brothels in certain areas. In Marrickville in New South Wales, for instance, new

⁵⁵ J. Raymond, "Ten Reasons for *Not* Legalizing Prostitution and a Legal Response to the Demand for Prostitution," *Journal of Trauma Practice* Vol. 2 No. 3/4, 320-321 (2003).

⁵⁶ D. Leidholdt, "Prostitution and Trafficking in Women: An Intimate Relationship," *Journal of Trauma Practice* Vol. 2 No. 3/4, 167-183 (2003).

⁵⁷ By Jo McKenzie-McClean, Prostitution law change 'a disaster', < <http://www.stuff.co.nz/>, 18 April 2006.

⁵⁸ Shadow Report for the CEDAW Committee on Australia: From CATW-Australia, December 2005.

planning controls were introduced this year that dictate that brothels should be 75 metres apart.⁵⁹ State regulatory systems may require health examinations for prostituted women.

Escort prostitution is legalised in Victoria but not in Queensland. But escort prostitution is estimated to constitute forty per cent of prostitution in Australia.⁶⁰ In Queensland the legal brothel sector currently seeks to change the legislation to enable legal brothels to run legalised escort services in order to capture some of this market. Wherever brothel prostitution is legalised the industry seeks constantly to change the legislation to remove controls and make the industry more profitable by, for instance, eliminating prohibitions on advertising for workers, or allowing brothels to have a larger number of rooms.

Street prostitution remains illegal in all jurisdictions except in designated tolerance zones in New South Wales. State governments that legalised brothel and/or escort prostitution justified their decision on the grounds that street prostitution would be reduced through moving women into 'safer' brothels. This tactic has not worked, with the state of Victoria experiencing a hundred per cent real increase in its number of street prostituted women since 1994. The Victorian government in 2001 also attempted to introduce tolerance zones for street prostitution, including government-run 'safe' houses for hourly rent by women and their buyers. These developments indicate that legalised brothel and escort prostitution regimes cannot be justified on the basis of protection of, and concern for, women in street prostitution.

Legalisation also means that prostitution is treated just like any other business, with the Business Licensing Authority (BLA) overseeing brothels in the state of Victoria. This body also oversees travel agents and car yards. The BLA merely collects licensing fees from brothel and escort agency operators, and has no expertise in supervising the prostitution industry. In the Victorian 1994 legislation, it was stated that part of the licensing fees should be used for exit programs and safety monitoring. Neither of these safeguards has been introduced.

Legalisation causes legal and illegal prostitution to grow

Australian states that have legalised brothel prostitution say that they aim to control the size and shape of the industry and contain organised crime. This aim has not been fulfilled. Where legalisation is introduced the number of legal brothels rises and there always seems to be an illegal sector that is considerably larger than the legal sector. In Victoria, estimates from the police and the legal brothel industry put the number of illegal brothels at 400, four times more than the legal ones.⁶¹ Even the legal brothels may be connected with organised crime. Victoria, ACT and Queensland require police checks on prospective brothel owners to make sure that they do not have criminal offences on their records. But such checks are not necessarily effective. In Melbourne, for instance, one of the largest brothels was set up by the nephew of 'the notorious late Robert Trimbole'.⁶² In some cases, it seems, brothel owners may just be members of organised crime families who do not have offences to their names. In other cases men with convictions can effectively run legal brothels whilst not being the official owners through front people or organisations.

⁵⁹ New planning controls in Marrickville dictate that sex industry premises must be 75 metres apart. Quoted in "Variety of premises," *The Glebe*, 17 March 2005.

⁶⁰ "Callgirls are turning a trick with bestsellers - Oldest tricks in the book," *The Weekend Australian*, p. B01, 12 February 2005.

⁶¹ Pdraic Murphy, "Licensed brothels call for blitz on illegal sex shops," *The Age*, 3 June 2002.

⁶² Raymond Hoser, *Victoria Police corruption* (Doncaster, Vic.: Kotabi Publishing), 1999.

Another link between legalised prostitution and organised crime was demonstrated in July 2004 when the Victorian Business Licensing Authority rejected an application to continue business from Top of the Town brothel owner Chailai Richardson. Ms Richardson is married to convicted child prostitution offender (convicted in 1992), Peter Richardson, and was identified by the BLA as merely a front for Peter Richardson's successful brothel business. The Richardsons are also connected to organised crime figure Tony Mokbel through the former owner of the building where the brothel is housed, property developer Jack Smit. The Top of the Town brothel is one of the most successful brothels in Melbourne with 11 rooms (120 prostituted women), and is worth approximately AUD8 million.⁶³

There have been 18 linked organised crime killings in Melbourne since 1998. In addition, in the second half of 2003, there were at least four unsolved murders linked to Melbourne's sex industry. On October 30, 2003, two brothel operators were executed in their suburban home. On August 19, the naked body of a prostituted woman in St Kilda was found next to a highway north of Melbourne. On June 4, 2003 a male prostitute was murdered as he left his home to defend rape charges at a County Court.⁶⁴

An increase in prostitution means an increase in the numbers of women subjected to the abuse entailed in their 'exploitation' i.e. more women and girls will suffer violence, humiliation, sexually transmitted infections, post-traumatic stress, suicidality, drug dependence, to survive. The growth of the industry internationally is evidenced by a 2005 study in the UK found that, over a 10-year period, the number of men in Britain who have paid for sex has almost doubled. In 1990, 5.6% of 11,000 men asked said they had paid for sex, but by 2000 the figure was over 9%.⁶⁵ A new study shows the number of men visiting prostitutes has doubled. But should we be surprised when attitudes to sex have shifted so dramatically? The study's authors attribute this increase in prostitution abuse by men to the fact that the sex industry has been normalised in recent years through greater acceptance of pornography, men's use of prostituted women abroad on business trips and through sex tourism, and through tabletop dancing venues and the Internet. The effects of legalisation on the numbers of women involved in prostitution is clear from a comparison of Germany, which has legalised brothels and 3.8 prostituted people per 1000 population, and Sweden, which penalises the male buyers and has 0.3 prostituted people per 1000 population.⁶⁶

Legalisation of prostitution and the problem of police corruption

Governments that legalise prostitution often argue that it will eliminate police corruption. In two states royal commissions have been held to investigate the problem of police corruption with particular reference to prostitution. These are the Fitzgerald Inquiry in Queensland (1989) and the Wood Commission in New South Wales (1997). There is evidence for the corruption of police, the magistracy, the judiciary, lawyers and politicians in relation to prostitution in some published sources and in the Royal Commission reports.⁶⁷ In Victoria and in New South Wales there is evidence to suggest that the practice of giving hotshots (heroin overdoses) has been used by police involved in the prostitution industry to eliminate troublesome women.⁶⁸ Victorian

⁶³ "Madam's links to alleged drug boss; Brothel owner fights for licence," Herald Sun, 3 December 2004, p. 9.

⁶⁴ "All's crook down south," The Daily Telegraph, 26 July 2003, p. 29.

⁶⁵ "Why are more men using prostitutes?," The Magazine, <<http://news.bbc.co.uk/1/hi/magazine/4488254.stm>>, 1 December 2005.

⁶⁶ Ward, Helen and Day, Sophie, "Sex work in context," in Day, Sophie and Ward, Helen (eds) 2004: Sex Work, Mobility and Health in Europe. London: Kegan Paul.

⁶⁷ Hoser, 1999; Bottom, Bob, The Godfather in Australia, 1988.

⁶⁸ Evidence to Wood Commission, 1997.

police effectively stopped policing brothels when its vice squad was closed in mid-1999. Since then complaints about brothels have been referred to local governments.⁶⁹

In March 2005, an officer of the Victorian branch of the Australian tax office was accused of leaking information on black market tobacco in exchange for sex with a prostituted woman at a Melbourne brothel. It was speculated that the brothel was the beneficiary of the information, which further suggests links between the legal prostitution industry and the illegal drugs market.⁷⁰

Prostitution violence in Australia

Concern for the safety of the women in prostitution is often given as one of the reasons for legalising or decriminalising by governments. Women in legalised brothel prostitution in Australia experience two forms of violence, that which is not paid for, and that which is. Unpaid for violence includes rapes, assaults and murder. The paid for or 'commercial' violence includes all the day-to-day prostitution activities that, research tells us, prostituted women routinely have to dissociate emotionally from in order to survive. Women do not escape the unpaid for violence in legal brothels. One example of unpaid for violence comes from the classiest brothel in Melbourne, The Daily Planet, which was launched on the Australian stock exchange in February 2003. The Daily Planet has alarm buttons in the rooms that women can press to call the bouncer. Unfortunately women only press these once they have been hit. A bouncer at the brothel interviewed in the local paper explains that he runs up and breaks the door open when the bell rings (the locks are flimsy).⁷¹ But the damage has already been done. There is no way to prevent women being hit in the best-run brothels and it is, according to the bouncer's account, not uncommon.

Mary Sullivan's research on the Occupational Health and Safety Codes for brothels developed in Australia by state governments and prostitutes' rights organisations is very useful for demonstrating the violence of the industry.⁷² The idea behind OHS for brothels is that prostitution can be treated like hairdressing or office work and the codes do cover such things as slipping on wet floors. However, where the codes address the violence of prostitution they show the reality of the power relations involved in grim detail. There is a state supported programme on self-defence and conflict resolution for the sex industry, for instance, which shows that prostituted women can find themselves in situations similar to hostages. Women are trained in how to react to threatening situations.

The Ugly Mugs programme, which operates in all states that have legalised prostitution, shows how fundamentally dangerous the 'work' of prostitution is. In the programme reports on violent buyers are distributed to police, social workers and prostituted women. This is not necessary in other forms of women's work. The OHS codes suggest that women exercise their 'intuition' to help work out whether the buyers are likely to be violent. Prostituted women can, however, find themselves fined by their employers if they refuse a client they consider to be dangerous.

The OHS codes recommend that sadomasochist practice is safer than conventional sex because it is less likely to communicate sexually transmitted infections. But they

⁶⁹ "Police seek \$10m to hit sex slavery," The Australian, 26 November 2003, p. 7.

⁷⁰ Mark Butler, "Sex for secrets in tax office scandal – 'Corrupt' agent arrested," The Daily Telegraph, 23 March 2005, p. 7.

⁷¹ "Everything but the girls," The Sunday Age, 31 May 1998.

⁷² Sullivan, Mary, "Making Sex Work in Victoria," PhD 2004. Department of Political Science, The University of Melbourne.

recommend training in the use of sadomasochist equipment such as branding irons, whips and canes, hot wax and piercing instruments because of the damage they cause. Body fluids such as blood, vomit, urine, faeces, saliva and semen, they point out, may contain infectious organisms. There is advice on how to do fistfucking of the anus and the vagina, which can tear the colon and be life threatening.

Legalisation makes women vulnerable to having to perform particularly brutal practices, because greater competition gives them less bargaining power, and they have to do what brothel owners demand. One result is that there is a greatly increased demand for anal sex. Prostituted women charge more for anal sex because it is always painful but charge extra if the penis is large because that causes particular pain.⁷³

An autobiography of a prostituted woman from Melbourne, Victoria gives a useful description of the practices in an ordinary legal brothel. The author describes how she tries to maintain control of the discomfort and pain she has to endure.⁷⁴

Control, not to squeal when a man grabbed my breast hard enough to make it twinge. Control to keep my legs stretched in the air even when they were trembling. Control to brace against pounding from behind, as my face mashed in to the pillow and my arms shuddered and my spine jarred with every thrust. Control, not to gag at a slimy tongue in my mouth, burrowing wetly into my ear, licking at my throat. Control not to twitch when a fingernail suddenly dug into my anus, when a cock scraped into my vagina against burning skin and I felt my face go pale with pain.

If OHS guidelines are nonsensical in relation to legal brothel prostitution such as described above, they are outright ridiculous when considering escort prostitution, which is legal in Victoria. The escort industry involves women visiting the private homes, cars, or hotel rooms of buyers, where no checks have been carried out for safety, hygiene, or any of the other usual workplace health and safety targets. The safety guidelines published by the state government prostitution outreach organisation called RhED (Resourcing Health and Education in the Sex Industry), attached to a government community health service, shows just how ridiculous the idea of occupational health and safety in relation to escort prostitution is.⁷⁵ The organisation describes itself as a 'service for the sex industry in Victoria' to provide health, education, support, and advocacy services to prostituted women. Their safety tips for escort workers, posted on the Web, suggest such tactics as asking for a tour of the house on arrival to check out the exits and picking up a heavy ashtray to smash the man's stereo equipment or throw through a window if he gets difficult. They also include:

- Pens, screech whistles and breath sprays can make good weapons, and may allow you the opportunity to get away
- Assert yourself in the first 10 minutes of meeting the client. From the moment you are alone with the client it's important to take control and stay in control of the situation. Be polite and friendly – it's often the best way to gain control – even when the client is behaving like a jerk.
- Let the client know that there is someone waiting outside for you, even if you are not using a driver.

⁷³ Barclay, Ingrid. "Interactive Processes in Brothel Prostitution," Honours Thesis. Department of Political Science, The University of Melbourne, 2001.

⁷⁴ Holden, Kate, In My Skin, Melbourne: The Text Publishing Company, 2005. p. 172.

⁷⁵ <<http://www.sexworker.org.au>>

- If you drive yourself, park your car so only the back can be seen from the house (for example behind a tree or some bushes) and leave the car radio on if possible (this will suggest to the client that someone is waiting for you).
- Have your belongings near the door in a pile so you can grab them if you need to get away quickly.

These guidelines are similar to what women are told about how to avoid rape – precisely what prostitution is.

The Netherlands Experiment Proves that Decriminalization is a Failure

It is estimated that about 30 000 persons ‘work’ in prostitution in the Netherlands.⁷⁶ The sex abuse industry in the country has a turnover of 1.6 billion € every year.⁷⁷ The Netherlands’ strategy to eliminate trafficking was to decriminalize prostitution and initiate a license system for brothel operators that the municipalities handle. It was seen as a way to stop ignoring the brothels and instead admits their existence and the “profession of sex workers”.⁷⁸ The goal of decriminalization and regulation of prostitution was to raise working conditions for sex workers, make the sex industry more transparent and allow the police to monitor the situation effectively. Regulation on design and construction of brothels was initiated in order to allegedly protect the mental and physical health, well-being and social situation of prostitutes along with regulations on the way brothels are operated in order to prohibit employment of minors and illegal immigrants.

The Netherlands passed a law on Abolition of the Ban of Brothels in 2000. The purpose of the law was to increase the surveillance of the approximately 2,000 brothels and sex-clubs in the country.⁷⁹ Then it was thought to be possible to work against the so-called “involuntary” prostitution and the exploitation of minors and illegal immigrants in prostitution, and other forms of unacceptable forms of sexual exploitation.⁸⁰ These regulations were supposed to make it unattractive and impossible to employ illegal immigrants as prostitutes and then trafficking to the Netherlands would diminish.⁸¹ The State has initiated a Policy Group, Abolition of the Ban of Brothels Supplementary Policy Group, under the Ministry of Justice.

The law was evaluated in 2002, and it was noted that the law had not succeeded in accomplishing its purpose to cease the illegal prostitution, where trafficking is common. Brothels, which have moved to areas where the surveillance is the least, have continued their activity without further disturbance from the authorities, and thus the problem with minors and illegal immigrants in prostitution had not diminished. The customers to the legal brothels have diminished, and this is seen as a problem since the lesser chances of profit for these brothel-owners have decreased their will to cooperate with the authorities and respect the law.⁸²

The law has been a complete failure. The alleged goal of legalization to prevent trafficking has not worked. A story in January 2006 from the UN Information Service⁸³ welcomes a new campaign in the Netherlands to identify victims of trafficking who have been forced into

⁷⁶ CEDAW/C/NET/3, p. 107.

⁷⁷ Mänskliga rättigheter i Nederländerna 2003, Utrikesdepartementet, p.6.

⁷⁸ CEDAW/C/NET/3, p. 30.

⁷⁹ Mänskliga rättigheter i Nederländerna 2003, Utrikesdepartementet, p. 5.

⁸⁰ CEDAW/C/NET/3, p. 33.

⁸¹ <[http://www.coe.int/T/E/human_rights/Trafficking/3_Documents/National_Laws/EG\(2002\)2VolII_E.asp#P3088_223239](http://www.coe.int/T/E/human_rights/Trafficking/3_Documents/National_Laws/EG(2002)2VolII_E.asp#P3088_223239)>

⁸² Mänskliga rättigheter i Nederländerna 2003, Utrikesdepartementet, p. 5.

⁸³ UNIS/CP/529, <<http://www.unis.unvienna.org/unis/pressrels/2006/uniscp529.html>> 12 January 2006p

prostitution. "Mr. Costa said, "Victims of trafficking suffer the most cruel, degrading and violent treatment. I encourage people to support this important campaign and provide information to their local police or through the hotline. I hope other European countries will also do more to end sexual exploitation." "What Mr. Costa fails to realize is that you cannot end sexual exploitation so long as you endorse prostitution. Prostituted women/girls will always have to be procured anew. If demand is not addressed, there will never be enough supply of women as 'product' and trafficking will continue.

Following the Hague Ministerial Declaration on European Guidelines for effective measures to prevent and combat trafficking in women for the purpose of sexual exploitation from 1997, the Netherlands appointed a National Rapporteur on Traffic of Persons, Mensenhandel.⁸⁴ This bureau estimated the number of victims of human trafficking in the Netherlands to be about 3.500 persons in 2003⁸⁵.

The international recruitment of persons for 'sex workers' is criminalized, but not domestic or 'voluntary' prostitution. Everybody seems to agree that trafficking is a violation of human rights, but trafficking would not exist without prostitution and the market for it. It is not possible to separate the notions from each other. "Legalization protects some men's rights to cheap, easily accessible sex and pimps' ability to earn a damn good living by getting women to do it."⁸⁶

Many persons agree that prostitution is not an ideal profession, but legitimate it by stating that we do not live in ideal world.⁸⁷ True enough but the ideal of international law is that human rights apply to all, and that we should strive toward it, not accept the status quo. If we just accept injustice, especially because it has so many victims or earns so much money, we would still have African slaves in the Americas.

Pro-prostitution movements ignore the social context. "The pro-prostitution lobby stands on a shaky platform of economic justice built on the false premise that prostitution is a *quid pro quo* commercial sexual transaction and as such should be subject to standard labor laws and protections."⁸⁸ This is simply not so when women do not have equal bargaining power to men. It is simply a contract of adhesion that by definition is not equal.

One alleged reason for legalization in the Netherlands was to regularize prostitution as labor and remove the stigma. This was a lie as indicated by the legal positions that both the Netherlands and Belgium have taken in other legal proceedings. In one case⁸⁹ the Netherlands argued they could refuse entry to prostituted women "on grounds of public interest". If it's in the public interest to refuse entry to the Netherlands because a person was a prostitute, how can it be in the public interest to have legal prostitution? The Secretary of State rejected the applicants stating that, "prostitution is prohibited activity or at least not socially acceptable form of work and cannot be regarded as being either a regular job or a profession." The abolitionists agree but coming from the Secretary of State of the Netherlands, where prostitution was legalized, it shows the hypocrisy toward women and the fact that legalization has nothing to do with improving the health or dignity of the women.

⁸⁴ <[http://www.coe.int/T/E/human_rights/Trafficking/3_Documents/National_laws/EG\(2002\)2VolIII_E.asp#P3088_223239](http://www.coe.int/T/E/human_rights/Trafficking/3_Documents/National_laws/EG(2002)2VolIII_E.asp#P3088_223239)>

⁸⁵ Mänskliga rättigheter i Nederländerna 2003, Utrikesdepartementet, p. 6.

⁸⁶ HWJL, Carter & Giobbe, Duet: Prostitution, Racism and Feminist Discourse, p. 55.

⁸⁷ Askin & Koenig ed., Women and international human rights law, p. 711.

⁸⁸ HWJL, Carter & Giobbe, Duet: Prostitution, Racism and Feminist Discourse, p. 50.

⁸⁹ European Court of Justice, Aldona Malgorzata Jany and others v. Staatssecretaris van Justitie, ECJ C-269/99, 2001-11-20.

Both the Netherlands and Belgian governments argued that prostitution cannot be treated as a regular commercial activity, because it is impossible to determine if the prostitute has freely moved to the Member State to pursue those activities. Precisely. The Governments argue that prostitution may have the appearance of independence, but since procuring (trafficking) is illegal, any employment relationship must be organized illegally. Precisely. Therefore, “prostitutes are normally in a subordinate position in relation to a pimp.” Precisely. (para 54) Both countries argued it’s illegal, it’s immoral and it’s difficult to control. This position is of course contrary to the positions they put forward in their CEDAW reports. The Netherlands continued to hold this opinion as late as 2004⁹⁰ If the Netherlands government agrees that it’s impossible to control trafficking and that every employment relationship with the prostituted woman must be organized illegally and that women are in a subordinate position, then they must outlaw it if they are serious about stopping trafficking. By legalizing it, they admit they are encouraging trafficking.

The Court in *Jany* held that prostitution is an economic activity that can be pursued by a self-employed person but it must be established that there is no relationship of subordination regarding choice, working conditions and conditions of remuneration, it must be under that person’s own responsibility and the monies must be paid directly and in full to the person. Under these requirements, brothels are illegal in the EU because a brothel cannot ever meet these conditions as pointed out by the Special Rapporteur on Trafficking.

The intimate connection between prostitution and trafficking

While there is a great global outcry against trafficking, the majority of trafficking would not exist if prostitution did not exist. Even the Netherlands government admits the two cannot be separated nor can trafficking be controlled while prostitution is legal. Since the average life span for a prostituted woman is four years, a supply of fresh meat must be available. If there were no profit to selling women, the criminals would not bother. If they did not need more and more women for prostitution, there would be no “market”. Legalization leads to expansion. The International Organization of Migration attributes the rise in trafficking to the rise of prostitution in Europe. In the Netherlands, the sex industry increased by twenty-five percent after legalization.⁹¹ No research shows that legalizing prostitution decreases illegal prostitution. In fact, following legalization in Victoria, Australia, the number of legal brothels doubled and illegal brothels went up to three-hundred percent.⁹² The U.S. Department of State recognized that legalized prostitution makes anti-trafficking work more difficult.⁹³

The clear relationship between trafficking in women for purposes of prostitution is made clear in the Shadow Report for the CEDAW Committee in Australia.

Trafficking into prostitution in Australia

Since legalisation of brothel prostitution in Australia the trafficking of women into prostitution has become a growing problem and it is estimated that 1000 trafficked women are currently in Australia. Legalisation creates the demand for trafficking, as brothels seek to find sufficient women to sell, and seek women who are willing to do particularly painful activities and work without condoms. Sex entrepreneurs find it hard to source women locally to supply an expanding industry and trafficked women are more vulnerable and more profitable. In Australia trafficking mostly takes place

⁹⁰ European Court of Justice, See Opinion of Advocate General, Poiares Maduro , Panayotova and others v. Minister voor Vreemdelingenzaken en Integratie. 19 February 2004, ECJ C-327/02.

⁹¹ Op Cit, 10 reasons for not legalizing ...

⁹² Op Cit., Bad for the Body... p. 1099

⁹³ Op Cit., 10 Reasons for Not Legalizing Number 2.

into legal brothels. Traffickers arrange for women to arrive on tourist visas, apply for refugee status for them, and set them to work legally in brothels whilst they await the outcome of their applications in conditions of debt bondage. The refugee applications are routinely rejected, but by then the traffickers have made their money and may themselves tip off the immigration authorities to women who are overstayers.

The traffickers sell the women to legal and illegal brothels in Victoria for AUD15, 000 each. The women are debt bonded so the profits of their enslavement do not go to them. Police estimate they are forced to have sex with 800 men to pay off debts to the traffickers before they receive any money. They appear, a police spokesperson said, to be flown here to order'.⁹⁴ It is estimated that AUD1 million is earned from trafficked women weekly. One indication of the significance of trafficking in the supply of women to the brothels of Melbourne in the state of Victoria is that 25 per cent of the women in the legal brothels of the city were born in Thailand. Thailand has been the main source country for trafficking into prostitution in Australia. It is likely that all of these women will have been in debt bondage even if conditions for some of them have now changed.⁹⁵

The legalisation of the industry has made life easier for the traffickers because women are told that the industry in Australia is safe because it is legal. They are also told that the legality of the industry means that the police will not be sympathetic to complaints.⁹⁶ Legalisation has led to problems of disbelieving trafficked women in court cases. In a case in Victoria 2004, the 'jury did not find in favour of the trafficked women because they could not fathom the idea that debt bondage equalled slavery when a woman had 'consented' to come to Australia for prostitution in the legal industry'.⁹⁷

International jurisprudence defines sexual violence as a crime

UN Protocol to Prevent, Suppress and Punish Trafficking in Persons

States that legalize prostitution are violating several international conventions. Article 9 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children requires that States take legislative action to discourage exploitation and acts that lead to trafficking. By legalizing prostitution, States are doing the exact opposite. Women are specifically being exploited, and prostitution is the driving force behind increased sex trafficking.

Convention on the Elimination of All Forms of Discrimination Against Women

The Convention on the Elimination of all Forms of Discrimination Against Women states clearly in Article Six that States must eliminate the exploitation of prostitution. When a State legalizes prostitution and collects taxes on the abuse of women, it is exploitation. Equality before the law and the dignity of the individual is a norm in every human rights document. How can those norms be squared with the legalization of prostitution that gives *carte blanche* to the torture of women and the sale of women and their body parts as commodities in the market place? This does not promote the equality or dignity of women.

⁹⁴ Padraic Murphy, "Licensed brothels call for blitz on illegal sex shops," *The Age*, 3 June 2002.

⁹⁵ "Sex and the city," *The Sun-Herald*, 11 September 2005.

⁹⁶ Fergus, Lara, 2005 (June) Briefing No. 5. Trafficking in women for sexual exploitation. Published by the Australian Institute of Family Studies ISSN 1448-8140 (Print); ISSN 1448-8167 (Online)
ACSSA Coordinator: Melanie Heenan.

⁹⁷ *Ibid.*

CEDAW General Recommendation 19 declares that violence against women constitutes gender discrimination. According to Recommendation 19, gender-based violence includes physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. It may cause breaches of specific provisions of the Convention, regardless of whether those provisions expressly mention violence. The extensive proof of the violence against women in prostitution clearly violates this Recommendation.

Specific sections in Recommendation 19 say that State Parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act. State Parties shall ensure that laws against abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity. Effective measures shall be taken to overcome attitudes and practices on gender-based violence. It also acknowledges that specific preventive and punitive measures are necessary to overcome trafficking and sexual exploitation. State Parties shall take all legal and other measures that are necessary to provide effective protection of women against gender-based violence, including effective legal measures, preventive and protective measures.⁹⁸

The Vienna Declaration

The Vienna Declaration, in article 1, uses the term ‘violence against women’ as defined as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.” The Declaration declares that gender-based violence and exploitation, including international trafficking, must be eliminated. States should prohibit degrading practices such as trafficking in women and exploitation of prostitution and protect victims and persons in potentially exploitable situations. The Declaration is not legally binding but sets standards for interpretation.

The Slavery Conventions

The conditions of prostituted women are akin to slavery and are banned under the Slavery Convention of 1926 and 1956. The definition of slavery is:

Article I

For the purpose of the present Convention, the following definitions are agreed upon:

- (1) Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.
- (2) The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.

There is no doubt that “powers attaching to the right of ownership” are exercised in prostitution. Women are bought and sold, traded and shipped like merchandise, like cattle. The voices of many survivors have told us this as well as the known existence of actual “slave

⁹⁸ General Recommendation 19, p. 24 a, b, f, g, t.

markets” where women are literally put on the auction block. ⁹⁹ The consumer guide to prostitutes is another example of the ultimate commodification of women who are rated and graded as high or low quality flesh by men who consider themselves connoisseurs. ¹⁰⁰

Under the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956, the definition was expanded to debt bondage (Article 1(a)), and any institution where woman, without a right to refuse, is promised or given in marriage in payment or consideration of money or services, the husband can transfer her, or she is inherited on death (Article 1(c)) or a young child is sold by its parents (Article 1(d). Conveying slaves between countries, or trafficked women is prohibited (Article 3) and the definition was updated. ¹⁰¹

In addition, the International Labor Organization also prohibits the conditions under which prostituted women are held. ¹⁰² The voices of the women are clear. They are held in slavery. They are being traded as slaves. One cannot legalize slavery.

The Convention Against Torture

The prohibition against torture is one of the most fundamental aspects of human rights law. ¹⁰³ It is an assault on the persons identify, respect and dignity. It often involves isolation, removal of clothing, assaulting sexual organs, depriving the victim of sleep, inflicting psychological and physical pain, and rape - many of the exact crimes prostituted women report on a routine basis.

Rogalla suggests looking at individual instances of torture as a social process happening over time. ¹⁰⁴ That process involves ongoing indignities and ill treatment leading to psychological damage, isolation and the invisibility of the victim. That is exactly what has happened to the victims of prostitution. Sexual violence is a means of exercising power and domination over the victim to gain control, degrade and humiliate primarily women by men. Thus,

⁹⁹ Joan Smith, Why British men are rapists, Cover story - The New Statesman, research by Sam Alexandroni, Monday 23rd January 2006.

¹⁰⁰ Alex Johnson, Reporter, A consumer guide to prostitutes is a click away , In explicit detail, Web sites ‘review’ services of professional escorts, MSNBC, <<http://msnbc.msn.com/id/10879309/>> Updated: 7:52 a.m. ET Jan. 20, 2006.

¹⁰¹ Article 7

For the purposes of the present Convention:

(a) "Slavery" means, as defined in the Slavery Convention of 1926, the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, and "slave" means a person in such condition or status;

(b) "A person of servile status" means a person in the condition or status resulting from any of the institutions or practices mentioned in article 1 of this Convention;

(c) "Slave trade" means and includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a person acquired with a view to being sold or exchanged; and, in general, every act of trade or transport in slaves by whatever means of conveyance.

¹⁰² C29 Forced Labour Convention, 1930

Article 2

1. For the purposes of this Convention the term *forced or compulsory labour* shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

Article 25

The illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced.

¹⁰³ Nagan, Winston P. and Atkins, Lucie, The International Law of Torture: From Universal Proscription to Effective Application and Enforcement, Harvard Human Rights Journal, Volume 14, Spring 2001.

¹⁰⁴ Ibid, Modern day Torture ...

discrimination and gender equality is implicated. Many years of feminist activism finally established the reality that rape has more to do with violence than with sex. Rape is gender-based torture used to intimidate and humiliate women and strip women of their integrity and sense of self. The trauma extends far beyond the attack itself including emotional torment, psychological damage, physical injuries, disease, social ostracism and other consequences that devastate the lives of women.¹⁰⁵

Torture attacks the essential physical and psychological integrity of a human being.¹⁰⁶ The court in *Furundzija*¹⁰⁷ stated that among the possible purposes of torture under humanitarian law we must include that of humiliating the victim. They analogized humiliation to intimidation, which is explicitly named. If humiliation is included in humanitarian law, certainly it must be included in human rights law as well.

The International Criminal Court

The International Criminal Court Statute defines crimes against humanity to include rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity ... when committed as part of a widespread or systemic attack directed against a civilian population, with knowledge of the attack ... Article 7(1)(g). International jurisprudence has moved to recognize rape and other sexual offenses toward women for what they are – crimes.

The ad hoc tribunals

The East Timor Regulations promulgated by the United Nations Transitional Administration¹⁰⁸ include sexual offenses as a serious crime (1.3(e)). As crimes against humanity, it includes rape, sexual slavery, enforced prostitution and other forms of sexual violence of comparable style (5.1(g)). Torture is defined as the infliction of severe pain or suffering either physical or mental in custody or under the control of the abuser (5.2(d)).

In 1998, the Rwanda Tribunal defined rape as a form of genocide¹⁰⁹ and the Yugoslavia Tribunal defined rape as a form of torture in *Celebici*¹¹⁰ and *Furundzija*¹¹¹. The statutes of both tribunals list rape among the crimes against humanity and through jurisprudence of both, rape and other forms of sexual and gender violence have been recognized as genocide, torture and other inhumane acts.

The acts of the defendants at the International Criminal Tribunal for the Former Yugoslavia¹¹² were very similar to the acts done to prostituted women daily as found in the studies cited

¹⁰⁵ Lives blown apart: Crimes against women in times of conflict, Amnesty International, ACT 77/075/2004, 8 December 2004.

¹⁰⁶ Nagan, Winston P. and Atkins, Lucie, *The International Law of Torture: From Universal Proscription to Effective Application and Enforcement*, Harvard Human Rights Journal, Volume 14, Spring 2001.

¹⁰⁷ International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Anto Furundzija* (1998) ICTY3 (10 December 1998)

¹⁰⁸ Regulation No. 2000/15 On the Establishment of Panels with Exclusive Jurisdiction over Serious Criminal Offenses.

¹⁰⁹ International Criminal Tribunal for Rwanda, *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgment of 2 September 1996.

¹¹⁰ International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Zejnir Delalic, Zdravko Mucic (aka Pavo), Hazim Delic & Esad Land.o (aka Zenga) (Celebici Case)* (2001) ICTY 1 (29 February 2001).

¹¹¹ International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Anto Furundzija* (1998) ICTY3 (10 December 1998)

¹¹² International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Anto Furundzija* (1998) ICTY3 (10 December 1998)

in this paper. Soldiers rubbed a knife against her inner thigh and lower stomach, threatened to put a knife into her vagina, badly beat one victim, beat the women on the feet with a baton, and forced them to have oral and vaginal intercourse as well as lick his penis. Victims were forced to stand naked, their children were threatened, and they were locked in a room with only a small blanket. The court found that the victim experienced severe physical and mental suffering.

The court held that under international human rights law, the prohibition on inhuman and degrading treatment and torture is a peremptory norm or *jus cogens*. A State cannot use any excuse to justify those acts,¹¹³ including that it is legalized prostitution. The fact that inhuman and degrading treatment and torture is *jus cogens* prevents any State from passing any legislative, administrative or judicial act authorizing the acts. States are obligated to prevent the acts and must take measures to end any such behavior that is occurring. Any legislation allowing it must be repealed. Instead, States are passing legislation allowing it in the form of prostitution. Thus the laws passed by the United States, Australia, New Zealand, the Netherlands and Germany legalizing prostitution are in violation of international law.

Further, the State has an obligation to other States as well. The facts show that legalized prostitution drives sex trafficking. Therefore, States owe an obligation to other States to prevent sex trafficking by ending prostitution. The Convention against Torture was not intended to leave persons without redress because their State was incapable or disinclined to protect them.¹¹⁴ The victim is protected regardless of their character or their own actions, even the torturer himself.¹¹⁵

In another case of the ICTY,¹¹⁶ the victims also described the types of acts they were subjected to which included oral and vaginal rape, beating, threats to cut her throat, the apartment was locked, there was no access to the outside world, the men had knives, rifles and pistols, and the women had to obey every command including cleaning and serving food and drink. They were stripped and ordered to dance, and they were sold. One woman felt like she was his property. These acts are identical to the lives described by prostituted women. The tribunal found that such acts “no doubt constituting serious violations of common Article 3, entail criminal responsibility under customary international law.”¹¹⁷ The tribunal went further than the tribunal in Furundzija and discussed the issue of factors other than coercion or force or threat of force that would render sex non-consensual or non-voluntary on the part of the victim. The court found that the basic underlying legal principle was that sexual penetration is rape if it is not truly voluntary or consensual on the part of the victim, which goes beyond only looking at force but also looking at sexual autonomy. Sexual autonomy is violated whenever the person has not freely agreed to it or is otherwise not a voluntary participant.¹¹⁸ Prostituted women continually say they have no ability to control who the clients are or what acts they must perform, and in fact they have less control in legalized brothels than on the street.

The ICTY also concluded that the definition of rape meant more than just body parts but must include intimidation, degradation, humiliation, discrimination, punishment, control or

¹¹³ International Criminal Tribunal for the former Yugoslavia, Prosecutor v. Anto Furundzija (1998) ICTY3 (10 December 1998)

¹¹⁴ Kinslor, Joanne, Non-refoulement and torture: The adequacy of Australia’s laws and practices in safeguarding asylum-seekers from torture, Australian Journal of Human Rights, 8, 2000.

¹¹⁵ Ibid, Non-refoulement ...

¹¹⁶ International Criminal Tribunal for the former Yugoslavia, Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovich (2001) ICTY 2 (22 February 2001)

¹¹⁷ International Criminal Tribunal for the Former Yugoslavia, Prosecutor v. Dragoljub, supra ... paragraph 408.

¹¹⁸ International Criminal Tribunal for the Former Yugoslavia, Prosecutor v. Dragoljub, supra ... paragraph 456.

destruction of a person. Rape has been found to constitute torture.¹¹⁹ Paid rape is how the women themselves characterize prostitution. Rape is a violation of personal dignity that is not lessened by paying for the act.

The absence of consent or voluntary participation was also discussed in Dragoljub.¹²⁰ Looking at the circumstances that define the vulnerability or deception of the victim, the court concluded that the common denominator was¹²¹ that the behaviors of the perpetrator have an effect such that the victim's will was overcome or that her ability to freely refuse sexual acts was temporarily or more permanently negated. The tribunal found that alleged consent is not a defense under the Rules of Procedure.¹²² No one can consent to be a victim of crime. The focus must remain on the criminal act not on the behavior of the victim. Prostituted women are "seasoned" by beatings and rapes, deprived of their identification documents, left naked, locked in rooms until they learn that they have no hope of escape. Capitulation of the victim cannot be construed as "consent".

Ironically in Victoria, Australia where prostitution was legalized, the definition of consent is "free agreement"¹²³ and that cannot be given where a person submits because of the use of force, fear of force or harm, or because the person is in illegal detention. By their own laws, they must acknowledge that the women in prostitution are incapable of giving "consent" because of the ubiquitous use of force and illegal detention.

The European Court of Human Rights

The European Court of Human Rights has established that filthy conditions, water shortage, skin infections, and sleep deprivation can all be torture when the suffering is intense. Likewise, when the government refuses to stop the behaviors, that government is systematically involved and is to be held liable under the Convention.¹²⁴ Many women in prostitution report such conditions. In the case of legalization of prostitution, the State itself not only doesn't stop the conditions, it legitimizes them and increases them to the detriment of the victims and must be held accountable.

In the Siliadin v. France case,¹²⁵ the European Court of Human Rights held that there had been a violation of Article 4, prohibition of servitude. The victim was a Totolese national who at fifteen was brought to Paris to do domestic work but whose passport was confiscated, and she became an unpaid servant. The couple was first convicted, then acquitted on appeal and then found guilty of making the applicant, a vulnerable and dependent person, work unpaid for them but the Court considered that her working and living conditions were not incompatible with human dignity.

This decision was taken to the ECtHR as violating Article 4 against forced or compulsory labour that had in reality made her a domestic slave. The Court found that Article 4 was a fundamental value of democratic societies. The court held that she was subjected to forced

¹¹⁹ European Court of Human Rights, Reports of Judgments and Decisions, Eur. Ct. of H.R. September 1997, Aydin v. Turkey, 23178/94 (1997) ECHR 75 (25 September 1997); Fernando and Raquel Mejia v. Peru (Decision of 1 March 12996 (Report No. 5/96, case no 10,970, in Annual Report of the Inter-American Commission on Human Rights 1995 OEA/Ser.L/V/II.91, pp. 182-188.

¹²⁰ International Criminal Tribunal for the Former Yugoslavia, Prosecutor v. Dragoljub, supra... paragraph 440.

¹²¹ International Criminal Tribunal for the Former Yugoslavia, Prosecutor v. Dragoljub, supra... paragraph 452.

¹²² International Criminal Tribunal for the Former Yugoslavia, Prosecutor v. Dragoljub, supra... paragraph 464.

¹²³ Op Cit., Modern Day Torture.

¹²⁴ Modern Day Torture: Government-sponsored neglect of asylum seeker children from the Australian mandatory immigration detention regime, Rogalla, Barbara, (2003) Journal of South Pacific Law, 11.

¹²⁵ European Court of Human Rights, App. No. 73316/01, 26 July 2005.

labor and compulsory servitude that is to provide ones services under coercion. Given that the vast majority of women are coerced into prostitution and ninety-five percent of prostituted women seek to get out of prostitution, one can certainly argue that they are providing services under coercion. The factors the court used to find compulsory servitude in the Siliadin case were that her papers were confiscated, she had been made promises about the immigration status that were never carried out, she was afraid of being arrested by the police, she had no freedom of movement or free time, she was completely dependent on the couple, and she had no hope her situation would improve. This describes precisely the condition of most prostituted women.

Sexual assaults are serious interferences in a person's private life. The State shall criminalize such acts and create possibilities for prosecuting the perpetrators of these assaults.¹²⁶ Physical integrity is a right protected by article 8 of the European Convention on Human Rights. Interference with the physical integrity of a person must thus be prescribed by law and requires consent.¹²⁷ A State can through law prohibit serious abuse, even if it takes place with the abused person's consent.¹²⁸ The State may interfere with legislation or in another way when very strong reasons exist for such interference. Such reasons could be the protection of minors, protection of others in dependant positions or protection of persons who cannot make their decisions in complete freedom. The State can interfere with sexual acts that include the use of significant violence even if consent exists. This has been done in a case concerning sadomasochistic acts.¹²⁹

To be a violation of the European Convention, the torture does not have to be for any reason named in the Convention; rape alone is sufficient to be defined as torture depending on the motive of the perpetrator.¹³⁰ In Ortiz v. Cramajo, the kidnapping, beating and rape of a nun constituted torture.¹³¹ In Selmouni v. France, the victim was beaten, sodomized, and threatened, which constituted torture.¹³² The acts were considered to be intense, humiliating to anyone, heinous and repeated so that they constituted torture rather than just degrading treatment. These are very similar or identical to acts prostituted women experience daily and in some places, it's called "legal".

In Aydin v. Turkey, the female detainee complained of rape and argued that it constituted torture.¹³³ She was stripped, put into a car tire and spun around, beaten, sprayed with cold water from a high-pressure hose, blindfolded and raped. Medical evidence showed bruising and a torn hymen. The Court reiterated that there can be no derogation from the prohibition on torture.¹³⁴ The court found that rape is an especially grave and abhorrent act that leaves deep psychological scars that do not respond to healing as quickly as other types of injuries. Therefore, rape is justified as being defined as torture rather than just inhuman and degrading treatment. Prostituted women face these conditions and worse on a regular basis and report much more severe injuries due to the long-term nature of the abuse.

¹²⁶ European Court of Human Rights, Danelius, p. 261.

¹²⁷ European Court of Human Rights, Y.F. v. Turkey, application no 24209/94, final judgment 22/10/2003.

¹²⁸ European Court of Human Rights, Danelius, p. 265-266.

¹²⁹ European Court of Human Rights, Lashey, Jaggard and Brown v. UK. Danelius p. 267.

¹³⁰ A Special Adjudication ex parte Ogochukwu Chigioke Okonkwo, R. v. (1998) EWHI Admin 688 (30th June, 1998), Kacaj v. Secretary of State for the Home Department (2002) EWCA Civ 314 (14th March, 2002).

¹³¹ United States, Ortiz v. Gramajo, 886 F. Supp. 162 (D. Mass. 1995, U.S.).

¹³² European Court of Human Rights, Selmouni v. France, 1109 Eur. Ct. H.R. 1999).

¹³³ European Court of Human Rights, Aydin v. Turkey, (23178/94) (1997) ECHR 75 (25 September 1997).

¹³⁴ European Court of Human Rights, Aydin, supra... paragraph 81.

The conditions of confinement of criminals have been held to be a violation of human rights.¹³⁵ In one case, there was an open toilet, only a tap with cold water, two beds, a table and bench, central heating and a window with bars but no natural lighting. The inmate had books, some food, soap and toilet paper in the cell. The cell was overheated; the light was on twenty-four hours a day, but the radio was switched off at night. The cell was freshly painted, but the inmate had only recently been allowed outside for walks. The court found there was a violation of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms based on these conditions. The cumulative impact of the conditions must be considered and the motive or purpose is irrelevant. In another case,¹³⁶ prisoners were held in cells with a metal frame bed with mattress, blanket and chair. There was no natural light; the ventilation system did not work well and was noisy; there was no call system in the cell; toilet and shower facilities were nearby; but there were no facilities for exercise. This was held to violate the Convention as well. Women held in prostitution report being confined in much worse situations than those described by these prisoners, and they have not been convicted of any crime.

The ECtHR has found that a person's body concerns the most intimate aspect of private life under Article 8.¹³⁷ A compulsory medical intervention, even a minor one, in this case a gynaecological exam that some women would not consider minor and that this woman did not, was an interference with this right. Nor was the fact that she did not "resist" an issue because she was completely vulnerable at the hands of the authorities. Prostituted women held in "legal" brothels are subject to regular compulsory gynaecological exams, not for their benefit, but for the benefit of the customers.

In the sexual assault context, it took a long time for institutions to understand that rape is violence not sex. Likewise, in the marriage context, it also took a long time for the justice system to understand that domestic violence is not an acceptable part of the marriage contract. At one time it was considered men's right to beat, rape, sell and even kill their wives because they owned them. Such acts were not seen as "violence" or criminal. In recent history, it has been only since 1974 with a renewed emphasis on violence against women that it came to be accepted, by both women and men, that these acts are not acceptable, and in fact, women have all the human rights men do. Even more recently has it been seen that men do not have the right to rape their wives. Even today in many states of the United States, men can do so with impunity. The parallels between prostitution, domestic violence and marital rape are very strong. It is legalization of violence. How long will it take us to see that prostitution is simply violence against women for which men pay? How many women's lives will be destroyed in the meantime?

Legalization of prostitution constitutes "state action" under international law

Prostitution has been legalized in the Netherlands, Germany, New Zealand, some states of Australia and one county in the state of Nevada in the U.S. Canada and Thailand are considering it. In 2000, the Dutch Ministry of Justice argued for a legal quota of foreign "sex workers" to feed their prostitution market that demanded more "bodies".¹³⁸ The European Court recognized prostitution as an economic activity so more bodies could be brought in. The State has become the pimp.

¹³⁵European Court of Human Rights, *Kuznetsov v. Ukraine* (39042/97) (2003) ECHR 2098 (29 April 2003).

¹³⁶European Court of Human Rights, *Magee v. The United Kingdom* (28135/95) (2000) ECHR 215 (6 June 2000).

¹³⁷Y.F. v. Turkey, App no. 24209/94, 22 October 2003, para 33.

¹³⁸Raymond, Janice G., 10 Reasons for Not Legalizing Prostitution, *Journal of Trauma Practice*, 2, 2003, 315-332; Farley, Melissa (Ed.), *Prostitution, Trafficking and Traumatic Stress*, Binghamton; Haworth Press, 2003.

The level of “state action” that will suffice for acts to be covered under international law does not need to be actual authority but can merely be the “semblance of official authority”.¹³⁹ Legalization gives actual authority for the acts to occur. The acts need not occur when the government has direct control over the victim but only the “consent or acquiescence of a public official” is necessary.¹⁴⁰ By legalizing prostitution, the government is giving its consent to the systemic violence toward women that is endemic to prostitution. The violence is the logical outcome of government policy to legalize prostitution.

Previous cases found that a person who knew sexual violence was occurring and allowed it to take place was responsible because they sent a clear signal of official tolerance.¹⁴¹ The ICTY tribunal held that the *actus reus* of aiding and abetting in international law requires practical assistance, encouragement, or moral support that has a substantial effect on the perpetration of the crime.¹⁴² The ICTY held that mere knowledge that the actions aid and abet is sufficient for *mens rea*.¹⁴³ The facts show that legalizing prostitution increases both legal and illegal prostitution and does nothing to diminish the harm to women. Rather, it increases the harm to women. A State is aiding and abetting the violence by sending a clear signal that sexual violence is allowable by legalizing prostitution.

The European Court of Human Rights held in HLR v. France¹⁴⁴ that Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms relating to torture may also apply when the danger emanates from the persons or groups of persons who are not public officials because of the absolute character of the right involved. Therefore, the State cannot escape liability by claiming that private citizens own the brothels. The State by its actions has authorized those private citizens to engage in violence. There is nothing novel about applying international law to individuals who are outside the State. In fact international law binds every citizen just as municipal law does. Thus both the State and the individual are responsible.

Legalization of prostitution is a violation of CEDAW

Legalization violates Article 6

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

The CEDAW Committee as recently as 2004 has taken a very strong stance against the exploitation of prostitution calling on State parties to take all appropriate measures, to attack the poverty that allows prostitution to thrive, to pay attention to the fact that more young girls are being exploited, encouraging the States to take a holistic approach and discourage demand, urging prosecution of procurers and clients and encouraging provision of health needs.¹⁴⁵

¹³⁹ United States, *Kadic v. Karadzic*, 70 F. 3d 232 (2nd Cir. 1995, U.S.).

¹⁴⁰ United States, *Ortiz v. Gramajo*, 886 F. Supp. 162 (D. Mass. 1995, U.S.).

¹⁴¹ International Criminal Tribunal for the former Yugoslavia, *Furundzija*, supra, paragraph 206.

¹⁴² International Criminal Tribunal for the former Yugoslavia, *Furundzija*, supra, paragraph 235.

¹⁴³ International Criminal Tribunal for the former Yugoslavia, *Furundzija*, supra, paragraph 236.

¹⁴⁴ European Court of Human Rights, *HLR v. France*, 26 EHRR 29 (1997).

¹⁴⁵ Thirtieth session (12-30 January 2004); Thirty-first session (6-23 July 2004); General Assembly Official Records, Fifty-ninth Session; Supplement No. 38 (A/59/38), paragraphs 60, 156, 157, 204, 208, 298, 337.

Legalization of prostitution encourages trafficking and the exploitation of prostitution rather than suppressing it.

Without prostitution, which is the profit motive for trafficking, there would be no trafficking. “Trafficking and Prostitution are one in the same. How can they not be when human beings are being bought and sold for the sole purpose of marketing? When assisting victims of any kind of violence, why is the education limited to how they were violated when the perpetration is the same?”¹⁴⁶

The CEDAW committee has recognized that prostitution is intimately connected to trafficking of women. In the concluding observation for Nepal ¹⁴⁷ the Committee said:

149. The Committee is concerned about the high incidence of prostitution and the increase in trafficking in women and girls, (emphasis added) in particular for the purpose of prostitution. It expresses concern that girl children are taken across the border for the purpose of child marriage.

150. The Committee urges the Government to take effective steps to review existing legislative provisions on prostitution and trafficking in women and their compatibility with the Convention, and to ensure their full implementation and compliance. It also calls upon the Government to initiate regional and bilateral cooperation, taking into account subregional, regional and international agreements and standards on this issue. It urges the Government to review its criminal code, to punish persons who procure women for prostitution or for trafficking, to establish repatriation and rehabilitation programmes, and to support services for victims of trafficking.

The increase in prostitution is inexorably tied to the increase in trafficking.

In the Cuba report, ¹⁴⁸ the Committee acknowledges not only the increase in prostitution but also the need to attack the root causes including women’s economic dependence.

265. The Committee notes with concern that, while prostitution is not a crime, there is little information about the impact of programmes and other measures to prevent women from becoming prostitutes, and to rehabilitate and reintegrate them into society. Further efforts are needed to identify the root causes of the increase in prostitution in recent years, and of the effectiveness of measures to counteract this trend.

266. The Committee urges the Government to increase its understanding of the causes of prostitution, and to assess the impact of its preventive and rehabilitative measures with a view to improving their effectiveness, and to bringing them fully into line with article 6 of the Convention. The Committee invites the Government to expand its programmes for women's economic independence in such a manner as to attack the causes of prostitution and to eradicate the need for women to enter into prostitution. It also calls on the Government to include in its next periodic report detailed information on any developments related to preventive and rehabilitative measures taken with regard to prostitutes.

The legalization of prostitution does not attack the root causes nor deal with women’s economic independence but in fact feeds on that root cause of economic desperation and

¹⁴⁶ Chong Kim, letter, 21 November 2005, used with consent.

¹⁴⁷ Concluding Observations of the Committee on the Elimination of Discrimination Against Women : Nepal. 01/07/99. A/54/38, rev.1, paras 117-160. (Concluding Observations/Comments).

¹⁴⁸ Concluding Observations of the Committee on the Elimination of Discrimination Against Women : Cuba. 19/06/2000. A/55/38, paras 244-277. (Concluding Observations/Comments)

continues the cycle to the detriment of individual women in particular and all women in general.

Likewise in the Concluding Observations for the Netherlands ¹⁴⁹ the Committee recognized that so-called “voluntary” prostitution is not, and that in fact it is intimately tied into trafficking for prostitution with force and illegality. ¹⁵⁰

Prostitution is inherently exploitation of women.

When the State legalizes prostitution, there can be no clearer example of “exploitation”. Blacks Law Dictionary (6th edition) defines “exploitation” as “Act or process of exploiting, making use of, or working up. Utilization by application of industry, argument, or other means of turning to account as the exploitation of a mine or a forest. (Cite omitted) Taking unjust advantage of another for one’s own advantage or benefit (e.g. paying low wages to illegal aliens).” By legalizing prostitution, the State becomes the pimp and makes money (from taxes and licenses) from women who are used up and taken advantage of for the benefit of others.

The false debate about “forced” versus “consensual” prostitution illustrates the twisted discourse around women’s human rights. Prostituted women are “seasoned” by beatings and rapes, deprived of their identification documents, left naked, locked in rooms until they learn that they have no hope of escape. Capitulation of the victim of this kind of treatment cannot be “consent” to be involved in prostitution.

Further, one of the requirements to survive in prostitution is the ability to dissociate. ¹⁵¹ The only way to survive after freedom is to deny the reality of what occurred. Thus it is not surprising that some survivors advocate for prostitution and claim it is a fine job. It is only when the psychological trauma can be successfully dealt with that the denial will disappear.

Loving to Survive: Sexual Terror, Men’s Violence and Women’s Lives, ¹⁵² shows how the “Stockholm Syndrome” applies to women in a patriarchal culture. The “Stockholm Syndrome” grew out of a bank hostage situation in Stockholm where the captives were held for six days but ended up supporting the ex-convicts and even marrying one of them. Much study has been done since then about trauma bonding in life threatening situations, and much work has been done to ascertain how it applies to women who are victims of domestic violence and/or sexual assault. Graham takes it a step further to show how all women in a patriarchy display the symptoms, because we live in a society where our lives are constantly under threat, where those who threaten our lives are alternately cruel and kind, and we have no escape. Therefore, if we want to survive, we must engage in some form of psychological manipulations. These manipulations take the form of perceptual and cognitive distortions.

Variables that increase the likelihood that the hostage will turn to the captor for nurturance and protection are: dependence on the captor for survival, increasing inter-dependence, increasing duration, increasing the time spent together, physical proximity and contact, and reducing the hostage’s ability to psychologically insulate by other activities. All of these factors are present in the case of prostitution. The woman must depend on the captor/pimp for

¹⁴⁹ Concluding Observations of the Committee on the Elimination of Discrimination Against Women : Netherlands. 12/04/94. A/49/38, paras. 245-317 (Concluding Observations/Comments)

¹⁵⁰ Concluding Observations of the Committee on the Elimination of Discrimination Against Women : Finland. 31/05/95. A/50/38, paras 346-397. (Concluding Observations/Comments), see para 272.

¹⁵¹ Op Cit., “Bad for the Body ... p. 1106.

¹⁵² Dee. L.R. Graham with Edna I. Rawlings and Roberta K. Rigsby, Loving to Survive; Sexual Terror, Men’s Violence and Women’s Lives, NY University Press, 2004.

survival and they are engaged in the same type of transaction, as the time increases and she becomes more and more isolated from others, she must depend on the pimp. Thus it is no wonder that prostituted women often turn to the pimp for nurturance and protection, adopt his worldview, and begin to speak publicly about the benefits of prostitution. The pimp begins to be seen as the good guy and all the others, the enemy, because they threaten that very fragile safety she has achieved that is vital for her survival.

After a long period of time, even if given the “freedom” to leave the abuser, the hostage will find it difficult to do so, because she has so strongly denied the abuse and her own anger. This cognitive distortion allows the hostage to feel as if she was and is in control. To believe that is the only way she can psychically survive. As hostages begin to take on the “world view” of the captor, women begin to take on the world view of patriarchy that women are only good for the sexual gratification of men. If victims blame themselves rather than the pimp, then they can believe that if it’s their behavior causing the abuse, their behavior can stop the abuse. It gives them an illusion of having some control.

Women bond to men to inhibit men’s aggression toward them. Bonding to an abuser has been found in pimp-procured prostitutes (p. 31). But the syndrome has been found in many types of situations and people and seems to be a universal response to a life-threatening situation. It does not indicate there is something wrong with women in general or prostituted women in particular. All of us, in a similar situation, would do it. In fact, the book’s thesis is that all women must do it because all women live in a patriarchy, and our lives are constantly threatened, which is proven by both empirical and qualitative studies as well as the real lives of women.

“If women as a group have Societal Stockholm Syndrome, we would expect women both to deny, minimize, or rationalize male violence and to deny our anger at men for their violence against women.” (P. 147) In fact they do. The “sex workers” and their female supporters who do men’s bidding by claiming that prostitution is not violence are in fact denying, minimizing and rationalizing male violence and denying their own anger. Like all of us, they are suffering from Societal Stockholm Syndrome but expressing it in the context of their own struggle for survival – both physical and psychological. No one wants to define themselves as a victim. No one wants to say, I have no control over my life. So we rationalize to stay alive. Women are much more likely to internalize their anger and take it out on themselves, to punish themselves. One way to do that is to continue to be abused.

Some Africans benefited from slavery and not only participated but encouraged it. Some concentration camp survivors benefited from supporting the guards. We recognize the practical and psychological reasons behind that. We do not say that because some Africans and some camp survivors benefited from or supported the practice, we should therefore continue it for the vast majority who do not. Nor should we suggest that prostitution is all right for all women because some profess to support it.

Risk of Violence

The Committee has recognized explicitly, as required by Article 6, that prostitution “poses for women risks of exploitation and violence.”¹⁵³ The abuse of women has become so entwined in the Thailand economy that it totals 4.3 billion dollars per year.¹⁵⁴ This can be defined as nothing else but exploitation of women. It is the sale and abuse of women’s bodies that

¹⁵³ Concluding Observations of the Committee on the Elimination of Discrimination Against Women : Netherlands. 31/07/2001. A/56/38, paras. 185-231. (Concluding Observations/Comments), para 209.

¹⁵⁴ Virada Somswagdi, “Legalization of Prostitution: A Challenge to Feminism and Societal Conscience”, a talk at Cornell Law School, 9 March 2004.

contributes to the maintenance of the Thai government and society for the benefit of men literally on the backs of women. The World Trade Organization has even suggested counting the proceeds in the gross national product; a truly abhorrent suggestion that exploitation and abuse should be counted as legitimate profit. The result of the situation in Thailand is indicated by the Committee's Concluding Observations about Thailand:¹⁵⁵

Factors and difficulties affecting the implementation of the Convention

227. The Committee notes that the recent financial crisis has been affecting the country's economic and social development and is an impediment to the implementation of the Convention.

228. The Committee is concerned that traditional attitudes that foster discrimination against women and girls continue to prevail and to hinder the full implementation of the Convention.

Principal areas of concern and recommendations

230. The Committee expresses its concern at the lack of effective law enforcement mechanisms and the lack of cases filed by women in the courts on the basis of constitutional guarantees. The Committee urges NCWA to study constitutional developments in other countries and practical ways of strengthening the capacity of women to use the Constitution to ensure gender equality.

231. The Committee remains concerned that the Convention is not directly applicable in the courts in Thailand and that there is no separate law exclusively dealing with discrimination against women. The absence of a definition of discrimination congruent with the Convention in the Constitution is also of serious concern.

232. The Committee recommends the introduction of specific anti-discrimination legislation in compliance with article 1 of the Convention.

233. Noting the prevailing traditional attitudes affecting the advancement of Thai women, the Committee recommends that sensitization programmes for policy makers, administrators, legal personnel and other professionals involved in the health and education sector be provided. The Committee recommends that school textbooks be revised to eliminate stereotyped images of women and girls and to include women's human rights issues.

234. The Committee is concerned about the underrepresentation of women in politics and decision-making structures, including the judicial system. It emphasizes the importance of fostering a political and social environment conducive to women's promotion in all sectors of public and private life. The Committee recommends the introduction of affirmative action policies or temporary special measures in accordance with article 4, paragraph 1, of the Convention, with goals and timetables to address the situation.

235. Recognizing that the Government has successfully raised the legal employment age from 12 to 15 years by extending compulsory education from 6 to 9 years, the Committee continues to be concerned about the early drop-out of girls from school and their early entry into the labour force. The Committee takes note of the proposal to introduce a children's rights law and recommends that the Government ensure that its

¹⁵⁵ Concluding Observations of the Committee on the Elimination of Discrimination Against Women : Thailand. 02/02/99. A/ 54/38, paras. 213-250 (Concluding Observations/Comments)

provisions conform with the Convention on the Elimination of All Forms of Discrimination against Women and the relevant provisions of the Convention on the Rights of the Child.

236. The Committee expresses its concern about the status of women migrant workers. In particular, the Committee is concerned about cross-border trafficking in women and girls, forced prostitution and the commercial sex industry.

Rather than tackling the serious problem of discrimination against women in the Thai society, the government compounds the problem by condoning the sale of women as objects for the use of men, which infects the entire culture and prevents the implementation of the CEDAW principles throughout society. When women are commodities, they need be treated no better than other marketed products.

Legalizing such sale only increases the problem as the Committee has found.¹⁵⁶

168. The Committee was concerned about the fact that a large number of women were arrested for prostitution. The Committee was likewise concerned about the large number of advertisements for sex services in daily newspapers, which contributed significantly to the spread of prostitution.

In the 2001 remarks regarding Finland,¹⁵⁷ the Committee pointed out not only that violence against women is a very serious problem of human rights, but that the government took it seriously and criminalized the buying of sexual services from children. The report also highlighted the positive impacts of a change of atmosphere i.e. that a newspaper decided not to publish advertisements for sex phone lines.

285. Turning to violence against women, which was described as a very serious problem of human rights, the representative drew attention to steps taken by Finland at both the national and international levels to address that issue....A project for the prevention of prostitution had been initiated and the buying of sexual services from persons under 18 years of age had been criminalized. An amendment to the Penal Code allowed for the prosecution of Finnish citizens for sexual offences committed abroad, and in December 2000 Finland had signed the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. An interesting example of the positive change of atmosphere was that the oldest and largest evening paper in Finland had decided not to publish advertisements for sex phone lines.

Thus it is obvious that the societal culture regarding prostitution impacts other types of violence toward all women. If women can be bought and sold in the market place, then they have no more rights than cattle or pigs. The State that legalizes prostitution is making a very significant statement that violence against women can be approved when paid for, and that women themselves are not entitled to full human rights. That statement cannot but impact every day life for every woman.

The increase in violence against immigrant women and women of color because of prostitution is visible in the Netherlands report.¹⁵⁸ The report states that the Netherlands had

¹⁵⁶ Concluding Observations of the Committee on the Elimination of Discrimination Against Women : Israel. 12/08/97. A/52/38Rev.1,Part II paras 132-183 (Concluding Observations/Comments)

¹⁵⁷ Concluding Observations of the Committee on the Elimination of Discrimination Against Women : Finland. 02/02/2001. A/56/38, paras 279-311. (Concluding Observations/Comments)

¹⁵⁸ Concluding Observations of the Committee on the Elimination of Discrimination Against Women : Netherlands. 31/07/2001. A/56/38, paras 185-231. (Concluding Observations/Comments)

the first national rapporteur on trafficking, which is logical because it's legalization of prostitution means more and more women will be trafficked there. (para 190) At the same time, the Committee admitted there had been increased sexual violence to women. (para 192) This comes as no surprise since legalization of prostitution sets up the image of women as suitable targets of violence. The discussion in Paragraphs 205-206 about violence toward immigrant women illustrates the relationship between racism and the women who are trafficked to the Netherlands from other countries (68-80%) to be prostitutes.¹⁵⁹

Nine out of ten prostituted women in Spain are from other countries, and many are there illegally i.e. trafficked.¹⁶⁰ The leftist union found these facts "alarming" and called for the "elimination" of prostitution, which it considered "not work, but a modern form of slavery, inequality and gender violence." Their report said ninety-five percent of prostitution is not voluntary. As for the remaining five per cent, "the description of voluntary must be viewed in the context of the social, cultural and economic conditions that women face."

The problem of paedophilia and sex tourism among Australian men has previously been confronted by the Committee¹⁶¹ who specifically asked the Australian government to assess ways of reducing the exploitation of prostitution. The government has done just the opposite. Violent behaviors against women have been associated with attitudes that promote men's beliefs that they are entitled to sexual access to women, that they are superior to women, and that they are licensed as sexual aggressors.¹⁶² Women in prostitution have their "bodies and lives controlled and exploited by others; johns, pimps, club-owners and lawmakers"¹⁶³. Prostitution constitutes the ultimate patriarchal expression where sexual abuse sexual objectification, and sexual oppression of women is accepted and encouraged through legalization.

Other Criminal Activity

According to the World Bank, violence against women as a cause of death and disability in women of reproductive age equals that of cancer. The research leaves no doubt of the intimate connection between prostitution, violence and crime. In a study covering five countries, researchers found an extensive array of violence against prostituted women and its consequences that did not differ among countries.¹⁶⁴ Prostitution increases other forms of violence against women. Physical assault and post-traumatic stress disorder are consequences of prostitution. Prostitution is a gross violation of a woman's integrity and causes irreversible damage. "Sex trade work as part of the panoply of violence against women that exists in the heteropatriarchy and always, or by definition, harms the dignity and personhood of sex trade workers"¹⁶⁵

¹⁵⁹ Brenda Zurita, Prostitution is Not a Profession: It's exploitation, <<http://www.cwfa.org/articles/9691/BLI/family/index.htm>>, 14 December 2005.

¹⁶⁰ 9 out of 10 prostitutes in Spain immigrants <http://www.khaleejtimes.com/DisplayArticle.asp?xfile=data/theworld/2006/January/theworld_January355.xml§ion=th,eworld&col=> (AFP), 16 January 2006

¹⁶¹ 12/08/1997; A/52/38/Revi.1; Concluding Observations on Australia, para 395.

¹⁶² White, J.W. and Ko, "Adolescent sexual aggression with in heterosexual relationships: prevalent characteristics, and causes". In H.E. Barbaree, W.L. Marshall and D. R. Laws, the Juvenile Sex Offender, Guilford Press, NY, 1993.

¹⁶³ HWJL, Shah, Introduction, p. 3.

¹⁶⁴ Farley, Melissa, Baral Isin, Kiremire, Merab and Sezgin,Ufuk, Prostitution in Five Countries: Violence and Post-Traumatic Stress Disorder, Feminism and Psychology, 1998, Volume 8(4): 406-426.

¹⁶⁵ Rabinovitch & Strega, Violence against women, The PEERS Story, p 144.

The Committee has recognized that prostitution is often part of other criminal activities,¹⁶⁶ such as the connection with illegal migration and a lucrative source of money for criminal gangs.¹⁶⁷ The harm to women in prostitution has been documented repeatedly for years throughout the world. As the studies prove, the harm of prostitution, like slavery, cannot be mediated by licensing it. The harm is inherent in the act. To legalize the act is to legalize the harm.

The Committee has recognized that prostitution has a negative impact on women's health.

Many of the health problems of women in prostitution are a direct result of violence e.g. several women had their ribs broken by the police in Istanbul; in San Francisco, U.S., a woman broke her hips jumping out of a car when a john was attempting to kidnap her; many women had their teeth knocked out by pimps and johns.¹⁶⁸

The ILO report, *The Sex Sector*, which was founded upon a strict distinction between child and adult prostitution, states categorically that prostitution is damaging to the health of children but sees this as one way in which child prostitution can be distinguished from the prostitution of those over eighteen.¹⁶⁹ The report states:

Commercial sexual exploitation is one of the most brutal forms of violence against children. Child victims suffer extreme physical, psychosocial and emotional abuse which have lifelong and life-threatening consequences. They risk early pregnancy, maternal mortality and sexually transmitted diseases. Case-studies and testimonies of child victims speak of a trauma so deep that many are unable to enter or return to a normal way of life. Many others die before they reach adulthood.

Since it is so harmful to children, including a person who is seventeen years and eleven months old, how can it cease to be harmful to that same person one month later? Since the average age of entry into prostitution is fourteen, virtually every woman in prostitution has suffered these harms. In fact, both women and children experience similar damage though to different degrees. One way in which prostitution damages women's health is through sexually transmitted diseases. Though venereal disease is more readily contracted by children as a result of the undeveloped nature of the mucous membranes in the orifices the buyers use, they are also a severe scourge of adult women in prostitution. A 1994 study of prostituted women in the United States found that only fifteen per cent had never contracted a sexually transmitted disease.¹⁷⁰ The gynecological problems that prostituted women and girls suffer, often as a result of sexually transmitted diseases, include chronic pelvic pain, pelvic inflammatory disease, unwanted pregnancy, miscarriages, high infertility rates, and increased risk of reproductive system cancers.

The Committee has recognized this in relation to the risk posed by HIV/AIDS and STD's.

¹⁶⁶ Concluding Observations of the Committee on the Elimination of Discrimination Against Women : Finland. 31/05/95. A/50/38, paras 346-397. (Concluding Observations/Comments)

¹⁶⁷ Concluding Observations of the Committee on the Elimination of Discrimination against Women: Czech Republic. 14/05/98. A/53/38, paras 167-207. (Concluding Observations/Comments). See para 175.

¹⁶⁸ Melissa Farley, Prostitution Research and Education, unpublished manuscript, 2000.

¹⁶⁹ Lin Lean Lim (ed), *The sex sector: the economic and social bases of prostitution in Southeast Asia* (Geneva: International Labour Office), 1998, p. 177.

¹⁷⁰ Parriott, Ruth, *Health Experiences of Twin Cities Women Used in Prostitution: Survey Findings and Recommendations*. Unpublished. Available from Breaking Free, 1821 University Avenue, Suite 312, South, St. Paul, Minnesota 55104, 1994.

76. The Committee is concerned that women and girls are exploited in prostitution and inter-state and cross-border trafficking. It is also concerned that those women are exposed to HIV/AIDS and health risks and that existing legislation encourages mandatory testing and isolation.¹⁷¹

The Committee made a very comprehensive statement in CEDAW recommendation No. 24.¹⁷²

18. The issues of HIV/AIDS and other sexually transmitted diseases are central to the rights of women and adolescent girls to sexual health. Adolescent girls and women in many countries lack adequate access to information and services necessary to ensure sexual health. As a consequence of unequal power relations based on gender, women and adolescent girls are often unable to refuse sex or insist on safe and responsible sex practices. Harmful traditional practices, such as female genital mutilation, polygamy, as well as marital rape, may also expose girls and women to the risk of contracting HIV/AIDS and other sexually transmitted diseases. Women in prostitution are also particularly vulnerable to these diseases. (emphasis added) States parties should ensure, without prejudice or 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. In particular, States parties should ensure the rights of female and male adolescents to sexual and reproductive health education by properly trained personnel in specially designed programmes that respect their right to privacy and confidentiality.

In addition, in response to the Guyana report,¹⁷³ the Committee showed its concern:

181. The Committee urges the Government to take effective steps to review and amend existing legislation on prostitution in conformity with the Convention, and to ensure its full implementation and compliance. Moreover, in the light of the high incidence of HIV/AIDS in Guyana, full attention must be paid to the health services available to prostitutes.

Legalization does not attack the poverty that the Committee has recognized as one large factor forcing women into prostitution.

According to official UNDP data, almost half the world's population lives in conditions of extreme poverty: less than US\$1 per day. Of this number, seventy percent are women. The ILO report¹⁷⁴ made it perfectly clear that women are forced into prostitution for economic and indeed sheer survival reasons. This cannot be counted as "consent".

The CEDAW committee has likewise noticed the connection between poverty and prostitution as can be seen in the Finland Concluding Observations where the Committee said:

360. Additional questions were raised about whether an increase in prostitution and traffic in women was noticeable in view of the dire economic situation of the Baltic States and whether related interim measures had been taken. The representatives stated that it was often part of other criminal activities and that special services were set up to help prostitutes and reintegrate them into society.¹⁷⁵

¹⁷¹ Concluding Observations of the Committee on the Elimination of Discrimination Against Women : India. 01/02/2000. A/55/38, paras. 30-90. (Concluding Observations/Comments)

¹⁷² Women and health: Article 12, 02/02/99. CEDAW General recom. 24 (General Comments)20th session 1999.

¹⁷³ Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Guyana. 31/07/2001. A/56/38, paras.145-184. (Concluding Observations/Comments)

¹⁷⁴ The Sex Sector, ibid.

¹⁷⁵ Concluding Observations of the Committee on the Elimination of Discrimination Against Women : Finland. 31/05/95. A/50/38, paras 347-397. (Concluding Observations/Comments)

The impact of poverty is clear enough and repeated in the Fiji report while discrimination against women continues unabated:¹⁷⁶

64. The Committee is concerned that there is a growing problem of prostitution due to economic hardship, and that a colonial law from 1944 which penalizes the conduct of only women who engage in prostitution continues to be enforced.

Likewise in the Czech Republic Conclusions, the Committee recognizes that the discrimination against women, the segregation into low paying jobs, and the lack of opportunities for women is a driving force for prostitution and trafficking:

Principal subjects of concern ¹⁷⁷

192. The Committee notes with concern that, in the Czech Republic, prostitution and trafficking in women are approached exclusively in the context of combating organized crime. These crimes are closely related to economic transition and socio-political changes. The Committee acknowledges the adverse effects of such developments as rising unemployment and increasing poverty as factors contributing to prostitution and trafficking in women.

195. The Committee is very concerned about the prevailing wage disparities between women and men and the segregation of women in low-paying and low skilled work, which had been one of the results of privatization and economic rationalization.

Suggestions and recommendations

204. The Committee strongly recommends the formulation and implementation of effective policies to combat prostitution and trafficking of women. The Committee suggests that measures to combat these crimes require not only services to victims and sanctions for perpetrators, but the design and implementation of comprehensive national social and economic policies to create new opportunities for women. It therefore recommends that the Government take effective action to combat feminization of poverty and to improve the economic situation of women in order to prevent trafficking and prostitution.

The link between prostitution and the lack of job opportunities was remarked in the Cuba comments as well: ¹⁷⁸

220. The Committee was concerned about the re-emergence of prostitution in Cuba, which was linked to the growth in tourism and to the economic problems facing women.

225. Every effort should be made to further check the re-emergence of prostitution, to offer more and better job opportunities to women who engaged in prostitution, and not to place the sole responsibility for prostitution on the women themselves. Stronger measures must be adopted to prosecute procurers and clients who violated those women's rights.

¹⁷⁶ Committee on the Elimination of Discrimination against Women : Fiji. 07/05/2002. A/57/38 (Part I), paras 24-70. (Concluding Observations/Comments)

¹⁷⁷ Concluding observations of the Committee on the Elimination of Discrimination against Women: Czech Republic. 14/05/98. A/53/38, paras. 167-207. (Concluding Observations/Comments).

¹⁷⁸ Concluding Observations of the Committee on the Elimination of Discrimination Against Women : Cuba. 09/05/96. A/ 51/38, paras 197-228 (Concluding Observations/Comments)

The Committee has clearly recognized the connection between employment opportunities and equality for women and the desperation of women who are forced into prostitution by lack of economic opportunity as exemplified in the CEDAW General Recommendation 19.¹⁷⁹

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.

Equality for women cannot become a reality so long as women are denied the very basic means of survival - decent economic opportunities and equality in the marketplace. The entire focus of the CEDAW convention is to establish a baseline for women's equality in the world. It is obvious that maintaining prostitution as the last refuge for poverty stricken women is exploitation of the most vulnerable persons and cannot lead to gender equality. So long as prostitution remains as an "option" for poor women, there is no incentive to develop educational opportunities, job programs, or economic policies that could uplift the poor. The answer to the feminization of poverty cannot be prostitution.

Legalization of prostitution violates Article 2(f) and 5 (a) to eliminate practices based on the idea of the inferiority of women

The following quote from the Australian CEDAW shadow reports illustrates the violation of Article 5.

Article 2(f) of CEDAW states that parties to the Convention will 'take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, **customs and practices** which constitute discrimination against women' (emphasis added). **Article 5(a)** similarly states that 'all appropriate measures' will be taken to 'modify **the social and cultural patterns of conduct** of men and women, with a view to achieving the elimination of prejudices and **customary** and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women' (emphasis added).

The definition of harmful traditional practices was developed in 1995 in a UN Fact Sheet No 23 entitled 'Harmful Traditional Practices Affecting the Health of Women and Children'. The definition offered in the introduction covers several aspects that fit prostitution very well. As well as damaging the health of women and girls, traditional/cultural practices are said to 'reflect values and beliefs held by members of a community for periods often spanning generations' and are said to persist because they are not questioned and take on an aura of morality in the eyes of those practicing them. The practices are 'performed for male benefit'. They are 'consequences of the value placed on women and the girl child by society', and they 'persist in an environment where women and the girl child have unequal access to education, wealth, health and employment'.

¹⁷⁹ Violence against women: 29/01/92. CEDAW General Recom. 19, A/47/38. (General Comments)

2/Reflects values and beliefs held by members of a community for periods often spanning generations

Prostitution is a practice that fulfils this part of the definition very well. Defenders of prostitution tend to say that it is ‘the oldest profession’ and often use examples from prehistory to justify the view that prostitution should be honoured and celebrated.¹⁸⁰ One problem with this celebration of ‘sacred’ or ‘temple’ prostitution is that the proponents assume a golden age in which women were equal and in which the form of prostitution that existed was empowering to women rather than abusive. But there is no good evidence to suggest that prostitution had its origins in an egalitarian society. Gerda Lerner, for instance, attributes prostitution’s origins to the practice of slavery itself in Mesopotamia where extra slave women were placed in brothels.¹⁸¹ Similarly, Julianna Howell notes that when legislation legalising prostitution in Victoria, Australia was introduced, ‘a common view expressed by members of parliament (MPs) [was] that prostitution is the “oldest profession”, and one that will never disappear’. For example, ‘one [Victorian] MP who stated he accepted the inevitability of prostitution related a tale of “one of the great [Australian] dynasties” which was founded when the “right man” married a “humble prostitute”’.¹⁸² The historical evidence of the longevity of prostitution in different forms might more easily be used to support the idea that prostitution should be categorised as a harmful traditional practice.

3/ For the benefit of men

All the sound and fury that emanates from the debates presently raging in the international community of non-government organisations and feminist academics about prostitution concentrate upon women as if men were not involved in prostitution at all. Separating ‘forced’ from ‘free’ prostitution, as some sex work and even anti-trafficking organisations now do, encourages the exclusion of the male buyers, and those who make profits from that abuse, from consideration. It is a socially constructed masculine sexual desire that provides the stimulus to the industry of prostitution. Women can exercise no ‘choice’ to be in prostitution without the sex of male dominance and men’s demand to exercise that sexuality in the bodies of women bought for that purpose. The prostitution industry exploits the economic, physical and social powerlessness of women and children, in order to service what is an almost exclusively male desire. In western cultures women are seen as freely choosing prostitution whilst the male abusers are invisible. The men need to remain invisible if the social harm of their prostitution behaviour is to be hidden from their women partners, relatives, and workmates. A comparison can be made here with female genital mutilation which is often represented as something that women choose for their female children. This practice is usually carried out by women alone and men are absolved of responsibility. However, feminists campaigning against FGM have consistently stressed that FGM occurs so that women may conform to male ideas of female sexuality, and it is indeed men’s requirements that underlie the practice.¹⁸³

¹⁸⁰ Shannon Bell, *Reading, writing, and rewriting the prostitute body* (Bloomington: Indiana University Press), 1994.

¹⁸¹ Gerda Lerner, *The creation of patriarchy* (New York: Oxford University Press), 1986.

¹⁸² Julianna Howell, “St Kilda street prostitution: An example of gender biased discourse and ideology framing the prostitution debate,” Honours thesis, Department of Political Science, The University of Melbourne, 2001, p. 30.

¹⁸³ Efua Dorkenoo, *Cutting the rose: female genital mutilation: the practice and its prevention*, London, UK: Minority Rights Publications, 1994.

When legalisation is embarked upon in the present the preservation of public health from sexually transmitted diseases is usually still given as the most important aim. In fact the object is to protect the health of the male buyers.

Prostitution is not about women enjoying rights over their own bodies; on the contrary, it is an expression of men's control over women's sexuality. It is the hiring out of one's body for the purposes of sexual intercourse, abuse and manifestations of undifferentiated male lust. It is about gendered, ethnic, age, racial and class power relations. By no means is it the "consent of two adults", when one party is the buyer and the other the seller, especially when the buying party happens to be socially constructed as "the better sex", "the better class", "the more matured", "the power- that- be", "the more culturally polished" or "the fairer skin" etc.¹⁸⁴

Feminist thinking addresses that legalization of prostitution is economic anointing or laundering. Moreover, the problem of prostitution is rooted in diverse aspects of economic, political, socio-cultural values and sexuality, which are closely linked to the patriarchal social structure.

Further proof, if any be needed, that the system of legal prostitution in Australia is set up for the benefit of men and not the protection of women is the Occupational Health and Safety Codes. In Australia, the OSHA law guarantees the right of all workers not to have their health put at risk through carrying out the ordinary requirements of their work. Therefore to protect the "workers" from health risks of STD's and HIV, the customers would need to have health checks prior to any contact, not the women. A medical certificate should be required from each customer, and it should be updated monthly. This would ensure that no diseases would be spread. To require health checks of the women does not comply with the law, because if they were infected, they were not "protected" and it's too late, especially if they are infected with HIV. Anything less than requiring health checks of the customers proves beyond a doubt that it is the intention of the Australian state to protect the man (the purchase) not the woman (seller).

Some argue that since the woman is the seller, she must comply with certain regulations to avoid "caveat emptor", but then it becomes clear that the practice has nothing to do with women's autonomy or dignity but her status as a product. It is not an item she is selling or even a service. Instead, she is selling the right to do something to her body. Society does not allow complete control over our own bodies – we cannot legally sell a kidney though we can give one away. We cannot sell a baby though we can give one away. Laws set certain baselines to illustrate what a society defines as human rights, autonomy and dignity. Previously, it was unlawful to have pre-marital sex – we could not give sex away. Though phrased in terms of morals, it really had everything to do with control of women's sexuality by demanding they could only have sex in legal union with a man – a union in which he was superior. The position of the male Left since the 1960s, though phrased in terms of autonomy, really had everything to do with maintaining control of women's sexuality by demanding that they have sex with any man – a practice in which the man remained superior.

The OSHA regulations in Australia also say that a woman can refuse to have sex with a man who won't put on a condom. How should this be enforced? A video camera in every room? A panic button around her neck – which might lead to her being strangled? A microphone perhaps where she will yell out a magic word and guards will come and remove him? Should he then be arrested? Some rooms now have three panic buttons. At the least, the brothels should keep a computerized list of men who have refused to wear condoms and check the

¹⁸⁴ Virada Somswagsdi, "Legalization of Prostitution: A Challenge to Feminism and Societal Conscience," A talk at Cornell Law School, Chair, Women Studies, Chaingmai University, Thailand, 9 March 2004.

identification of the men upon entry, and if they are on the list, refuse to allow them inside. Of course, this is not done.

Guidelines to implement the laws have also been drawn up. One is to have a 100-watt bulb in the room so the woman can do a visual inspection of the man's penis to see that he has no obvious disease or if on an "outcall," take a small flashlight to do the same. Further, she is to share her knowledge of hygiene and health with the customer (give him a lecture) prior to engaging in sex. Besides the fact that most diseases do not have outward visual manifestations, most prostituted women are not nurses and would not know what to look for, most men would not allow their genitals to be inspected by flashlight nor could the women deliver a lecture about hygiene and disease. To enforce this requirement, the man should have to pass through a screening with medical personal who question him about his reproductive organs and do a thorough visual screening. Of course, this is not done. When questioned about this requirement, most men said they would not go to any such brothel where they were inspected or lectured.¹⁸⁵ Women however are expected to endure much more intrusive weekly gynecological exams for the benefit of men.

In the alternative, the State could pay for the women to go to medical or nursing school to get the required information and then, when they have finished school, if they "voluntarily" decide to return to being a prostitute, they could adequately examine men's genitals for disease, or perhaps they would prefer to be a doctor or nurse.

The government acts more and more like a pimp with a document on the RhED website that clearly instructs inexperienced, and most probably very young, prostituted women that they should be nice to customers, and that prostitution is not abusive. 'Tips for Novices' tells women to respect their 'customers', 'Unless a customer is terribly rude, there is no reason to cop an attitude with him or her. Both you and your customers get something valuable out of the transaction that takes place. It behoves you to honor the mutual exchange'. The document compares prostitution with a religious vocation, 'The only think (sic) wrong with sex work is society's negative, hypocritical attitude towards it. You deserve as much support for your career choice as Mother Teresa does for hers'. The last line instructs the recruits to 'Lube your orifices' and the author's name is given as 'Taste of Latex'. These instructions, for prostituted women exploited in many cases by organised crime, are provided by a state financed and run organization. The state seems to have taken sides here, servicing the pimps rather than the abused women. Women must smile their way through the abuse they experience and not think negatively about it.¹⁸⁶ In fact, the state says, it's like being a nun.

The utter ludicrous nature of the "health and safety code" and the impossibility of its protecting women illustrates the absurdity of legalizing prostitution to "protect" women. The reality of the "experiment" of legalizing prostitution in Australia is a complete indictment of the concept.

4/ Takes on an aura of morality

Prostitution is also starting to take on an aura of morality. Although it has traditionally led to punishment and social isolation for women (although not for the men for whose use and benefit it exists), it is now being legalised in many places such as the Netherlands and Australia. When the 1998 ILO report on prostitution, *The Sex Sector*, can call for the recognition of the usefulness of prostitution to the economies of South East Asia, then the status of prostitution as an industry starts to take on the appearance

¹⁸⁵ Author inquiry.

¹⁸⁶ Personal email from Sheila Jeffries, Australia.

of a positive good, rather than a social evil. The status of prostituted women does not necessarily change, however, even though the business of making a profit from the industry can become respectable. Even if prostitution is not always seen as wholly good, it is certainly seen as inevitable in most countries of the world, an inevitability which shows the deep rooted nature of its acceptance, its embeddedness as a practice in male dominant cultures.

The sex industry is a powerful educator and creates its own morality through pornography. Pornography consists of photographs and moving images of women being paid to perform sexual acts, i.e. prostitution. It teaches important messages which legitimise men's prostitution abuse. It teaches that women like and crave to be sexually used, despite the fact that the women are in fact simulating desire or even enslaved and clearly bruised. It teaches the practices of prostitution as what sex is. Pornography is, as Kathleen Barry argues, the 'propaganda of woman hatred', but it is also the force which propels the prostitution industry to expand and teaches new generations of men a morality in which the abuse of women in prostitution is a conceivable option.¹⁸⁷

Prostitution is increasingly promoted as a therapeutic institution for lonely, busy, elderly, or disabled men. Organisations such as Touching Base in Sydney (established in 2000) promote prostitution amongst disabled and aged care organisations, and enlist community figures such as the Governor of New South Wales to advocate on behalf of their organisation. The rhetoric of organisations such as Touching Base attempt to justify men's use of women in prostitution under the guise of 'sexual rights', with no regard for the right of women to not have to forgo sexual autonomy for money. The organizations exactly invert the language of human rights activists and feminists, and distort sympathies for the situation of people with a disability to promote prostitution. For example, the web site of Touching Base says that the organisation was 'developed to assist people with disabilities and sex workers to connect with each other, focusing on access, discrimination, human rights, legal issues, and attitudinal barriers that both communities face'.¹⁸⁸ The sex industry in Australia now lobbies for disabled and aged care subsidies from government for men to buy prostituted women.

Prostitution is given an aura of morality by academic justifications which represent it as good for women, as representing women's 'choice' and 'agency' and even 'feminism in action'.¹⁸⁹ Thus prostitution takes on the aura of contributing to women's 'empowerment' and those who continue to want to point out the brutality involved in men's prostitution behaviour can be said to be acting against women's interests.¹⁹⁰ Mentioning the men whose interests create and maintain prostitution becomes a social solecism.

In a conference in the Balkans, a Transparency International spokesperson actually referred to "improving the product" when referring to a higher class of prostitutes and "making it easier for the customer to find the right product" i.e. the johns to find cheaper women. This illustrates the point that 1) legalizing prostitution means women become commodities in the stream of commerce; and 2) once prostitution is legal, all women are prostitutes. The State

¹⁸⁷ Kathleen Barry, *Female sexual slavery*, New York; London: New York University Press, 1979.

¹⁸⁸ Touching Base website, <<http://touchingbase.org>>

¹⁸⁹ Jill Nagle (ed), *Whores and other feminists*, New York: Routledge, 1997.

¹⁹⁰ Roberts, Nickie, *Whores in History*. London: HarperCollins, 1992.

can no longer protect women from it, prohibit women from doing it ¹⁹¹ and can force women to do it. ¹⁹²

Prostitution damages the health of women and girls. It stems from beliefs that have been held by the community for some time - the belief in women's inferiority and women's sole purpose as sexual instruments for men. Such commercial sexual access has taken on the aura of morality and acceptability much as it was accepted for centuries that men could rape their wives. After all, the reason they married was to have easily available sex. Legalization or prostitution simply says that men can rape women for pay. Prostitution is certainly for male benefit and based on women's inequality and lack of access to resources.

Legislation of prostitution violates community norms.

Some have argued that prostitution is not violence but the expression of women's sexual autonomy and acts to which they consent. The facts belie this. It is astounding that the International Labor Organization could suggest that the sex industry be treated as legitimate while at the same time admitting that the women feel alienated and forced, were conscience stricken and had negative self images, and many wanted to leave if they could. ¹⁹³ This cannot be considered "agency". The acts to which virtually every prostituted woman is subjected are crimes, and no one can consent to being the victim of a crime.

Some States and even international and United Nations organizations illustrate a schizophrenic attitude toward prostitution. A UN/AIDS and WHO condom campaign in Thailand humiliated the women by posting their photographs in brothels if they had agreed to sex without a condom. ¹⁹⁴ Men who refused to have sex without a condom were not similarly humiliated. In 2001, WHO staff, Dr. Cris Tunon, suggested we should "accept the imperfections of society". ¹⁹⁵ Should we accept slavery? Should we accept torture? These are also imperfections of society. The universal answer is no. Why should we accept the rape and abuse of women? Just because it's common? In the 1980s, a lobbyist in Arizona argued exactly that, that because discrimination against women was so common, to include it in the list of prohibited acts would diminish the seriousness of the law and the attention that could be paid to other marginalized groups.

In December 2005, the Rosa Center for Victims of War in Croatia held a seminar on Trafficking and Prostitution and made it clear that the legalization of prostitution is not acceptable. ¹⁹⁶ The European Women's Lobby agrees and argues that the chief cause of trafficking is not poverty *per se* but the existence of a market for women's bodies created by pornography and prostitution. Lilian Halls, Paris member of the European Feminist Initiative for a Different Europe, pointed out the "... the hypocrisy of the state which wouldn't openly admit that it makes money from the prostitution. Furthermore, the fact that the non-commercial activities income is taxed at a flat rate creates the paradox that it makes it more

¹⁹¹THE Queensland Government could breach discrimination laws if it tries to stop public servants working in the legal sex industry, the state's anti-discrimination commissioner said. In this case, the public servant in question was a school teacher. One commissioner said if it's legal for men teachers to visit sex workers, then it's legal for women teachers to be one,
< <http://www.thecouriermail.news.com.au/printpage/0,5942,17176566,00.html>, The Courier-Mail> 08 November 2005

¹⁹² At least two stories have circulated from Germany and New Zealand that women on unemployment were told they must apply at brothels. This has not yet been verified. But with the reasoning in the school teacher case, it surely won't be far behind.

¹⁹³ Op Cit., 10 Reasons...

¹⁹⁴Op Cit., "Bad for the Body ... p. 1110.

¹⁹⁵ WHO Deutsche Presse -Agentur, August 13, 2001, WHO urges decriminalization of prostitution.

¹⁹⁶ Tomislav Domes, <<http://see.oneworld.net/article/view/123421/1/3260>> 06 December 2005.

difficult to leave the world of prostitution, having in mind that women have to prove themselves that they are not involved in prostitution anymore.”

Boriana Jönsson, member of Stockholm-based Kvinna til Kvinna, pointed out that "The ban", believes Jönsson, "demonstrates the ethical and political attitude of the state towards prostitution and gender equality in general. From the viewpoint of human rights, there can't be such a relationship in which a man would purchase and own the body of a woman as a commodity. No civilized society, regardless of the possible fiscal or other benefits, should allow for that. “

Brenda Zurita, the Project Director for CWA's Crossing the Bridge initiative against sex trafficking and child exploitation, says that prostitution is not a profession but exploitation.¹⁹⁷ “Amsterdam is known for prostitution. Its red light district draws tourists from around the globe in search of sex and voyeurism. So, how did legalizing prostitution work for Amsterdam? The mayor admitted in October that the Dutch experiment to end abuse by legalizing prostitution has failed. An article on LifeSiteNews.com quotes Amsterdam Mayor Job Cohen: "Almost five years after the lifting of the brothel ban, we have to acknowledge that the aims of the law have not been reached. Lately we've received more and more signals that abuse still continues." The police admit, "We are in the midst of modern slavery."”¹⁹⁸ Eighty percent of the women in Dutch brothels were trafficked.

In Canada where a discussion has been on going about legalization, the federal committee looking at it has been charged with ignoring the harsh lessons learned in other countries.¹⁹⁸ In fact, “the reports from Australia and New Zealand claim that such legalization led to more organized crime-controlled street prostitution "terrorizing" communities, illegal brothels and a rise in victimized children and human trafficking”, Art Hanger said. Sex workers feel laws do little about violence and that violence is an inevitable aspect of the sex industry.¹⁹⁹

"The terrible predicament of prostitutes and the danger the trade inflicts on society are being ignored," said the Conservative MP for Calgary Northeast. "It changes the whole face of a community," Hanger added, pointing to reports that say communities have seen a huge growth in sex trade workers, drug addicts and johns harassing residents.

In the amicus brief filed in Alliance for Open Society and OSI v. USAID & Natsios,²⁰⁰ the nineteen supporting organizations ranged from Russia to Sweden to the U.S. and the Asia-Pacific. They were organizations led by, informed by, and serving the survivors of prostitution with many of them such as Breaking Free founded by women who had escaped. They were united that prostitution is a system of abuse and that the best strategy, the pro-victim approach, is helping prostituted persons escape.

To end exploitation, demand must be attacked.

In the comments for Norway,²⁰¹ the CEDAW Committee recognized that in spite of various steps taken to assist victims, “violence against women does not seem to have been reduced.”

¹⁹⁷ Brenda Zurita, Prostitution is Not a Profession, It's exploitation, <<http://www.cwfa.org/articles/9691/BLI/family/index.htm>>, 14 December 2005.

¹⁹⁸ Linda Slobodian, MPs at odds over legalizing prostitution, Calgary Herald, Tuesday, October 11, 2005.

¹⁹⁹ Farley, *infra*.

²⁰⁰ USCD-SD, 05 CV 8209

²⁰¹ Concluding Observations of the Committee on the Elimination of Discrimination Against Women : Norway. 31/05/95. A/50/38, paras. 452-495. (Concluding Observations/Comments)

(para 466) Likewise child abuse had increased, especially incest (para 469) along with an increase in hard core pornography, prostitution and trafficking (para 470).

The government representative responded that studies had been done and, “Most studies have been based on psychoanalytic theory, system theory or feminist theory. Studies within a psychoanalytic framework see violence as a consequence of the individual history. In system theory, the generation perspective is important, explaining violence as an issue of revictimization. Many victims repeat the abuse that they themselves experienced as children. The feminist perspective focuses on the power relation between men and women. It is well known that most abusers are men while the victims may be boys, girls or adult women. Empirical evidence suggests that gender power and family pattern have been central in understanding the prevalence of sexual violence in society.” (para 466)

Clearly whether looking at individual history, revictimization, power relations or family patterns, legalizing prostitution has a negative impact on every indicator of violence against women. The men who engage in it have more discriminatory attitudes against women and are more accepting of prostitution and rape myths as well as more violent themselves.²⁰² A thriving sex industry increases child prostitution and other sex crimes²⁰³ and has a negative effect on how women are regarded by men.²⁰⁴ The lack of gender equality promotes violence against women.²⁰⁵ Prostitution promotes gender inequality. Violence against women and children increases when prostitution increases because acceptance or normalization of prostitution justifies and excuses violence against women. Therefore, promoting prostitution promotes violence against women and inequality in contradistinction to the very purpose of CEDAW.

The Committee went on to praise Norway:

467. Norway deserves to be commended for attempting to look at the other side of prostitution - namely, its male consumers. A study on prostitution has provided an analysis of prostitution as a problem that is not simply a problem of women but of male sexual needs and desire to "control sexual relations".

This finding by the Norwegian government fits clearly within the feminist perspective and empirical evidence. The problem is not the women; the problem is the gender relationship of power and control. Legalizing prostitution only institutionalizes that relationship and gives it government credibility.

The missing link is the user, the customer, the john.²⁰⁶ In the rare occasions when a trafficker is caught, s/he may get a lengthy sentence. Often, when the victims are caught, they too are punished or immediately deported. But the customers, who are creating the demand without which there would be no prostitution, rarely bear any penalty. These customers may be having sex with children, often knowingly or at their own request, or with women they can see are battered and bruised thus forced. Yet they face no legal or societal consequences.

Studies of the customers show their use of prostitutes is tied to their disregard for women. A john who was guaranteed anonymity said prostitution was like “renting an organ for ten minutes”. Another man said, “I use them like I might use any other amenity, a restaurant, or a

²⁰² Op Cit, Prostitution is Sexual violence...

²⁰³ Raymond, Janice G, 10 Reasons for Not Legalizing Prostitution,. Journal of Trauma Practice, 2, 2003, 315-332; Farley, Melissa (Ed.), Prostitution, Trafficking and Traumatic Stress, Binghamton; Haworth Press, 2003, and Bad for the Body op cit .

²⁰⁴ Op Cit, The Swedish Law...

²⁰⁵ Op Cit., “Bad for the Body ... p. 1111.

²⁰⁶ Joan Smith, Why British men are rapists, Cover story - The New Statesman, research by Sam Alexandroni, Monday 23rd January 2006.

public convenience.”²⁰⁷

As Smith points out, “... it exposes the pernicious assumptions at the heart of prostitution. One is the rarely challenged claim that there is something peculiar to male sexuality that makes men entitled to sexual release whenever they want it; another is that women are a class from which men should expect to get sex, regardless of the damage they inflict on individuals. In that sense, it is just as much an abuse of human rights as conventional slavery, which assumed that Africans could be bought and sold for use by white people.”

The Committee has recognized more than once that the client and procurer must face criminal penalties to end prostitution²⁰⁸ and that the responsibility for ending prostitution should not be placed on the women but on the procurers and clients.²⁰⁹

In the 2001 Concluding Observations²¹⁰ the Committee expressed concern that Sweden’s approach to penalizing the buyer might increase clandestine prostitution (para 354) while likewise expressing concern that Sweden has become a destination for trafficked women. The Committee urged the Government to evaluate the policy (para 355), which it has done. The effects of legalisation on the numbers of women involved in prostitution is clear from a comparison with Germany, which has legalised brothels and has 3.8 prostituted people per 1000 population, and Sweden, which penalises the male buyers and has 0.3 prostituted people per 1000 population.²¹¹

In fact, the effect of the Swedish law has been dramatic. Official figures show that the number of women involved in prostitution fell from 2,500 before the law came into force in 1999 to 1,500 in 2002. By 2004 the recruitment of women into street prostitution had almost halted. With a population of nine million, Sweden is estimated to have only 500 street prostitutes, while neighbouring Denmark, with a population just over half that size, had between 5,500 and 7,800 in 2004, half of whom, it is estimated, were victims of trafficking.

In contrast, a five-year evaluation of the German law shows that it has neither improved conditions for women in the prostitution industry nor helped women to leave. It has also failed "to reduce crime in the world of prostitution." As a result, the report stated that "prostitution should not be considered to be a reasonable means for securing one's living."²¹²

²⁰⁷ http://www.mercatornet.com/articles/view/the_real_harms_of_prostitution/

Melissa Farley | Monday, 18 October 2010 **The real harms of prostitution**
Why would we legalise what women who have experienced it call 'paid rape' and voluntary slavery

²⁰⁸ Concluding Observations of the Committee on the Elimination of Discrimination Against Women : Guyana. 31/07/2001. A/56/38, paras. 145-184. (Concluding Observations/Comments); Committee on the Elimination of Discrimination against Women: Fiji. 07/05/2002. A/57/38 (Part I), paras 24-70. (Concluding Observations/Comments) (para 225)

²⁰⁹ Concluding Observations of the Committee on the Elimination of Discrimination Against Women : Cuba. 09/05/96. A/51/38, paras 197-228. (Concluding Observations/Comments) (para 225)

²¹⁰ Concluding Observations of the Committee on the Elimination of Discrimination Against Women : Sweden. 31/07/2001. A/56/38, paras 319-360. (Concluding Observations/Comments)

²¹¹ Ward, Helen and Day, Sophie, “ Sex work in context,” in Day, Sophie and Ward, Helen (eds), Sex Work, Mobility and Health in Europe, London: Kegan Paul, 2004.

²¹² Trafficking, Prostitution and the Sex Industry: The Nordic Legal Model, By Janice Raymond* - 21 July 2010, <http://www.portside.org/?q=showpost&i=97>

Supporters of the Swedish law say it has also had an impact on trafficking into Sweden, with the National Criminal Investigation Department (NCID) reporting that the country is no longer an attractive market for foreign gangs. Intercepted telephone conversations show that pimps and traffickers express frustration about setting up shop in Sweden, preferring to operate in Denmark, Germany, the Netherlands and Spain. In its 2004 report the NCID concluded that the law "continues to function as a barrier against the establishment of traffickers in Sweden"; it estimates that roughly 400-600 women are trafficked into Sweden each year, compared with between 10,000 and 15,000 into Finland. The law's opponents claim it has made street prostitution more risky because the few remaining clients tend to be more "perverted", but most of them concede that it has reduced demand.²¹³

Norway adopted the model in 2009 and has seen a twenty percent decrease in street prostitution, sixteen percent in indoor prostitution and sixty percent decrease in advertisements for sexual activities.²¹⁴

Thus it can be seen that the Swedish approach is clearly the best approach to end exploitation of the prostitution of women. Based on the pioneering approach of the Swedish government, the international community including the CEDAW committee has begun to recognize that prostitution is not some inevitable societal fixture, but is driven by the patriarchal expectation of males to have sexual access to females on demand. The success of the Swedish approach clearly shows the way forward for implementation of Article 6. For States Parties to legalize prostitution, thereby creating more exploitation and violence, flies in the face of research, reason and reality.

Patriarchy is the Problem

The acceptance of the myth of men's uncontrollable sexual urges, and the institution of prostitution as a way to prevent men from raping innocent women is seen as the ultimate justification for prostitution.²¹⁵ The Whore/Madonna dichotomy then continues; some women can be raped, others cannot. "Prostitution exists in and is maintained by a male-controlled society where violence against women and children is pandemic and racism flourishes."²¹⁶ Prostitution functions in tandem with racism and sexism and reduces women to objects.²¹⁷

The fact that prostitution is harmful to women is ignored. Instead male privilege is reinforced through the masculine entitlement to sexual access to and power and control over women, in a situation where men create the market and where customers contribute to the maintenance of a system of slavery at the expense of women's bodies. Legalized prostitution allows males unconditional sexual access to females and turns women into second-class citizens. Customers, pimps, police and governments are perpetrators of violence against women. The situation where some women shall be completely sexually available to buyers constitutes nothing less than paid rape.

Diane Matte, Coordinator of the International Secretariat of the World March of Women outlines the four institutions that maintain the patriarchal system of exploitation of women:

²¹³ Joan Smith, Why British men are rapists, Cover story - The New Statesman, research by Sam Alexandroni, Monday 23rd January 2006.

²¹⁴ Ibid, footnote 211

²¹⁵ Carter & Giobbe, Duet: Prostitution, Racism and Feminist Discourse, HWJL, p. 45.

²¹⁶ Carter & Giobbe, Duet: Prostitution, Racism and Feminist Discourse, HWJL, p. 54.

²¹⁷ Carter & Giobbe, Duet: Prostitution, Racism and Feminist Discourse, HWJL, p. 38.

marriage, maternity, heterosexuality and prostitution.²¹⁸ While challenges exist in all four, the least strides have been made in prostitution. In fact, it seems that the more strides women make in one area of freedom, the more we are pushed back in another. Ownership and use of women's bodies by men is the clearest example that women do not have freedom. Yet instead of the practice declining, it is actually increasing, and women who speak out against it are pilloried.

"If we truly want to address the issue of violence against prostituted women, then, we must tackle inequality between women and men in a much broader way. We must above all challenge the demand, i.e., the fact that men want to purchase sexual services, and make the necessary links with the maintenance of women's inferior status. Remember, too, that the institution of prostitution concerns all women. Under patriarchy, the man/buyer does not wonder if the woman wants to be a prostitute. He prostitutes her." (Matte)

CONCLUSION

The research has clearly shown that the women who are exploited in prostitution suffer the same kind of acts suffered by torture victims, have the same kind of injuries and the same harms. The victims of prostitution not suffer the injuries daily and over time. In locations where prostitution is legalized, women suffer these injuries with the permission of the State. The State, by its acquiescence in the legalization and its support of the direct actors, bears responsibility and must be held accountable.

The behaviors rise to the level of torture under international law and are certainly crimes for which on defense of consent is allowed. For consent to be valid there has to be informed choice. In this situation, there is neither accurate information nor actual choice. Approximately fifty percent of those sold into prostitution are minors, and the issue of choice is not even applicable.

Research in the communities where prostitution has been legalized proves that it does not eliminate the problems of violence or trafficking but in fact escalates illegal prostitution, crime and the degradation of women in general. As prostitution grows so does trafficking as the method to procure sufficient numbers of prostituted women.

International jurisprudence from UN treaties, multilateral documents, NGO conventions, the ICC, the ad hoc tribunals, and the ECtHR all give ample examples of the illegality of prostitution under international law. The state has an obligation to respect human rights. It cannot do that by supporting a regime to sell women as commodities in the market place. The state has an obligation to protect human rights. It cannot do that by legalization of prostitution that results in negative consequences to the prostituted woman in particular and all women in general. The state has an obligation to fulfill the substantive requirements of human rights, which it must do by focusing on ending the demand for prostituted women and creating the conditions whereby women and children cannot be coerced into prostitution. This begins with ending violence against children in the home, marital rape, domestic violence, inequality in the work place, sexual harassment, lack of political representation, feminization of poverty and all the other indicia of the inequality of women. Clearly the legalization of prostitution violates CEDAW Articles 2, 5 and 6 that focus on traditional practices, ideas of the inferiority of women and ending the exploitation of prostitution.

²¹⁸ Text of a presentation made by Diane Matte, Coordinator of the International Secretariat of the World March of Women, to the Subcommittee on Solicitation Laws of the Standing Committee On Justice, in Montreal, March 16, 2005.

Legalized prostitution cannot exist alongside the true equality of women. The structural inequity based on gender, class and race is exemplified by the idea that one group of women must be available for men's sexual access and cannot be squared with any concept of human rights. This violation of international law cannot go unchallenged. Failure to do so undermines every human rights norm that claims to support the dignity of the person and equality between the sexes.

¹ Where trafficking occurs without the use of one or more of the means set forth in subparagraph (a) (as may be the case in child trafficking), then consent is irrelevant simply by virtue of its logical (not legal) irrelevance.

² As the travaux préparatoires makes clear, the Protocol is to be interpreted "without prejudice to how States parties address prostitution in their respective domestic laws". United Nations document A/55/383/Add.1, paragraph 64.

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