

THE SWEDISH LAW TO CRIMINALIZE CLIENTS: A FAILED EXPERIMENT IN SOCIAL ENGINEERING

Ann Jordan

Program on Human Trafficking and Forced Labor

Center for Human Rights & Humanitarian Law

INTRODUCTION

In 1999, the Swedish government embarked on an experiment in social engineering¹ to end men's practice of purchasing commercial sexual services. The government enacted a new law criminalizing the purchase (but not the sale) of sex (Swedish Penal Code). It hoped that the fear of arrest and increased public stigma would convince men to change their sexual behavior. The government also hoped that the law would force the estimated 1,850 to 3,000 women who sold sex in Sweden at that time to find another line of work. Lastly, the government hoped that the law would eliminate trafficking into forced prostitution and the presence of migrant sex workers.

Not surprisingly, the experiment has failed. In the thirteen years since the law was enacted, the Swedish government has been unable to prove that the law has reduced the number of sex buyers or sellers or stopped trafficking. All it has to show for its efforts are a (contested) public support for the law and more danger for

street-based sex workers. Despite this failure, the government has chosen to ignore the evidence and proclaim the law to be a success; it also continues to advocate that other countries should adopt a similar law.

In 2010, the government released a report claiming that the law reduced street-based sex work, despite the fact that the report does not contain any evidence supporting the claim (Skarhed 2010). From the first day of the report's release, many researchers in Sweden – who could read the entire report in Swedish – have been highly critical of the government's claims. Nonetheless, the English-language press and advocates continue to praise the Swedish law for its 'success'. Their source of information is primarily the government's initial and short English-language summary.

The government later released an English translation of important sections of the report revealing that, although street-based prostitution has decreased, the government does not know what *caused* the drop. It does not know either whether the law *caused* any reduction in the number of sex buyers, sex workers, trafficking victims or migrant sex workers. Nonetheless, advocates of the law continue to promote the law as a success.

¹ According to the Oxford English Dictionary, social engineering is "The use of centralized planning in an attempt to manage social change and regulate the future development and behaviour of a society." <http://www.oed.com/view/Entry/272695?redirectedFrom=social%20engineering#eid>

This Paper analyzes the English-language text of the report and demonstrates that none of the government's claims are supported by evidence. The Paper has four parts: (1) a description of the Swedish law, (2) a comparison of the government's claims with the government's evidence, (3) the negative consequences of the law and (4) a call for less politics and more evidence-based research and solutions.

THE LAW CRIMINALIZING SEX BUYERS

It is useful to start with a brief introduction to Sweden. It is a small country of around 9 million people², rich (the 14th highest per capita income globally³). It has very few sex workers and little evidence of trafficking. The experiment is taking place in a small, fairly homogeneous country with a strong sense of a national identity where such experiments might be able to work.

In contrast, 14 cities have populations larger than the entire country of Sweden.⁴ India alone has a population of over a billion⁵, is poor (153rd in per capita income⁶), has an estimated 3 million sex workers (Mukherjee 2004, 77) and tens of thousands of people trafficked into prostitution, factories, farms and homes. It is a large multi-cultural, multi-religion and multi-language country.

So, it is important to keep these numbers (and the extreme differences) in mind when considering campaigns to export the Swedish law to other countries. As of publication, only wealthy countries – Finland, Norway and Iceland - have adopted similar laws although

² World Bank

<http://data.worldbank.org/country/sweden>

³ World Bank 2010

<http://siteresources.worldbank.org/DATSTATISTI CS/Resources/GNIPC.pdf>

⁴ Geohive

http://www.geohive.com/earth/cy_notagg.aspx

⁵ <http://data.worldbank.org/country/india>

⁶ World Bank 2010

<http://siteresources.worldbank.org/DATSTATISTI CS/Resources/GNIPC.pdf>

several other countries have considered or are considering a similar law.

When it adopted the law, the Swedish government set out aspirational goals about what the law would accomplish: it would "act as a deterrent to those who purchase sexual services; the number of purchasers would therefore decline and the number of people in street prostitution and new recruits to prostitution would also go down." It also "could help make it harder for various groups or individuals in other countries to establish more extensive organised prostitution activities in Sweden or to carry out human trafficking for sexual purposes."⁷

The unofficial agenda was something else entirely. As Don Kulick describes it, the law was also meant to elevate Swedish culture above others. He argues that the law allows "Sweden [to] portray itself as a kind of moral beacon that others [particularly the European Union] will want to follow" (Kulick 2003, 209; see also Bucken-Knapp 2011).

The Swedish approach is not practical or reality-based. It envisions a time when all men who purchase sex are either in prison or are so afraid of being arrested that they no longer seek commercial sex, at least not in Sweden. Obviously, it is impossible to arrest, let alone imprison, all men who purchase sex. So, the law is an experiment in social engineering to change the behavior and thoughts of Swedish men. Prior to the law, men did not have to worry about being arrested. The hope was that the mere threat of arrest, plus social stigma, would be enough to change their behavior

The law focuses on increasing the social stigma against buyers, as well as sellers, of sex. Although it is constructed upon the theory that sex workers are passive 'victims', in practice, it is intended to increase stigma and discrimination against the sex workers who refuse or are unable to quit selling sex. These

⁷ <http://www.sweden.gov.se/sb/d/4096/a/119861>

issues are discussed later in the section on negative consequences of the law.

Prostitution is violence against women

Campaign supporters attribute prostitution's existence to unequal power relations between men (clients) and women (sex workers) and equate all commercial sexual transactions with male violence. The Swedish government believes that prostitution is a "serious harm both to individuals and to society" that must be abolished (Skarhed, 2010, 31). As such, "the distinction between voluntary and non-voluntary prostitution is not relevant" (Skarhed 2010, 5). Since all sex workers are considered to be 'victims', they must be protected, even if they do not want or need the government to intervene.

In support, advocates cite research done about violence in street-based sex work in countries where all or some aspects of prostitution are criminalized. For example, they cite a five country study of street-based sex workers (Farley 1998). While it is true that prostitution is firmly situated within patriarchy (as is most work in patriarchal societies) and that violence exists within prostitution – particularly in street-based sex work - prostitution is not, per se, violence against women.

Rather, in most countries, laws exist that disempower sex workers and prevent them from taking reasonable steps to ensure their safety. Canadian sex workers sued the government to challenge the constitutionality of such laws and won (Bedford 2010; Bedford Appeal 2012). The case is discussed in more detail on pages 10-11 but, at this point it is important to note that selling sex is legal in Sweden (as it is in Canada) and that Sweden has laws that are similar to the ones being challenged in Canada. Those provisions prevent sex workers from taking steps to make their work safer.

The Swedish government also maintains that there is no difference between women who are trafficked into prostitution and migrants to

work voluntarily in prostitution (Clausen 2007, 11). As a result, it considers all migrant sex workers to be victims who need to be saved or rescued and, more than likely, deported.

It is important to be aware of these consequences of the 'all prostitution is violence' viewpoint because also results in a belief that prostitution, trafficking and migrant sex work are one and the same. So, when the government is discussing 'trafficking' or 'sex trafficking' in its discussions, it is not possible to know whether it is referring to migrant sex workers, domestic sex workers and/or persons trafficked into the sex sector. This makes any of the already unreliable statements by the government even more problematic and unreliable.

Lastly, the branch of radical feminism that supports this analysis of sex work uses the rhetoric of 'violence against women' and 'victimhood' as a tool to silence and disempower 'socially objectionable' women. They collaborate with governments to create tools to enforce their views about appropriate gender roles. The Swedish approach disempowers women who happen to be sex workers and prevents them from asserting their labor and other rights. The government and its supporters apparently believe that they know 'what is best' for others, even though they have not bothered to consult with those 'others' at any time, before, during or after adopting and enforcing the new law (or promoting it elsewhere).

Sex workers are passive 'prostituted' women

This viewpoint also positions all sex workers as passive objects (not agents) who are not in control of their actions or able to speak for themselves. Advocates call all sex workers 'prostituted women.' They believe that no woman would voluntarily sell sex and so all sex workers must be controlled or coerced by someone or something. The advocates maintain that sex workers are 'prostituted' no matter where they work (Europe, Asia, Africa, or the

Americas), no matter how they work (independent, in a brothel, indoors or outdoors, legally or illegally), and no matter how much money they make (\$1000 or \$1 a day).

As a result, the Swedish government did not bother to consult with sex workers when it developed the law. It did not get any first-hand information from sex workers or immigrants about their views on the law, their needs or concerns or their ideas on how to improve the situation of sex workers. Instead, the government and feminist leaders intentionally excluded and marginalized their voices. In this way, the establishment elite were able to avoid hearing different points of view.

Unfortunately, Sweden is not unique. Most governments and advocates fail or refuse to reach out to sex workers before adopting laws or policies that can and usually do end up harming sex workers.

This approach should raise concerns among people who believe in democratic processes and who support the right of marginalized populations to speak for themselves. When advocates and governments intentionally exclude the voices of sex workers or other persons who might disagree with them, they are claiming a monopoly on public dialogue and political decision making. They are also claiming that they are the 'experts' who alone have the right to speak for those poor, passive, victimized 'prostituted' women. In this way, Swedish feminists and the government (like elites in other countries) have created a perfect system for imposing dominance over marginalized women.

Prostitution is social deviance

Additionally, the Swedish government and its feminist supporters are using the law to advocate for increased social stigma and support for the patriarchal separation of women into 'good' and 'bad' categories. The feminist supporters have positioned themselves as 'good' women who have the right to define 'gender equality' and appropriate sexual

behavior. They have collaborated with the Swedish and other governments to claim a superior moral authority on what constitutes appropriate sexual behavior. More disturbingly, they have asserted the right to impose their views on other women.

Although advocates claim they are promoting gender equality, their underlying message is that there is "good sex" (Kulick 2005, 208) with good women and bad sex with bad women. As Kulick perceptively observes, "[w]hat I believe is ultimately at stake in this transition is a much wider phenomenon, namely the entrenchment of an official sexuality, a national sexuality, to which all Swedes should adhere, not because they will be punished if they do...but because official sexuality is good sexuality, the morally comprehensible way to be" (Kulick 2005, 206).

When feminists ('good' women) feel that they have the privilege and the right to exercise power to force sex workers ('bad' women) to conform to mainstream cultural norms about sex, they are simply using the same tools historically deployed within patriarchy to dictate social norms controlling women's lives.

Sex workers have no rights

The 1999 law must be understood in the context of other laws regulating and controlling the sale of sex in Sweden. First, selling (but not buying) sex is now and has been legal in Sweden - what is not prohibited, is permitted. However, the legal framework surrounding prostitution prevents people who have a legal right to work - sex sellers – from accessing the same labor and other rights that Sweden proudly promotes and ensures for other people who have a legal right to work.

On the one hand, sex workers must pay taxes on their income but the "tax office does not accept 'prostitution' or 'sex work' as a business" and so they cannot register as a business (Dodillet and Östergren 1011, 6). If they freelance or work for someone else, the government will not register them as 'employees.' They must register as a business.

Every worker who is engaged in a legal labor activity can register as a business but not sex workers. The government forces them to break the law: they must either lie, register a business in another category, or not pay taxes. If they do not register, they cannot participate in the social security benefits that are available to other workers. The law prevents them from being able to operate openly and honestly and also prevents them from having access to labor protections on the same terms as other workers.

Sex workers have no labor rights and are not permitted to take actions to make their work safer or easier. Sweden has an extensive and admirable array of labor laws for workers, but those laws do not apply to sex workers. Instead, Swedish laws *prevent* people who sell sexual services from working in a secure environment.

"[N]o one can operate a brothel, rent an apartment, room or hotel room, assist with finding clients, act as a security guard or allow advertising for sex workers. This in turn implies that sex workers can not work together, recommend customers to each other, advertise, work from property they rent or own or even cohabit with a partner (since the partner is likely to share part of any income derived from sex work) (Dodillet and Östergren 2011, 4). No other workers in legal occupations are completely prevented from working.

All people working in legal occupations should have the same right to the legal protections. It does not matter whether they are engaged in coal mining, sex work or commodities trading. As is discussed later on pages 10-11, similar laws have been ruled unconstitutional and struck down in Canada.

EVALUATING THE EVIDENCE ON THE IMPACT OF THE SWEDISH LAW⁸

In order to claim success, the Swedish government must be able to present reliable evidence that the law actually reduced the number of men who purchase sex, the number of women who sell sex and the number of people who are trafficked into forced prostitution. A close examination of government reports and other research reveals that Sweden's claims of success are not supported by any reliable evidence. Nonetheless, the government's latest report concludes that the law "has had the intended effect and is an important instrument in preventing and combating prostitution" (Skarhed 2010, 11).

It is important to note at the outset that the mandate for the Skarhed Report ensured that the results would not provide any support for abandoning the prostitution law: "One starting point of our work has been that the purchase of sexual services is to remain criminalized" (Skarhed 2010, 4). Consequently, the final report could not contain any evidence on failures; it could only report successes even when evidence is lacking.

When the report was released, Swedish language readers were quick to point out the flaws in the research and to challenge its unsupported claims. At the same time, English language readers only had access to a summary, which contained only positive statements. Reports in the English-language press and websites to this day are almost uniformly positive as a result. Only months later did the government release English translations of the text of the report. Those provisions are the subject of this Issue Paper.

⁸ For information on the impact of criminalization, legalization and decriminalization laws, see upcoming Issue Paper on human trafficking and sex work.

The most comprehensive critique published in English comes from Swedish experts Susanne Dodillet and Petra Östergren in 2011. They have followed the implementation of the law for many years and observe that:

[t]he problem with these [the government's] claims is that if they are carefully investigated they do not appear to be supported by the available facts or research. As soon as the official evaluation was published, it was also criticized from several directions. *** The criticism has primarily been focused on the evaluation's lack of scientific rigor: it did not have an objective starting point, since the terms of reference given were that the purchase of sex must continue to be illegal; there was not a satisfying definition of prostitution; it did not take into account ideology, method, sources and possible confounding factors; there were inconsistencies, contradictions, haphazard referencing, irrelevant or flawed comparisons and conclusions were made without factual backup and were at times of a speculative character (Dodillet and Östergren 2011, 2; see also Australian government report by Wallace (undated)).

Next, we turn to the specific claims in the Skarhed Report.

No evidence the law reduced the number of sex buyers

The law has been enforced almost entirely against clients of street-based sex workers but the government does not have any evidence of a decrease in sex buyers since the law went into effect. They do not know how many men were soliciting on the street before or after the law. They do not know if men moved from the streets to indoors and on line, or out of the country. They have not collected such data and so cannot prove any success in achieving the primary goal of the law.

The report raises the *possibility* that some men behave differently as a result of the law. It cites a 2008 survey in which, "several of those [men]

questioned" said the law caused them to stop or cut back on buying sex (Skarhed 2010, 32). The survey also reported that only 8% of the men said they had bought sex, as compared to 13.6% in 1996 (Skarhed 2010, 32). However, self-reports about one's own socially-unacceptable behavior is not evidence of *actual* behavior. In fact, if the law has been successful in stigmatizing the purchase of sex as intended, then it is logical that men would want to avoid the stigma by claiming that they are no longer engaging in 'bad sex'.

Although fear of arrest and public exposure are certainly strong deterrents, they are not a guarantee of changed behavior. In fact, research, including government research, reveals the ineffectiveness of the law on sex buyers: "most men state that the ban has not changed anything for them" and "for many men the ban is of no concern at all, since they mostly buy sex abroad." (Dodillet and Östergren 2011, 14-15). Even the government admits that it is "more common to buy sex abroad than in Sweden" (Skarhed 2010, 32).

The report does not contain any information on the nationality or ethnicity of the men who have been arrested. In many countries, the customers of street-based sex workers are poorer and less educated than men who buy indoors or on line. They are also disproportionately immigrants or men of color. Since a large percentage of the street-based sex workers in Sweden are immigrant women (Skarhed 2010, 20), it would make sense that a large percentage of their customers are also immigrants. If this is the case, then the focus on street-based sex work means that the law is primarily an anti-immigrant tool. Research is needed on this question.

No evidence the law reduced the number of sex workers

The government had hoped that an increase in arrests would also lead to a decrease in the total number of women selling sex. In 1998, there were between 1,850 and 2,500 (perhaps up to 3,000) sex workers and about 730 of them

were street-based (Dodillet and Östergren 2011, 8; Skarhed 2010, 20).

The government does not know whether there is any change in the overall number of sex workers. In 2007 - eight years after the law was implemented – it conceded that “[w]e cannot give any unambiguous answer to [the question of whether prostitution has increased or decreased]. At most, we can discern that street prostitution is slowly returning, after swiftly disappearing in the wake of the law” (Swedish National Board 2007, 63). It concluded that “[n]o causal connections can be proven between legislation and changes in prostitution” (Swedish National Board 2007, 46).

Nonetheless, the government now asserts its unsupported *belief* that “it is reasonable to assume that prostitution would also have increased in Sweden if we had not had a ban on the purchase of sexual services. Therefore, criminalization has helped to combat prostitution” (Skarhed 2010, 8-9, emphasis added).⁹

Street-based sex work. The government also claims that 50% of the street-based sex workers have quit prostitution since the law was implemented. A close examination of the 2010 Report reveals that there is no evidence to support this claim.

It is true that the number of street-based sex workers went down from 730 in 1998 to around 300 to 430 a year at present (Skarhed 2010, 12). The overall decrease in street prostitution is around 50%. But the government *assumes* that this reduction is real – that the women did not move to the internet or indoors and that it the reduction was caused by the law. “[I]t is reasonable to assume that the reduction in

street prostitution in Sweden is a direct result of criminalization” and that the law “has not led to a change in arenas, that is, from street prostitution to the Internet” (Skarhed 2010, 7, 8, 20 emphasis added). This claim is routinely repeated by the government and its supporters as ‘proof’ that the law works.

At the same time, the report reveals that the government does not know how many “previous street prostitutes” may have turned to the “internet or alternative method[s] of contact” (Skarhed 2010, 21). It concedes that “it is difficult to determine whether changes in prostitution are as a result of the ban or of other measures or circumstances” (Skarhed 2010, 35).

There is some indication that street-based sex workers have moved indoors and online. Elizabeth Bernstein, who conducted research with Swedish sex workers, reports that women told her that prostitution has moved underground and “street-walkers have switched to different forms of client networking, resorting primarily to cell phones or the Internet” (Bernstein 2007, 153; see also Clausen 2007, 5).

The government also agrees that selling sex over the internet is increasing but it cannot state who is causing the increase – new sex workers or former street-based sex workers. It notes that, out of 78 people selling sex over the internet in one region, “61 were believed to be new people who had not been active in the market the previous year” (Skarhed 2010, 21). It does not know who these new people are.

Given the total lack of data on indoor and internet prostitution, the government simply cannot claim that the drop in street-based sex work is ‘real’.

Similarly, it has no data on how many women left sex work after the law was implemented or whether the law had any impact on those who did exit. Although the government states that (some) women who have left prostitution support the law, other researchers state that

⁹ A 2004 Norwegian government evaluation of the law (based on Swedish materials and their own observations) also concluded that it was impossible to determine the cause of the decrease (Norwegian Ministry 2004, 11).

sex workers are very unhappy with the treatment they receive from social service providers (Danna 2007, 36-37).

Lastly, the law has changed the nature of street-based sex work. The government concedes that a greater proportion of the women on the streets are now immigrants (Skarhed 2010, 20). It appears, then, that the law has not stopped migrant sex workers from coming to Sweden. Presumably, those women are in the country without visas and so now work in an environment that leaves them more exposed to abuse and exploitation by third parties.

Indoor sex work. The government admits that it is unable to state whether the law has had any impact on indoor sex work (Skarhed 2010, 20-23; Swedish National Board 2007, 63; Norwegian Ministry 2004, 23). It does not know how many adults worked indoors before the law or now. It recognizes that there was a trend towards less street-based and more indoor sex work before the new law (Skarhed 2010, 20-23; Swedish National Board 2007, 30; Swedish National Board 2003, 27).

However, since there was already a trend before the law to move indoors and to the internet, the police crackdowns on street-based prostitution could have pushed more women to move off the streets in order to avoid police harassment. Another possible explanation is that women have moved out of the country altogether. Research is lacking on this issue.

No evidence the law reduced trafficking into prostitution

Sweden's definition of 'trafficking' is consistent with the view that all sex workers are always victims. Under Swedish law, 'trafficking' includes "exploitation for casual sexual relations or in another way exploited for sexual purposes" (Swedish Penal Code, ch. 4). In other words, 'trafficking' means any prostitution involving third parties, such as a club, an assistant, a phone service or a brothel, even when there is no force, fraud or coercion. Thus, when the government claims there were 400 to

600 trafficking victims in 2004 (Skarhed 2010, 29), it means there were 400 to 600 women working in prostitution with third parties. This approach inflates the number of 'trafficking victims' because it includes women who are working freely with a third party and who are not forced or coerced to work.

The government does not know whether there has been any change in the number of 'exploited sex workers' between 1999 and 2010, when the Skarhed Report was issued (Skarhed 2010, 29). It admits that it does not "have completely reliable knowledge about the occurrence of human trafficking for sexual purposes in Sweden" (Skarhed 2010, 35).

Instead, it relies on statements by the Swedish Police to claim that "the ban on the purchase of sexual services acts as a barrier to human traffickers (Skarhed 2010, 9).

In fact, the opposite could as easily be true - it is possible that real trafficking (involving force, fraud or coercion) has *increased* because sex workers now need third parties to ensure that clients are safe from police scrutiny. However, data is lacking on this question.

The rate of prosecutions remains low. The National Police reported that the law has not led to more information about trafficking, which was one of the hoped-for outcomes. According to the National Police, "no one was convicted of human trafficking for sexual purposes" in 2009 (Swedish National Police 2010, 10).¹⁰ Government documents reveal that only 22 people were convicted from 2003 to 2009 (Dodillet and Östergren 2011, 13). The average is 2.75 convictions a year over eight years. One explanation for the low conviction rates might be the fact that a large percentage of the so-called trafficking victims are not real

¹⁰ In a 2005 police report, "the police complained about a 19% *decrease* in information on human trafficking" (Danna 2007, 45). At the same time, "no investigation on sexual purchasers has ever led to the discovery of more serious crimes" (Danna 2007, 45).

victims at all because they work voluntarily and freely.

Public opinion relatively unchanged

The government states the law “was intended to reflect society’s attitude that prostitution is an undesirable social phenomenon” and it proudly reports that the change in public opinion is “so great” that is “must be interpreted in such a way that the ban itself has had a normative effect” (Skarhed 2010, 19, 31). In other words, the experiment in social engineering – at least with regard to public opinion (not behavior) – is a success.

However, a 2008 public opinion survey found that, although support for the law was high, it has changed little since 1999, particularly among women. “[W]omen’s support for the legislation has remained relative constant at around 80%, whilst amongst men support has dipped somewhat from 70 to 60% between 1999 and 2008” (Kousmanen 2011, 253).

In addition, the “majority of the respondents...are in favour of criminalization of the sale of sexual services” (Kousmanen 2011, 260). Sixty-six percent of women and 49% of men are in favor of criminalizing sex workers (Kousmanen 2011, 254). In 1999, 78% of women thought sex workers should be criminalized also. So, although there is a slight decrease in women’s views of sex work, there is no evidence that the drop is linked at all to the ‘victimized prostituted woman’ narrative. In fact, a high percentage of Swedish women continue to have negative views of sex workers. One would have thought that women in particular would have changed their views to align with the government’s rhetoric about victimized prostituted women. But, perhaps the government’s other message that prostitution is bad is the more powerful message.

It is also extremely interesting to note that a large percentage of women do not see prostitution as an issue of violence against women. Instead, they see it as a problem of people who engage in bad behavior and should

be punished. Kousmanen thinks that the pro-criminalization respondents might view criminalization as an equality issue and want to hold women “equally legally responsible” as sex buyers (Kousmanen 2011, 260). Unfortunately, there has not been any national dialogue on other ways to approach prostitution – for example, by supporting labor rights for sex workers - and so the public is left with the option of either opposing the law, supporting the law or expanding the law to criminalize sex sellers also.

Thus, there is no ‘one’ Swedish opinion or point of view. If anything, it appears that about half of the population is dissatisfied with the law for not going far enough because it fails to criminalize sex sellers. The government cannot claim that there is a universal or even a majority shift in public opinion as a result of the law.

NEGATIVE CONSEQUENCES OF THE LAW

The Swedish law has had many negative consequences for street-based sex workers. However, the report devoted less than two pages to the subject (Skarhed 2010, 32-34) and dismisses most of the claims of harm as undocumented or not likely. Other researchers and sex workers disagree.

Increased risk of violence

Although there is no reliable study on the issue, sex workers “express fear of increased violence, as well as an actual increase” (Dodillet and Östergren 2011, 23; see also Scoular 2010, 20; Hubbard 2008, 147; Norwegian Ministry 2004, 12-14; Östergren 2004, 2, 5).

The Skarhed Report notes that a 2003 government report spoke about more risk because of greater competition among women for fewer clients. However, it dismisses the information and blames women themselves for the violence. It relies on a few statements from the police and some women who left prostitution to assert that the real cause is more heroin (Skarhed 2010, 33).

Thus, the government contemptuously tries to avoid any responsibility for violence caused by the law by shifting the blame for violence to the women themselves. Its claim of ‘clean hands’ is not surprising because the report has to reject any concerns or evidence that might support calls to abolish the law.

Sex workers and researchers also say that the crackdown on street based sex work has forced women to move to more hidden and thus potentially dangerous locations. The men still on the streets are reportedly the more dangerous ones while the nice or safe clients have moved to the internet (Norwegian Ministry 2004, 12-14; Östergren 2004, 3). This situation has pushed women to accept more risky clients who may turn out to be violent.

The government has also failed to address the situation of violence against migrant sex workers. Undocumented migrants are deported (Kulick 2005, 209-210) and so undocumented migrant sex workers would understandably be unlikely to report violence to the police. Clients are subject to arrest and so they are now presumably less likely to report cases of abuse or possible trafficking of sex workers to the police. This situation clearly increases the vulnerability of migrants to abuse.

As sex workers move into more hidden locations to avoid the police, they may end up in the hands of third parties to keep the police away and help find clients (Dodillet and Östergren 2011, 22; Swedish National Board of Health and Welfare 2007, 4-48; Bernstein 2008, 154, 163). Whether this results in more or less violence for the women is not known. The government does not address this issue in its 2010 report.

Instead of considering all of these possible negative and harmful outcomes of the law, the government, on the one hand, admits that “[t]here are no statistics about cases reported to the police and criminal proceedings regarding assaults against people involved in prostitution” but, on the other hand, it still concludes that the law has not increased the

“risk of physical abuse” (Skarhed 2010, 9, 33). Obviously, the government should stop blaming the victims and conduct objective, methodologically sound research to investigate the relationship between laws and violence against sex workers.

The government should take note of the recent Canadian case in which the court squarely laid the blame for increased violence at the door of laws that – like Sweden’s - prevent women from working safely.

In Canada, as in Sweden, it is legal to sell sex but, in Canada, the purchase of sex is also legal. Canada, like Sweden, has laws that prevent sex workers from being able to work safely. So, former and current sex workers challenged three laws that force them to choose between safe working conditions and arrest or unsafe conditions. A Canadian trial court ruled that laws criminalizing (1) the acts of living on the earnings of prostitution, (2) keeping a brothel, and (3) communicating in public for the purpose of prostitution (soliciting) are unconstitutional because they prevent sex workers from taking actions to make their work safer (Bedford 2010, 5-6).

The Court found that “the laws, individually and together, force prostitutes to choose between their liberty interest and their right to security of the persons” (Bedford 2010, 5).

[T]hese three provisions prevent prostitutes from taking precautions, some extremely rudimentary, that can decrease the risk of violence towards them. Prostitutes are faced with deciding between their liberty and their security of the person. Thus, while it is ultimately the client who inflicts violence upon a prostitute, in my view the law plays a sufficient contributory role in preventing a prostitute from taking steps that could reduce the risk of such violence (Bedford 2010, 94).

In March 2012, the Ontario Court of Appeal issued its review of the case. To start with, it rejected the argument made by supporters of

the laws that sex workers choose to work in a dangerous occupation, as “matter of personal choice” (Bedford Appeal 2012, 54). In other words, the violence is their own fault. The Court rejected this attempt to stigmatize sex workers and justify discrimination. It stated that the proponents’ argument

...implies that those who choose to engage in the sex trade are for that reason not worthy of the same constitutional protection as those who engage in other dangerous, but legal enterprises. Parliament has chosen not to criminalize prostitution. In the eyes of the criminal law, prostitution is as legal as any other non-prohibited commercial activity. A claim that a criminal law prohibition increases the risk of physical harm to persons who engage in prostitution must...be examined in the same way as any other claim that a criminal law prohibition increases the risk of physical harm to persons engaged in any other lawful commercial activity (Bedford Appeal 2012, 55, emphasis added).

It went on to agree with the lower court that the law prohibiting brothels is unconstitutional (although Parliament could decide to regulate them) (Bedford Appeal 2012, 7). It also decided that the law against living on the earnings of prostitution was intended only to apply to exploiters; it was not intended to criminalize, for example, family members, employees, agents, landlords, service providers. So, the court limited the law to cover only to those who ‘exploit’ sex workers (meaning pimps) (Bedford Appeal 2012, 7).

The Appeal Court split on the issue of the solicitation law. The lower court found the anti-solicitation provision was unconstitutional. It stated that street-based sex workers face “an alarming amount of violence” and that the anti-solicitation law prevents them from “screening clients at an early, and crucial stage of a potential transaction, thereby putting them at an increased risk of violence” (Bedford 2010, 94). To avoid arrest for solicitation, sex buyers

negotiate quickly, which prevents the sex workers from taking time to screen the client.

However, three of five the judges in the Appeal Court rejected the this reasoning because they assumed most sex workers will work indoors now that brothels are legal and they stated there is “limited evidence” that being able to have “face-to-face communication with customers will improve the safety of street prostitutes” (Bedford Appeal 2012, 127).

However, two judges sharply disagreed with this conclusion and supported the trial court view that the provision is unconstitutional (Bedford Appeal 2012, 148). The next step will be a possible review by the Supreme Court.

Swedish laws may also be unconstitutional as well as contrary to the European Convention on Human Rights. Furthermore, it is likely that, by excluding sex workers from access to labor and other rights on par with other workers, Swedish laws controlling prostitution-related activities also violate Sweden’s labor laws and the European Convention. Perhaps it is time for someone to mount a legal challenge in Sweden (and Finland, Norway and Iceland).

Fewer men testifying in trafficking and abuses cases

Clients often report cases of abuse and cooperate with law enforcement.¹¹ Although there is no data on the issue, it would make sense that men who can be criminally prosecuted for soliciting prostitution would not be willing to report crimes or assist in prosecutions of crimes of violence against sex workers. “Clients are exposed to blackmail and robbery, and the stigma associated with buying sex means people often have to leave their jobs and positions, even on a mere suspicion”

¹¹ For example, in 2009, a customer in the United Kingdom helped a Thai woman escape from her traffickers. The judge in the trafficking case said the Danish man should be “highly commended” for his actions (The Herald 2009).

(Dodillet and Östergren 2011, 21). This issue was not addressed in the Skarhed Report.

Increased stigma against sex workers

Sex workers report that criminalization of clients in Sweden has reinforced and increased the social stigma¹² about prostitution (Skarhed 2010, 34; Dodillet and Östergren 2011, 21). The law adopts traditional patriarchal images of innocent, sexually pure women – in need of rescue and protection – and bad women - social deviants who sell sex - who do not deserve society's protection. The government and its supporters hope that, by using negative images to increase stigma of sex workers and their customers, public pressure will force them to conform (at least superficially) to the views of the majority.

No wonder then that the government openly encourages increased stigma. The report declares that the negative effects of stigma due to the law “must be viewed as positive from the perspective that the purpose of the law is indeed to combat prostitution” (Skarhed 2010, 34, emphasis supplied). In other words, the many harms of social stigma are, in fact, a positive outcome of the law because stigma may push women into other forms of work.

The government should not be engaged in a campaign against sex workers, who are not criminals and have a legal right to sell sex. Neither should it be promoting discrimination against sex workers. Presumably, Sweden’s legal system guarantees equality and freedom from discrimination. Instead of supporting these basic human rights, the government is actually *encouraging* the public to discriminate against and ignore the rights of sex workers. These rights abuses must stop.

¹² Stigmatizing sex work is a key factor that undermines the health, safety and rights of sex workers (Crago 2009).

More police harassment

Kulick reports that police harassment has increased: sex workers “can be forced to appear in court to provide testimony against the client” and must appear even if they refuse to testify. When “caught with a client, their belongings are searched and they may be frisked.” Their possessions – such as condoms - can be confiscated as evidence (Kulick 2000; see also Dodillet and Östergren 2011, 22; Danna 2007, 37).

Law enforcement’s treatment of sex workers – who are not criminals and have a legal right to sell sex - was not covered in the 2010 report. The government should investigate police practices to ensure that the law does not lead to police abuse of sex workers. Of course, as long as the government is engaged in a campaign to stigmatize sex workers, the police would have reason to feel that they can treat sex workers any way they please.

Negative health consequences

In general, as sex workers move further underground, they have less access to health services and are less able to exchange information about risky clients, and health or other issues.¹³ Access to condoms and information about safe sex practices are essential to promote health among sex workers, clients and the general public.

So, when the police confiscate condoms to use as evidence of prostitution, they are directly undermining the health of sex workers, clients and their other sexual partners. Confiscation makes it more likely that clients will refuse to use condoms and that sex workers and brothels will not carry them. It also increases the risk of people engaging in unsafe sex practices leading to more sexually-transmitted infections and HIV.

¹³ The invisibility of sex workers constitutes the biggest obstacle to outreach workers in terms of HIV/AIDS and STI education and prevention (UNAIDS 2002, 13).

Stigma and criminalization of prostitution are problematic for health. The Swedish Discrimination Ombudsman reportedly is concerned that the increased stigma (so strongly approved by Skarhed) will lead to worse health outcomes for sex workers and their clients, include HIV/AIDs (Dodillet and Östergren 2011, 24).

Anand Grover, the UN Special Rapporteur on the right of everyone to health is also extremely concerned about the impact that criminalization of prostitution has on health outcomes for sex workers and their clients. He has stated that “the criminalization of private, consensual sexual behavior between adults” prevents sex workers from accessing services, therapies and treatments, “leading to poorer health outcomes for sex workers, as they may fear legal consequences or harassment and judgement” (UN Special Rapporteur 2010, 10, 12-13).

The impact of the Swedish law on the health of sex workers, clients and their other sexual partners was not covered in the 2010 report.

CONCLUSION AND RECOMMENDATIONS

The reports produced by the Swedish government and other researchers reveal that the government’s claims of success are not supported by facts. There is no evidence that fewer men are purchasing sex, that fewer women are selling sex or that fewer people are being trafficked into forced prostitution. At most, the government can demonstrate that there has been a drop in street-based prostitution but cannot explain the cause of the drop. It can also show there is public support for the law but even that claim is controversial.

It is evident then, that Sweden’s experiment in social engineering has failed. The attempt to change private sexual behavior through the coercive force and threat of criminal law has not worked because the criminal law cannot force people to be ‘more equal’ in their private, consensual sexual lives - even in Sweden. The criminal law is a blunt and ineffective tool to change such private behavior. It has not

stopped prostitution in the United States where a century of laws criminalizing sex buyers and sellers has failed to have any impact – except for giving people criminal records that make it almost impossible to find another job.

Sweden could have saved itself the embarrassment of failure if it had simply paid attention to the evidence of failure that is readily available from other countries where prostitution is criminalized, such as in the United States.

Instead of continuing to support and promote a failed experiment, it is time for the Swedish government to take an evidence-based, rights-based approach. It should:

1. Cease making unsubstantiated claims of ‘success’ and stop promoting the law as a ‘model’ for other governments. Ideally, it should recognize the politically motivated nature of the Skarhed Report and remove it from government websites.
2. Repeal the law.
3. Focus on trafficking into forced prostitution and minors in prostitution, including comprehensive services and assistance to ensure the health and safety of the victims.
4. Work with street and homeless youth to develop programs they want and need to help them get off the streets and to identify strategies for preventing other children from becoming homeless or turning to prostitution to survive.
5. Work with adult sex workers to develop a non-judgmental, participatory and evidence-based strategy to provide the services and assistance that have been identified by sex workers as needed to support those who want to leave sex work voluntarily.
6. Accept the reality that some women (men and trans people) will decide to remain in prostitution and ensure that they are provided with the same labor and other

legal protections that are enjoyed by other workers.

7. Adopt a new approach that values independent, unbiased and methodologically sound research and that includes the voices of all concerned parties, including sex workers and youth.
8. Commission an independent, non-partisan and methodologically sound study to collect information – from all sources, including sex workers and youth – to document and evaluate the real impact that the entire range of prostitution-related laws and policies have on sex workers, sex purchasers, migrants and victims of trafficking.

Next, other governments, such as Israel, that are proposing to adopt a law like Sweden's should consider whether they too wish to waste scarce resources and political capital on a law that is unsuccessful *and* also certain to produce

harm. Those countries could instead consider taking the above steps to develop real solutions based on evidence and rights instead of ideology and emotions.

Governments that take these minimal steps to ensure that laws and policies 'do no harm' will ensure that they are supporting and implementing international human rights standards, which all governments, including Sweden, have promised to do.

At the same time, sex workers and advocates in Sweden, Norway, Finland and Iceland, and other countries where selling sex is legal might want to read the Bedford case carefully and consider bringing a legal action to challenge their countries' laws on similar grounds. It would be worthwhile also to consider claims of discrimination and lack of labor and other rights, in addition claims related to violence as in the Bedford case.

REFERENCES

- Bedford v. Attorney General of Canada, Ontario Superior Court of Justice, Judge Himel, 2010 ONSC 4264, 9/28/2010.
<http://www.scribd.com/doc/38456225/Bedford-v-Canada-2010-ONSC-4264>
- Appeal Court: Attorney General v. Bedford, Court of Appeals for Ontario, March 26, 2012
<http://www.ontariocourts.ca/decisions/2012/2012ONCA0186.pdf>
- Bernstein, Elizabeth (2007), TEMPORARILY YOURS: INTIMACY, AUTHENTICITY, AND THE COMMERCE OF SEX, Univ. of Chicago Press (for purchase).
- Brooks-Gordon, Belinda (2010), *Bellwether Citizens: The Regulation of Male Clients of Sex Workers*, Journal of Law and Society, Vol. 37, No. 1, pp. 145-170.
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1558072 (purchase on line)
- Bucken-Knapp, Gregg and Johan Karlsson Schaffer (2011) *The Same Policy, But Different Ideas: The Ideational Underpinnings of the Norwegian and Swedish Bans on the Purchase of Sexual Services*, Paper for 2nd European Conference on Gender & Politics, Central European University, Budapest, Hungary.
http://nppr.se/wp-content/uploads/NPPR_ECPG_2011.pdf
- Crago, Anna-Louise and Jane Arnott (2009), *Rights Not Rescue: A Report on Female, Male, and transgender Sex Workers' Human Rights in Botswana, Namibia, and South Africa*, Open Society Initiative for Southern Africa and the Open Society Institute's Sexual Health and Rights Project.
http://www.soros.org/initiatives/health/focus/sharp/articles_publications/publications/rights_20081114/summary_20081114.pdf
- Danna, Daniela (2007), *Report on the city of Stockholm, in Prostitution and Public Life in Four European Capitals*, Daniela Danna, editor, Carocci,
http://air.unimi.it/bitstream/2434/36004/1/Danna_Prostitution_and_public_life.pdf
- Dodillet, Susanne and Petra Östergren, *The Swedish Sex Purchase Act: Claimed Success and Documented Effects*, Conference paper, 2011.
<http://www.petraostergren.com/upl/files/54259.pdf>
- Farley, Melissa, Isin Baral, Merab Kiremire, and Ufuk Sizgin (1998), *Prostitution in Five Countries: Violence and Post-Traumatic Stress Disorder*, Feminism and Psychology (8) 405–425.
http://thehousegroup.org/archive/res_five_countries_violence_ptsd.pdf
- The Herald (2009), *Sordid World of Sex Slavery*, Feb. 6, 2009.
<http://www.thisisplymouth.co.uk/news/SORDID-WORLD-SEX-SLAVERY/article-677911-detail/article.html>
- Hubbard, Phil, Roger Matthews and Jane Scouller (2008) *Regulating sex work in the EU: prostitute women and the new spaces of exclusion*, Gender, Place and Culture, vol. 15, no. 2, 137-152.
<http://www.informaworld.com/smpp/123737388-54339550/content~db=all?content=10.1080/09663690701863232>
- Kulick, Don (2005), *Four Hundred Thousand Swedish Perverts*, GLQ: A Journal of Lesbian and Gay Studies, vol. 11, no. 2, pp. 205-235.
http://muse.jhu.edu/journals/journal_of_lesbian_and_gay_studies/v011/11.2kulick.pdf
- Kulick, Don (2003), *Sex in the new Europe: The criminalization of clients and Swedish fear of penetration*, Anthropological theory, vol. 3(2), pp. 199-219.
<http://myweb.dal.ca/mgoodyea/Documents/Sweden/Sex%20in%20the%20new%20Europe%20Kulick%20Anthr%20Theor%202003%203%2082%29%20199.pdf>
- Kulick, Don (2000), *Talk delivered at Beijing Plus Ten meetings on the "Swedish model"*.
<http://www.salli.org/info/lib/kulick-un-talkswe.pdf>

- Kuosmanen, Jari (2011), Attitudes and Perceptions about legislation prohibiting the purchase of sexual services in Sweden, European Journal of Social work, vol. 14, no. 2, pp. 247-263.
<http://www.tandfonline.com/doi/abs/10.1080/13691451003744341>
- Mukherjee, Dr. K.K. and Dr. Sutapa Mukherjee, *Girls/Women in Prostitution in India: A National Study*, 2004.
http://wcd.nic.in/research/prostitution_national_study.doc
- Norwegian Ministry of Justice and the Police (2004), *Purchasing sexual services in Sweden and the Netherlands: Legal Regulation and Experiences*, Working Group on the legal regulation of the purchase of sexual services.
http://www.regjeringen.no/upload/kilde/jd/rapp/2004/0034/ddd/pdfv/232216-purchasing_sexual_services_in_sweden_and_the_netherlands.pdf
- Östergren, Petra (2004), *Sexworkers Critique of Swedish Prostitution Policy*,
http://www.petraÖstergren.com/pages.aspx?r_id=40716
- Scoular, Jane (2010), *What's Law Got To Do With It? How and Why Law Matters in the Regulation of Sex Work*, Journal of Law and Society, vol. 37, no. 1.
<http://www3.interscience.wiley.com/journal/123300831/issue>
- Scoular, Jane and Maggie O'Neill (2007), *Regulating Prostitution: Social Inclusion, Responsibilization and the Politics of Prostitution Reform*, British Journal of Criminology.
<http://bjc.oxfordjournals.org/cgi/content/short/47/5/764>
- Skarhed (2010), *Ban on the Purchase of Sexual Services*, Anna Skarhed.
<http://www.sweden.gov.se/content/1/c6/15/14/88/0e51eb7f.pdf>
- Swedish National Board of Health and Welfare (2007), *Prostitution in Sweden 2007*.
http://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/8806/2008-126-65_200812665.pdf
- Swedish National Board of Health and Welfare (2003), *Prostitution in Sweden 2003: Knowledge, Beliefs & Attitudes Of Key Informants*.
http://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/10488/2004-131-28_200413128.pdf
- Swedish National Police (2010), *Situation Report 11, Trafficking in human beings for sexual and other purposes*, 2011, RPS Report 1020:6.
<http://www.si.se/upload/Human%20Traffickin g/L%C3%A4g%2011%20Fin%20ENG.PDF>
- Swedish Penal Code (excerpt; unofficial translation). On Offences against Liberty and Peace (1962:700)
<http://legislationline.org/documents/action/popup/id/3687>
- UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, A/HRC/14/20, Report to the Human Rights Council, April 27, 2010.
<http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.pdf>
- UNAIDS (2002) *Sex Work and HIV/AIDS: UNAIDS Technical Update*,
http://data.unaids.org/Publications/IRC-pub02/JC705-SexWork-TU_en.pdf
- Wallace, Bob, Principal Policy Officer, *The Ban on Purchasing Sex in Sweden: The so-called 'Swedish Model'*, Office of the Australian Prostitution Licensing Authority (undated)
<http://www.pla.qld.gov.au/Resources/PLA/portsPublications/documents/THE%20BAN%20ON%20PURCHASING%20SEX%20IN%20SWEDEN%20-%20THE%20SWEDISH%20MODEL.pdf>

Contact:

Ann Jordan, Director, Program on Human Trafficking and Forced Labor
Center for Human Rights and Humanitarian Law
American University Washington College of Law
4801 Massachusetts Avenue, NW
Washington, DC 20016 USA
ajordan@wcl.american.edu
www.rightswork.org

This project was made possible with the generous support from Global Fund for Women, the Foundation to Promote Open Society and two anonymous donors.

The opinions, findings, and conclusions or recommendations expressed in this publication are those of the Program on Human Trafficking and Forced Labor and do not necessarily reflect the views of its funders.

© Copyright 2012. American University Washington College of Law. In the spirit of the United Nations' encouragement of collective efforts at the international level (Resolution 49/184), this document is placed in the public domain and put at the disposal of all interested persons to consult it or use it. Reproduction is authorized provided that: (1) the text is reproduced in its entirety without changes, (2) reproduction is for educational ends and not for commercial use and (3) credit is given to Program on Human Trafficking and Forced Labor, Center for Human Rights and Humanitarian Law, American University Washington College of Law.