



**Tithe an  
Oireachtais**  
Houses of the  
Oireachtas

## **Tithe an Oireachtais**

An Comhchoiste um Dhlí agus Ceart, Cosaint agus  
Comhionannas

Tuarascáil ar éisteachtaí agus aighneachtaí maidir leis an  
Athbhreithniú ar Reachtaíocht i ndáil le Striapachas

*Meitheamh 2013*

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## **Houses of the Oireachtas**

Joint Committee on Justice, Defence and Equality

Report on hearings and submissions on the Review of Legislation on  
Prostitution

*June 2013*

**31/JDAE/010**

## Chairman's Preface

The Joint Committee on Justice, Defence and Equality was requested by the Minister for Justice and Equality to examine the document produced by his Department on the review of laws relating to prostitution.

The Committee decided to invite written submissions on this issue which resulted in over 800 submissions being received for consideration. These submissions were wide-ranging and included various suggested changes to the current laws for consideration by the Committee.

On foot of these submissions, the Committee agreed to hear evidence from a number of contributors. This resulted in a number of public and private hearings from 24 organisations and individuals. This was an attempt to ensure that as many viewpoints as possible were presented to the Committee in order to allow for a more informed response to the Minister. The written submissions of those who gave evidence to the Committee are included as part of this report as are the transcripts of the public hearings. Due to the large number of submissions received, it was not possible to publish all of them, however, all submissions were considered by the Committee in its preparation of this report.

From the outset, it was clear that this would be a complex and delicate matter and the Committee wished to ensure that the human element on which the evidence was based was not lost. I believe that the evidence to the Committee was presented in a balanced and fair way.

As part of the process, a delegation of Members travelled to Sweden to engage with those involved in the operation of the "Swedish Model". The report makes reference to some of the information presented to the delegation while in Sweden.

This report makes recommendations to the Minister based on the information presented to the Committee through written submissions and from those who appeared before the Committee.

I would like to express my thanks to all those who took part in this process, for their invaluable contributions. I was particularly impressed that all evidence was presented in a frank, honest and, at times, very emotional manner.

I look forward to further progress and engagement with the Minister on this important issue.

I would also like to thank the Members of the Joint Committee for their participation in this process and hope that our input makes a valuable contribution to the ongoing review.



A handwritten signature in black ink, which appears to read "D Stanton". The signature is written in a cursive style and is positioned above a horizontal line.

David Stanton TD  
Chairman  
June, 2013



**Niall Collins TD  
(FF)**



**Marcella Corcoran Kennedy TD  
(FG)**



**Alan Farrell TD  
(FG)**



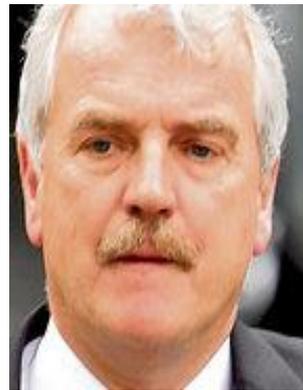
**Anne Ferris TD  
(LAB)  
[Vice-Chairman]**



**Seán Kenny TD  
(LAB)**



**Pádraig Mac Lochlainn TD  
(SF)**



**Finian McGrath TD  
(IND)**



**John Paul Phelan TD  
(FG)**



**David Stanton TD  
(FG)  
[Chairman]**



**Senator Ivana Bacik  
(LAB)**



**Senator Paul Bradford  
(FG)**



**Senator Martin Conway  
(FG)**



**Senator Rónán Mullen  
(IND)**



**Senator Denis O'Donovan  
(FF)**



**Senator Katherine Zappone  
(IND)**

## ORDERS OF REFERENCE

### **a. Functions of the Committee – derived from Standing Orders [DSO 82A; SSO 70A]**

- (1) The Select Committee shall consider and report to the Dáil on—
  - (a) such aspects of the expenditure, administration and policy of the relevant Government Department or Departments and associated public bodies as the Committee may select, and
  - (b) European Union matters within the remit of the relevant Department or Departments.
- (2) The Select Committee may be joined with a Select Committee appointed by Seanad Éireann to form a Joint Committee for the purposes of the functions set out below, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.
- (3) Without prejudice to the generality of paragraph (1), the Select Committee shall consider, in respect of the relevant Department or Departments, such—
  - (a) Bills,
  - (b) proposals contained in any motion, including any motion within the meaning of Standing Order 164,
  - (c) Estimates for Public Services, and
  - (d) other matters as shall be referred to the Select Committee by the Dáil, and
  - (e) Annual Output Statements, and
  - (f) such Value for Money and Policy Reviews as the Select Committee may select.
- (4) The Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies, and report thereon to both Houses of the Oireachtas:
  - (a) matters of policy for which the Minister is officially responsible,
  - (b) public affairs administered by the Department,
  - (c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,
  - (d) Government policy in respect of bodies under the aegis of the Department,
  - (e) policy issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,
  - (f) the general scheme or draft heads of any Bill published by the Minister,
  - (g) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,
  - (h) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,
  - (i) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in paragraph (4)(d) and (e) and the overall operational results, statements of strategy and corporate plans of such bodies, and
  - (j) such other matters as may be referred to it by the Dáil and/or Seanad from time to time.

- (5) Without prejudice to the generality of paragraph (1), the Joint Committee shall consider, in respect of the relevant Department or Departments—
- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 105, including the compliance of such acts with the principle of subsidiarity,
  - (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
  - (c) non-legislative documents published by any EU institution in relation to EU policy matters, and
  - (d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.
- \* (6) A sub-Committee stands established in respect of each Department within the remit of the Select Committee to consider the matters outlined in paragraph (3), and the following arrangements apply to such sub-Committees:
- (a) the matters outlined in paragraph (3) which require referral to the Select Committee by the Dáil may be referred directly to such sub-Committees, and
  - (b) each such sub-Committee has the powers defined in Standing Order 83(1) and (2) and may report directly to the Dáil, including by way of Message under Standing Order 87.
- (7) The Chairman of the Joint Committee, who shall be a member of Dáil Éireann, shall also be the Chairman of the Select Committee and of any sub-Committee or Committees standing established in respect of the Select Committee.
- (8) The following may attend meetings of the Select or Joint Committee, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:
- (a) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,
  - (b) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
  - (c) at the invitation of the Committee, other Members of the European Parliament.

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\* By Order of the Dáil of 8<sup>th</sup> June 2011, paragraph (6) does not apply to the Committee on Justice, Defence and Equality.

**b. Scope and Context of Activities of Committees (as derived from Standing Orders [DSO 82; SSO 70])**

- (1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders.
- (2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil and/or Seanad.
- (3) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Dáil Standing Order 26. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.
- (4) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Dáil Standing Order 163 and/or the Comptroller and Auditor General (Amendment) Act 1993.
- (5) The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
  - (a) a member of the Government or a Minister of State, or
  - (b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceann Comhairle / Cathaoirleach whose decision shall be final.

## **Part 1: Introduction**

This report has been prepared by the Joint Committee on Justice, Defence and Equality in response to the request of the Minister for Justice, Equality and Defence, Alan Shatter TD, to undertake public consultation and hearings on the Discussion Document on Future Direction of Prostitution Legislation published by the Department of Justice on 22 June 2012. Acting on the Minister's request, the Committee published a request for submissions on 4 July 2012 and received over 800 written submissions on the law relating to prostitution. The Committee held 4 public hearings between 12 December 2012 and 6 February 2013 at which presentations were made by 26 organisations and individuals.

This part of the report sets out the factual background to the review of legislation and approaches adopted in various jurisdictions to legislating on prostitution. Part 2 outlines the evidence and submissions presented to the Committee concerning the prevalence of prostitution in Ireland, profiles and experiences of those affected by it, and the impact of related issues such as health effects, criminality and trafficking. Part 3 of this report summarises the views of contributors on the objectives of reform and the means by which the law should achieve them. The report concludes with the Committee's findings and recommendations in Part 4.

Many submissions received from individuals contain sensitive personal information; a large number also included a request for confidentiality. For that reason, written submissions from individual persons who did not present to public hearings of the Committee are not published with this report.

### **1.1 Background**

Prostitution is a common phenomenon throughout Ireland. It is available in towns and cities across the State every day of the year and has been a feature of Irish society for centuries. Prostitution has been provided mainly by poor or marginalised Irish women and availed of by Irish men of all social classes. Though not "a fit subject for polite conversation", Dublin's 'Monto', the 'wrens' of the Curragh, the idea of 'the fallen woman' and Irish courtesans such as Eliza Gilbert (Lola Montez)

have been reflected literature, popular culture and social policy as well as perceptions of women, sex, class and poverty in Ireland. Despite social and legal condemnation, it has persisted.

Historically, prostitution in Ireland was a street-based phenomenon associated mainly with cities, ports and – before independence – garrison towns. However, the last 20 years have seen a move towards indoor-only prostitution that is available in towns throughout the country. The vast majority of women in prostitution in Ireland today are believed to be of non-Irish nationality. These changes appear to have occurred in line with developments such as the introduction of mobile phones and the internet, globalisation, ease of movement around Ireland and across the expanded European Union, the widespread construction of apartments and increased disposable incomes of Irish people.

### **1.1.1 Prostitution and the Criminal Law**

The criminal law has for many years reflected social disapproval of prostitution. A number of 19th Century statutes dealt with prostitution as a vagrancy offence for which a "common prostitute" could be arrested without warrant.<sup>1</sup> Similarly, statutes penalised procurement, operating or working as a prostitute in a brothel, living off the earnings of prostitution, soliciting, procuring and importuning. The most recent revision of the law relating to prostitution was undertaken in the Criminal Law (Sexual Offences) Act, 1993 ("the 1993 Act"). That Act removed from the statute book a number of vagrancy-related offences that had been found by the Supreme Court to be unconstitutional.<sup>2</sup> More significantly, it rendered gender-neutral the offences of soliciting and loitering for the purposes of prostitution, thereby permitting prosecution of both prostitutes and their clients. The Act re-stated long-standing prohibitions on operating brothels and profiting from prostitution, and updated public-order aspects of prostitution to deal with 20th century phenomena such as kerb-crawling. The 1993 Act reflected the fact that prostitution in Ireland was at that time

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<sup>2</sup> See for example s. 7 Dublin Police Act, 1867, or equivalently for male prostitutes s. 1(1) Vagrancy Act 1898. *King v Attorney General* [1981] I.R. 233

largely street-based and was perceived mainly as a public-order issue. It did not criminalise or sanction the transaction at the centre of adult prostitution, namely the sale of sexual services.

Prostitution-related offences under the criminal law currently in force include the following:

- **Soliciting or importuning for the purpose of prostitution in a street or public place** (s. 7 of the 1993 Act). This is a summary offence punishable by fines and/or (for a third or subsequent offence) up to four weeks' imprisonment.
- **Loitering for the purposes of prostitution** (s. 8 of the 1993 Act). This offence is committed by a person whom a member of An Garda Síochána suspects on reasonable grounds of loitering in a street or public place (including loitering in a car) to solicit or importune another for the purposes of prostitution, and who fails to leave the area when directed to do so. The penalties on summary conviction are the same as those for offences under S. 7.
- **Organising prostitution** (s. 9 of the 1993 Act). This offence is committed by a person who for gain:
  - controls or directs the activities of a prostitute in respect of prostitution;
  - organises prostitution; or
  - compels or coerces a person to be a prostitute.

This is an indictable offence punishable by a fine and/or imprisonment of up to 5 years.

- **Living on the earnings of prostitution** (s. 10 of the 1993 Act). This offence is committed by a person who knowingly lives, in whole or part, on the earnings of another person's prostitution and who aids or abets that prostitution. This is a summary offence punishable by a fine and/or up to six months' imprisonment.
- **Brothel keeping** (s. 11 of the 1993 Act). The offence consists of keeping, managing or assisting in the management of a brothel or, in the case of a landlord or tenant, knowingly permitting the use of a premises as a brothel. The term "brothel" is not defined by statute so the Common Law understanding of it as any premises used by more than one woman for

prostitution must be inferred. Conviction of this offence on indictment can be punished by a fine and/or up to five years' imprisonment.

- **Advertising prostitution** (s. 23 of the Criminal Justice (Public Order) Act, 1994).  
Publishing or distributing advertisements for a brothel or the services of a prostitute is an indictable offence punishable by a fine.
- **Soliciting a child or vulnerable adult for the purpose of committing a sexual offence** (s. 6 of the 1993 Act as inserted by s. 2 of the Criminal Law (Sexual Offences) (Amendment) Act 2007). This offence is committed whether or not the solicitation is for the purpose of prostitution. It is punishable by up to five years' imprisonment.
- **Trafficking a child for the purposes of sexual exploitation** (s. 3 of the Child Trafficking and Pornography Act as amended by s. 3 of the Criminal Law (Human Trafficking) Act 2008). This offence applies to all forms of sexual exploitation, but prostitution is specifically mentioned as one in the section. The maximum punishment for this offence is life imprisonment.
- **Soliciting or importuning a trafficked person for the purpose of prostitution** (s. 5 of the Criminal Law (Human Trafficking) Act, 2008). This offence is punishable on summary conviction by a fine of up to €5000 and on indictment by a fine and/or up to five years' imprisonment. It is a defence to show that the person charged did not have reasonable grounds for believing that the person being solicited had been trafficked.
- **Procuring a woman or girl to become a prostitute** (s. 2 of the Criminal Law Amendment Act, 1885). This applies whether it is intended that the victim serve as a prostitute or "an inmate of a brothel" in Ireland or elsewhere. The penalty is imprisonment for up to two years.
- **Allowing a child to be in a brothel** (S. 248 of the Children Act, 2001). A person who has the care or custody of a child who permits him or her to reside in or frequent a brothel can be punished on summary conviction with a fine and/or up to 12 months' imprisonment.
- **Causing or encouraging the prostitution of a child** (s. 249 of the Children Act, 2001). A

person having the care or custody of a child who commits this offence is liable to conviction on indictment to a fine.

## **1.2 Review by the Department of Justice and Equality**

In June 2012 the Department of Justice and Equality opened a review of the law relating to prostitution. The Department initiated the review by publishing a Discussion Document<sup>3</sup> that outlines different possible legislative approaches to prostitution and arguments for and against them.

In his foreword to the Discussion Document, the Minister for Justice, Equality and Defence, Alan Shatter TD, explained that the criminal law relating to prostitution was being reviewed primarily because of the changed nature of prostitution in Ireland. The Minister pointed out the importance of periodically reviewing the law to ensure that it is up to date and relevant to altered circumstances.

The Discussion Document elaborates the reasons for the review of legislation. While in most cases the sale and purchase of sexual services by consenting adults is not in itself illegal in Ireland, many activities associated with prostitution, such as public solicitation, advertising, kerb crawling, operating brothels and living off the proceeds of prostitution, are prohibited. Despite general public disapproval and the illegality of those associated activities, prostitution persists and indeed there is some evidence that its prevalence has increased since 1993. The review would therefore allow a re-evaluation of how issues related to prostitution could be addressed, the welfare of communities and of sex workers be protected, and criminal activities be detected, prosecuted and deterred.

### **1.2.1 International Legal and Policy Measures**

The Discussion Document outlines international and EU instruments having a bearing on prostitution and trafficking and to which Ireland is a party. These include:

- EU Directives 2011/92 and 2011/36 against sexual exploitation of children and human trafficking respectively. These require Member States to (among other things) punish and

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<sup>3</sup> *Discussion Document on Future Direction of Prostitution Legislation.* (2012) Dublin: Department of Justice and Equality. Available at <http://www.justice.ie/en/JELR/Pages/PB12000187>

prevent child prostitution, provide education and training to reduce demand for human trafficking, and propose that Member States criminalise the purchase of sex from a person known to have been trafficked;

- Council of Europe Convention on the Protection of Children Against Sexual Abuse and Exploitation, 2007. This requires State Parties to criminalise child prostitution and related activities;
- Council of Europe Convention Against Trafficking in Human Beings, 2005. This proposes measures including legislation and education to counter human trafficking, including the criminalisation of the purchase of prostitution where the person selling sexual services is known to have been trafficked;
- United Nations Convention on the Elimination of All Forms of Discrimination Against Women, 1979. This calls on State Parties to take appropriate measures to suppress trafficking and exploitation of women in prostitution;
- Protocol to UN Convention Against Transnational Organised Crime, 2000. This calls on State Parties to to adopt appropriate measure including legislation and international cooperation to discourage demand that fosters exploitation that leads to trafficking, particularly of women and children.

### **1.2.2 HIV prevention**

The Discussion Document also considers the effect of prostitution laws on efforts to prevent the spread of HIV and to support those infected with it. In particular, it outlines the provisions of 2011 Report of the UNAIDS Advisory Group on HIV and Sex Work. This document was prepared by academic and NGO experts to advise UNAIDS on matters concerning HIV prevention, treatment, care and support for sex workers. The 2011 report recommended a harm-reduction approach and the complete decriminalisation of prostitution as a means of promoting public health and human rights of sex workers, in particular to promote universal access to HIV services, and suggested that laws in Sweden and Norway that criminalised buying sex had worked to the detriment of sex

workers. It also recommended that human trafficking be treated as a distinct phenomenon not necessarily related to prostitution.

### **1.2.3 Approaches to Legislation**

The Discussion Document contemplates four broad approaches to prostitution legislation. It neither favours nor rejects any of them, but outlines how they have been implemented in various countries and presents arguments commonly made for and against them. The four approaches are:

- total criminalisation;
- partial criminalisation;
- full decriminalisation; and
- legalisation and regulation.

#### **1.2.3.1 Total criminalisation**

Under the total criminalisation approach, all aspects of prostitution and associated activities are offences. This approach is used in many parts of the USA and in some European countries.

Arguments in favour of it presented in the Discussion Document are that prohibition sends a strong signal of society's disapproval of prostitution, and that it helps to prevent the spread of disease, social nuisances and crime. Arguments presented in the Discussion Document against this approach are that it denies individuals the autonomy to buy or sell sex if they so wish, that it simply forces prostitution underground, criminalises vulnerable people, and increases stigma in a way that prevents those who engage in prostitution from having recourse to the police or to social and health services.

#### **1.2.3.2 Partial decriminalisation**

The Discussion Document considers two approaches to partial decriminalisation. The first, which is in effect in Ireland, decriminalises commercial sex between consenting adults in private but criminalises certain related activities such as public soliciting, advertising or brothel-keeping. This approach seeks to deter public nuisances and the proliferation of prostitution by banning kerb crawling and advertising. It takes a harm-reduction approach to exploitation and criminal

involvement by prohibiting brothels and living on the earnings of prostitution. Arguments presented against this approach say it increases the stigmatisation and isolation of prostitutes, reduces their bargaining power *vis à vis* clients, and destabilises their lives and incomes. The effect of this is said to be reduced access to health and support services, stress, lack of recourse to the police, and increased exposure to risky practices, violence and intimidation.

The second approach to partial decriminalisation outlined in the Discussion Document is that adopted by Sweden in 1999 whereby the sale of sex is not unlawful but its purchase is. For convenience, this is referred to in this report as 'The Swedish Approach'. The premise of the Swedish Approach is that prostitution is inherently exploitative, dangerous and degrading, and incompatible with gender equality. Advocates of this position therefore see the elimination of prostitution as a policy goal for promoting gender equality and addressing the physical, psychological and social harms – including human trafficking – associated with the sex trade. The Discussion Document outlines the argument in favour of this approach, stating that the decriminalisation of selling sex helps to prevent the alienation or stigmatisation of prostitutes; at the same time, making buyers liable to prosecution forces down demand, fosters a social norm that regards buying people's bodies is unacceptable, and engenders a better understanding of consensual sexual relations. Arguments presented in the Discussion Document against the Swedish Approach include the claim that it denies women independent agency or control over their own sexuality, and that it forces prostitutes into a less advantageous and more risky position where they will be more dependent on pimps and dangerous clients. Opponents are also said to view as unhelpful the treatment of prostitution and trafficking as intrinsically related phenomena.

### **1.2.3.3 Full decriminalisation**

The full decriminalisation approach involves the repeal of all laws prohibiting the the buying or selling of sexual services by consenting adults. This is the approach implemented in New Zealand in 2003 and, the Discussion Document notes, is advocated by "international public health organisations". Under this approach, violence and exploitation through pimping or trafficking remain illegal. Certain aspects of prostitution (such as public order issues, health and safety and

employment rights) may be regulated by official or state-sponsored bodies, but the state does not otherwise approve of or profit from prostitution. Arguments in support of this approach outlined in the Discussion Document include the claim that it recognises that prostitution cannot be eliminated through prohibition, that it respects prostitutes' autonomy, agency and right to work without undue surveillance or interference, that it promotes the ability of sex workers to report criminal activities such as pimping, violence and trafficking, as well as their access to health and social support services, and that it would free police resources to deal with more insidious forms of crime. Arguments against this approach presented in the Discussion Document are that it effectively condones prostitution, which is a social evil, that reduced surveillance by police will facilitate underage prostitution, violence, exploitation and trafficking, and that the social nuisances caused by prostitution would proliferate.

#### **1.2.3.4 Legalisation and regulation**

The legalisation and regulation approach goes further than full decriminalisation by adding a degree of state involvement through licensing and regulation of sex workers and brothels. Regulatory measures can include mandatory health checks for STIs, inspection of brothels and zoning controls for brothels and areas designated for street prostitution. The Discussion Document outlines arguments commonly made in favour of this approach, including the contention that prostitution is inevitable, so legalisation and regulation provide a pragmatic means of addressing problems such as exploitation, violence, criminal involvement, health and welfare. Counter-arguments in the document contend that this approach actually leads to increased trafficking, more illegal brothels than licensed ones, widespread criminal involvement and worse conditions for prostitutes. Further, by accepting the treatment of prostitutes bodies as commodities, it institutionalises prostitution and condones exploitation and degradation inherent in commercialised sex.

#### **1.2.4 Department of Justice and Equality Conference on Prostitution, October 2012**

As part of the review, the Department also held a conference on prostitution law on 13 October 2012. This was addressed by Irish and overseas experts in health care, social work, social work

and policing, as well as hearing representations and opinions from interested non-governmental organisations (NGOs) and from sex workers. The Department forwarded to the Committee presentation materials received for that conference; these are treated in this report in the same way as written submissions to the Committee.

### **Committee Visit to Sweden**

As part of its work on the review of legislation relating to prostitution, a delegation from the Committee visited Sweden in November 2012. An outline of that that visit appears in Appendix 1.

## Part 2. Evidence on Prostitution in Ireland

This section of the report gives a brief synopsis of evidence on the prevalence of and demand for prostitution in Ireland, profiles and experiences of those who work in it, the health consequences of prostitution, and the prevalence of criminality, child prostitution and human trafficking in the Irish sex trade.

### 2.1 Prevalence

Evidence on the prevalence of prostitution in Ireland was given to the Committee in oral presentations and written submissions.

The Immigrant Council of Ireland is a non-governmental organisation that operates a law centre and advocates for the rights of immigrants in Ireland. It outlined to the Committee the findings of the research it published in 2009<sup>4</sup> concerning prostitution in Ireland, which focused principally on migrant women. That report was cited by many who contributed to the Committee's review and for convenience is referred to as "the Kelleher Report".

Citing the accounts of service providers, the Kelleher Report estimates that approximately 100 women are active in street prostitution in Dublin. Of these, the vast majority are said to be of Irish nationality, some of whom also work in Britain. Estimates of street prostitution in other parts of the State were more tentative. The Kelleher Report states that numbers outside Dublin were difficult to estimate and suggests that approximately 30 to 40 operate on the streets of each of Cork and Waterford. Doras Luimní, a migrant rights service based in Limerick, notes a press report that, outside of Dublin, "Limerick has recorded the highest number of detections of prostitution and

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brothel keeping in the Republic". It said that most women working in street prostitution in that city were "Romanian or Eastern European".<sup>5</sup>

The Kelleher Report found that 27 lap-dancing clubs were advertised on the internet, of which 15 were in Dublin. It noted that evidence of prostitution in lap-dancing clubs had been uncovered in cases in 2002 and 2003.

Indoor prostitution by "escorts" has come to dominate prostitution in Ireland since the introduction of the internet and mobile phones. According to Superintendent Fergus Healy of An Garda Síochána:

"In the past decade the Irish escort industry has become a destination of choice for working prostitutes, mainly on foot of the economic boom and the expansion of the European Union. During this time, people engaged in the prostitution industry in Ireland were earning three times the rate for those working in other European jurisdictions. This resulted in an estimated 800 female prostitutes advertising their services via the internet on a daily basis within the jurisdiction. Prostitution services are offered and available in every county within the jurisdiction."<sup>6</sup>

Apart from escort sites and mobile phones, Superintendent Healy suggested that advertising for prostitution may spread to social networking sites and other methods, if it had not already done so.

Escort web sites display illustrated "profiles" of prostitutes that indicate the places and times of their availability, the services they offer, and a mobile phone number for clients to contact them.

The Kelleher Report concluded that at least 800 women were advertised for prostitution in Ireland on any given day. Monitoring of escort web sites indicates that these women are highly mobile both within Ireland and internationally. Some 40% of women were advertised as "touring escorts" who travel between towns and cities across Ireland and sometimes internationally. The total number of women available for escort prostitution in Ireland in any given year may therefore be considerably

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<sup>5</sup> Limerick Post 8 July 2011: *Crackdown on Prostitution Continues in Limerick*. Cited in Submission 2012/1033(2)

<sup>6</sup> Joint Committee on Justice, Defence and Equality. Deb. 6 February 2013

higher than 800: the Immigrant Council of Ireland states that independent audits of escort web sites in 2011 and 2012 showed advertisements for 1052 and 1124 women respectively.

Escort-Ireland.com is a UK-based company that advertises escort services to Irish customers through its web site. It describes itself as "the most popular of the Irish escort web sites". Its written submission to the Committee states that, in the six months from 1 March 2012 to 31 August 2012, Escort-Ireland.com advertised 2196 females, 77 males, 72 transvestites, 70 transsexuals, 28 "duos" and 5 couples. It states that these are "unique escorts", presumably meaning that no individual had more than one profile counted. It also says that, while escorts generally provide sexual services to their clients, the basis of the transaction is payment for companionship and that the escort is at liberty to refuse sexual contact if he or she wishes to do so.<sup>7</sup>

Mr Paul Maguire, editor of the RTE investigations unit, addressed the Committee on 6 February 2013 on the research conducted for the Prime Time documentary "Profiting from Prostitution".<sup>8</sup> Over a period of 12 months, more than 8800 profiles were advertised on the escort web sites monitored by the research team, the daily average being 693. Most individuals advertised had at least two profiles as a means of advertising different services or for different locations. He added that the advertised image frequently "bears no resemblance to the reality of the individual". Nearly all escorts were advertised as working independently, but Mr Maguire told the Committee that research suggested that most were in fact working for "a pimp or some kind of organiser".<sup>9</sup>

Many advertisements identify women as being "independent" escorts, while others are said to work for agencies. The Immigrant Council of Ireland told the Committee that "touring escorts" advertised their availability at locations in cities and towns throughout the State, often in response to large sporting or other major events. Escorts meet their customers in hotels, in houses or apartments rented by or for them, or (in what are known as "call-outs") in the customer's premises or hotel. Not all indoor prostitution in Ireland is advertised on the internet: the Kelleher Report mentions African women who do not advertise on escort sites, as well as Chinese women in "massage

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<sup>7</sup> Submission 2012/1065

<sup>8</sup> Broadcast 7 February 2012. Web address <http://www.rte.ie/news/player/2012/0207/3193909-prime-time-profiting-from-prostitution/> (Retrieved 7 March 2013)

<sup>9</sup> Joint Committee on Justice, Defence and Equality. Deb. 6 February 2013

parlours" or other forms of disguised brothels that offer sexual services and that appear to be subject to a degree of central control.

Advertised prices suggest an average rate of €150 per half hour or €250 per full hour, with an additional charge of €50 for call-outs. Based on the estimate that an escort generates earnings of on average €750 per day over a six-day working week, the Kelleher Report estimates the indoor prostitution industry to be worth at least €180 million per year.

Male prostitution was discussed by Mr Mick Quinlan and Mr Daniel McCartney of the Gay Men's Health Alliance. They cited the 2004 Real Lives survey<sup>10</sup> which indicated that, among Irish men who have sex with men (MSM), 5.8% had accepted payment for sex with a man in the previous 12 months. This was broadly consistent with the 2010 European MSM Internet Survey (EMIS) which, they told the Committee, showed that approximately 4.1% of MSM across Europe had sold sex to another man in the previous 12 months.<sup>11</sup>

Superintendent Fergus Healy of An Garda Síochána told the Committee:

"Substantial sums of money are made through the prostitution industry. The Criminal Assets Bureau is actively involved in pursuing these people who are making substantial sums of money. It is a global issue and not unique to Ireland."

## 2.2 Demand for prostitution in Ireland

The Committee received five written submissions from members of the public who said they pay for sexual services. Four were from men and one was from the mother of a man with a physical disability.

Two of the men outlined their reasons. One wrote that he was 60 years old and had sought out the services of escorts on the suggestion of a friend after the end of an abusive marriage had left him depressed and lonely. He said:

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<sup>10</sup> Devine, P. *et al.* (2006) *Real Lives: Findings from the All-Ireland Gay Men's Sex Survey 2003 and 2004*. Belfast: The Rainbow Project

<sup>11</sup> Joint Committee on Justice, Defence and Equality. Deb. 23 January 2013

"It not only restored my self-confidence but restored my faith in womankind in general ... I've found that sex workers are incredible people, kind, generous, honest and, most importantly, non-judgemental."<sup>12</sup>

Another wrote that he was a mature man who was happily married with children, but that – for reasons he did not explain – he had had sexual intercourse with his wife only twice in the last five years. He visited escorts and said that they are:

"... bright, friendly, enthusiastic people going about their work. I believe in the main they are treated very respectfully by men in general and certainly by me in particular."<sup>13</sup>

The mother of the man with a physical disability wrote:

"On a few occasions per year we employ the services of a lady who is very pleasant and very well paid to spend the night with my son, in order to let my dear son feel the companionship and warmth of a beautiful woman which he cannot have in his real life ... The lady is perfectly happy to do this and is very well paid, I look upon her as a friend ... I have spoken at length to them and they are quite happy to do so and love their job."<sup>14</sup>

Many contributors to the Committee's review cited the findings of a 2006 study by Layte *et al*<sup>15</sup> in relation to demand for prostitution. That study indicates that 6% of Irish men reported having ever paid a woman for sex, of whom approximately half (3%) had done so in the five years preceding the survey. Those who had paid for sex in the preceding five years tended to be young (aged under 35) and to belong to higher or lower professional classes; in contrast, those who had ever paid for sex but not within the preceding 5 years tended to be older (aged over 55) and were evenly distributed across all social classes. The Committee frequently heard that "one in fifteen Irish men pay women for sex". However, these findings may indicate that current demand for prostitution in Ireland is smaller than commonly believed.

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<sup>12</sup> Submission 2012/616

<sup>13</sup> Submission 2012/975(2)

<sup>14</sup> Submission 2012/671

<sup>15</sup> Layte, R. *et al* (2006) *The Irish Study of Sexual Health and Relationships*. Dublin: Crisis Pregnancy Agency and Department of Health and Children.

Concerning demand for male prostitution in Ireland, the Committee heard that the 2004 Real Lives survey disclosed that 6.5% of Irish MSM had paid for sex with another man in the preceding year. Payment for sex was more common among older MSM, with 15.9% of MSM aged over 50 years reporting having paid for sex that year. The 2010 EMIS found that 4.7% of respondents across Europe confirmed having paid for sex with another man that year.

The Kelleher Report cites the result of the 2006 Irish Escort Clients Survey<sup>16</sup> that was conducted among Irish visitors to web sites advertising prostitution services in Ireland. The results of that survey are consistent with the findings in Layte *et al* (2006) as to the age and social class of men who have paid for sex within the last five years. Thirty-seven per cent of respondents confirmed that they had used street prostitutes as well as escorts. The same percentage of respondents said they had used prostitutes abroad.

The 2006 Escort Clients Survey polled visitors to escort web sites on their habits, lifestyles and use of prostitutes. Responses indicated that 91% of respondents used escorts for sexual gratification. That finding is consistent with 'reviews' of women submitted by men who had paid them for sex to an escort web site. Extracts from these appear in the Kelleher Report and were quoted by the Immigrant Council of Ireland in its presentation to the Committee on 12 December 2012. The quoted extracts demonstrated an essentially consumerist attitude towards women in prostitution, focusing on the shape of their bodies, the sexual acts they were prepared to perform, and their willingness or ability to display affection and enthusiasm. They discussed "value for money", complained of disparities between real and advertised appearances or of unwillingness to provide advertised services, and rated women negatively for "coldness" or "indifference" when they failed to provide the expected "girlfriend experience". A small minority of them indicated ambivalent or negative attitudes towards using prostitutes, including feelings of shame and remorse. These

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<sup>16</sup> "Irish Escort Clients 2006 Survey", [http://escortsurveys.com/irish\\_escort\\_clients\\_survey\\_2006.html](http://escortsurveys.com/irish_escort_clients_survey_2006.html) (Retrieved 28 February 2013)

findings of a consumerist attitude are consistent with a 2008 study of Scottish men who bought sex<sup>17</sup> that was cited by a number of contributors to the Committee's review.

Former prostitutes who appeared before the Committee said that, in their experience, there was a strong demand for young women or women who appeared young, to the extent that older street prostitutes would try to drive away younger ones who might take business from them. One told of working in a brothel where telephone callers would frequently enquire as to the age of the youngest woman working there.

Dr. Derek Freedman, a consultant in genito-urinary medicine, told the Committee that the histories of his patients indicated that reasons for using prostitutes included curiosity, group dynamics on holidays or at events such as stag parties, loneliness, inability to be intimate, sex addiction and occasionally, sociopathy – that is, the lack of understanding of the consequences of one's behaviour. He said that the common denominator to most reasons was alcohol, which acted to lower inhibitions. Once the initial inhibition concerning paying for sex was overcome, there was a potential for addiction.<sup>18</sup>

## **2.3 Women in prostitution in Ireland**

The Immigrant Council of Ireland told the Committee that the majority of women active in street prostitution in Dublin are Irish, with a minority from Africa and South America.

Ms Patricia Stapleton of Doras Luimní told the Committee that street prostitution in Limerick was dominated by migrant women, mostly Eastern Europe, who appeared to be aged between 18 (or even younger) and 24. Few of these women spoke English beyond the level needed for the simplest communication with their clients.<sup>19</sup>

The Kelleher Report found the advertised ages of women on escort web sites aimed at Irish "punters" ranged from 19 to 58 years, with 52.4% in the range 18–24 years, 38.9% 25–34 years,

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<sup>17</sup> MacLeod J., Farley M., Anderson L., Folding J (2008) *Challenging Men's Demand for Prostitution in Scotland*. Glasgow: Women's Support Project.

<sup>18</sup> Joint Committee on Justice, Defence and Equality, Deb. 23 January 2013

<sup>19</sup> *Ibid.*

and 8.4% over 35 years. It also found that the overwhelming majority of escorts advertising to Irish buyers were stated to be of non-Irish nationality, with 3% advertised as being Irish, 42% from other pre-2004 EU member states, 29% from Latin America or Caribbean countries, 20.5% from the 10 EU accession states that joined in 2004, 2.4% from non-EU Eastern Europe, 1.4% from Africa, and the remainder from other countries. The researchers caution that escorts advertised as being from certain Western European countries such as Spain or Italy are often in fact of Latin American or Eastern European origin. This was corroborated by Mr Paul Maguire of RTE, who told the Committee that many escorts advertised as Spanish or French were found by RTE researchers to be Romanian.

The Kelleher Report also drew on interviews with staff of the HSE's Women's Health Project (WHP), a Dublin-based outreach service that principally targets women involved in prostitution. In 2007 40% of the WHP's clients were Irish and 60% were from other countries. The report attributes the disparity between the proportion of Irish women attending the WHP compared to the low number advertised on escort sites to the fact that most women attending the WHP work in street prostitution in Dublin, where Irish women predominate. Many of these are drug users who avail of the drug support services offered by the WHP. Among migrant women clients of the WHP, nearly 40% reported having children either abroad or in Ireland.

Ms Leigh- Ann Sweeney's submission was based on doctoral research into the health-care needs and experiences of prostitutes. It noted that, of fifteen prostitutes working in the West of Ireland whom she interviewed, two were Irish nationals, four were from Africa, four from Brazil, one from the Dominican Republic, and the remaining four were from EU member states. All but one worked in indoor prostitution as escorts. One of the escorts was transsexual, the other subjects were female.<sup>20</sup>

## 2.4 Entry into prostitution

The Committee heard varying accounts of routes into prostitution and reasons for entering it.

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<sup>20</sup> Submission 2012/988(1)

Studies of Irish street prostitution cited to the Committee show strong associations with backgrounds featuring poverty, limited education or training, physical or sexual abuse, family dysfunction, addiction, or homelessness. Another factor cited to the Committee was the influence of peers, boyfriends, partners or spouses who persuade, manipulate or coerce women into prostitution.<sup>21</sup> Submissions and presentations to the Committee supported that analysis:

- One submission by a former prostitute tells of an alcoholic mother, a violent but largely absent father, and a lack of support and supervision while growing up. When she was 17 a female friend in London introduced her to prostitution as a source of easy money, clothes, and a comfortable life.<sup>22</sup>
- Another former prostitute's submission tells of a background of foster care, homelessness and dependence on shoplifting to survive. A man she describes as both her boyfriend and pimp persuaded her to enter prostitution at the age of 15 as a way of earning money and never being homeless again. By the time she was 16, she had been used sexually by "hundreds and hundreds of men".<sup>23</sup>
- Dr. Kathryn McGarry (a sociologist based in NUI Maynooth) told the Committee that one of her research subjects was brought by her mother – also a prostitute – to work on Benburb Street in Dublin when she turned 15.
- "Witness D", a former prostitute, told the Committee she entered prostitution on Dublin's Burlington Road at the age of 22 to pay for a heroin habit.<sup>24</sup>

Ruhama is a non-governmental organisation that provides an outreach service to women in prostitution and assists those who wish to exit from it. Its written submission described poverty, debt, abuse, addiction, grooming and coercion as creating a "push-pull" into prostitution. It states that the overall effect of these is to negate any question of voluntary choice by the women affected

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<sup>21</sup> Cox G., Whittaker T. (2009) *Drug Use, Sex Work and the Risk Environment in Dublin*. Dublin: NACD; O'Neill M., O'Connor A. (1999) *Drug-Using Women Working in Prostitution*". Dublin: Eastern Health Board; Lawless, K. Wayne, A. (2005) *The Next Step Initiative: Research on Barriers Affecting Women in Prostitution* Dublin: TSA Consultancy/Ruhama. Studies were cited by multiple contributors in written submissions.

<sup>22</sup> Submission 2012/1048(4)

<sup>23</sup> Submission 2012/1048(2)

<sup>24</sup> Joint Committee on Justice, Defence and Equality. Deb. 6 February 2013 (Private session)

by them. Ruhama characterise decisions to enter prostitutions as "either forced upon individuals by third parties or selected as the best of a bad bunch of options."<sup>25</sup>

One statistic frequently cited in submissions and presentations was that up to 75% of women in prostitution first became involved in it under the age of 18.<sup>26</sup> This is broadly consistent with the findings of studies of Irish street prostitutes cited by Barnardos in its written submission,<sup>27</sup> which found that between 50 and 82 per cent of those studied did so. However, the 1999 study by O'Neill and O'Connor of drug-using women in prostitution in Dublin shows that 35 of 77 women interviewed (45%) entered prostitution in their teenage years. Three of Dr. Kathryn McGarry's sixteen interview subjects were under 18 when they went on the streets; one of the three ex-prostitutes who addressed the Committee was under 18 when she began. While these examples may not be representative of the overall pattern of entry into street prostitution, they indicate that the prostitution of underage girls is a real and significant phenomenon.

The Committee heard that there are few studies giving reliable data on the ages of entry into indoor forms of prostitution or reasons for doing so. However, some information was given in submissions and presentations to the Committee. "Witness A", a foreign national who currently works as an escort in Dublin, told the Committee that she started doing so two years ago after the end of her marriage and having worked for a considerable time in another career. She said that, after years of "swinging" as a leisure activity, and after careful consideration, she chose to become an independent escort as an alternative to other career choices open to her. "Witness B" currently works as a touring escort and said that she entered prostitution at the age of 19 in Spain, one and a half years after she left her home. She told the Committee that she initially worked part-time as an escort simply as a way of making money.<sup>28</sup>

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<sup>25</sup> Submission 2012/1144(1)

<sup>26</sup> The source "Women's Resource Centre (2008)" is commonly given as the basis for this statistic. The original source appears to be Benson C. and Matthews R. (1995) *Street Prostitution: Ten Facts in Search of a Policy*. *International Journal of Sociology of Law* [23] 395-415 at p. 399. The 75% referred to were engaged in street prostitution in Britain.

<sup>27</sup> Quinlan Cook, S. (2007) *Prostitution in Dublin*, Presentation at Children's Acts Advisory Board conference 2007; Eastern Health Board (1997), Working Party on Child Prostitution. Cited by Barnardos in written submission.

<sup>28</sup> Joint Committee on Justice, Defence and Equality. Deb. 20 February 2013 (Private session)

Based on interviews with 12 migrant women clients of the WHP, the Kelleher Report says that most had worked in prostitution abroad before coming to Ireland, while a minority had come intending to work in lap-dancing clubs or for other purposes but had either chosen or been induced to engage in prostitution once in Ireland.

The Committee received eight written submissions<sup>29</sup> from persons who described themselves as current sex workers. Two gave their ages as 37 and 35 and said they had worked as escorts for "nearly a decade" and "two and a half years" respectively. Two of the submissions referred to job loss and unemployment as the background to the women's decision to work as escorts.

The Committee heard that young women in Eastern European countries are often recruited into prostitution in Ireland or elsewhere in Western Europe by means of recruiters' or friends' accounts of glamour and lucrative work. In some cases young women actively seek out escort agencies. "Witness B", who is originally from Romania, confirmed this, saying that she was aware of many young women eager to leave that country to earn money as escorts, and that the majority who make their way to Ireland do so with the help of friends or agencies. She characterised this as simply another form of economic migration, saying that there was no need for coercion as the women were eager to travel. However, other contributors, including former prostitutes who addressed the Committee, disagreed strongly, saying that these depictions of life as an escort, whether in Ireland or elsewhere, are at best uninformed and are frequently intended to deceive women who might not otherwise be willing to enter prostitution.

## **2.5 Experiences in prostitution**

The Committee heard direct evidence on the experience of working in the sex trade from two current and three former prostitutes.

"Witness A" and "Witness B" addressed the Committee in private session on 20 February 2012.

Both spoke in positive terms about their experiences. "Witness A" is a foreign national who said she began working in Dublin as an escort two years ago "after extensive research". She said she

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<sup>29</sup> Submissions 2012/701, 2012/867, 2012/978, 2012/986, 2012/966, 2012/1013(1) and 2013/083

operated entirely independently, enjoyed her work, had control over her choice of clients and dealt mainly with regulars. She had never experienced violence or intimidation from clients or others such as pimps. She charges her clients €240 per hour and added that much of that time is usually spent in conversation. She makes over €1000 profit per week, with her largest overheads being €250 per month to advertise on an escort web site and the cost of maintaining her personal web site. She was clear that the escort web site charges a flat fee only for displaying her profile; as an independent escort, she said there was no question of paying them a commission on her earnings. Questioned on whether she regarded her experiences as typical of escort work, she said she would be "at the top end" of the escort business, and that perhaps 15 to 20 per cent of escorts worked in circumstances comparable to hers. She said there were informal communications networks based on web sites and phone contacts by means of which women kept each other informed of their welfare and of undesirable clients.

"Witness B" is a 27-year old Romanian woman from a background she described as "not poor". She began part-time work as a prostitute in Spain when she was 19 and found it "brilliant". She came to Ireland in 2009 through an agency. She said that unless a woman had friends already in a country, agencies were essential for accommodation and local knowledge. She now works for a different agency as a touring escort around Ireland and in other countries. She has regular clients in Ireland and the agency arranges the transport and accommodation needed to see them. It also updates her web profile to reflect her schedule. In return, she pays the agency 50% of her earnings. She said she enjoys what she does, works when she wants to, has control over which clients she sees and was emphatic that she has never been intimidated in her work.

The accounts of former prostitutes who appeared and addressed the Committee gave a starkly different picture of life in the sex trade. "Witness C", "Witness D" and "Witness E" are all Irish nationals. "Witness C" entered street prostitution at the age of 15 before moving to escort prostitution. "Witness D" worked on the street from the age of 22 to pay for her heroin habit.

"Witness E" began work in brothels when she was 22. They told the Committee that they all had experienced violence: "Witness D" said that she had experienced one rape by a lone man, one

gang rape, and one anal rape while a witness was present. She characterised rape as "part of the job", but one that was largely invisible to those outside prostitution. "Witness E" reminded the Committee of the long list of prostitutes who have been murdered in Ireland over the years.

"Witness C" referred to "a tsunami" of violence in prostitution.

All three women described their experiences of prostitution in terms of abhorrence and disgust.

They told the Committee of the sense of powerlessness and worthlessness that was engendered by men who invaded and abused their bodies, who expected gross and demeaning demands to be met with enthusiasm and who treated them as disposable commodities. They spoke of the humiliation of parading partially or fully naked before patrons of brothels. This was compounded by the lack of control they had over the course of their lives and the stigma that alienated them from society. They said most of their clients were middle to upper-middle class men, and they believed the majority of them to be married. In contrast, they said that almost all women in prostitution came from deprived or impoverished backgrounds which left them with no other means to earn a living.

The Committee heard that pimping was pervasive in Irish prostitution. "Witness E" said that few, if any, prostitutes who say they are independent are in fact free agents: pimps would simply not allow a woman to work for herself and "would kick the door down" if one tried to do so. She said that the escort agencies instruct women to say that they are independent when in reality the hours and places they work and the number of men they see are controlled, adding that pimps generally take half or more of a woman's earnings. While women could make money, most left prostitution with none. She said that many women in prostitution lack the understanding or structures for long-term planning and spent what they earned on drink, drugs or clothes, assuming they were allowed the time and money to do so.<sup>30</sup>

The stark difference in opinion between current and former prostitutes was mirrored in written submissions to the Committee. One former prostitute wrote of being required by the owner of an escort agency to service up to 15 men in a single day. She told of dissociating from her body to a

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<sup>30</sup> Joint Committee on Justice, Defence and Equality. Deb. 6 February 2013 (Private session)

corner of the room and doing algebra equations in her head while her client performed an act she was unwilling to do but for which he insisted he had paid.<sup>31</sup> Another wrote:

"The stories I read about how glamorous it's supposed to be make me ill. It's a hard cruel life filled with lies, beatings and rape. In the end you feel like a toilet. People call you terrible names when you get caught, even the ones you love turn on you."<sup>32</sup>

In contrast to these accounts, submissions from current prostitutes expressed positive views. Six of eight those who sent written submissions described themselves as independent; all said they were happy with what they do. Most spoke of prostitution in terms of empowerment and the freedom to make a living doing something they enjoy:

"My experiences have been overwhelmingly positive. I have found myself in the role of sex educator, therapist, confidante or carer."<sup>33</sup>

"I am a woman making my own way in the world and I am happy doing what I'm doing. I will be out of the industry in three years and will have a number of properties to run, all 100% paid for."<sup>34</sup>

A submission from a person who described herself as "a former sex worker" suggests that there are four categories of sex workers: elective, crisis, survival and coerced. She says that elective sex workers make up the majority of indoor sex workers. Crisis sex workers enter prostitution as temporary means to cope with and overcome hardships, while survival sex workers do so for similar reasons but do not have the resources or opportunities to resolve their difficulties and must rely on prostitution as a long-term strategy. In relation to coerced sex workers, she says that "nobody has any real idea where they are or what form that coercion really takes".<sup>35</sup>

Evidence from academics and organisations that work with prostitutes tended to corroborate the negative views reported by former prostitutes. Ruhama's submission describes the women it works with as reporting hyper-vigilance and constant tension "due to the perpetual risk of the unknown

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<sup>31</sup> Submission 2012/1048(4)

<sup>32</sup> Submission 2012/1048(3)

<sup>33</sup> Submission 2012/1013(1)

<sup>34</sup> Submission 2012/867

<sup>35</sup> Submission 2012/827

that might occur when responding each day to knocks at the door from strangers who have paid to have sex with them". They also report feelings of isolation, panic attacks, dissociation, depression and suicidal ideation.

Dr Kathryn McGarry told the Committee that her research work on the lived experiences of 13 women in prostitution indicated that street prostitutes found their working environment highly stressful ("mental torture" in the words of one subject), because of the need to manage the risks posed by violent or otherwise undesirable clients, and because of the criminal consequences of on-street prostitution. Although some reported good working relationships with the Gardaí, many felt that their extra-legal status made it hard to report crime and to avoid danger and exploitation.<sup>36</sup>

Other aspects of working in prostitution that were described to the Committee included constant movement of touring escorts from one location to another, frequently at night, to the extent that some women were unaware of what town or even country they were in. Contributors that work with migrants pointed out that language and cultural barriers often leave vulnerable people with no understanding of how or where to seek help or support, while their immigration status may make them unwilling to even attempt to do so. Other contributors commented on the high degree of control to which some women are subjected by pimps, agencies or brothel managers, requiring them to see large numbers of clients and perform sexual acts that they do not wish to do.

Payments for rent and 'fines' – for refusing to accept clients or for taking time off – are deducted from their earnings without consultation or accountability. Other sources of stress described to the Committee included shame and the social stigma against prostitution, isolation, maintaining secrecy from family and friends, separation from children, and concerns about unwanted pregnancy, health and prospects for life outside prostitution.

Many contributors stressed to the Committee the risks and reality of violence in prostitution. Apart from the evidence delivered in person by three former prostitutes, the Committee heard that clients of the Women's Health Project had told of rape, assault and robbery by clients of indoor and outdoor prostitution. These are consistent with studies cited by many contributors, including one of

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<sup>36</sup> Joint Committee on Justice, Equality and Defence. Deb. 16 January 2013; Submission 2012/999

30 women in street prostitution in Dublin, 80% of whom said they had been subjected to violence.<sup>37</sup> In interviews conducted with prostitutes for Ruhama's 2005 "Next Step Initiative" research project, most subjects confirmed experiencing high levels of violence and suffering from the stress of constantly maintaining vigilance and taking precautions.<sup>38</sup> Numerous international studies cited to the Committee suggested that violence pervaded all forms prostitution, particularly street prostitution: one states that 62% of women in prostitution reported having been raped;<sup>39</sup> another states that beatings, rape, assaults and degrading treatment are common.<sup>40</sup> Many contributors also cited the UK Home Office's 2004 Consultation Document "Paying the Price", which states that violence by both customers and domestic partners was reported by prostitutes "disproportionately frequently".<sup>41</sup> Contributors also cited research which they said indicated that risks of violence faced by women in indoor prostitution were comparable to those in street prostitution.<sup>42</sup> In her personal submission<sup>43</sup> Ms Linda Latham of the Women's Health Project noted research from The Netherlands<sup>44</sup> which indicated that levels of violence<sup>44</sup> experienced in prostitution are directly associated with the degree of poverty in which they lived, and that prostitutes' chances of being subjected to violence are positively correlated with their length of time working in the sex trade. The Committee was told by a large number of contributors that as many as 90% of women in prostitution would leave it immediately, given the means and opportunity.<sup>45</sup> This was viewed with skepticism by the working prostitutes who addressed the Committee. "Witness A" believed she had a good sense of opinions among a large number of escorts; in her view, a small minority of them might want to exit but could not, mainly because of financial dependency on their earnings in

<sup>37</sup> Haughey, C. & Bacik, I. (2000). *Final Report: A Study of Prostitution in Dublin*. Law School: Trinity College, Dublin.

<sup>38</sup> Lawless K & Wayne A. (2005). See fn 166 above.

<sup>39</sup> Farley M. *et al.* (1998) *Prostitution in Five Countries: Violence and Post-Traumatic Stress Disorder*. *Feminism and Psychology*, 8.4: 405-426.

<sup>40</sup> Farley M. (2004) *Bad for the Body, Bad for the Heart: Prostitution Harms Women Even if Decriminalised*. *Violence Against Women*, 10: 1087-1125

<sup>41</sup> Home Office (2004) *Paying the Price: A Consultation Paper on Prostitution*. London: Home Office Communication Directorate (at p. 16).

<sup>42</sup> Raphael J. & Shapiro D. (2004) *Violence in Indoor and Outdoor Prostitution Venue*. *Violence Against Women* 10: 126-139

<sup>43</sup> Submission 2012/967

<sup>44</sup> Vanwesenbeeck I. (1994) *Prostitutes' Well-Being and Risk*. Amsterdam: VU Uitgeverij

<sup>45</sup> This statistic was generally ascribed to Farley M. *et al.* (2003) *Prostitution and Trafficking in Nine Countries: An Update on Violence and Post-Traumatic Stress Disorder* in Farley M. (ed.) *Prostitution and Traumatic Stress*. London: Haworth Press

prostitution and their lack of skills or training for alternative employment. She fully supported the work of those who sought to assist them. She knew of only one woman who had approached an NGO for assistance to exit, but that woman had found it unhelpful. "Witness B" agreed that some prostitutes wanted to exit but found it difficult to do so, particularly those who no longer enjoyed what they did and only worked for the money. Both she and "Witness A" accepted that there may be a degree of coercion in the sex trade in Ireland, but both believed it represented a very small part of the business.

## **2.6 Medical and psychological effects of prostitution**

The Committee received oral and written evidence from a large number of contributors on medical and psychological harms associated with prostitution.

Many contributors cited the survey of clients of the Women's Health Project outlined in the Kelleher Report.<sup>46</sup> This was based on interviews with clients and staff and on reviews of case notes. Clients are mainly women in street prostitution, though the WHP has also provided outreach services to indoor locations such as massage parlours, apartments and brothels. The results indicate that 59 of 73 (80%) women attending the clinic in 2007 presented with sexually transmitted infections including bacterial vaginosis, candida infections, Hepatitis A, Hepatitis B, chlamydia, genital and anal warts, syphilis, gonorrhoea and HIV. Clients also suffered gynaecological problems such as damage to the vaginal tract, fissures, cysts and abscesses. Many of these conditions were said to have long-term consequences for the health and fertility of women, potentially extending beyond any exit from prostitution. Drug and alcohol abuse were cited as additional concerns, arising either from pressure to use them with clients or to cope with stress and other negative effects of prostitution. This in turn was said to increase preparedness to engage in risky or unsafe behaviours.

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<sup>46</sup> Kelleher *et al.* (2009) pp. 104–f109.

The Irish Medical Organisation referred to the high rates of infection among drug-using prostitutes surveyed in a 2009 study commissioned by the National Advisory Committee on Drugs:<sup>47</sup> 78% of subjects reported infection with Hepatitis C, and 21% with HIV. Outreach workers and staff of the WHP report that prostitutes often face pressure to engage in unsafe sex practices such as not using condoms.

Dr Derek Freedman told the Committee that in his opinion it was rare for clients to acquire infections from prostitutes in Western Europe, North America and Australia. He believed sex workers generally to be very careful to protect themselves and their clients against infections. While he felt he had to exercise a degree of skepticism when taking sexual histories, he believed patients were far more likely to have acquired a sexually transmitted infection from a casual encounter than from a professional sex worker.<sup>48</sup>

The Committee was told that considerable psychological risks and conditions had been found to be associated with prostitution. Ms Linda Latham referred in her submission to the psychological effects of "degrading violation of [women's] bodily integrity in sexual acts they are asked or required to perform". Concerns about health, fertility, threats of violence, pressure to avoid time off work, the stress of repeated examinations and the risk and reality of unwanted pregnancy were all mentioned as sources of stress. The Committee was told that the effects of these frequently included dissociation, where a person undergoing trauma makes a conscious decision to disconnect from their body. Other consequences described in studies cited by contributors included low self-esteem, depression, hyper-vigilance, suicidal ideation and the effects of drugs and alcohol used to numb psychological pain.<sup>49</sup> One study mentioned by many contributors suggested that as many as 68% of women in prostitution met the diagnostic criteria for post-traumatic stress disorder.<sup>50</sup>

Several contributors drew a parallel between the traumatic effects ascribed to prostitution and those of domestic violence. Sonas Housing Association, which works with victims of domestic

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<sup>47</sup> Cox G. & Whittaker T. (2009).

<sup>48</sup> Joint Committee on Justice, Defence and Equality. Deb. 23 January 2013.

<sup>49</sup> The 2006 Escort Clients Survey indicates that 44.8% of Irish respondents had encountered an escort they believed to be on drugs.

<sup>50</sup> Farley M. *et al.* (2003).

violence, referred in its submission<sup>51</sup> to a study that noted that pimps and traffickers use the same means of control as domestic abusers, namely isolation, financial control, verbal abuse, physical and sexual violence, and captivity.<sup>52</sup> Another contributor, who drew a similar parallel in relation to victims of trafficking, stated that victims will frequently dissociate and form "an unrealistic bond" with their abusers, doing whatever is needed to survive.<sup>53</sup>

The Committee heard that women in prostitution have significantly higher rates of mortality than the general population. Studies cited by Ms Linda Latham and the Irish Medical Organisation suggested rates of between 12 and 40 times those of the general population.<sup>54</sup>

## 2.7 Social effects of prostitution

Street prostitution has long been recognised as a public nuisance and a cause of harassment and disruption for residents and businesses in affected areas. Similar complaints are made about indoor prostitution, where noise and the arrival and departure of clients from houses or apartments disturbs local residents. However, the social effect of prostitution most frequently condemned in evidence and submissions to the Committee was the normative consequences of tolerating or condoning the sale of sexual services. In her opening statement to the Committee, Ms Jacqueline Healy of the National Women's Council of Ireland expressed this view in a way that was echoed by many other contributors:

"The system of prostitution perpetuates patriarchal views on women's sexuality and legitimates male domination in society. As long as it is tolerated, it is an obstacle to equality between women and men. A society that tolerates prostitution cannot achieve gender equality."<sup>55</sup>

Ruhama's written submission states:

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<sup>51</sup> Submission 2012/834(1)

<sup>52</sup> Giobbe E. (1994) *A Comparison of Pimps and Batterers*. Prostitution Research and Education

<sup>53</sup> Submission 2012/723(1)

<sup>54</sup> Department of Justice (Canada) (1985) *Pornography and Prostitution in Canada: Report of the Special Commission*. (Summary) Ottawa; Mayor of London (2010) *The Way Forward – Taking Action to End Violence Against Women and Girls: Final Strategy 2010 – 2013*. London: Greater London Authority

<sup>55</sup> Joint Committee on Justice, Defence and Equality Deb. 12 December 2012

"The sexual exploitation of prostitution is harmful to all women. If one woman is perceived as being for sale, the implication is that all women and girls are potentially for sale and this directly undermines the potential for gender equality."<sup>56</sup>

Ms Emma Regan of the Irish Feminist Network said:

"Although it is not solely women who work in the sex industry, they form the majority. The majority of buyers are men. This creates a gender dynamic whereby the bodies of women are for sale in the sex industry, a situation that relates to the wider dynamic of the objectification of women in society and the media."<sup>57</sup>

A young man aged 20 wrote:

"I don't want an Ireland where I can buy sex. I don't want an Ireland where people become things; where the boundaries between people and commodities become blurred. I believe if I was to buy sex from a woman it would define me. I don't want to be that person."<sup>58</sup>

A related argument focused on the position of minority groups that are vulnerable to exploitation in prostitution. Pavee Point, which advocates for rights of members of the Traveller and Roma communities, pointed to the vulnerability of Roma women to trafficking for the purpose of sexual exploitation.<sup>59</sup> Although the precise degree of involvement of Traveller and Roma women in prostitution had not been studied, their vulnerability to exploitation made the continuing toleration of prostitution likely to have a disproportionate effect on them.<sup>60</sup> Galway Traveller Movement made a similar argument, pointing out that because prostitution in Ireland is carried out predominantly by migrant women, its continuance tends to reinforce ethnic marginalisation and inequality.<sup>61</sup>

Differing arguments on the social effects of prostitution were heard from other contributors. A view expressed by some was that prostitution generally had a neutral effect, that the private actions of

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<sup>56</sup> Submission 2012/1144(1)

<sup>57</sup> Joint Committee on Justice, Defence and Equality Deb. 16 January 2013

<sup>58</sup> Submission 2012/859(2)

<sup>59</sup> European Roma Rights Centre & People in Need (2011) *Breaking the Silence: Trafficking in Romani Communities*. Budapest: ERRC

<sup>60</sup> Submission 2012/651(1)

<sup>61</sup> Submission 2012/807

consenting adults were their own business, and that any negative effects (such as violence, abuse or coercion) should be the focus of enquiries rather than prostitution generally.

Other contributors ascribed a positive social effect to prostitution: one current sex worker articulated a view expressed by several others, writing that sex workers provide intimacy and companionship for many who would not otherwise have any, including the disabled, the elderly, and those who are shy, lonely or suffering from broken or dysfunctional relationships.<sup>62</sup> Another submission points to benefits of prostitution for those who work in it: while sex work is unlikely to be anyone's first career choice, the author says that among the diverse range of people who have chosen it, it provides many with financial stability, a means of funding education, and independence.<sup>63</sup>

An argument made in several submissions was that much of the social harm commonly associated with prostitution is in fact attributable to the stigma surrounding it. That stigma is said to impede prostitutes' access to help and support services and to force commercial sex into a criminal milieu where abuse and exploitation are more likely to take place.<sup>64</sup>

## 2.8 Criminality and prostitution

Superintendent Fergus Healy summarised for the Committee the numbers of prosecutions and convictions for prostitution-related offences from 2010 to 2012:

	<b>2010</b>	<b>2011</b>	<b>2012</b>
<b>Offence</b>	Prosecutions (Convictions)	Prosecutions (Convictions)	Prosecutions (Convictions)
Brothel keeping	65 (21)	62 (17)	47 (8)
Organising prostitution	7 (3)	3 (1)	1 (1)
Soliciting/Importuning	102 (19)	107 (19)	46 (3)
Loitering for the purposes of prostitution	21 (12)	35 (17)	16 (0)
Living on the earnings of prostitution	7 (1)	4 (1)	2 (0)

<sup>62</sup> Submission 2013/083

<sup>63</sup> Submission 2012/1020

<sup>64</sup> Submission 2012/604

He said that the some of the foreign nationals whom the Gardaí linked with running prostitution in Ireland were associated with crime gangs in Ireland and their countries of origin. He thought it probable that "a large percentage of the moneys generated from the industry is being redeployed into organised crime groups, domestically and internationally". Chief Superintendent Orla McPartlin advised the Committee that, while the Criminal Assets Bureau had not conducted any general study of the value of the prostitution industry, seizures it had made in the course of investigations indicated that "significant monies are being generated by those organising prostitution in Ireland".<sup>65</sup> This view was supported by former prostitutes who addressed the Committee: "Witness E" said that almost all money spent on prostitution ultimately went to criminals, and that removing that resource from them would instantly weaken their position.

Despite the low numbers of prosecutions for organising prostitution and living off the earnings of it, contributors claimed that pimping and organised prostitution was widespread. Escort web sites and the agencies that organise women are almost always based in countries such as England or the USA where their activities are not illegal. In its submission, Escort-Ireland.com disclaims any criminal involvement and insists that it operates as a fully legitimate business under UK law.

The Committee heard there was evidence of pimping and control of prostitution taking place in Ireland. "Witness E" told the Committee of time she had spent working in a brothel which she understood to be owned and operated by a subversive organisation. She maintained that very few prostitutes were truly independent as pimps would never permit them to be. Doras Luimní's submission notes that many women encountered on its outreach work are accompanied by others – both male and female – who speak or accept payment on behalf of the prostitutes.

The Kelleher Report describes cases where women who wished to leave escort agencies or operate independently were raped or threatened with violence and blackmail to prevent them doing so.<sup>66</sup> The 2006 Escort Client Survey indicates that nearly 30% of respondents had encountered an escort whom they believed to be exploited by someone, 17% had met one whom they suspected

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<sup>65</sup> Letter to Clerk of the Joint Committee on Justice, Defence and Equality (27 February 2013) 2013/080(1)

<sup>66</sup> Kelleher (2009) pp. 102-103.

had been physically abused and 25% had met one whom they believed to have been forced to work as a prostitute.

Mr Paul Maguire of RTE told the Committee that research conducted for the "Profiting from Prostitution" documentary suggested that many escorts advertised as independents were in fact managed or controlled by third parties. He said that many mobile phone numbers in web profiles of women who were described as independent turned out to be sequential. He considered it extremely improbable that several prostitutes would coincidentally have sequential numbers: the more likely explanation was that the numbers belonged to a batch of SIM cards that had been bought in bulk by one person and allocated to the escorts. This appeared to indicate a degree of central control or organisation of nominally independent escorts. In some cases, numbers would be assigned to different women at different times. Mr Maguire also pointed to the highly organised and coordinated movements of large numbers of women around the country: over the period researched for the documentary, 446 women were seen to move from Dublin to Cork, and the exact same number moved in the opposite direction. The similarity of numbers recurs in relation to other cities, with 358 moving from Galway while 354 went there from Dublin; similarly, 295 moved from Belfast to Dublin and 291 moved the opposite way. "Witness B", a touring escort who works for an agency, disputed that this pointed to coercion or pimping: in her view, it simply reflected the economics of supply and demand to which escorts and the agencies they worked for were responding.

Any premises used by more than one person for prostitution is a brothel for the purposes of Irish law as currently in force. Therefore, where two or more prostitutes work in the same premises, both are liable to found guilty of operating a brothel even if their earnings or activities are subject to control by a third party who is not on the premises but who effectively manages the operation. The Committee heard that many premises used for indoor prostitution are brothels according to this definition, as escort agencies and pimps commonly arrange for a number of women – in some cases as many as 10 – to work in a single apartment or house. However, a number of contributors,

including working prostitutes, said that many women prefer to work in pairs as a means of improving security against any violent or disruptive clients.

In 2011 and 2012 An Garda Síochána undertook two major operations targeting prostitution, one (Operation Freewheel) focusing on Limerick and the other (Operation Quest) conducted in cooperation with the Police Service of Northern Ireland and carried out in various towns and cities. These targeted brothels and, in the case of Operation Freewheel, street prostitution with aims including the identification of organisers and victims of trafficking. Operation Freewheel led to 31 warrants being issued to search premises in the Limerick area suspected of being brothels, while Operation Quest involved searches of 140 suspected brothels, including 14 in Limerick alone. In a press statement concerning Operation Quest, An Garda Síochána stated "The policy of An Garda Síochána is to treat women involved as witnesses/victims unless significant evidence comes to light suggesting direct involvement in organised prostitution or brothel keeping."<sup>67</sup> Three people were charged with organising prostitution as a result of arrests made during Operation Quest, while Operation Freewheel led to 27 men being charged with importuning.

## 2.9 Child prostitution

The main direct evidence of child prostitution in Ireland presented to the Committee was in accounts discussed above of persons starting to become involved in prostitution under the age of 18. The Committee was also referred to reports of the Anti-Human Trafficking Unit (AHTU) of the Department of Justice and Equality. Those reports give details of cases where there are at least reasonable grounds for suspecting human trafficking for exploitation. They indicate that, between 2009 and 2011, up to 34 minors may have been trafficked into the State for sexual exploitation or for sexual and labour exploitation.

Based on studies undertaken over 12 months from 2007 and 2008, the Kelleher report identified 11 people suspected of having been trafficked for sexual exploitation who were minors when they

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<sup>67</sup> Garda Press Office 29 May 1012 <http://www.garda.ie/Controller.aspx?Page=9344> (Retrieved 12 March 2013)

arrived in Ireland. It also cites a 1997 study<sup>68</sup> that expressed concerns that "there were 35 juveniles known to be in prostitution in Waterford city".

In its written submission, Barnardos<sup>69</sup> notes the extreme difficulty in assessing the extent of child prostitution in Ireland. It cites its UK study<sup>70</sup> which identifies categories of children at risk of entry into prostitution, including those who have left the care system, experienced homelessness, have alcohol and/or drug addictions, and been separated or trafficked. These findings are supported by the UK Home Office's 2004 consultation document on prostitution,<sup>71</sup> which was cited by numerous contributors.

The 2001 Barnardos UK study suggests that teenagers are most vulnerable to exploitation through prostitution at the ages of 13 to 15. Three of Dr. Kathryn McGarry's 16 interview subjects for her doctoral research entered prostitution under the age of 18; one was 14, another 15.<sup>72</sup> "Witness C", a former prostitute, told the Committee that she began work as a prostitute at the age of 15.<sup>73</sup> A written submission from one former prostitute who entered the sex trade at that age says:

"... girls who are post-puberty by only a year or two are routinely lusted after, sought out, highly prized and then abused for enough years [until] they've lost much of their commercial value".<sup>74</sup>

Escort-Ireland.com says in its submission that:

"We are not aware of a child ever having been advertised on E-I to date. We use age verification technology and human procedures with the aim of preventing this possibly happening."

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<sup>68</sup> McElwee, C., Lalor, N. & K. (1997) *Prostitution in Waterford City: A Contemporary Analysis*. Waterford: StreetSmart Press

<sup>69</sup> Submission 2012/847

<sup>70</sup> Barnardos UK. (2002) *Stolen Childhood: Barnardos' Work with Children Abused Through Prostitution*. London: Barnardos.

<sup>71</sup> Home Office (2004)

<sup>72</sup> Joint Committee on Justice, Defence and Equality. Deb. 16 January 2013

<sup>73</sup> Joint Committee on Justice, Defence and Equality. Deb. 6 February 2013 (Private session)

<sup>74</sup> Submission 2012/1048(6)

The 2006 Escort Clients Survey included questions about underage prostitution. Fifteen per cent of respondents said they had been offered the services of a girl aged under 18; approximately three per cent of respondents said they had availed of them.

## 2.10 Trafficking

The Garda Anti-Human Trafficking Unit has published statistics on potential and suspected victims of trafficking for the years 2009–2011. The report for 2009 states that 53 of 66 cases coming to the attention of the AHTU were found to warrant investigation; of these, 6 cases (all female) were found on investigation to justify suspicion that trafficking for sexual exploitation had occurred. The 2010 report states that 56 cases of alleged trafficking for sexual exploitation were reported in that year, of which 15 related to minors. The 2011 report cites 57 potential cases of trafficking; of these, 37 were alleged to involve sexual exploitation and 2 sexual and labour exploitation. Two of these cases involved minors. Neither the 2010 nor the 2011 report enumerates the numbers of cases in which investigations concluded that reported cases of trafficking for sexual exploitation were found to be justified.

The AHTU reports indicate that five convictions for trafficking-related offences were secured in 2010. Seven prosecutions were commenced in 2011, and two further convictions secured.

Many submissions and presentations to the Committee supported the view that trafficking is a pervasive feature of prostitution in Ireland. The Immigrant Council of Ireland, which commissioned the Kelleher Report, cited the survey in it conducted between January 2007 and September 2008 by Ruhama, the HSE's Women's Health Project and others.<sup>75</sup> That survey identified 102 women who were adjudged to be victims of trafficking within the Palermo Protocol's definition of that term. Of these, 38 were in prostitution in Dublin, 5 outside Dublin, and 30 at multiple locations throughout the country. Among 84 for whom relevant information was available, 76 worked in indoor prostitution, 3 on the street, and 5 in both. The women claimed to be aware of a further 64 women who had been trafficked into Ireland. The Kelleher Report states that, because of the covert and

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<sup>75</sup> See Kelleher *–et al* (2008) pp. 55-59

illegal nature of trafficking, this total of 166 cases of suspected cases of trafficking must be treated as an underestimate.

The Eurostat Report on Trafficking in Human Beings for the years 2008–2010<sup>76</sup> indicates that human trafficking across Europe increased by 18% during that period. Trafficking for sexual exploitation accounted for 62% of reported victims and for 84% of traffickers who were detected. Women comprised 68% of all of those who were reported trafficked, men 17%, girls 12% and boys 3%.

Doras Luimní says in its written submission<sup>77</sup> that "we firmly believe that many of these [street prostitutes in Limerick] may be victims of trafficking". NASC – The Immigrant Support Centre, a Cork-based organisation that works for migrant rights, submitted that it had "extensive anecdotal evidence of the relationship between trafficking and sexual exploitation among migrant women and children in Ireland, particularly in Cork".<sup>78</sup>

Accounts of women suspected of having been trafficked tell of varying degrees of deception and coercion. The Kelleher Report states that women trafficked into the Irish sex industry generally come from backgrounds of low income and limited opportunities in Africa, Latin America, Eastern Europe and East Asia. Among those who did not have easy legal access to Western Europe, it was common for documentation (which in some cases was false) and travel arrangements to be organised by recruiters. While some accounts indicate that women were aware that they were being recruited for prostitution, others tell of deception as to the work the women were to do and coercion to ensure that they did it. Once in Western Europe, trafficked women reported having their passports removed and being subjected to "debt bondage", that is, being forced to work as prostitutes to pay the large sums owed to their recruiters and traffickers, in many cases by means of actual or threatened violence against them or their families at home. Accounts tell of women

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<sup>76</sup> Eurostat (2013) "*Trafficking in Human Beings: 2013 Edition*", Publications Office of the European Union, Luxembourg.

<sup>77</sup> Submission 2012/1033(2)

<sup>78</sup> Submission 2012/997

being sold to pimps and of being trafficked between cities and countries without being told where they were.<sup>79</sup>

While nearly all contributors who expressed a view on the subject accepted that trafficking for sexual exploitation was a real problem in Ireland, a number disputed the extent of it. Some contributors pointed to the numbers of convictions for trafficking for sexual exploitation reported by the AHTU, saying that if trafficking for sexual exploitation were as common as alleged, the numbers should be considerably higher. It was further suggested that the AHTU did not distinguish any convictions relating to sex trafficking from those involving trafficking for labour. Several submissions also referred to comments by a senior Garda involved in Operation Quest in 2006 to the effect that there was no evidence of coercion among foreign escorts operating in Dublin brothels.<sup>80</sup> "Witness B", who works as a touring escort, suggested that some prostitutes who are arrested in brothel raids claim to have been trafficked as a means of avoiding further detention. She said that most of these women return to their work in the sex trade immediately on their release, rather than have their claims of trafficking examined; she said this supported her view that the extent of trafficking was exaggerated.

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<sup>79</sup> Kelleher (2009) pp. 63 – 65

<sup>80</sup> Irish Independent 8 October 2006 *Hookers' Rates Soar as They Get Lunch-Time Rush*. Retrieved from <http://www.independent.ie/irish-news hookers-rates-soar-as-they-get-lunchtime-rush-26417230.html> on 19 March 2013

## Part 3: Reform of the Law on Prostitution

This part of the report outlines the subjects identified by contributors as requiring reform and the arguments presented for and against doing so.

### 3.1 The need for reform

A large majority of contributors endorsed the view that the current law was inadequate to address the problems posed by prostitution. Contributors cited the increase in the number of prostitutes working in Ireland – particularly the high proportion of migrant women – increases in human trafficking, and the trend towards escort prostitution using the internet and mobile phones as issues that were not reflected in or addressed by current legislation. Addressing the Committee on 12 December 2012, Ms Denise Charlton of the Immigrant Council of Ireland expressed the opinion of many contributors when she characterised the current law on prostitution as "not fit for purpose". A different view was expressed by Dr Éilis Ward, a social scientist in NUI Galway, and her colleague, Dr Gillian Wylie of Trinity College, Dublin. They told the Committee that their research suggested that prostitution was an area of social policy that was not amenable to control through the law and may in fact be impossible to abolish.<sup>81</sup> Their written submission expands on this:

"[T]he current policy situation may in fact represent the best kind of response – one in which prostitution is neither legalised nor abolished, in which the state is empowered to address trafficking through existing anti-trafficking legislation (and within that can prosecute for sex trafficking specifically) and in which there is a commitment to address prostitution through welfare and education means rather than through the law."<sup>82</sup>

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<sup>81</sup> Joint Committee on Justice, Defence and Equality. Deb. 12 December 2012  
<sup>82</sup> Submission 2012/605(1)

### 3.2 Timing and information

The great majority of contributors who favoured reform believed that it was required immediately. Many expressed this need as an issue of human rights due to social, physical and psychological harms arising from prostitution. The view expressed to the Committee by Mr Liam Doran, General Secretary of the Irish Nurses and Midwife's Organisation, typified that of many contributors:

"We need to do this now. Penalty points were brought forward to stop motorists speeding. These laws must be brought forward to deter people from engaging in the exploitation of women for their own satisfaction or profit. Our legislators must have the courage to act now to protect these vulnerable women and offer them some hope of a real life in which they can be free from their terrible nightmare."<sup>83</sup>

A few contributors expressed reservations about legislating in the short term, based mainly on concerns about the quality and extent of information concerning the nature of prostitution in Ireland and the experiences of those involved in it. These contributors suggested that the majority of studies conducted to date tended to focus on street prostitution and Irish women, both of which were generally acknowledged to have become minority categories. Referring to her doctoral research on prostitutes in the West of Ireland, Ms Leigh-Ann Sweeney said:

"It became clear that it is necessary to understand the women's lived experiences in order to conclude that the current legislation is archaic and does not match the new realities of life on the ground. We must identify who this cohort is. Only then [should we] re-enact and redesign legislation in conjunction with such 'knowing' and 'insight'."<sup>84</sup>

Drs Ward and Wylie's written submission says:

"While this 'factual information' deficit persists, we would suggest that it seems foolish to proceed with legislative change. We wonder if any other realm of activity or endeavour in

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<sup>83</sup> Joint Committee on Justice, Defence and Equality Deb. 12 December 2012.

<sup>84</sup> Submission 2012/988

Ireland would undergo legal change in the absence of necessary base-line data and analysis."<sup>85</sup>

The Kelleher Report notes gaps in knowledge of prostitution, including health effects of prostitution, the role and conduct of agencies, experiences of those in prostitution, initiatives that may help those who wish to exit it, demand for prostitution and the long-term outcomes of interventions for victims of trafficking.<sup>86</sup> However, these were not seen by the majority of contributors as requiring delay in acting to reform legislation. The Kelleher Report was cited by many contributors as an authoritative survey of the state of prostitution and of its effects in Ireland. It, as well as existing research by academics, health agencies, RTE, and the views expressed by An Garda Síochána were viewed as providing ample information on which to act. Ms Monica O'Connor, who was one of the authors of the Kelleher Report, summed up this view:

"In fact, our research gives a very comprehensive review of both trafficking for sexual exploitation and the prostitution regime as it currently exists in Ireland. The research has been validated by the Garda and the figures contained therein are very accurate."<sup>87</sup>

### **3.3 The objectives of reform**

A very small number of contributors to this review suggested that current laws on prostitution (if not the manner or extent of their enforcement) were satisfactory and that legislative change was not needed. A large majority said that current legislation is inadequate to deal with problems in prostitution or that are caused by it. There was general acceptance that the public-order issues that formed the central focus of the Criminal Law (Sexual Offences) Act, 1993 were mainly relevant to street prostitution, which predominated in the sex trade at that time. Since then indoor escort prostitution has become by far the largest component of the Irish sex trade. Of equal relevance was the fact that migrant women now comprised the majority of those who work in prostitution in Ireland. Nearly all contributors to this review said that reform was necessary, whether to reflect

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<sup>85</sup> Submission 2012/605

<sup>86</sup> Kelleher (2009) p. 31.

<sup>87</sup> Joint Committee on Justice, Defence and Equality. Deb. 16 January 2013.

those changes (or changes in Irish society generally), or to alter society's attitude and approach to prostitution. However, there was a clear divergence on the objectives and approaches of the reforms required.

### 3.3.1 Eliminating prostitution

A majority of contributors to the Committee's review stated that the objective of reform should be to eliminate prostitution or at least to reduce its prevalence to the greatest extent possible. The 'Turn Off the Red Light' campaign is a coalition of 64 NGOs, trade unions, political organisations and other groups that advocate as a policy goal the reduction or elimination of prostitution by means including the criminalisation of buying sex. Many of the individual and organisations that sent written submissions or gave presentations to the Committee were either members of 'Turn Off the Red Light' or expressed support for it. The written submission to the Committee from the campaign summarised the analyses of the majority of contributors who favoured elimination of prostitution:

"[P]rostitution is incompatible with the dignity and safety associated with a job ... a society that tolerates prostitution cannot achieve gender equality."<sup>88</sup>

#### 3.3.1.1 Arguments for eliminating prostitution

Many proponents of this view contended that men's purchase of the sexual services of women constituted a form of violence against women, whether symbolic or physical, and that it affirmed and perpetuated male domination and patriarchy. The Kelleher Report traces this analysis of prostitution to radical feminists such as Kate Millett, Kathleen Barry and Andrea Dworkin.<sup>89</sup> While some advocates of elimination did not expressly endorse this analysis, nearly all cited research which suggested that coercion, exploitation, violence, and medical and psychological harm were intrinsic to all forms of prostitution, whether indoor and outdoor, and in all parts of the world.<sup>90</sup>

Contributors who favoured the goal of elimination maintained that all prostitution occurs within a continuum of exploitation, coercion and deception. Examples cited to the Committee ranged from

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<sup>88</sup> Submission 2012/1043(2)

<sup>89</sup> Kelleher (2009) pp. 41 – 42.

<sup>90</sup> Studies commonly cited by these contributors included Farley M. *et al.* (1998), Farley M. *et al.* (2003) and Raphael J. & Shapiro D. (2004).

misleading accounts of glamour and money to lure economically disadvantaged women into the sex trade, to grooming by pimps and "lover-boys" who target vulnerable women and girls, to economic duress forcing women to sell their bodies to support themselves and their families, and ultimately to threatened and actual violence by pimps and clients. In relation to trafficking, contributors referred to women forced by poverty or threats to travel to work as prostitutes, or being deceived by their traffickers as to the job awaiting them abroad. The absence of employment opportunities and the cumulative effect of the disadvantages of the women in these situations render their consent to prostitution irrelevant. While there may be cases where prostitution takes place voluntarily, they are rare and atypical.

The status of prostitution as work was the focus of other arguments for working towards the elimination of prostitution. Contributors such as the INMO and UNITE trade unions pointed to the inherent exploitation and dangers of working in prostitution, the indignity of doing so, and the impossibility of regulating conditions of work in prostitution. Contributors told the Committee that where prostitution has been decriminalised or legalised, the health and welfare of those who work in it do not improve and their working conditions remain dangerous, while associated harms – such as trafficking and the involvement of organised crime – tend to increase. Similar arguments were made concerning the position of migrants in Ireland who face particular difficulty in obtaining legitimate work and who consequently can be forced into, or to remain in, prostitution. Sr. Mary Ryan of Act to Prevent Trafficking, a faith-based NGO focused particularly on the elimination of sex trafficking, told the Committee:

"To call [prostitution] work is to degrade the notion of decent work as set out by the International Labour Organization, ILO. Decent work has been defined as being productive work for women and men in conditions of freedom, equity, security and human dignity. To legalise and regulate prostitution as sex work would allow criminals and members of organised crime rings to become legitimate business people with the State sanctioning the

marketing of people's bodies, something that would be repugnant to many, if not all, people."<sup>91</sup>

In its oral and written submissions, Barnardos highlighted the exploitation of vulnerable children through prostitution and the young age at which many people become involved in it:

"The evidence indicates that the continued demand for prostitution and the potential financial gain for those who organise prostitution continue to pose a significant risk to vulnerable children and young people. Experience shows that the tender age or obvious vulnerability of a person alone cannot act as deterrents for buyers of sex, and a more comprehensive approach is needed in tackling the demand for paid sex.

A number of men and male-oriented organisations reminded the Committee of the small proportion of Irish men who have paid for sex, and argued that the persistence of prostitution and the harms associated with it cannot be justified by the interests of such a minority. The Men's Development Network, an NGO that works with men to achieve beneficial change, says in its written submission that "... we need to change the law so that the behaviour of men who buy sex is stopped and can no longer have such disastrous effects on those whom they so casually and sometimes viciously abuse".<sup>92</sup>

All advocates of working towards elimination argued that doing so, along with appropriate support and rehabilitation measures, was the only effective way to address harms linked to prostitution, including violence to and exploitation of women and children, human trafficking, the documented physical and psychological harms, the objectification of women and the perception that their bodies could legitimately be bought and sold. In its written submission,<sup>93</sup> Labour Women concludes "The only way to eliminate harm in prostitution is by working to eliminate prostitution itself".

Ms. Jacqueline Healy of the National Women's Council of Ireland told the Committee:

"Prostitution is a violation of women's human rights, including human dignity. The system of prostitution perpetuates patriarchal views on women's sexuality and legitimates male

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<sup>91</sup> Joint Committee on Justice, Defence and Equality Deb. 12 December 2012

<sup>92</sup> Submission 2012/836(2)

<sup>93</sup> Submission 2012/1047(2)

domination in society. As long as it is tolerated, it is an obstacle to equality between women and men. A society that tolerates prostitution cannot achieve gender equality. The abolition of the system of prostitution is a progressive and realistic objective, based on the fundamental principal of equality between men and women."<sup>94</sup>

"Witness E", a former prostitute, told the Committee that, in light of the suffering that she and her colleagues had endured, any effort to eliminate prostitution was better than none. She asked whether murder should be legally tolerated, simply because its criminalisation did not always prevent it occurring.<sup>95</sup>

### 3.3.1.2 Criticisms of arguments for elimination

Many critics took the view that prostitution had continually adapted to efforts to eliminate it, and that all such efforts, however well motivated, were unlikely to succeed. Some contributors, while not favouring the promotion of prostitution, criticised the premises of those who favoured eliminating it. Their central criticism was that pro-elimination arguments were based on preconceptions, stereotypes and over-generalisations of a complex phenomenon that encompassed a great diversity of experiences. Contributors criticised the analysis of prostitution as violence against women, saying that it completely ignored the reality of men and transsexuals who work in prostitution and dismissed the opinions and experiences of women who openly affirmed their wish to work in prostitution and who said that it empowered them and gave them control over the course of their lives. Similarly, they criticised the argument that women's consent to prostitution was illusory: they said this denied that sex workers had the capacity to make their own decisions and instead gave that power to others who, however well-meaning, had no right to do so. Some also criticised studies relied on by advocates of elimination, suggesting that these were biased, unrepresentative, or methodologically flawed.<sup>96</sup>

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<sup>94</sup> Joint Committee on Justice, Equality and Defence. Deb. 12 December 2012.

<sup>95</sup> Joint Committee on Justice, Equality and Defence. Deb. 6 February 2013 (Private session).

<sup>96</sup> Several contributors cited in this regard Weitzer R. (2005) *Flawed Theory and Method in Studies of Prostitution and Rehashing Tired Claims About Prostitution: A Response to Farley and Raphael and Shapiro*. Violence Against Women [11] 934 – 939 and 971 – 977 respectively.

"Witness A", a current prostitute who addressed the Committee, said that her experiences in prostitution did not in any way resemble the scenario of violence, abuse and exploitation portrayed by advocates of elimination. She agreed that some prostitutes suffered exploitation but insisted that the legal means were already there to address and resolve those cases. She added that exploitation was not confined to the sex trade: she suggested that many young migrant women working as waitresses faced considerable exploitation and sexism in their jobs, while earning much less than her escort colleagues.<sup>97</sup>

### **3.3.2 Harm reduction as the primary objective**

There was a consensus that targeting and mitigating harms associated with prostitution were necessary objectives of reform of the law. Some contributors viewed this as the primary objective of reform. In contrast, advocates of eliminating prostitution considered harm reduction an important objective but, of itself, insufficient.

Most contributors who saw harm reduction as the primary objective of reform suggested that prostitution could not be eradicated by legal sanctions, and that the history of legislative interventions around the world showed that it would always adapt and re-emerge. Based on that premise, they argued that issues of human rights, public health and social welfare dictated that society should target interventions at reducing risks to sex workers from violence, disease, coercion, drugs and social exclusion. These contributors generally favoured decriminalisation or legalisation of prostitution, the arguments for and against which are examined separately below.

Sex Workers' Alliance Ireland is a coalition of researchers, health and support workers and activists that advocates for the rights and welfare of sex workers. In its written submission it states the rationale for the harm-reduction approach:

"The rights and wrongs of prostitution are less important than the operation of legislation that should be able to intervene for those at risk and acknowledge those who do not conform to a victim identity. Fundamentally it should be recognised that driving sex workers

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<sup>97</sup> Joint Committee on Justice Defence and Equality. Deb. 20 February 2013 (Private session)

and their clients underground exposes them to greater risks than those risks which abolitionists wish to save them from."<sup>98</sup>

Dr Kathryn McGarry argued that sex workers are active risk managers and need to be supported in doing so. She told the Committee:

"Shifting the focus away from criminal justice and towards public health, social justice and social care enables those who work with the most vulnerable groups in the sex industry to provide optimum support. Safety for sex workers should be prioritised through harm reduction to protect those who are most vulnerable, to intervene for those who are at risk and to acknowledge those who do not conform to a victim identity."<sup>99</sup>

Mr Daniel McCarthy of the Gay Health Network told the Committee that, as with heterosexual prostitution, commercial sex between men is a fact of life for a minority of MSM in Ireland and other countries. Legislation should facilitate access to health and support services and not further stigmatise either buyers or sellers of sex who rely on those services:

"Access to support, sexual health and support services, including information, condoms and lubricants, is vital. Reports show that those who use services and are tested are more informed and inclined to look after themselves. Introducing further legislation would inhibit this and make it more difficult to access services or supports. Legislation may delay people attending, especially if they have symptoms or if they are obliged to search out whom they can attend for STI services. In addition, they would be reluctant to discuss or make disclosures about the type of sex in which they engaged."<sup>100</sup>

He cited in support of this the 2011 Report of the UNAIDS Advisory Group on HIV and Sex Work<sup>101</sup> and reports from transnational organisations including the World Health Organisation that advocate harm-reduction approaches as a means of tackling the spread of HIV.

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<sup>98</sup> Submission 2012/1008(2)

<sup>99</sup> Joint Committee on Justice, Defence and Equality. Deb. 16 January 2013.

<sup>100</sup> Joint Committee on Justice, Defence and Equality. Deb. 23 January 2013.

<sup>101</sup> UNAIDS (2011) *The Report of the UNAIDS Advisory Group on HIV and Sex Work*. Geneva. UNAIDS.

### 3.3.2.1 Criticism

Advocates of working towards the elimination of prostitution fully supported harm reduction as an objective of reform. However, they were firmly of the view that, on its own, it was insufficient to address the risks and harms associated with prostitution, and that the overriding goal of eliminating prostitution was essential for addressing those harms. Support for that view was expressed by Ruhama,<sup>102</sup> the Immigrant Council of Ireland,<sup>103</sup> the Irish Medical Organisation<sup>104</sup> and the INMO.<sup>105</sup> Ms Linda Latham of the Women's Health Project articulates this criticism in her personal submission:

"If we were to continue giving out condoms and messages of 'how to keep safe' whilst women were ironically in a hugely exploitative and violent industry, we were defeating the object and lacking a broader analysis. This is my fundamental argument with sex worker rights groups. They are so pre-occupied with trying to make safe and improve the conditions for sex workers that I feel they lose the oversight in what is actually causing the greatest harm of all and that is the sex work, not the conditions."<sup>106</sup>

In its written submission, Ruhama argues that that the 2011 UNAIDS Advisory Group Report – which advocates decriminalisation and harm reduction as primary objective of prostitution policy – is flawed by a pro-prostitution bias of the authors. Ruhama point out that the report expressly notes that the views in it do not necessarily reflect those of all members of the Advisory Group, the UNAIDS Secretariat, or of its sponsors. They further argue that many of the harm-reduction measures advocated in that report (including decriminalising homosexuality, HIV treatment and sex education) are either already implemented in Ireland or relevant only to less developed countries. Ruhama argues that the call for decriminalisation in the report is therefore unnecessary and counter-productive.<sup>107</sup>

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<sup>102</sup> Submission 2012/1144(1)  
<sup>103</sup> Submission 2012/1040(1)  
<sup>104</sup> Submission 2012/696(1)  
<sup>105</sup> Submission 2012/1004  
<sup>106</sup> Submission 2012/967  
<sup>107</sup> Submission 2012/1144(1)

### 3.3.3 Preventing human trafficking through demand reduction

There was an overall consensus that trafficking for exploitation through prostitution was a real issue of concern in Ireland, as demonstrated by AHTU statistics and by the experiences of support workers in State agencies and NGOs. However, there was disagreement on the relevance of reform of prostitution laws to addressing that issue.

Proponents of working to eliminate prostitution argued that prostitution and trafficking were inextricably linked, and that the objective of eliminating human trafficking could not be achieved without working to eliminate the sex trade generally. The Committee heard that there was a significant degree of overlap between the exploitation and violence in trafficking and that in prostitution: the methods, motivations, vulnerabilities and sources of demand were said to be the same in both.<sup>108</sup> Ms Sarah Benson of Ruhama told the Committee:

"Given the mechanisms by which the sex trade operates, victims of trafficking are advertised in the same places as all other forms of the commercial sex trade and not in a separate corner or cohort that is restricted. A cohesive approach to organised prostitution is also the means by which perpetrators and victims of trafficking can be identified and assisted."<sup>109</sup>

Proponents maintained that, due to this link, working towards elimination was the only effective way in which the State could fulfil its obligation under international law to "discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking".<sup>110</sup> While the criminalisation of soliciting a trafficked person for the purposes of prostitution<sup>111</sup> had addressed the State's obligations under certain European and UN instruments, the overriding requirement to address trafficking through demand reduction remained.

Another argument for addressing trafficking by reducing demand was based on the available supply of persons genuinely willing to engage in prostitution. Citing studies of developments in the

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<sup>108</sup> Ruhama, Submission 2012/1144(1)

<sup>109</sup> Joint Committee on Justice, Defence and Equality Deb. 12 December 2012

<sup>110</sup> United Nations Convention against Transnational Organized Crime, Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (2000).

<sup>111</sup> s. 5 Criminal Law (Human Trafficking) Act, 2008

legalised sex trade in The Netherlands<sup>112</sup> and Germany,<sup>113</sup> they argued that the mismatch between demand and voluntary supply led inevitably to trafficking to meet the excess demand. Ms Benson of Ruhama said:

"It is not possible that there would be enough of that small cohort of freely choosing independent women who are without control, coercion and have other positive viable choices available to them. There are simply not enough of those woman to meet the demand. Consequently, there will always be exploitation in the sex trade, no matter where it is situated or how it is regulated."<sup>114</sup>

Contributors who advocated addressing trafficking through demand reduction also cited the outcomes of different legislative approaches to prostitution. The Committee was told that in Germany and New Zealand, where prostitution had been decriminalised, and in The Netherlands, where it had been legalised and regulated, human trafficking for prostitution was persistent and increasing.<sup>115</sup> In contrast, countries such as Sweden and Norway – where the law had been changed to discourage demand for prostitution – were said to show a decline in the incidence of trafficking in line with reductions in the number of people involved in prostitution and in demand for it.

Critics of these arguments contended that treating prostitution and human trafficking as intrinsically linked was based on a simplistic view of all sex workers as victims and that it generalised the experiences of a minority to represent what was in fact a diverse and complex group.<sup>116</sup> A number pointed to the reports of the Garda Anti-Human Trafficking Unit, which showed very few convictions for trafficking. They argued that if sex trafficking were as pervasive as proponents of elimination maintained, the number of reports and convictions should be much greater.<sup>117</sup> Citing the recommendations of the 2011 Report of the UNAIDS Advisory Group, some said that trafficking

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<sup>112</sup> Daalder, A.L. (2007) *Prostitution in The Netherlands Since the Lifting of the Brothel Ban*. The Hague: Boom Juridische uitgevers, WODC.

<sup>113</sup> Federal Ministry for Families, Seniors, Women and Youth (2007) *Report of the Federal Government on the Impact of the Law Regulating the Legal Situation of Prostitutes*. Berlin: BMFSFJ.

<sup>114</sup> Joint Committee on Justice, Defence and Equality Deb. 12 December 2012

<sup>115</sup> Federal Ministry for Families, Seniors, Women and Youth (2007); Baker, D., Presentation to Grosse Freiheit Conference, 8 May 2011, Copenhagen; Daalder (2007). (Cited by Ruhama, Submission 1144(1))

<sup>116</sup> Sex Workers Alliance Ireland, Submission 2012/1008(2)

<sup>117</sup> Submissions 2012/983; 2013/083.

should be understood and responded to separately from prostitution: failure to make this distinction would cause resources to be diverted away from areas where they were needed most, and so worsen the situation of genuine victims of trafficking. The causes of trafficking lay in issues such as economic under-development, lack of education and opportunity, and gender discrimination. Simply seeking to eliminate prostitution would leave these root causes unaddressed and divert resources away from tackling them.<sup>118</sup> Several also disputed the reported success of the Swedish law in reducing trafficking, pointing out that prosecutions for sex trafficking there had increased by 563% between 2008 and 2010.<sup>119</sup>

### 3.4 Approaches to reform

Written submissions and oral presentations to the Committee proposed a number of approaches to reform of the law on prostitution. Much of the debate in submissions and at Committee hearings centred on proposals to criminalise the purchase of sex and the arguments of those who opposed or had reservations about doing so.

#### 3.4.1 The 'Swedish Approach'

Advocates of working towards the elimination of prostitution, including the members and supporters of the Turn Off the Red Light campaign, comprised the majority of contributors to this review. They almost unanimously argued that the approach in force in Sweden since 1999 was the best one to be followed in Ireland.

The salient features of the 1999 Swedish Law on Sex Purchase are its declaration that prostitution is intrinsically a form of violence against women, that the purchase of sexual services is not socially acceptable, its decriminalisation of the sale of sexual services and criminalisation of their purchase. Swedish law, like Ireland's, prohibits "pandering" – that is, pimping and procuring of prostitutes or living off their earnings – and the ownership or operation of brothels. It specifically provides for the

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<sup>118</sup> Submission 2013/083; 2012/611; 2012/968.

<sup>119</sup> Rikspolisstyrelsen (2011) *Slutredovisning: Prostitution och Människohandel* Retrieved from <http://www.polisen.se/Aktuellt/Rapporter-och-publikationer/Rapporter/Publicerat--Nationellt/Organiserad-brottslighet/Slutredovisning-prostitution-och-manniskohandel/> on 14 January 2013.

forfeiture of rented premises used for prostitution. Those found guilty of purchasing sexual services can be punished by police warnings, fines, or up to six months' imprisonment. Social, police and health services are integrated into the official response to prostitution, offering support to prostitutes whose clients are apprehended. For convenience, criminalising the purchase of sexual services while not criminalising their sale is referred to in this report as 'the Swedish Approach'.

#### **3.4.1.1 Arguments for the Swedish Approach**

Proponents of the Swedish Approach cited three main arguments in support of their views:

- the normative effect of prohibiting payment for sex, of declaring in law that it is socially unacceptable and a form of violence against women would advance social debate on gender equality and mobilise the authority of the State against perceptions of women's and girls' bodies as commodities available to be bought and sold;
- penalising the buying of sex would act as a powerful deterrent against demand for prostitution and human trafficking, and would likewise reduce incentives to enter or remain in prostitution;
- decriminalising the sale of sex by prostitutes would avoid stigma and marginalisation, and so not impede access to essential support, health and rehabilitation services.

Supporters of the Swedish Approach said that this would lead to reduced prostitution and, as a consequence, reduced trafficking and exploitation of adult and child prostitutes. This would in turn assist the State in meeting its obligations under international agreements combatting trafficking and the promotion of gender equality. They referred to the combined effect on social attitudes of legal sanctions and public awareness campaigns, and argued that a similar approach to prostitution could achieve equivalent results. Proponents cited the personal accounts they had heard from support workers in Sweden and to studies – in particular the Swedish Government's

2010 Review of the Sex Purchase Act under Chancellor of Justice Anna Skarhed<sup>120</sup> – to support their confidence in the effectiveness of the Swedish Approach.

The Committee was told that the Skarhed Review had found that:

- street prostitution had declined by approximately 50%;
- while the number of people advertising on escort sites aimed at Swedish buyers had increased, the rate of increase was less than half that in neighbouring Norway and Denmark;
- there had been no overall increase in the number of people involved in prostitution in Sweden, while numbers in Norway and Denmark had increased significantly;
- despite initial public opposition to the law, recent surveys showed that support for the ban had risen to more than 70% of the Swedish public generally and even higher among young people;
- telephone surveillance and other forms of intelligence led the Swedish police to believe that traffickers and pimps no longer considered Sweden an attractive destination;
- the decriminalised status of sex workers had allowed them to maintain contact with support services and avoided prostitution being driven underground;
- there was no evidence that the 1999 law had increased violence or worsened the conditions of those exploited in prostitution;
- demand for prostitution had fallen, with 7.8% percent of men in 2008 reporting use of prostitutes, compared with 13.6% in 1996;
- the decline in demand increased incentives to exit prostitution;
- women who had exited prostitution reported that criminalising buyers had empowered them to do so, to stop blaming themselves and to properly attribute blame to the buyers who bore responsibility for the harms they had suffered.

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<sup>120</sup> Skarhed *et al.* (2010) State Public Enquiry 2010:49 *Förbud Mot Köp av Sexuell Tjäns: En Utvärdering 1999–2008*. Stockholm: Government of Sweden. Selected extracts in English published by The Swedish Institute retrieved from <http://www.government.se/sb/d/13420/a/151488> on 11 December 2012.

Other evidence cited in support of the Swedish Approach focused on concerns that prostitution might be driven underground or lead to an increase in violence against prostitutes. The submission from Equality Now – a UK-based organisation that advocates for rights of women and girls – reflected the views of many contributors, saying that prostitution could not be concealed from the reach of the police when it depended on internet advertising or public solicitation of clients. The submission added that Swedish police confirmed that violence in prostitution had not increased since 1999, that no murders of prostitutes had occurred since then, and that women in prostitution talk to and seek help from the police.<sup>121</sup>

The Committee heard that the Swedish Approach had been adopted into law in Norway and Iceland in 2009 and was being considered in other countries including France and the United Kingdom.

Proponents of the Swedish Approach advocated a multi-dimensional approach to reform, encompassing not just the criminal law but also health, educational and social policies to support those affected by prostitution and assist their exit from it. Reforms suggested to the Committee by Ruhama in its written submission<sup>122</sup> are representative of those proposed by advocates of the Swedish Approach. They include:

- repeal of the offence of offering one's own services as a prostitute;
- increasing the penalties for the offence of organising prostitution to a fine of up to €10 million and up to 10 years' imprisonment;
- reducing the burden of proof for the offence of allowing a premises to be used as a brothel from "knowingly" to "recklessly";
- reducing the burden of proof for the offence of soliciting or importuning a trafficked person for the purpose of prostitution, so that this becomes a strict liability offence in which the defendant's knowledge of the trafficked person's status is irrelevant;
- a new offence of purchasing sex;

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<sup>121</sup> Submission 2012/1189

<sup>122</sup> Submission 2012/1144(1) pp. 27 – 34

- making the advertisement of prostitution an arrestable offence and increasing the penalties substantially;
- a new offence of owning, possessing or controlling a SIM card used to advertise prostitution. (Ruhama cautions that this should be drafted and implemented in a way that targets those who organise and profit from prostitution but that avoids penalising victims);
- giving power to An Garda Síochána to seize ownership of or disable phone numbers used to advertise or control prostitution;
- provisions (equivalent to those concerning sexual offences and trafficking) allowing victims of prostitution to give evidence anonymously and by video link;
- expunging the criminal records of victims of prostitution;
- the provision by State bodies and NGOs across the country of educational, training, financial, housing, health and rehabilitation services to help victims overcome barriers and dependencies that keep them in prostitution.

Proponents of the Swedish Approach were confident that Constitutional objections to the penalising of purchasing sex while its sale was legal could be overcome, particularly if the offence was treated as a summary one. The written submissions of the Immigrant Council of Ireland includes legal research and opinions suggesting ways in which provisions giving effect to the Swedish Approach could be enacted without offending the Constitution.<sup>123</sup>

Several advocates for the Swedish Approach, including the Immigrant Council of Ireland, also proposed that the State should take steps to limit or prevent access to sites that advertise prostitution to Irish-based users by means of action with the controllers of internet domain names.<sup>124</sup> A small number further suggested that the State should act to prevent access to web sites that provide pornography or otherwise promote the sex industry.<sup>125 126</sup>

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<sup>123</sup> Submission 2012/1040(2) Appendices 1 – 6.

<sup>124</sup> *Ibid.*

<sup>125</sup> Action to Prevent Trafficking (APT), Joint Committee on Justice, Defence and Equality. Deb. 12 December 2012.

<sup>126</sup> Submission 2013/022

### 3.4.1.2 Criticisms of the Swedish Approach

Criticisms of the Swedish Approach centred on three main arguments: that it was based on flawed premises, that evidence cited in support of its effectiveness was poorly derived, inconclusive or counter-factual, and that, if implemented, its effects would be harmful and counterproductive.

Critics argued that the Swedish Approach treats all prostitutes as victims who must be rescued.

They said this view was based on simplistic and ideologically driven perceptions that do not reflect the diverse experiences, opinions or circumstances of sex workers and their clients in Sweden, Ireland or elsewhere.<sup>127</sup> Many prostitutes were said to firmly reject being identified as victims, and

opponents claimed that those who view them as such do so because of bias arising from abolitionist ideologies or from focusing on vulnerable or exploited prostitutes.<sup>128</sup> They argued that it

fails to recognise that not all prostitutes conform to the victim stereotype, and therefore was a simplistic 'one-size-fits-all' prescription that will reinforce stigma and waste resources, to the

detriment of those – such as drug-using prostitutes and victims of trafficking – who require the most support.<sup>129</sup> The definition of prostitution as violence against women was also criticised for

ignoring the significant number of men and transsexuals who choose to work as prostitutes. Critics said this was discriminatory and highlighted ideological biases underlying the Swedish Approach.

Critics maintained that the Swedish Approach denies sex workers the capacity to decide for

themselves how, when and with whom they should work.<sup>130</sup> This was said to reflect a paternalistic

approach that ran against modern models of social work, which favour empowerment and non-

judgemental support for individual choices. They claimed it denied prostitutes a voice in decisions

affecting their own lives and welfare, and negated their human rights and autonomy.<sup>131 132</sup>

The Committee was told that, contrary to the claims of proponents and of the Skarhed Review, the

Swedish Approach had not been shown to be effective in achieving its objectives. The Skarhed

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<sup>127</sup> Submission 2012/025

<sup>128</sup> Submission 2012/1020

<sup>129</sup> Submissions 2012/025, 2012/605

<sup>130</sup> Submission 2012/113

<sup>131</sup> Submissions 2012/599(1), 2012/1195, 2012/600

<sup>132</sup> A number of critics cited in this regard Dodillet, S. & Östergren P. (2011) *The Swedish Sex Purchase Act: Claimed Success and Documented Effects*. International Conference: Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges. The Hague, March 3 and 4, 2011.

Review was widely criticised by opponents for lacking empirical research and scientific rigour, and for excluding any consideration of repealing the ban on buying sex.<sup>133</sup> The reported 50% drop in street prostitution was attributed by these critics to the trend in Western European countries away from the street towards indoor prostitution mediated by the internet and mobile phones. However, the Skarhed Review was said to have assumed that the reduction was real and was due to women exiting prostitution because of the ban.<sup>134</sup> Critics also maintained that there was a lack of solid base-line data to compare levels before and after the ban, and said that this meant that any claimed reduction was based on subjective impressions of police and support workers. Several critics cited the 2007 report published by Sweden's National Board of Health and Welfare, which stated that street prostitution is "slowly returning" after a decrease in the immediate aftermath of the 1999 law.<sup>135</sup> The reported drop in demand was also disputed as being based on unreliable comparisons.<sup>136</sup> The Committee was told that men in Sweden continued to travel abroad to use prostitutes, while demand within the country appeared to be unaffected, a view supported by Dr Derek Freedman.<sup>137</sup> Critics also cited Swedish police reports which show that, between 2008 and 2010, prosecutions for buying sexual services had increased by 569%, those for child prostitution had increased by 402%, and those for sex trafficking had increased by 563%.<sup>138</sup> Even if these figures indicated improving rates of detection, these contributors said that they did not suggest any decrease in prostitution or trafficking due to the ban.<sup>139</sup>

Concerning the normative effect of the law and attitudes to prostitution, surveys in Sweden were said to suggest that opinions tend to favour the criminalisation of both the sale and purchase of

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<sup>133</sup> Submissions 2012/999, 2013/025, 2012/690

<sup>134</sup> Dodillet, S. & Östergren, P. (2011)

<sup>135</sup> Eriksson, A. & Gavanas, A. (2007) *Prostitution in Sweden*. English translation retrieved from [http://www.socialstyrelsen.se/lists/artikelkatalog/attachments/8806/2008-126-65\\_200812665.pdf](http://www.socialstyrelsen.se/lists/artikelkatalog/attachments/8806/2008-126-65_200812665.pdf) on 13 March 2013. Cited in Submission 2012/1008(2) (Sex Workers' Association Ireland)

<sup>136</sup> Jordan, A. (2012) *The Swedish Law to Criminalise Clients: A Failed Experiment in Social Engineering*. – American University Washington College of Law. Cited in Submissions 2012/611 and 2012/612.

<sup>137</sup> Joint Committee on Justice, Defence and Equality. Deb. 23 January 2013.

<sup>138</sup> Rikspolisstyrelsen (2011).

<sup>139</sup> Submission 2012/690

sex. Critics said this indicated that the objective of shaping public attitudes to perceive prostitution as contrary to gender equality was being failed.<sup>140</sup>

Critics of the Swedish Approach said that, contrary to claims of its proponents, it would worsen conditions for sex workers and drive prostitution underground.<sup>141</sup> Many cited the 2011 Report of the UNAIDS Advisory Group, which deprecated the Swedish Approach, saying that it "has been shown to backfire on sex workers". While prostitutes must of necessity remain accessible to clients, the reported experiences of street prostitutes in Sweden and Norway since the introductions of bans on buying sex were said to show alienation from the police and a worsening of conditions.<sup>142</sup> Dr Teresa Whittaker of Sex Workers' Alliance Ireland told the Committee that there were increasing indications that bans in Sweden and Norway were being seen to have failed, and that repeal was now being advocated in Norway.<sup>143</sup> Critics cited reports that prostitutes were under pressure to negotiate with clients quickly so as to avoid detection by police: this was said to reduced their ability to evaluate clients and to reject those who might be harmful. The Committee was told that prostitutes reported increased fears of violence and occurrences of it, as well as reluctance to report it for fear of harassment by the authorities. While prostitutes were not liable to be arrested for their activities, critics cited reports which suggested that police used their possession of condoms as evidence against the client. This was said to increase pressures not to carry condoms and therefore the risk of unprotected sex.<sup>144</sup> Sex workers in Norway, where a similar ban had been introduced, were reported to have difficulty renting living accommodation, because any suggestion of the nature of their work caused landlords to evict them rather than risk a charge of pandering or operating a brothel.<sup>145</sup>

Several critics maintained that the increased difficulties and dangers faced by sex workers in Sweden and Norway since their implementation of bans on buying sex amounted to a total

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<sup>140</sup> Jordan, A. (2012)

<sup>141</sup> Submission 2012/605

<sup>142</sup> Submission 2012/968

<sup>143</sup> Joint Committee on Justice, Defence and Equality Deb. 16 January 2013.

<sup>144</sup> Submission 2012/083

<sup>145</sup> Bjørndahl, U. (2012) *Dangerous Liaisons: A Report on the Violence Women in Prostitution in Oslo are Exposed to*. Retrieved from <http://humboldt1982.files.wordpress.com/2012/12/dangerous-liaisons.pdf> on 25 February 2013. Cited in Submission 2013/025.

criminalisation of prostitutes, notwithstanding the nominal decriminalisation of selling sex. The Committee was told that the Skarhed Review acknowledges that there have been increases in stigma, insecurity and marginalisation faced by prostitutes since the introduction of the ban.

Several contributors pointed out that it describes these as a positive development:

"For people who are still being exploited in prostitution, the above negative effects of the ban that they describe must be viewed as positive from the perspective that the purpose of the law is indeed to combat prostitution."<sup>146</sup>

One critic described this as "unconscionable", particularly as the ostensible aim of the law is to protect women who are suffering under it.<sup>147</sup> While prostitution may be the 'least worst' of a limited number of poor options for some, it still provided their means of earning a living. Without a viable alternative, it made no sense to remove or impair that source of income.<sup>148</sup>

Other criticisms included the possible unconstitutionality of penalising one party to a transaction that is lawful for the other.<sup>149</sup> A related argument was that deeming all prostitution to be involuntary rendered a sex worker who had legal capacity in all other areas of his or her life incapable in the sole of area of consenting to sex for money: one critic described this as "unprecedented".<sup>150</sup>

Several contributors suggested that it would be problematic to treat all buyers of sex as criminals, regardless of the intentions and capacities of the parties to the transaction. They maintained that some buyers, such as those with physical disabilities, could have legitimate reasons to engage the services of a willing prostitute, and that it would be unfair and disproportionate to criminalise them for doing so.<sup>151</sup>

### 3.4.2 Total decriminalisation and legalisation

The Committee heard arguments for both these approaches from opponents of the Swedish Approach, most of which favoured decriminalisation rather than legalisation. The arguments – and

<sup>146</sup> Skarhed *et al.* (2010) at section 4.6.4.

<sup>147</sup> Submission 2013/025

<sup>148</sup> Submissions 2012/968, 2013/083

<sup>149</sup> Submissions 2012/612, 2012/968

<sup>150</sup> Submission 2012/1008(2)

<sup>151</sup> Submissions 2012/983, 2012/136, 2012/609, 2012/998(2)

criticisms of them – tend to overlap to a considerable degree, so they are considered under the same general heading here with distinctions being made where appropriate.

Total decriminalisation of prostitution involves the repeal of laws penalising the buying and selling of sex by consenting adults, but without state involvement in the business of prostitution through measures such as licensing sex workers or brothels. It generally does not give prostitution a special legal status. While some legislative provisions specific to sex work remain, the conditions under which it takes place are governed mainly by general civil, criminal and employment laws.

Total decriminalisation is the approach adopted in New South Wales between 1979 and 1995 and in New Zealand in 2003. As noted in the Department of Justice's Consultation Document, it is proposed by international health bodies such as UNAIDS and the WHO for consideration by governments as a means of improving the health and welfare of sex workers and to combat the spread of HIV.

Legalisation usually involves a degree of state intervention in the operation of the business of prostitution, whether by way of registration or licensing of sex workers and/or brothels, official health regimes or other measures. Legalisation regimes have been adopted in The Netherlands, Germany, and in Victoria and Queensland, Australia. Comparatively few contributors to this review advocated the full legalisation and regulation of prostitution.

Both decriminalisation and legalisation were strongly opposed by supporters of the Swedish Approach, who constituted the majority of those who contributed to this review.

#### **3.4.2.1 Arguments for total decriminalisation and legalisation**

Proponents of these approaches took the position that criminal legislation against prostitution had repeatedly failed to eliminate it and by forcing it into the realm of criminality – had made matters worse for sex workers and society. They did not generally suggest that prostitution was a business or way of life that should be promoted. Instead, they said the fact of the matter was that it could not be suppressed without causing even greater harm. On that basis, they argued that the best possible approach was to recognise the reality – or even inevitability – of prostitution and to

prioritise harm-reduction measures.<sup>152</sup> Proponents of total decriminalisation said it would allow the State to adopt such measures without either endorsing or stigmatising sex work. In contrast, a few advocates of legalisation suggested that a degree of State endorsement of prostitution was necessary to empower those who worked in prostitution to participate more fully in society, would counteract the effects of ambiguity and hypocrisy, and could open up a profitable industry for development.

Advocates of decriminalisation and legalisation generally premised their argument on concern for the rights of those who work in or make use of prostitution, in particular their rights to work, to equality before the law, to fair treatment by State agencies, to privacy, and the right to live in and participate in society without stigma.<sup>153</sup> They claimed that removing criminal sanctions from consensual prostitution and allowing it to take place more openly would reduce stigma and marginalisation and help those who chose to work in prostitution to determine the course of their own lives without undue interference.<sup>154</sup> They maintained that this, as well as measures such as the New Zealand offence of coercing a sex worker, would in turn help to empower sex workers to take advantage of their legal rights – including those relating to employment, social welfare and health – and to address exploitation and violence.<sup>155</sup> Similarly, contributors maintained that decriminalisation or legalisation would allow the Gardaí to focus on priority areas such as trafficking, pimping and coercive clients.<sup>156</sup> Proponents mentioned the work of the New Zealand Prostitutes' Collective as a support service and advocate for the rights and interests of sex workers.<sup>157</sup>

Proponents of decriminalisation cited reviews of the regimes in New South Wales<sup>158</sup> and New Zealand<sup>159</sup> in support of their positions. They said that these showed that decriminalisation had not

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<sup>152</sup> Submissions 2012/827, 2012/998, 2012/612, 2012/614

<sup>153</sup> Submissions 2012/827, 2012/968, 2012/998, 2013/083, 2012/1020, 2012/1008 (Sex Workers Alliance Ireland)

<sup>154</sup> Submissions 2012/1008, 2013/083, 2012/1020,

<sup>155</sup> Submission 2012/612

<sup>156</sup> Submission 2012/998

<sup>157</sup> Submission 2012/612

<sup>158</sup> Donovan, B., Harcourt C. *et al.* (2012) *The Sex Industry in New South Wales: A Report to the NSW Ministry of Health*. Sydney: Kirby Institute, University of New South Wales.

<sup>159</sup> Abel, G., Fitzgerald, L. & Brunton, C., (2007) *The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers*. Christchurch: Otago University; New Zealand Prostitution Law Review Committee

led to increases in the numbers of prostitutes, that New Zealand sex workers felt they had improved health and safety rights and were better able to refuse undesirable clients since decriminalisation in 2003, that safe sex practices were widely followed, that frequent use of medical check-ups was common, and that rates of sexually transmitted infections were generally in line with the wider population. Sex trafficking was found to be non-existent in the 2008 New Zealand Government report, while the 2012 New South Wales report could find evidence of only "a handful" of cases. The reports do not give uniformly positive accounts of prostitution: the 2008 New Zealand Government report states that 3.9% of prostitutes surveyed said that they had been forced at some stage to do sex work by someone, while 1.3% of those surveyed had engaged in prostitution under the age of 18. Violence was still considered a common risk, though a majority who expressed an opinion on the subject felt it was more likely to be reported to the police. Similarly, reports of employment conditions in brothels were mixed: in general, those that had been poor before 2003 remained so afterwards. The 2012 New South Wales review noted that street prostitutes in particular remained at risk of violence, with 50% reporting assaults during their work. Advocates of decriminalisation proposed that the law should be amended to decriminalise consensual adult prostitution and to clarify that sex workers had full recourse to employment and other areas of civil law in respect of their work.<sup>160</sup> They suggested that the law require and promote safe sex practices such as the use of condoms for all commercial sex.<sup>161</sup> In relation to violence and coercion, they proposed a specific offence of coercion of prostitutes by clients or persons such as pimps, brothel managers or traffickers, including a right to refuse clients.<sup>162</sup> The Sex Worker Alliance of Ireland proposed that violence against prostitutes be treated as a form of hate crime.<sup>163</sup> Several proposed that the definition of brothels be loosened to allow small numbers of prostitutes to work cooperatively for mutual protection and support.<sup>164</sup> For similar reasons, it was proposed that the offence of living off the earnings of prostitution should be amended to allow prostitutes to

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(2008) *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*. Wellington: Ministry of Justice.

<sup>160</sup> Submissions 2012/601(1), 2012/1008(2) (Sex Workers' Alliance Ireland)

<sup>161</sup> Submission 2012/612

<sup>162</sup> Submissions 2012/827, 2012/612, 2012/614

<sup>163</sup> Submission 2012/1008(2)

<sup>164</sup> Submissions 2012/968, 2012/1008(2) (Sex Workers' Alliance Ireland)

hire their own security staff and to safeguard non-exploitative landlords.<sup>165</sup> A number said that the criminal records of prostitutes should be expunged, particularly of those who had been convicted of brothel keeping solely on the basis of having worked in the same premises as other prostitutes.<sup>166</sup> Some proponents suggested that offences such as soliciting that target street prostitution should be relaxed or repealed so as to allow designated areas to operate as 'tolerance zones'. They said that, with cooperation and careful policing, these could operate without causing a public nuisance or undesirable practices.<sup>167</sup>

Proponents of legalisation proposed similar reforms of the law, but additionally suggested a licensing and inspection regime for sex workers and brothels, with a State (or State-sponsored) agency to supervise the sex trade and monitor the welfare of those who work in it. Some also suggested the repeal of the prohibition on advertising prostitution, with escort web sites being subjected to licensing laws.<sup>168</sup> Advocates suggested that tax revenues derived from prostitution could pay for the cost of regulating it and for the health and social security costs of those who work in it.<sup>169</sup>

In common with almost all contributors to this review, proponents of decriminalisation advocated substantial resources to be targeted at detecting and punishing traffickers and pimps, towards interventions to support street prostitutes and other vulnerable sex workers, and towards assisting those who wish to exit the sex trade to do so.<sup>170</sup> Advocates of both decriminalisation and legalisation were emphatic that prostitutes should have their own voice in all decisions on reform and operation of laws that affect them above all others. Many further suggested that these be subject to regular independent review to ensure that deficiencies and abuses were addressed.

### **3.4.2.2 Criticisms of total decriminalisation and legalisation**

Total decriminalisation and legalisation were rejected as models for reform by advocates of the Swedish Approach.

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<sup>165</sup> Submissions 2012/600, 2012/968, 2012/599(1)

<sup>166</sup> Submissions 2012/1065(1) (Escort-Ireland),

<sup>167</sup> Submissions 2012/827, 2012/612, 2012/614

<sup>168</sup> Submissions 2012/604, 2012/998

<sup>169</sup> Submission 2012/717,

<sup>170</sup> Submissions 2012/1065(1) (Escort-Ireland), 2012/1008(2) (Sex Workers Alliance Ireland), 2012/599,

One line of criticism expressed by these contributors was that these models promoted a naive and utopian view of prostitution that ignored its true effects and that wrongly ascribed to it the status of legitimate work. In its written submission, Ruhama suggested that calls for prostitution to be classed as legitimate work are sometimes motivated by genuine – though, in Ruhama's view, misguided – desires to promote the welfare of those who work in prostitution. However, it suggests that others who do so were the promoters of the sex trade, such as pimps and traffickers, who have a vested interest in legitimising their business, and whose activities and large profits made from the exploitation of prostitutes would thereby become respectable.<sup>171</sup> This was echoed by "Witness D" a former prostitute, who rejected the term 'sex worker': she said it gave a veneer of respectability to a process of of exploitation and degradation.<sup>172</sup> The INMO's submission refers to "the extreme exploitation and the tremendous physical and emotional damage which women in prostitution suffer", and concludes that these negate any justification for calling prostitution a job. It notes the work of the New Zealand Prostitutes' Collective but suggests that it was more a government-funded support group than a trade union.<sup>173</sup> Several critics pointedly asked whether it would be acceptable to consider promoting prostitution as a career option for girls or young women, or to suggest that unemployed women might be required to engage in it as a form of work. Another line of criticism focused on outcomes of decriminalisation or legalisation regimes in countries where they had been adopted. Critics referred the Committee to a review of prostitution in nine countries which was said to show that prostitution could not be treated as an ordinary occupation and integrated into employment law.<sup>174</sup> Similarly, the Committee was told that news reports and studies – including State-sponsored reviews – on these regimes indicated that they did not improve the welfare either of those who work in prostitution or of the societies in which they did so. According to these accounts:

- the legalisation regime in The Netherlands had given rise to a proliferation of illegal brothels operating in parallel with licensed ones. Organised crime was strongly associated with the

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<sup>171</sup> Submission 2012/1144

<sup>172</sup> Joint Committee on Justice, Defence and Equality, Deb. 6 February 2013 (Private session).

<sup>173</sup> Submission 2012/1004

<sup>174</sup> Farley *et al.* (2003)

sex trade, and many managers of licensed brothels had criminal records. Although few women had registered as legal prostitutes, the overall number had greatly increased, to the extent that the authorities were unable to estimate with confidence how many there were. The great majority of prostitutes were migrants, whose lack of work permits were the leading grounds for sanctions of licensed brothels. Police were preoccupied with inspection work to the detriment of investigating trafficking and other prostitution-related crime; they estimated that between 50% and 90% of prostitutes worked involuntarily. Local authorities were failing to support exiting from prostitution despite strong demand for such services. In Amsterdam alone, at least 4000 people were estimated to be trafficked for sex every year. Prostitutes reported poor emotional well-being and increased use of sedatives. In 2011 a deputy mayor of Amsterdam was reported to have said that decriminalising procuring had been "reprehensibly naive" and "a national error".<sup>175 176 177 178 179</sup>

- in New Zealand, decriminalisation had encouraged demand for prostitution and normalised it, and had also induced young women who would otherwise not have done so to enter into it. Street prostitution in Auckland had doubled between 2006 and 2007. Pimping and gang activity in organising prostitution had increased since decriminalisation in 2003. Legal provisions intended to permit prostitutes to operate small brothels without registration were being exploited by pimps to avoid detection by authorities. Prostitutes' concerns about violence or mistrust of the police had not improved since 2003, while the legitimisation of prostitution had increased burdens of proof for obtaining search warrants or other police interventions: this made it more difficult to investigate suspicions of trafficking, child prostitution or exploitation. There were concerns about the trafficking of girls within New Zealand, but decriminalisation had made systematic intelligence gathering and detection

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<sup>175</sup> Daalder, A.L. (2002), (2007)

<sup>176</sup> DSP-Groep (2006) *Evaluatie Opheffing Bordeelverbod: Gemeentelijk Beleid (English Summary Conclusions)*, DSP – Groep BV, Amsterdam.

<sup>177</sup> Korps Landelijke Politiediensten – Dienst Nationale Recherche (2008) *Schone Schijn: De Signalering van Mensenhandel in de Vergunde Prostitutiesector*, KLPT, Driebergen

<sup>178</sup> Projectgroep Emergo (2011) *De Gezamenlijke Aanpak van de Zware (Georganiseerde) Misdaad in het Hart van Amsterdam*.

<sup>179</sup> Le Monde, 23 December 2011, "*Les Néerlandais commencent à regretter la légalisation de la prostitution*".

more difficult. Funding for services to assist women to exit prostitution were reported to have been cut.<sup>180 181</sup>

- in Australia, police were reported to have described New South Wales' decriminalisation as having empowered and enriched brothel owners and pimps. Law enforcement and service providers had only patchy access to brothels, while organised crime and trafficking was said to have infiltrated the sex trade.<sup>182 183</sup> In Victoria, legalisation and regulation was reported as having failed to improve access to brothels and massage parlours for law enforcement or support work, and there was said to be no improvement in the stigma against those who work in prostitution.<sup>184</sup> A 2009 study of the effects of legalisation and regulation in Queensland estimated that 90% of the commercial sex industry operated outside the regulated legal sector.<sup>185</sup>
- in Germany, the 2007 study by the Federal Ministry for Families, Seniors, Women and Youth was said to indicate that decriminalisation had not improved transparency of the ability of authorities to control prostitution, and that there were no indications that it had reduced crime. Instead, police reported a 70% increase in investigations into trafficking following decriminalisation of prostitution. Few women in prostitution had registered for health or social security benefits, and the law was said to have virtually no measurable positive effects.<sup>186 187</sup>

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<sup>180</sup> Baker, D., Presentation to Grosse Freiheit Conference on Prostitution and Trafficking, Copenhagen, 8 May 2008.

<sup>181</sup> New Zealand Prostitution Law Review Committee (2008)

<sup>182</sup> The Sydney Morning Herald, 11 October 2011, "*Licensing Law to Tighten Screws on Brothel Chiefs*"

<sup>183</sup> The Sydney Morning Herald, 10 October 2011, "*Legal Brothels Linked to Sex Trafficking Rings*"

<sup>184</sup> Parliament of Victoria Drugs and Crime Prevention Committee, (2010) "*Inquiry into People Trafficking for Sex Work: Final Report*".

<sup>185</sup> Schloenhardt, A. & Human Trafficking Working Group (2009), "*Happy Birthday Brothels! Ten Years of Prostitution Regulation in Queensland*", The University of Queensland, TC Beirne School of Law.

<sup>186</sup> Federal Ministry for Families, Seniors, Women and Youth (2007)

<sup>187</sup> Bundeskriminalamt, "*Bundeslagebild Menschenhandel 2009*", Wiesbaden.

## **Part 4: Conclusions and Recommendations**

This part of the report outlines the Committee's conclusions based on the submissions, presentations and arguments made to it during its review, and sets out its recommendations for legislative and policy initiatives in relation to prostitution in Ireland.

### **4.1 Support for the Swedish Approach**

The Committee found compelling the accounts that it heard during its visit to Sweden from witnesses including police, officials and support personnel, and the evidence they were able to produce in favour of the Swedish Approach. This included the reduction in the size of the prostitution industry there, the evidence indicating that using the criminal law to tackle demand for prostitution has reduced trafficking. Of equal importance were the extensive harm reduction and support services provided to assist those who work in prostitution and enable them to exit from it. The Committee also noted the normative, declarative and deterrent effects of the Swedish law as well as its punitive aspects: the ban on buying sex was repeatedly stressed to be only part of a wider objective of identifying prostitution as a social wrong as much as a criminal one, and an important step in transforming views on gender and sexuality.

The Committee notes the degree of support for the Swedish Approach that was expressed in presentations and submissions received during the course of this review. Over 80% of written submissions favoured this approach, as did the majority of individuals and organisations that presented to the Committee in public and private sessions. Apart from their numerical majority, the Committee also attaches great importance to how these contributors comprise a broad cross-section of Irish civil society:

- Trade unions reject the idea of prostitution as an acceptable form of work or as one in which conditions can be improved by regulation or employment law;
- The Irish Medical Organisation and the INMO, which represent medical personnel who deal with those who suffer in and from prostitution, are unequivocal in their

advocacy of the Swedish Approach;

- Service providers such as the Women's Health Project, Ruhama, One In Four, Barnardos and Rape Crisis Centres assist those who are victims of harm and exploitation in prostitution or who are vulnerable to them: all urged the Committee to recommend the Swedish Approach;
- the Immigrant Council of Ireland, Pavee Point and other groups that work for the rights of migrant people and for victims of trafficking highlight the urgency of addressing this issue and are consistent in identifying adoption of the Swedish Approach as an essential part of doing so;
- hundreds of men and women who identified themselves only as Irish citizens urged the Committee to help establish a norm in Irish society whereby the purchase of a person's body for sex is not legally or socially acceptable.

The Committee notes the breadth and depth of evidence on the nature and effects of prostitution in Ireland produced to it in studies and presentations. In particular, the Kelleher Report draws on a wide range of data sources including case files, medical personnel, service providers, and internet analysis. This research was overseen by a supervisory board drawn from key statutory agencies and NGOs, and its data was supported and validated by independent sources including An Garda Síochána and the RTE research unit. The Committee attaches due significance to the recommendation of the Swedish Approach in this authoritative and independently verified evidence-based research.

## **4.2 Conclusions**

### **4.2.1 The need for action**

As a result of the information provided to it during this review, the Committee concludes that, in the light of the best available national and international evidence, legislative and policy initiatives are urgently required to address the harm and exploitation in and caused by the toleration of prostitution. A failure to act on this requirement would conflict with members' responsibilities as legislators and policy makers.

#### **4.2.2 Harms intrinsic to prostitution**

The Committee concludes that the criminality and harms associated with prostitution cannot be addressed separately from the incidence of prostitution generally. The imperative to address those issues outweigh any considerations in favour of voluntary prostitution where it does occur.

#### **4.2.3 A demand-led approach**

The Committee finds persuasive the evidence it has heard on the reduction of demand for prostitution in Sweden since the introduction of the ban on buying sex in 1999. It concludes that such a reduction in demand will lessen the incidence of harms associated with prostitution and – particularly in view of the predominance of migrant women in prostitution in Ireland – the economic basis for human trafficking into this State for the purpose of sexual exploitation.

The Committee is also persuaded that the approach adopted in Sweden has had a strongly positive normative effect on social attitudes to sexuality and gender equality in that country, and that equivalent measures could and should be used to promote those values in Ireland. Based on the evidence and submissions it has received, the Committee concludes that a ban in Ireland on the buying of sex that does not criminalise its sale will, as part of a multi-policy initiative including harm-reduction measures and initiatives to support exiting from prostitution, avoid an increase dangers associated with prostitution and will in the longer term reduce them in line with the prevalence of prostitution. The decriminalised status of those who sell sexual services is likely to help reduce stigma and barriers to seeking support from the Gardaí and support services. Similarly, a reduction in demand for prostitution will (when accompanied by appropriate support and health services) reduce the pressure faced by prostitutes to engage in risky or dangerous sexual practices, and so promote public health and HIV prevention.

The Committee is of the view that a ban on the purchase of sexual service can be effectively and efficiently enforced by the Gardaí. Most prostitution is currently advertised through web sites that can be readily found; similarly, contact numbers and premises used by prostitutes

are easily identified. This will facilitate enforcement by disabling or diverting phone numbers, apprehending purchasers at premises, and identifying and prosecuting organisers. Monies recovered from those who organise prostitution can be used to offset the cost of enforcement.

The Committee concludes that measures that reduce demand for prostitution will also contribute to the State's fulfilment of its obligations to eliminate discrimination against women, to combat prostitution and sexual exploitation of children, to suppress the exploitation in prostitution of women, and to prevent and suppress human trafficking and the demand for it.

## **4.3 Recommendations**

### **4.3.1 Policy objectives**

The policy objectives of reform of the law on prostitution should be:

- to combat sex trafficking, criminality and the exploitation of humans through prostitution;
- to reduce the demand for prostitution and to promote the view that it is legally and socially unacceptable to buy the use of another person's body for sex;
- to promote gender equality;
- to mitigate the physical, psychological and social harms associated with prostitution;
- to reduce the factors giving rise to the "push-pull" effect into prostitution, and to encourage people who wish to do so to exit prostitution, by means including economic, health, education, training and social interventions.

### **4.3.2 Definition of prostitution**

There is currently no definition of prostitution in Irish statute law. Neither the sale nor purchase of sexual intercourse or 'sexual services' is prohibited explicitly. Instead the focus of the criminal law is on prohibiting the visible display of prostitution. The Criminal Law (Sexual Offences) Act 1993 in section 7 criminalises a person (of either sex) who 'solicits or

importunes another person or other persons for the purposes of prostitution'. Section 1 defines such conduct as either offering 'services as a prostitute to another person', or seeking to obtain another person's 'services as a prostitute'. The term 'prostitute' is described as including a male person, but no other definition is given.

A Common Law definition of prostitution was given in the 1918 *de Munck* case, where prostitution was described as taking place when "a woman offers her body commonly for lewdness for payment in return"; it was not necessary that the woman offered herself for sexual intercourse, nor did sexual intercourse need to take place. 'Common prostitutes' were defined at Common Law as being women who 'offered themselves commonly for lewdness'. The Criminal Law Amendment Act 1935 was the first post-independence statute dealing with prostitution, making it an offence for a 'common prostitute' to loiter in a public place and importune or solicit passers-by for the purposes of prostitution. The term 'common prostitute' was effectively rendered unconstitutional by the Supreme Court decision in *King v Attorney General* [1981] I.R. 233.

Reform was finally introduced in the Criminal Law (Sexual Offences) Act 1993 which abolished references to 'common prostitute' and created gender-neutral offences of loitering and soliciting for the purposes of prostitution (sections 7 and 8). However, it does not define 'prostitution' itself, thus implicitly retaining the definition given in the early cases, but extending it to cover men as well as women.

Thus it is open to the Oireachtas to create a new statutory definition of prostitution. This definition would depend on the model of legislation decided upon. It would also be possible to incorporate the word 'prostitution' into new legislation without providing a specific definition, as the judiciary could then draw up on the commonly understood meaning of prostitution as applied at Common Law.

For example, if the Swedish Approach were adopted, legislation could create a new criminal offence of 'obtaining a sexual relation or sexual service by means of prostitution'. The Swedish offence is defined as 'obtaining a casual sexual relation in return for payment.' But

the use of the word 'casual' could create problems if there was an ongoing prostitution relationship or series of transactions.

A better approach in Irish law (based on a model provided by Aileen Donnelly SC for the Immigrant Council of Ireland)<sup>188</sup> could be to define the offence in terms such that 'any person who requests, agrees to, contracts for the obtaining of sexual services by means of prostitution shall be guilty of an offence'.

#### **4.3.3 Legal reform**

Provision should be made in law for the following:

- a summary offence penalising the purchase of sexual services of another person by means of prostitution, or any request, agreement or attempt to do so; it should at the same time be clarified that no offence is committed by the person whose sexual services are so sold;
- increased penalties for trafficking for the purposes of sexual exploitation;
- increased penalties for organising or living off the earnings of prostitution;
- an offence of recklessly permitting a premises to be used for the purposes of prostitution;
- the regulation and inspection of premises advertised as massage parlours so as to eliminate those used for prostitution;
- witnesses in cases dealing with sexual exploitation through prostitution and/or trafficking to give evidence anonymously;
- an offence of grooming a child or vulnerable person for the purpose of sexual abuse or exploitation;
- power for the An Garda Síochána to have disabled or vested in them any telephone number in use in the State that is suspected on reasonable grounds of being used for

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the purposes of prostitution;

- that the accessing of web sites – whether located in the State or abroad – that advertise prostitution in the State should be treated in the same way as accessing sites that advertise or distribute child pornography.

#### **4.3.4 Policy initiatives**

The State should, in consultation with appropriate agencies, support services, NGOs, and in particular with men and women in prostitution, formulate and implement properly resourced policies relating to health, education, training, housing and immigration status of men and women who work in prostitution so as to minimise harms risked or suffered by them and to support the exit from prostitution of those who wish to do so.

The Criminal Assets Bureau should be specifically tasked to focus on the finances of the prostitution industry in Ireland and the flow of money to criminal organisations in the State and abroad.

An Garda Síochána should, as far as practicable, consult with men and women in prostitution on how their health and well-being can be protected in the context of a ban on the purchase of sexual services.

The Government should formulate with the European Union and its counterparts in other states policies and measures to reduce the economic and social factors that drive and sustain human trafficking and the prostitution of migrant men and women.

#### **4.3.5 Research and evaluation of the effects of laws and policies**

The State should commission appropriate independent studies to increase its understanding of prostitution and trafficking. Further such studies should be undertaken at regular intervals to independently evaluate the effectiveness of legal and policy measures concerning prostitution and trafficking and to recommend changes where required.

## Appendix 1

### Outline of visit to Sweden, November 2012

As part of its work on the Review of legislation relating to prostitution, a delegation of the Committee travelled to Sweden in November 2012. The purpose of this visit was to engage directly with various organisations/individuals regarding the impact legislation enacted in Sweden in relation to prostitution. In the course of the visit the Committee met with a number of people/organisations including:

- Officials at the Ministry for Justice, Rosenbad 4 who gave an overview of the Swedish legislation prohibiting purchases of sexual services.
- Detective Inspector Kajsa Wahlberg, National Rapporteur on Trafficking in Human Beings; and a Social Worker from Stockholm.
- Mr Patrik Cederlöf, National Coordinator against Prostitution and Human Trafficking for Sexual Exploitation
- Morgan Johansson (S), Ewa Thalén Finné (M) and members of the Swedish Parliamentary Committee for Justice.
- Chief Prosecutor Lise Tamm and Ewa Carlenfors, Director of Stockholm Trafficking Policing Unit.

The Swedish women's movement originally advocated criminalising the buyer of sexual services and not the seller and this was carried forward by the women's associations of the political parties.

On 1 January 1999 Sweden passed legislation prohibiting the purchase of sexual services. Offences under this legislation include all forms of sexual services, whether they are purchased on the street, in brothels or in any other circumstance. The buyer of sexual services is punishable but not the seller of such services.

Based on the principle that prostitution is a form of violence against women, the Swedish approach has three main components:

1. Many women are forced by poverty to enter into prostitution and it is recognised that other support services are needed to provide women with a feasible exit strategy.
2. The buyer of sexual service is the lawbreaker and not the seller of the service and regards the seller (prostitute) as a victim. Trafficking of women and children for prostitution is being driven by the demand for prostitution domestically: sex purchase feeds demand.
3. Public education is the key to changing male attitudes to prostitution. While legal measures can provide a deterrent and an important statement of society's goals, societies as a whole must refuse to tolerate the purchase of sex before attitudes will change.

Swedish policies rest on principles such as:

- Prostitution is a serious barrier to gender equality.
- Prostitution is harmful to the prostituted woman or child but also to society.
- Women in prostitution are not to be criminalized or subjected to administrative punishments.
- Prostitution and trafficking in human beings for sexual purposes are seen as issues that cannot, and should not be separated; both are harmful practices and intrinsically linked.
- Prostitution is a gender-specific crime; the majority of victims are women and girls, although a number of young men and boys also fall victim.

Where the seller of these services is underage, other laws come into play. Support services, such as education and training, are needed to provide prostitutes with the opportunity to exit a life of prostitution and to offer all necessary assistance including financial support.

In an evaluation of the legislation published in 2010, it was found that its implementation had a positive effect in all aspects. The evaluation also made a number of proposals which included:

- More stringent criminal penalties – the maximum sentence increased from 6 months to 1 year following an amendment to the legislation in 2011.
- The establishment of a national centre against prostitution and human trafficking for sexual purposes.

There has always been violence in prostitution but since the introduction of this law, reported cases have fallen and those who do suffer violence are more likely to report such incidents, which are handled with compassion and understanding. The delegation was also told that many women in prostitution had been abused in childhood.

The terms 'sex worker' and 'escort' are not used, as to do so would equate prostitution with a regular job.

The objective is not to put buyers of sexual services into prison but to educate them to realise that buying sexual services is unacceptable. Programs exist to educate men buying sex services to change their behaviour. The majority of buyers are given fines either on-the-spot or by letter if there is an admission of guilt. However, if the buyer pleads not guilty, the case goes to court. Details of the buyer are not published and can be traced only through the court records. Since 2009 the number of prosecutions has increased from 130 to 500 in 2011.

Following the introduction of this legislation, there has been an increase in the selling of sexual service on the internet but it does not appear to be any greater than in neighbouring countries.

A member of the delegation, Senator Katherine Zappone, made the following observations:

The size of the industry is dramatically less in Sweden in comparison to other European countries and this has been verified by the all European and international experts. Critics maintain that there is no evidence that this is a result of the law but there is no other determining factor in comparative studies to similar countries such as Denmark.

- An approach that diminishes size and scale has major implications for the control of trafficking as there is increasing evidence that there is a direct corollary between the level of trafficking in a destination country and the size of the sex industry in that country, (Danailova-Trainor and Belser, 2006; Cho, Dreyer & Neumayer, 2012).
- They consistently emphasised the normative, declarative and deterrent purpose of the Swedish law as there is a lot of emphasis by opponents on the punitive aspect. The Committee heard from all the experts and practitioners, including the police that the law is understood by all of them to be part of a wider objective in relation to addressing prostitution as inherently harmful to individuals and undermining of gender equality. This is in itself is transformative in relation to gender and sexuality.
- They placed an emphasis on the extensive services in Sweden, thus in the view of the delegation negating the unnecessary polarisation of harm reduction versus criminalising buyers. (It is worth noting here too that one of the key aims of the Dutch law was that all Municipalities would provide resources for exit routes and ten years on only 6% have done so.) We heard evidence that the Swedish law in some ways ensures that there is a focus on exit routes which is what the vast majority of women say they want in any regime.

## **Appendix 2**

### **Submissions received by various organisations who attended hearings**