

Rhoda Grant's proposed Private Members Bill on 'The Criminalisation of the Purchase of Sex'

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Rhoda Grant MSP recently carried out a public consultation on her proposed Private Members Bill on the criminalisation of the purchase of sex in Scotland.

Rhoda has previously claimed that her aim with the proposed bill is to protect women, to combat trafficking and to reduce the demand for prostitution.

SCOT-PEP does not support trafficking in any form.

It is often claimed that targeting the clients of sex workers, will fight trafficking. In fact, the evidence suggests that such an approach can have precisely the opposite effect. Criminalising demand and prohibition creates a black market which serves as a financial incentive for traffickers and is therefore a flawed and dangerous logic.

Rhoda often references the Swedish Model (The Swedish Sex Purchase Act) as an example of good practice. However, many academics have challenged the supposed successes of this piece of legislation. For example, Dodillet and Östergren state:

*"The Sex Purchase Act **cannot** be said to have decreased prostitution, trafficking for sexual purposes, or had a deterrent effect on clients to the extent claimed"*¹

Furthermore in April 2012 Washington College of Law's Center for Human Rights and Humanitarian Law produced a report 'The Swedish Law to Criminalize Clients: A Failed Experiment in Social Engineering' which concludes that:

*"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."*²

Legislation that criminalises the purchase of sex results in harmful outcomes for sex workers, including increasing their HIV risk, vulnerability to abuse and exploitation and limiting their access to effective healthcare and support services. This has been well documented around the world, as highlighted at a 2010 UNFPA/UNAIDS conference:

*"As a result of the criminalisation of sex work, the locales where sex work takes place are surrounded by other forms of criminality such as criminal gangs, gambling, large scale corruption and extortion. This negatively impacts the health, safety, and human rights of sex workers."*³

¹ Dodillet S., and Östergren P., 'The Swedish Sex Purchase Act: Claimed Success and Documented Effects'. Presented at the International Workshop: Decriminalizing Prostitution: Experiences and Challenges. The Hague, March 3-4, 2011.

<http://www.plri.org/resource/swedish-sex-purchase-act-claimed-success-and-documented-effects>

² Ann Jordan, 'The Swedish Law to Criminalize Clients: A Failed Experiment in Social Engineering' Washington College of Law's Center for Human Rights and Humanitarian Law. April 2012. <http://rightswork.org/wp-content/uploads/2012/04/Issue-Paper-4.pdf>

³ 'Creating an Enabling Legal and Policy Environment for Increased Access to HIV & AIDS Services for Sex Workers', Thematic Task Team on Creating an Enabling Legal and Policy Environment in preparation for the 1st Asia and the Pacific Regional Consultation on HIV and Sex Work, 12 – 15 October 2010 in Pattaya, Thailand. [http://www.nswp.org/sites/nswp.org/files/EnablingEnv_discussion_paper_FINAL_Sep2010\[1\].pdf](http://www.nswp.org/sites/nswp.org/files/EnablingEnv_discussion_paper_FINAL_Sep2010[1].pdf)

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In July 2012 the Global Commission on HIV and the Law published its report 'HIV and the Law: Risks, Rights & Health' which states that countries should:

*"decriminalise private and consensual adult sexual behaviour including voluntary sex work."*⁴

In December 2011 the UNAIDS Advisory Group on HIV and Sex Work released their report to accompany the UNAIDS Guidance Note on HIV and Sex Work (2009), which states:

*"States should move away from criminalising sex work or activities associated with it. Decriminalisation of sex work should include removing criminal penalties for purchase and sale of sex, management of sex workers and brothels, and other activities related to sex work."*⁵

In November 2012 the UN Development Programme (UNDP), the UN Population Fund (UNFPA) and the Joint United Nations Programme on HIV/AIDS (UNAIDS) released their report *Sex Work and the Law* which examines 48 countries in Asia and the Pacific to assess laws, legal policies and law enforcement practices that affect the human rights of sex workers and impact on the effectiveness of HIV responses. The report states:

- Criminalisation of sex work increases vulnerability to HIV by fuelling stigma and discrimination, limits access to sexual health services and condoms.
- Removing legal penalties for sex work allows HIV prevention and treatment programmes to reach sex workers and their clients more effectively.
- There is no evidence that decriminalisation has increased sex work.⁶

On 12th December 2012 WHO released their guidance on 'Prevention and Treatment of HIV and other sexually transmitted infections for sex workers in low- and middle-income countries: Recommendations for a public health approach'. Their good practice recommendations included:

*"All countries should work toward decriminalisation of sex work and elimination of the unjust application of non-criminal laws and regulations against sex workers."*⁷

This echoes the repeated calls for decriminalisation from the UN Secretary General Ban Ki-Moon and UNAIDS, which in 2010 (published 2011) stated that reducing by half the number of "countries with punitive laws and practices around HIV transmission, sex work, drug use or homosexuality" was an agency goal by 2015.⁸

More recently, in 2011 the Equality and Human Rights Commission released their report into Human Trafficking in Scotland; in her introductory comments Baroness Kennedy QC stated that:

*"banning [prostitution] ... was both unworkable in law and in practice."*⁹

⁴ Global Commission on HIV and the Law, 'HIV and the Law: Risks, Rights & Health', July 2012 <http://hivlawcommission.org/index.php/report>

⁵ UNAIDS. **UNAIDS Guidance Note on HIV and Sex Work**, Geneva, 2011.

http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2009/JC2306_UNAIDS-guidance-note-HIV-sex-work_en.pdf

⁶ UNDP/UNFPA, 'Sex Work and the law in Asia and the Pacific', October 2012

<http://www.snap-undp.org/elibrary/Publication.aspx?ID=699>

⁷ WHO, 'Prevention and Treatment of HIV and other sexually transmitted infections for sex workers in low- and middle-income countries: Recommendations for a public health approach', December 2012 http://www.who.int/hiv/pub/guidelines/sex_worker/en/index.html

⁸ UNAIDS, **Getting to Zero**, Geneva, 2010.

http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2010/jc2034_unaids_strategy_en.pdf

⁹ Equality & Human Rights Commission Scotland. **Inquiry into Human Trafficking in Scotland**. 2011.

http://www.equalityhumanrights.com/uploaded_files/Scotland/Human_Trafficking_in_Scotland/_inquiry_into_human_trafficking_in_scotland-full-report_pdf_.pdf

Notes on the previous consultation

In November 2010, Trish Godman MSP put forward a previous consultation document¹⁰ on a private members bill entitled 'Criminalisation of the Purchase and Sale of Sex (Scotland)'. Much of the 'evidence' used was biased and regarded as being of low academic value and ethically poor. The results of the consultation were published by the Scottish Parliament in March 2011¹¹.

Significantly, of the nine academics who responded, eight were not in favour and fundamentally opposed the proposal, with one stating, *"The consultation is based on false premises and biased statements including sexist and paternalistic notions which have no place in a modern legislation"*(Dr Linda Cusick).

The Association of Chief Police Officers in Scotland (ACPOS) stated that they could not support either option tendered, and had significant concerns as to how the proposed offence would apply practically. ACPOS made the following statements in their response:

- *"ACPOS has concerns as to how sufficient evidence of such activity could be secured when balanced against the proportionality and necessity i.e. would it be justifiable and proportionate to carry out an intimate forensic medical examination of the purchaser and / or seller in such a situation in order to prove sexual contact?"*
- *"ACPOS is of the opinion that officers may not be able to gather sufficient evidence to report to the Procurator Fiscal, which in turn would mean there would be too few convictions for the proposed new offence to deter others"*

The Law Society of Scotland published their response¹² which raised doubts as to the proposals compatibility with Article 8 of the European Convention on Human Rights which states that everyone 'has the right to respect for his private and family life, his home and his correspondence and that there shall be no interference by a public authority'. They stated:

- *"the proposal seeks to criminalise an activity which is not illegal i.e. sexual intercourse between consenting parties, albeit against the background of a financial transaction"*
- *"the proposal has of course to be set against Article 8 and considered as to whether it can be construed as an encroachment upon one's personal liberties"*

Conclusion

SCOT-PEP urges MSPs not to support any further attempt to introduce a bill to criminalise the purchase of sex in the Scottish Parliament. We fail to see why Rhoda Grant, or indeed the Scottish Government, would wish to go against the overwhelming international body of academically rigorous evidence that clearly demonstrates that her proposal is completely misguided. As an organisation we would welcome any opportunity to discuss this issue further with individual members, or indeed to be part of any initiative which would lead to a more informed, evidenced-based debate on the sex industry in Scotland.

¹⁰ Godman T. 'Criminalisation of the Purchase and Sale of Sex (Scotland) Bill', Public Consultation, November 2010
<http://www.scottish.parliament.uk/s3/bills/membersbills/documents/20101122CriminalisationofPurchaseofSex.pdf>

¹¹ Godman T., "Criminalisation of the Purchase and Sale of Sex (Scotland) Bill; Summary of Consultation Responses", March 2011
<http://www.scottish.parliament.uk/s3/bills/membersbills/documents/20110316consultationreponsesummaryFinal.pdf>

¹² The Law Society of Scotland's Response, February 2011
http://www.lawscot.org.uk/media/245847/crim_purchase_and_sale_of_sex%20scotland%20bill.pdf