

Clause 13, Policing and Crime Bill: A Crucial Step Towards Ending Commercial Sexual Exploitation

This joint statement is made by the UK's leading violence against women, women's and human rights organisations. We are campaigning in support of **Clause 13** of the **Policing and Crime Bill 2009** because we believe that it will save women's lives and combat trafficking and other serious and organised crime.

SUMMARY STATEMENT

- The organisations here listed call upon members of the British Parliament to support Clause 13 of the Policing and Crime Bill. Clause 13 criminalises paying for a sexual service¹ with an individual who has been exploited.
- Clause 13 offers a unique opportunity to tackle the demand for vulnerable women, men and children for the purposes of prostitution as required by international human rights law and has been shown to be effective in other countries in tackling trafficking and securing gender equality.

STATEMENT IN FULL

Prostitution is violence against women

We understand that prostitution is a form of violence against women. International and national studies show that for the vast majority of prostituted women, men and children the experience is one that involves physical, mental and sexual violence which traumatises and de-humanises, causing significant and long-lasting physical and emotional harm. Research carried out on the harm caused by prostitution found that:

- 71% of women interviewed had experienced physical assault;

¹ In the Swedish legislation and in Clause 13 the offence refers to "a sexual service", however, in the Norwegian legislation the term used is "a sexual act" as recognition of the harm caused by prostitution.

- 63% had experienced rape; and
- 68% met the criteria for post-traumatic stress disorder. This figure is in the same range as that for combat veterans and survivors of torture.²

A comprehensive analysis of routes into prostitution identified that:

- Certain vulnerable groups of girls and women were more likely to become involved in prostitution; these were those who had suffered physical or sexual violence or neglect.
- This group were further marginalised by experiences which included running away, being in local authority care, being involved in crime, drug addicted and being excluded from education.
- These girls and women were then ‘facilitated’ into prostitution as a result of grooming by pimps or other procurers³.

The world average age for entry into prostitution is 13 years old, with as many as 75% of those prostituted in Britain entering before their 18th birthday⁴.

It is evidence like this that caused Sigma Huda, the former UN Special Rapporteur on Trafficking to conclude that: **“Prostitution as it is actually practised in the world does satisfy the elements of trafficking. It is rare that one finds a case in which the path to prostitution and/or a person’s experience does not involve, at the very least an abuse of power and/or an abuse of vulnerability. Power and vulnerability in this context must be understood to include power disparities based on gender, race, ethnicity and poverty.”**⁵

² Farley, M (2003) *Prostitution and Trafficking in Nine Countries: An update on Violence and Posttraumatic Stress Disorder* in the Journal of Trauma Practice.

³ R Matthews *Prostitution, Politics and Policy*, 2008, Routledge.

⁴ Research indicates that the average age of first involvement in prostitution in the UK is 15 years old see Paying the Price page 16 http://www.homeoffice.gov.uk/documents/paying_the_price.pdf?view=Binary.

⁵ UN Special Rapporteur on Trafficking in Persons, Especially Women and Children from 2004 to 2008 in Integration of the human rights of women and a gender perspective, United Nations. E/CN.4/2006/62.

The exploitation of women through prostitution is, therefore, a form of violence against women as defined in the UN Declaration on the Elimination of Violence against Women (CEDAW).⁶ This definition has been adopted by the Government in its development of a national strategy on violence against women. Articles 5 and 6 of CEDAW requires States, including the UK, to challenge social attitudes that tolerate discrimination and take all appropriate measures to tackle trafficking and the exploitation of prostitution.⁷

The Committee that monitors States' compliance with CEDAW has found that **“gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men”**. In a recent case in the European Court of Human Rights on domestic violence, the Court concluded that a State's failure to protect women against violence was discrimination because it breached their right to equal protection of the law⁸.

The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others recognises that prostitution and trafficking are “incompatible with the dignity and worth of the human person”. Article 9.5 of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000) requires States to “discourage the demand that fosters all forms of exploitation of persons, especially women and children that leads to trafficking”. The Council of Europe Convention on Action Against Trafficking in Human Beings⁹ also requires States to analyse the factors that result in women being trafficked and suppress them, including the demand to sexually exploit women.

⁶ The UN Declaration on the Elimination of Violence against Women defines violence against women in Article 1 as: “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life” (A/RES/48/104 – 1993).

⁷ General Recommendation No. 19⁷ (11th session, 1992) goes further in describing the positive obligations on States to eliminate gender based violence (including sexual violence, forced prostitution and trafficking) and makes clear that States may be responsible for private acts if they fail to act with due diligence to prevent the violation of rights or to investigate and punish acts of violence.

⁸ **Opuz v Turkey [2009]** (*Application no. 33401/02*) para 191

⁹ CETS No. 197/2005

If we want to secure gender equality and enable girls and women to live lives free from discrimination and violence we need to eliminate the demand to sexually exploit women children and men.

Tackling Demand Reduces Prostitution

The legalisation of the sex industry has been proved to be a failed social experiment. Countries which have legalised the sex industry have seen increases in the number of women who are trafficked. The legalisation of the sex industry also increases associated criminal activity, such as organised crime. In countries where the sex industry is legalised there is clear evidence of the involvement of organised crime networks in both the ‘legal’ and ‘non-legal’ sectors. In Queensland, Australia, the number of criminal offences linked to prostitution increased from 362 in 2000 to 6,000 in 2005-6. In Victoria, the first state in Australia that legalised brothels, the Chief of Police told a parliamentary committee that organised crime gangs had become entrenched within the ‘legal’ prostitution industry¹⁰. In Europe the countries that have legalised the sex industry have the highest numbers of trafficked women. Estimates of the number of trafficked women of those exploited through prostitution is never less than 50% in the Netherlands and reaches as high as 90% in Germany¹¹. A review carried out by the German Federal Government into the effects of legalising the sex industry in Germany concluded that the legislation had failed to deliver any benefits to individuals who are prostituted: **“The Prostitution Act has thus up until now also not been able to make actual, measurable improvements to prostitutes’ social protection. As regards improving prostitutes’ working conditions, hardly any measurable, positive impact has been observed in practice.... The Prostitution Act has not recognisably improved the prostitutes’ means for leaving prostitution. There are as yet no viable indications that the Prostitution Act has reduced crime. The Prostitution Act has as yet contributed**

¹⁰ S Jeffreys, *The Industrial Vagina, The Political Economy of the Global Sex Trade* (2009).

¹¹ P Monzini, *Sex Traffic: Prostitution, Crime and Exploitation* (2005).

only very little in terms of improving transparency in the world of prostitution....”¹²

Compare this with Sweden, a country that introduced legislation 10 years ago which criminalises the purchase of a sexual service. Those who are prostituted in Sweden are not criminalised¹³. This approach of discouraging demand has resulted in a considerable decrease in the number of prostituted individuals and a corresponding decrease in the number of individuals trafficked. Indeed evidence from Sweden’s National Rapporteur for Trafficking in Human Beings, Kajsa Wahlberg, indicates that organised crime networks and traffickers no longer see Sweden as an ‘attractive market’ instead focussing their attention on counties such as Germany, the Netherlands and Denmark where the purchase of sexual services is legal¹⁴.

International law requires States to “discourage” the demand to sexually exploit women, children and men through the adoption of laws like Clause 13 and the Swedish law that prohibits the purchase of sexual services. This approach has been successfully replicated in countries as diverse as Norway, Iceland, South Africa and South Korea.

About Clause 13

Clause 13 will discourage the demand to sexually exploit individuals in prostitution by making it a criminal offence to pay, or attempt to pay, for the sexual services of a woman (child or man) who has been subjected to force. Force includes coercion by threats and other psychological means including exploitation of vulnerability.

Clause 13: A person (A) commits an offence if—

(a) A makes or promises payment for the sexual services of a prostitute (B),

¹² Report by the Federal Government on the Impact of the Act Regulating the Legal Situation of Prostitutes (2007) page 79, Publikationsversand der Bundesregierung, www.bmfsfj.de.

¹³ See Sweden’s *Act on Violence Against Women* which was enacted on 1st July 1998.

¹⁴ In her 2004 report the National Rapporteur on Trafficking in Human Beings, Kajsa Wahlberg concluded that the law forbidding the purchase of sexual services “continues to function as a barrier against the establishment of traffickers in Sweden (NCID, 2004, p35). See also *The Swedish Law That Prohibits the Purchase of Sexual Services*, G Ekberg (2004)

(b) a third person (C) has used force, deception or threats of a kind likely to induce or encourage B to provide the sexual services for which A has made or promised payment, and C acted for or in the expectation of gain for C or another person (apart from A or B)

A person convicted of this offence will have a criminal record and may be fined.

Strict Liability and Human Rights

Part of Clause 13 is strict liability. This means that the person who buys a sexual service commits an offence whether or not he knows that the person he is buying has been exploited. The burden of proof is on the Prosecution who have to show that the person charged paid, or attempted to pay, for a sexual service.

Strict liability offences are used in the UK to secure the protection of particularly vulnerable individuals. For example, rape of a child under 13 is a strict liability offence under section 5 of the Sexual Offences Act 2003. Both the House of Lords and the European Court of Human Rights have made it clear that strict liability offences like this are compatible with the right to a fair trial¹⁵.

Women involved in prostitution who are exploited by, for example, a pimp, trafficker or boyfriend, are a vulnerable group in need of particular protection. Unlike the man who chooses to purchase her, the exploitation that the prostituted woman has experienced results in a situation where he is buying what she has not chosen to sell.

The strict liability element of Clause 13 is important because it ensures those who purchase a sexual service consider the situation of prostituted women. In particular it challenges the pervasive, but false idea that prostitution is always a matter of choice for the woman concerned.

¹⁵ See **R v G [2008] UKHL 3** and **Salabiaku v France (1981) 26 DR 171**

It is this element that makes the offence effective from a law enforcement perspective. The Crown Prosecution Service have advised a strict liability element is the **“most effective”** way of shifting responsibility on to those that purchase sexual services¹⁶ These views are shared by the Northern Ireland Human Rights Commission which concludes **“Given that the commercial sex trade is usually characterised by vulnerability to abuse, coercion, exploitation and control for gain, the Commission commends the provision for ‘strict liability’ in the provision”**¹⁷.

STATEMENT SIGNATORIES

The following organisations believe that Clause 13 is necessary to tackle demand for commercial sexual exploitation and protect women from violence and discrimination:

1. Eaves www.eaves4women.co.uk
2. OBJECT www.object.org.uk
3. Rights of Women www.rightsofwomen.org.uk
- 4.

For further information about this statement and to join us in protecting vulnerable women, children and men from violence contact Catherine Briddick, Senior Legal Officer at Rights of Women¹⁸ by emailing cate@row.org.uk.

¹⁶ Evidence of Vernon Coaker to the Joint Committee of Human Rights, Tenth Report of Session 2008-9, HL Paper 68, HC 395, page 10.

¹⁷ Northern Ireland Human Rights Commission response to the Policing and Crime Bill, paragraphs 28 and 31. The full response can be read here: http://www.nihrc.org/index.php?page=subresources&category_id=26&from=0&resources_id=112&search_content=&Itemid=61.

¹⁸ **Rights of Women** aims to achieve equality, justice and respect for all women. Rights of Women advises, educates and empowers women by:

- Providing women with free, confidential legal advice by specialist women solicitors and barristers¹⁸.
- Enabling women to understand and benefit from their legal rights through accessible and timely publications and training.
- Campaigning to ensure that women’s voices are heard and law and policy meets all women’s needs.

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