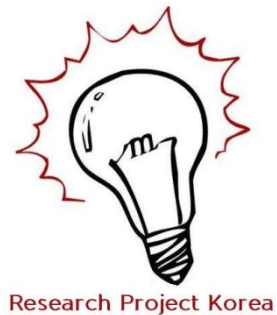


Lord Morrow  
Room 222  
Parliament Buildings  
Stormont, Belfast  
BT4 3XX



**Committee Stage: The Human Trafficking and Exploitation  
(Further Provisions and Support for Victims) Bill**

Dear Lord Morrow,

I am a German researcher currently based in Berlin. I graduated with a B.A. in Korean Studies at the School of Oriental and African Studies, a college of the University of London, and an M.A. in International Relations at the Graduate Institute of Peace Studies at Kyung Hee University, recipient of the UNESCO Prize for Peace Education. In 2014, I will commence a PhD programme at the Faculty of Law at Queens University Belfast to investigate the effects on sex workers and migrants of anti-prostitution and anti-trafficking legislation.

The latter has already been part of a research project, in which I investigated the impact of Korea's Anti-Sex Trade Law on sex workers' human rights. To that end, I collected data through interviews with sex workers as well as with representatives of governmental organisations and NGOs involved in the field of sex work (prostitution) in South Korea over a period of 12 months. The project is an outgrowth of my graduate thesis which analysed comprehensive methods to prevent human trafficking in Thailand and discussed some of the negative side effects of anti-trafficking policies in general.

I previously conducted field research in Thailand and Laos over a period of eight months, and I worked at DEPDC/GMS, a Thai community-based non-governmental organisation working to prevent children and youth from entering exploitative labour conditions, where I led a multicultural group research project to investigate the situation that temporary and permanent migrants and their children face in northern Thailand, and the policies currently in place to assist them.

Through my extensive research, I became aware of the collateral damage caused not only by uneven anti-trafficking measures but also by anti-prostitution legislation, in particular where sex workers and migrants are concerned. While my ongoing research project aims to add to the knowledge about the situation faced by sex workers in South Korea, I am also observing the discourse about sex work legislation in the international context.

I participated as a delegate at the Sex Workers' Freedom Festival in Kolkata, the Official Hub of the International AIDS Conference 2012 in Washington, attended several expert panel discussions to

evaluate the German prostitution law (ProstG),<sup>1</sup> and made a submission to the consultation process of the Scottish Parliament regarding the Criminalisation of the Purchase of Sex (Scotland) Bill (2).<sup>2</sup>

Since July 2013, I am member of the International Committee on the Rights of Sex Workers in Europe (ICRSE),<sup>3</sup> and I am frequently in touch with sex workers from all walks of life, including those living and working in Great Britain. Thus, I learnt about your proposed bill, to which I hereby wish to submit the below evidence to the Committee.

I consent to the full publication of all information provided in this document, including my name. All statements by third parties quoted in this letter were taken from publicly available sources as indicated in the footnotes. Should you wish to edit any part of this document, please contact me before doing so to avoid any distortions.

### **Introductory Remarks**

“[C]riminalization is criminalization and criminalized environments are criminalized environments.”  
- Esther Shannon<sup>4</sup>

All human beings have the right to be treated with respect, regardless of their gender, race, religion or occupation. I concur with Esther Shannon and believe that to reduce problems that do exist in the sex industry, the criminalisation of buyers of sexual services leaves sex workers no choice but to operate in criminalised environments. Therefore, I cannot support the proposed amendment of Article 64A of the Sexual Offences (Northern Ireland) Order 2008, to criminalise the paying for sexual services of a person as it will negatively affect the human rights of sex workers.<sup>5</sup>

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<sup>1</sup> Lehmann, Matthias “We still know very little.” – 10 Years Prostitution Law (ProstG) in Germany” URL: <http://wp.me/p294H2-tm> (Accessed: October 25, 2013); Lehmann, Matthias “Sex workers against Human Trafficking” (About the “Law to Fight Human Trafficking and Control Brothels”) <http://wp.me/p294H2-HP> (Accessed: October 25, 2013)

<sup>2</sup> Lehmann, Matthias “A self-inflicted lack of information” – My response to Rhoda Grant’s consultation process URL: <http://wp.me/p294H2-u6> (Accessed: October 25, 2013)

<sup>3</sup> ICRSE. Matthias Lehmann URL: <http://www.sexworkereurope.org/users/matthias-lehmann> (Accessed: October 25, 2013)

<sup>4</sup> Esther Shannon is a feminist activist who has worked with community-based feminist organizations on a wide variety of women’s issues and as a feminist journalist and researcher and as a communications specialist. She is a founding member of FIRST, a national coalition of feminists advocating for the decriminalization of sex work and for sex worker human and labour rights. This quote was taken from a public comment by Ms Shannon left on my website. URL: <http://researchprojectkorea.wordpress.com/2012/10/31/sex-lies-and-abolitionists/#comments> (Accessed: October 25, 2013)

<sup>5</sup> “The term ‘sex worker’ is used to refer to all adults who sell or exchange sex for money, goods or services (e.g., transport). It is used to refer to people who sell or exchange sex even if they do not identify as sex workers, or consider the activity to be ‘work’. The term is used to refer to sex workers including consenting female, male, and transgender people who receive money or goods in exchange for sexual services, either regularly or occasionally. Sex workers include consenting young people who are eighteen years or older. In circumstances where a person has been coerced into selling sex and is selling sex involuntarily, the preference is not to refer to the person as a ‘sex worker’. This avoids unnecessary conflation of sex work and trafficking, or confusion of sex workers with people trafficked for the purpose of sexual exploitation. ... Prostitution is a term that was commonly used in legislation enacted in the nineteenth and twentieth centuries to refer to sex work. The terms ‘prostitution’ and ‘prostitute’ have negative connotations and are considered by advocates of sex workers to be stigmatizing.” In this letter, I shall use the same terminology as used in the UN report “Sex Work and the Law in Asia and the Pacific”, compiled by UN agencies in cooperation with sex worker organisations. UNDP, UNAIDS, UNFPA “Sex Work and the Law in Asia and the Pacific”, URL: <http://www.snap-undp.org/elibrary/Publication.aspx?ID=699> (Accessed: October 25, 2013)

## **Conflation of Sex Work and Human Trafficking for the Purpose of Sexual Exploitation**

By criminalising paying for sexual services of a person, your proposed bill would further contribute to the already widespread conflation of consensual sex work and human trafficking for the purpose of sexual exploitation.

In the 2011 report into Human Trafficking in Scotland by the Equality and Human Rights Commission, Baroness Kennedy QC stated that the elements of “[c]oercion and deception are central to the UN’s definition of trafficking in the Palermo Protocol and central to the Inquiry’s recommendations.”<sup>6</sup> Your bill, however, fails to acknowledge the difference between consensual and coerced sexual acts.

Baroness Kennedy QC also stated that banning prostitution “was both unworkable in law and in practice.”<sup>7</sup> Besides being unworkable, laws that conflate sex work and trafficking negatively affect actual victims of human trafficking and sex workers, both of whom require appropriate assistance instead of measures that fight violence and exploitation in name only.

“The End Demand movement makes assumptions about sex buyers, characterizing them as deviants and the root of the trafficking problem. Legal frameworks and programs designed to punish and shame these buyers divert what scarce resources exist into unproven methods. Despite a lack of reduction in either trafficking or sex work, abolitionists have continued to push End Demand strategies, leading to changes in federal and state law which will continue to at best maintain the status quo and at worst harm sex workers by making their conditions worse.”<sup>8</sup>

## **On the adoption of the “Swedish Model” in Northern Ireland**

The negative effects of the Swedish Sex Purchase Act, that - like your bill proposal - criminalises the purchase of consensual sexual services, include the following, as outlined by Dodillet and Östergren, who investigated the claimed success and documented effects of the so-called “Swedish Model”.

“The most common and perhaps most serious complaint regarding sex workers themselves is that they experienced an increased stigmatization after the introduction of the Sex Purchase Act. Some also state that the ban is a violation of their human rights, and many say that they don’t feel fairly or respectfully treated: they are not regarded as fully worthy members of society. Sex workers object to the fact that they were not consulted in the making of the law. Since sex workers feel they are not able to influence their legal or societal situation, they feel powerless. And since the ban builds on the idea that women who sell sex are victims, weak and exploited, many claim that the law propagates stereotypical notions about sex workers.

The National Board of Health and Welfare report that due to the ban sex workers feel less trust in social authorities, police and the legal system, and half of the respondents in the RFSL 22 study say that the current legislation prevents people seeking help. 95 Instead of the police being a source of protection, sex workers feel hunted by them, and are subjected to invasive searches and questioning.

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<sup>6</sup> Inquiry into Human Trafficking in Scotland. Report of the Equality and Human Rights Commission. URL: [http://www.equalityhumanrights.com/uploaded\\_files/Scotland/Human\\_Trafficking\\_in\\_Scotland/\\_inquiry\\_into\\_human\\_trafficking\\_in\\_scotland-full-report\\_pdf\\_.pdf](http://www.equalityhumanrights.com/uploaded_files/Scotland/Human_Trafficking_in_Scotland/_inquiry_into_human_trafficking_in_scotland-full-report_pdf_.pdf) (Accessed: October 25, 2013)

<sup>7</sup> Ibid.

<sup>8</sup> Stephanie M. Berger “No End in Sight: Why the 'End Demand' Movement is the Wrong Focus for Efforts to Eliminate Human Trafficking” *Harvard Journal of Law and Gender*, Vol. 35, 2012. URL: <http://ssrn.com/abstract=2172526> (Accessed: October 25, 2013)

There is also a problem in that they are in an unclear legal position – they can be made to testify in a trial but they neither enjoy the rights of the accused nor of the victim. Some report that there is an increased dependency on third parties. Now that it is difficult to make direct contact with clients, sellers must rely on agents/pimps/helpers to find clients.”<sup>9</sup>

In Germany, where sex work is legal, annual reports compiled by the Federal Office of Criminal Investigation state consistently that since the adoption of Germany’s prostitution law in 2002, no significant changes could be detected where the overall situation in Germany is concerned with regards to completed investigations of cases of human trafficking for the purpose of sexual exploitation. The reports of the years 2010 and 2011 explicitly mentioned that the risk potential stemming from this area of crime remains limited.<sup>10</sup>

A report from New South Wales (NSW), where sex work is either legalised or largely decriminalised, states the following:

“NSW men are infrequent consumers of commercial sexual services, with only 2.3% purchasing sexual services in any one year, similar to the Australian average. The number of sex workers in Sydney brothels was similar to estimates from 20 years ago. These data confirm that the removal of most criminal sanctions did not increase the incidence of commercial sex in NSW.”<sup>11</sup>

As Basil Donovan, the report’s lead author, states, “any moves to reintroduce bans or licensing of sex work would be a backward step.”

“Jurisdictions that try to ban or license sex work always lose track as most of the industry slides into the shadows. Prostitution laws are the greatest allies of the exploiters. In NSW, by contrast, health and community workers have comprehensive access to and surveillance of the sex industry. That access has resulted in the healthiest sex industry ever documented.”<sup>12</sup>

I question that in drafting your bill proposal, you have had such comprehensive access to people working in the sex industry.

To the contrary, your statements following the suggestion by Ch Supt Philip Marshall that “[t]here needs to be wider social debate and understanding about what prostitution actually is in Northern Ireland before we consider what the right policy might be.”, suggest that you don’t even wish to listen to human trafficking experts of the Police Service in Northern Ireland.<sup>13</sup>

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<sup>9</sup> Dodillet, Susanne; Östergren, Petra. “The Swedish Sex Purchase Act: Claimed Success and Documented Effects”. Conference paper presented at the International Workshop: Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges. The Hague, March 3 and 4, 2011

URL: <http://gup.ub.gu.se/records/fulltext/140671.pdf> (Accessed: October 25, 2013)

<sup>10</sup> Bundeskriminalamt “Lagebilder Menschenhandel” 2005-2011, URL:

[http://www.bka.de/DE/Publikationen/JahresberichteUndLagebilder/Menschenhandel/menschenhandel\\_node.html?\\_nn\\_n=true](http://www.bka.de/DE/Publikationen/JahresberichteUndLagebilder/Menschenhandel/menschenhandel_node.html?_nn_n=true) (Accessed: October 25, 2013)

<sup>11</sup> Donovan, B., Harcourt, C., Egger, S., Watchirs Smith, L., Schneider, K., Kaldor, J.M., Chen, M.Y., Fairley, C.K., Tabrizi, S., (2012). “The Sex Industry in New South Wales: a Report to the NSW Ministry of Health.”

Sydney: Kirby Institute, University of New South Wales. URL:

[http://www.med.unsw.edu.au/NCHECRweb.nsf/resources/SHPReport/\\$file/NSWSexIndustryReportV4.pdf](http://www.med.unsw.edu.au/NCHECRweb.nsf/resources/SHPReport/$file/NSWSexIndustryReportV4.pdf) (Accessed: October 25, 2013)

<sup>12</sup> University of New South Wales “Sex work in NSW: healthiest in the world” URL:

<https://newsroom.unsw.edu.au/news/health/sex-work-nsw-healthiest-world> (Accessed: October 25, 2013)

<sup>13</sup> BBC News “Human Trafficking Bill: Lord Morrow criticises police comments” <http://www.bbc.co.uk/news/uk-northern-ireland-24193952> (Accessed: October 25, 2013)

A law that criminalises payment for consensual sexual acts will not only diminish the opportunity for *others* to engage with sex workers, it will also negatively affect the health and safety of sex workers, an already marginalised population.

Going back to the above mentioned quote of Esther Shannon and based on research about prostitution laws, I conclude that criminalised environments are counterproductive to harm reduction and effective measures to reduce human trafficking for the purpose of sexual exploitation.

In the following, I will quote passages from reports that support this conclusion.

### **1. Report of the UNAIDS Advisory Group on HIV and Sex Work**

“When it decriminalised sex work and sex work-related activities in 2005, the government of New Zealand undertook a study of the impact of this change on the lives of sex workers. The study found that post-decriminalisation many sex workers felt more empowered to refuse difficult clients and more able to seek help from the police when they were the victims of crime or violence.”

“Criminalisation of sex work and the application of non-criminal laws to sex work exacerbate the stigma and moral judgementalism experienced by sex workers. Law and law enforcement practices often open sex workers to extra-legal abuses, including sexual and physical abuse by police and violations of due process. In many ways, including by undermining sex workers’ ability to organise to help each other, these violations of sex workers’ rights are barriers to their access to comprehensive HIV services.”<sup>14</sup>

### **2. UNDP, UNAIDS, UNFPA - Sex Work and the Law in Asia and the Pacific**

“Criminalization increases vulnerability to HIV by fuelling stigma and discrimination, limiting access to HIV and sexual health services, condoms and harm reduction services, and adversely affecting the self esteem of sex workers and their ability to make informed choices about their health.”

“Criminalization legitimizes violence and discrimination against sex workers (particularly from law enforcement officers and health care providers) and makes authorities reluctant to offer protection or support to sex workers. Criminalization reinforces stigma and discrimination, and perpetuates judgmental attitudes and myths about sex workers. Criminalization contributes to the vulnerability of sex workers to human rights violations, such as public disclosure and shaming of people for engaging in sex work. In communities where sex work is criminalized, sex workers are often reluctant to report sexual assaults to police for fear of further abuse by the police or prosecution for sex work.”

“Punitive laws and police practices form barriers to sex workers’ access to services and can result in sex work being conducted in venues and localities that are hidden, unsafe and without access to HIV services. Reports from sex worker organizations show that where sex workers are regularly targeted for arrest and prosecution, sex workers are less likely to access health services. In some countries, health service providers and outreach workers are harassed or jailed when reaching out to sex workers (e.g., India, Indonesia and Nepal).”

“Some countries have opted to criminalize clients of sex workers, rather than or in addition to sex workers. For example, Nepal criminalizes clients but not sex workers. A similar approach has been proposed in India. Laws have been enacted that criminalize clients in American Samoa, Bhutan, Cambodia, China, Fiji, Guam, Republic of Korea, Palau, and Taiwan. The UNAIDS Advisory Group on

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<sup>14</sup> UNAIDS “Report of the UNAIDS Advisory Group on HIV and Sex Work” p.8, URL: <http://www.uknswp.org/wp-content/uploads/unaidoadvisorygrouponsexworkandHIVDec2011.pdf> (Accessed: October 25, 2013)

Sex Work has noted that there is no evidence that 'end demand' initiatives reduce sex work or HIV transmission, or improve the quality of life of sex workers. Efforts targeting clients sometimes encourage law enforcement officials to use condoms as evidence of involvement in sex work."

"In decriminalized contexts, the sex industry can be subject to the same general laws related to workplace health and safety and anti-discrimination protections as other industries. Legally enforceable workplace standards developed by the sex industry can contribute to a reduction in HIV transmission and improvements in overall working conditions."<sup>15</sup>

### **3. UNDP - HIV and the Law: Risks, Rights & Health**

"Norway and Sweden arrest the clients of sex workers but not the workers themselves. This so-called 'Swedish approach' is seen as more just to sex workers, who are perceived as victims by its proponents. This approach has been applied in other countries and has actually resulted in grave consequences for the workers."

"For sex workers, especially those who are gender-nonconforming, the threat of violence - from both clients and police - is a daily reality. Criminalisation, in collusion with social stigma makes sex workers' lives more unstable, less safe and far riskier in terms of HIV. There is no legal protection from discrimination and abuse where sex work is criminalised."<sup>16</sup>

Finally, as early as on the occasion of World AIDS Day in 2009, UN Secretary General Ban Ki-Moon stated that the "discrimination against sex workers, drug users and men who have sex with men only fuels the epidemic and prevents cost-effective interventions" and urged "all countries to remove punitive laws, policies and practices that hamper the AIDS response".<sup>17</sup>

As evident from the reports quoted above, legal frameworks that target the buyers of sexual services have been found to add to the discrimination of sex workers and negatively impact their health and safety. Further evidence to support this notion can be found in my answer to the following question.

In addition, criminalising the act of purchasing sexual services also reduces the avenues available to law enforcement to detect actual cases of human trafficking for the purpose of sexual exploitation since both clients and sex workers are far less likely to report possible suspicions or assist as witnesses for the prosecution.

"When it comes to clients, it seems they are less willing to assist as witnesses in cases in which profiteers who exploit the sexual labor of others are prosecuted, since they now find themselves guilty of a crime. 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."

"The National Board of Health and Welfare report that due to the ban sex workers feel less trust in social authorities, police and the legal system, and half of the respondents in the RFSL 22 study say that the current legislation prevents people seeking help. Instead of the police being a source of

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<sup>15</sup> UNDP, UNAIDS, UNFPA "Sex Work and the Law in Asia and the Pacific" pp. 1; 21-23; 29. URL: <http://www.snap-undp.org/elibrary/Publication.aspx?ID=699> (Accessed: October 25, 2013)

<sup>16</sup> UNDP, Global Commission on HIV and the Law "HIV and the Law: Risks, Rights & Health", URL: <http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/hiv-and-the-law--risks--rights---health/> (Accessed: October 25, 2013)

<sup>17</sup> Ban Ki-Moon "Secretary-General's message on World AIDS Day", URL: <http://www.un.org/sg/statements/?nid=4266> (Accessed: October 25, 2013)

protection, sex workers feel hunted by them, and are subjected to invasive searches and questioning.”<sup>18</sup>

Pye Jacobsson, a sex worker and spokesperson for Rose Alliance, an organisation by and for sex and erotic workers in Sweden, states the following about the impact of the Swedish Sex Purchase Act.

“Especially for the women in the street this has been very, very bad because before they had this classic thing, hanging into the car window, having the discussion 'this is what I'm willing to sell, this is what I'm willing to do'. They don't have that time anymore because their clients are so jumpy, so they have to get into the car, drive off, and then negotiate. And then they are already in the car.

Also, the good clients, which means the safe clients, the non-dangerous clients, they think - which is true - the risk of getting caught is bigger in the streets, which means that they turn in to indoor workers, even if they prefer buying sex from outdoor workers, which left the outdoor workers with the bad clients, the dangerous clients, which they before had the opportunity to turn down. But now they can't afford to, because many of the good clients are gone.

In the sex industry there are people that are being abused, that are suffering, that are trafficking victims etc. But the normal way for the police to find out is not from sex workers, it's from clients. Because there are clients who are actually not assholes, they will say 'this doesn't look good', they will call the police. And of course now they don't call the police anymore, because if they call the police they will be accused of a crime.”<sup>19</sup>

Legal frameworks that target the buyers of consensual sexual services thus not only negatively impact the health and safety of sex workers, they also hamper the work of law enforcement agencies to detect and prosecute actual cases of human trafficking for the purpose of sexual exploitation. Where consent of either party is absent, criminal law already provides penalties, such as for rape or sexual assault.

## **Conclusion**

Your proposal to criminalise the payment for consensual sexual services perpetuates stereotypes about sex work, rendering you complicit in the stigmatisation and discrimination of sex workers, which reports from various agencies of the United Nations and even the UN Secretary General himself described as harmful to the health and safety of sex workers.

In addition, there is sufficient evidence available, which indicates that your proposed bill would seriously hamper efforts to curb human trafficking for the purpose of sexual exploitation. Based on my academic expertise and the evidence presented in this letter, I thus reject the proposed bill and expect the honourable members of the Committee to come to the same conclusion.

Violent abuse or cases of human trafficking do occur in the sex industry, just as they do in any other industry.<sup>20</sup> Sex workers have a genuine interest to fight crime and reduce harm in their work

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<sup>18</sup> Dodillet, Östergren (2011)

<sup>19</sup> Hungarian Civil Liberties Union “We want to save you! And if you don't appreciate it, you will be punished!” (2009). URL: <http://tasz.hu/en/hclu-film/we-want-save-you-and-if-you-dont-appreciate-it-you-will-be-punished> (Accessed: October 25, 2013)

<sup>20</sup> “Of the total number of 20.9 million forced labourers, 18.7 million (90%) are exploited in the private economy, by individuals or enterprises. Out of these, 4.5 million (22%) are victims of forced sexual exploitation, and 14.2 million (68%)

environments. Given the challenges faced both by sex workers in particular and society in general, it is disappointing that time, efforts and taxes were spent to form a proposal that fails to address problems that *do* exist in the sex industry.

I am not a British citizen and I hope you will forgive me my lack of knowledge of inter-parliamentary communication between the respective parliaments in the United Kingdom. In Germany, communication between federal states occurs through various platforms, most prominently through the *Bundesrat*, the Upper House of the German Parliament. While I would not suggest that such communication is perfect at all times, I find it surprising that you apparently did not take notice of the two failed attempts to criminalise the purchase of sexual services in neighbouring Scotland, where experts of all shades provided evidence that led to the defeats of these bill proposals.

Surely, your tax payers' money as well as your own time could be put to better use than to propose and evaluate bill proposals that have been shown by a variety of experts, including from Sweden, to be harmful to the rights of the very people the bill allegedly proposes to help, and I like to end with a quote by Daniela Danna.

“Those who state they are defending women by prohibiting prostitution are actually deaf to the voices of those who decide to prostitute themselves and see in this activity many positive aspects, offering a service and relating on many levels—not exclusively sexual—with clients who seek sex and human contact.”<sup>21</sup>

Best Regards,



Berlin, November 1st, 2013

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are victims of forced labour exploitation in economic activities, such as agriculture, construction, domestic work or manufacturing. The remaining 2.2 million (10%) are in state-imposed forms of forced labour, for example in prisons, or in work imposed by the state military or by rebel armed forces.”

International Labour Organisation “2012 Global estimate of forced labour. Executive summary.” URL: [http://www.ilo.org/sapfl/informationresources/ILOPublications/WCMS\\_181953/lang--en/index.htm](http://www.ilo.org/sapfl/informationresources/ILOPublications/WCMS_181953/lang--en/index.htm) (Accessed: October 25, 2013)

<sup>21</sup> Danna, Daniela. “Client-Only Criminalization in the City of Stockholm: A Local Research on the Application of the “Swedish Model” of Prostitution Policy”. *Sexuality Research and Social Policy*. March 2012, Volume 9, Issue 1, p. 92