

October 2012

Safe Sex for Sale: Is Legalizing Sex Work the Answer to Sex Trafficking in the Netherlands?

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Recommended Citation

Gibly, Jess N. (2012) "Safe Sex for Sale: Is Legalizing Sex Work the Answer to Sex Trafficking in the Netherlands?," *International Journal of Undergraduate Research and Creative Activities*: Vol. 4, Article 4.

DOI: <http://dx.doi.org/10.7710/2168-0620.1004>

Safe Sex for Sale: Is Legalizing Sex Work the Answer to Sex Trafficking in the Netherlands?

Peer Review

This work has undergone a double-blind review by a minimum of two faculty members from institutions of higher learning from around the world. The faculty reviewers have expertise in disciplines closely related to those represented by this work. If possible, the work was also reviewed by undergraduates in collaboration with the faculty reviewers.

Abstract

This analysis of Dutch prostitution and trafficking policies looks at the historical background of the current policies and at what effect they have on sex trafficking in the Netherlands. For many years the Dutch have maintained a position of tolerance (*gedogen*) in regards to prostitution, as long as it did not cause a large public disturbance or health issue. However in response to the globalization of a growing sex industry, and the increasing amount of sex trafficking, the Netherlands has adopted a unique harm-reduction approach by way of legalizing and regulating voluntary sex work. This follows from the idea that one cannot regulate what is forbidden. The author argues that, although the policies of legalization and regulation create safer work environments and provide rights to voluntary sex workers, the illegal underground sex industry continues to thrive. Efforts to prevent sex trafficking and prosecute traffickers are impeded by insufficient funding and law enforcement personnel, as well as inconsistent standards of regulation across municipalities. The author suggests a combination of policies that would place the responsibility on sex workers' clients to ensure the sexual services they are receiving are legal and from a voluntary sex worker. This, along with increased funding and uniform standards, will help better regulate the Dutch sex industry.

Keywords

Sex trafficking, Prostitution, Dutch Social Policy, Regulated Tolerance, Human Trafficking, Legalized Sex Work, Sex Trafficking Policy

Acknowledgements

I would like to acknowledge my parents, Fineke Brasser and Amnon Gibly for encouraging me to go for it and always believing in my ability to write even when I did not. Thank you to my brother for showing me how it's done and to my professor and mentor, Chris Carey, for all the help he has provided me in the submission process. Editor's Note: Dr. Christopher Carey, Associate Professor of Interdisciplinary Studies, Portland State University, served as faculty mentor for the author.

Introduction

The Netherlands is internationally known for its tolerance of prostitution, with the country's Red Light Districts on many tourists' travel itineraries. In fact as of 2000, the running of a brothel is legal, as is the act of voluntary prostitution.¹ However this legalization does not originate in the endorsement of prostitution, but is a governmental response to exploitation within the sex industry and sex trafficking. As a way of regulating this industry, the Netherlands has adopted a policy of legalization, regulation, and harm reduction. The intended purpose of this policy is to provide sex workers' protection and reduce the illegal aspects of the industry such as underage prostitutes, and forced prostitution. Although this policy provides workers' rights and safer work environments for voluntary sex workers, the clandestine underground sex industry, rooted in illegal sex work and sex trafficking, continues to go unregulated. This, coupled with inadequate funding, lack of law enforcement personnel, and the illegal status of migrant sex workers seeking the alleged safety of a legal sex industry, leaves many sex workers vulnerable to trafficking.

Historical Background

Throughout its history, the Netherlands has generally maintained a position of tolerance with regards to prostitution. During the 19th century, prostitution was largely regulated by local law enforcement as a public order and health issue.² Then in 1911, the Morality Laws

were passed in response to a growing national interest in moral reform. The new laws brought an end to the regulated prostitution policy, and for the first time owning and running a brothel was criminalized, though prostitutes themselves were not. However, enforcement of the law was short-lived. Without changing the laws, the Netherlands soon returned to its policy of regulated tolerance. Running a brothel was fine as long as it did not cause a public disturbance or health issue.

During the 1970s and 1980s, there was a sudden growth in prostitution and other sex related services. What was once a behind-the-scenes business was now a large industry that brought in a lot of money, and with it crime. As a result, with regards to prostitution, the Dutch policy of *gedogen* (regulated tolerance) was failing, and the government began to lose control of the industry.³ At the same time, the Dutch economy was flourishing, which led to a decrease in Dutch women turning to prostitution for money. However, with the sex industry thriving, the demand for prostitutes was higher. Foreign prostitutes were brought in from Eastern Europe, West Indies, Thailand, the Philippines, and Latin America to fill the increasing demand.⁴ Many of the prostitutes were voluntary, but growing evidence suggested that a large number of them were victims of trafficking.

The first attempt to lift the ban on brothels occurred in 1985 when the Minister of Justice proposed a bill (18202) that would distinguish voluntary prostitution from forced prostitution. State involvement would be limited to monitoring the sex industry for

¹ The ban on brothel owning and prostitution was lifted with the repeal of articles 250bis and 432 of the Dutch Criminal Code, and article 250a was created in place of the former articles.

² Joyce Outshoorn, "Pragmatism in the Polder: Changing prostitution policy in The Netherlands".

Journal of contemporary European Studies, 12 (2004), 165–176.

<http://dx.doi.org/10.1080/1460846042000250873>

³ Chrisje Brants, "The Fine Art of Regulated Tolerance: Prostitution in Amsterdam." *Journal of Law and Society*, 25 (1998): 621–635.

<http://dx.doi.org/10.1111/1467-6478.00106>

⁴ Outshoorn, *Pragmatism*, 167.

situations of forced prostitution, and the regulation of sex work would fall to local authorities.⁵ There was a growing belief that lifting the ban was essential for properly regulating prostitution as “the courts held that one cannot regulate what is forbidden.”⁶ Though the bill had a lot of support, it failed in the final vote. Changes were made and the bill was introduced a few more times, each time coming close to passing.

At the beginning of the 1990s following the fall of the Soviet Union, a shift within Dutch prostitution occurred. Increasing numbers of women from the Eastern Bloc were arriving in the Netherlands to work in prostitution. Many were brought over as victims of sex trafficking, and if they came over voluntarily, fell prey to traffickers when they arrived. Women from the Eastern Bloc made up the majority of sex trafficking victims in the Netherlands.⁷ In 1994, the STV (Dutch Foundation against Trafficking in Women) found that 70% of trafficked women in the Netherlands were from Central and Eastern European Countries.⁸

Research on human trafficking and prostitution often cite ‘push’ and ‘pull’ factors as reasons for individuals wanting to leave their country and move to another country. Push factors, such as war, poverty, and discrimination, encourage people to

move out of the city or country they are in, whereas pull factors, such as education, better living conditions, and job opportunities, attract people to a certain place. Common push factors for many foreign sex workers in the Netherlands are poverty, lack of employment, and a poor economy, and this coupled with the pull factors of a legalized sex work industry, high demand for prostitutes, as well as a better economy, encourages many sex workers to seek work in the Netherlands, often through illegal and unsafe means.⁹ Therefore, the promises of good pay and safe transportation into the Netherlands lure many women into the control of traffickers. According to one study by Vocks and Nijboer, in a few cases the women were kidnapped or sold from one trafficker to another, but in the majority of cases the women had at some point “made the decision to place their future in the hands of traffickers,” citing economic reasons as the main motive.¹⁰

In the aftermath of the Soviet Union’s dissolution, the economy in the Eastern Bloc suffered, and countless women were looking for jobs, many turning to prostitution for an income.¹¹ As a result of this, the Netherlands experienced an increase in sex workers, many victims of sex

⁵ Joyce Outshoorn, “Voluntary and forced prostitution: the ‘realistic approach’ of the Netherlands,” In *The Politics of Prostitution*, ed Joyce Outshoorn (UK: Cambridge University Press, 2004), 185-204.

<http://dx.doi.org/10.1017/CBO9780511489044.011>

⁶ Outshoorn, *Pragmatism*, 167.

⁷ Damian Zaitch and Richard Staring, “Trends and policies on women trafficking in the Netherlands.” *Crime and Justice International* 23, no.101 (2007): 15-22.

⁸ Donna Hughes, D, “Best Practices to Address the Demand Side of Sex Trafficking.” Washington DC: Department of State (2004): 12 www.uri.edu/artsci/wms/hughes/demand_sex_trafficking.pdf

⁹ Donna M Hughes, "Supplying Women for the Sex Industry: Trafficking from the Russian Federation," in *Sexuality and Gender in Postcommunist Eastern Europe and Russia*, ed. Aleksandar Štulhofer, Theo Sandfort (Binghamton, NY: Haworth Press Inc, 2005), 209.

Hughes, Donna. "The 'Natasha' Trade: The Transnational Shadow Market of Trafficking in Women." *Journal Of International Affairs* 53, no. 2 (2000): 626.

¹⁰ Judith Vocks and Jan Nijboer, "The Promised Land: A Study of Trafficking in Women from Central and Eastern Europe to the Netherlands." *European Journal on Criminal Policy and Research*. 8, no.3 (2000): 383.

<http://dx.doi.org/10.1023/A:1008785214932>

¹¹ Hughes, *The 'Natasha' Trade*, 630-31.

trafficking, from the Eastern Bloc. There was a consensus among the various political parties that the drastic increase in trafficking victims was evidence that something needed to change in Dutch policy.¹² As a result, and because of the Dutch policy of regulated tolerance, the push to repeal the brothel ban gained momentum, and in 1997 the Minister of Justice, Winnie Sorgdragen, introduced a new bill (25437).

The new bill was very similar to the one proposed in 1985, but included a section focused on the sexual abuse of minors. The bill advocated for a “realistic approach without moralism, limiting the role of the state to eliminating coerced prostitution.”¹³ The bill was more focused on fighting forced prostitution than supporting voluntary sex work, with stated goals such as controlling and regulating the exploitation of prostitution, protecting minors from sexual abuse, preventing forced prostitution, and safeguarding, but not improving the position of prostitutes. The bill, which was debated for three years before a final decision was made, provided a means for allowing voluntary prostitution, while at the same time combating forced prostitution and sex trafficking.

Twenty years after the debate began the bill was finally passed, and on October 1, 2000, the general ban on brothels was lifted. Although the bill did help protect prostitutes’ rights, “the legislation passed on the assumption that repeal (of the brothel ban) would provide better protection for vulnerable women.”¹⁴ In accordance with

the bill, Article 250a was placed into Dutch Penal Code. “Forced introduction or keeping of persons into prostitution; the introduction or keeping of minors into prostitution (voluntarily or not); or introducing persons from other countries into prostitution (voluntarily or not)” or making a profit off aforementioned offenses, were included as punishable offenses in Article 250a.¹⁵ Prior to 2000, no legal articles explicitly addressed human trafficking in the Dutch Penal Code.¹⁶ With the passing of bill 25437 and the adoption of Article 250a, the Netherlands joined the growing international fight against human trafficking, which was represented by the UN’s adoption (in the same year) of the Palermo Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children.

In the same year, in support of the new legislation, and upon advisement from the EU, the Netherlands appointed a National Rapporteur on Trafficking in Human Beings. The independent office of the National Rapporteur is responsible for conducting independent research on human trafficking in the Netherlands and producing an annual report with recommendations for further action based on its findings. The National Rapporteur also works closely with different organizations in the Netherlands that deal with trafficking to gain a better understanding of the situation.¹⁷ The Ministry of Justice also created a task force that is solely concerned with human trafficking, which is responsible for aiding law enforcement in the prevention and

¹² Outshoorn, *Pragmatism*, 171.

¹³ Joyce Outshoorn, “Legalizing Prostitution as Sexual Service: the Case of the Netherlands,” Copenhagen ECPR Joint Sessions, paper presented at the *European Consortium for Political Research, Joint Sessions of Workshops, Copenhagen*, April 2000: 13.

¹⁴ Phil Hubbard, Roger Matthews, and Jane Scouler, “Regulating sex work in the EU: prostitute women and the new spaces of exclusion.” *Gender*,

Place & Culture. 15, no. 2 (2008): 142.

<http://dx.doi.org/10.1080/09663690701863232>

¹⁵ Zaitch and Staring, *Trends and Policies*, 6.

¹⁶ *Ibid.*

¹⁷ Heleen de Jonge van Ellemeet and Monika Smit, “Trafficking for exploitation outside the sex industry,” In *Trafficking and women’s rights*, eds Christien van den Anker and Jeroen Doomernik, (Pallgrave Macmillian, 2006), 219.

prosecution of human trafficking, as well as providing policy recommendations.

Between 2000 and 2006, Article 250a went through several changes: penalties for trafficking were increased, and the definition of trafficking was expanded to include labor trafficking as well as all forms of forced and/or coerced sexual services. Article 273f is the result of those changes, and it is still in place today.

Current Status

The Netherlands' current policy on human trafficking (with a specific focus on sex trafficking), adopted on September 1, 2006, is laid out in Article 273f of the Dutch Penal Code. The article expanded its definition of human trafficking to not only include sexual exploitation, but also "forced or compulsory labor or services, slavery, slavery like practices or servitude", and trafficking of organs.¹⁸ The article still maintains that the recruitment of another person with the "intention of inducing that person to make himself/herself available for performing sexual acts with or for a third party for remuneration in another country" is a form of human trafficking and subject to the same penalties as other forms of human trafficking (Article 273f: p.1 sub. 3).

As specified by the legislation, an individual charged with a human trafficking offense could be sentenced up to six years in jail and/or receive a fine up to €67,000. That sentence could be increased to eight years if the offense is one of aggravated circumstances, such as: if the victim is under the age of sixteen, or if two or more people in collaboration with each other commit the offense. If serious physical injury or danger to life was involved in the offense

¹⁸ Dien Korvinus, Koster Dagmar, and Heleen de Jonge van Ellemeet, "Trafficking in human beings: The concept of exploitation in the Dutch trafficking provision." *Trema* 29 no.7 (2006): 289

(aggravated offense), the offender's sentence can be increased to twelve years, or fifteen years if there is loss of life.¹⁹

However as of July 1, 2009, the maximum sentences for all forms of human trafficking were increased by two to four years.²⁰

According to the 2011 Global Trafficking in Persons Report, the number of prosecutions for trafficking offenses in the Netherlands has increased, however the average sentence is less than two years.²¹ As a means of improving prosecution rates and ensuring uniform interpretations of the law, in 2011 the Judiciary Committee limited litigation of trafficking cases to four specialized courts.²²

The responsibility of arresting and charging traffickers falls to the local police who depend heavily on anonymous reports, victims' statements, incident reports, and trafficking hotline tips. Labor inspectors have also been tasked with keeping an eye out for potential trafficking situations. A 2004 government issued action plan (*Ordering bescherming van de prostitutiesector*) advocated for each municipality to develop their own legal standards for organized prostitution, and to devote more time and resources to the supervision of both the legal and illegal sectors of the sex industry.²³ Unfortunately, most of local law enforcement's resources are devoted to monitoring and regulating the licensed sector, which leaves few resources

¹⁹ BNRM (National Rapporteur on Trafficking in Human Beings), "Human Trafficking – ten years of independent monitoring." (The Hague: BNRM, 2010), http://english.bnrm.nl/Images/8e%20rapportage%20NRM-ENG-web_tcm64-310472.pdf

²⁰ *Ibid.*, 30.

²¹ United States Department of State, "Trafficking in Persons Report – Netherlands". 27 June 2011: 273. <http://www.state.gov/j/tip/rls/tiprpt/2011/>

²² *Ibid.*

²³ Hubbard, Matthews and Scoular, *Regulating sex work*, 137-152.

to combat exploitation in the non-licensed sector.²⁴

Government supported programs are in place that provide law enforcement with trainings on how to identify potential trafficking victims. These trainings are important as local police are in charge of monitoring brothels and ensuring brothel owners are in accordance with Dutch regulations. “Regulations on the operation of brothels govern the position and status of prostitutes, protecting their physical and mental integrity and prohibiting forced prostitution, the employment of minors or people without a valid residence permit.”²⁵ In accordance with brothel licensing, the Public Administrative Probity Screening Act provides the local and state government the right to conduct inspections into brothels and revoke their licenses or refuse to grant them if there is evidence “that it might also be used to commit criminal offenses, or to profit financially from such offenses.”²⁶ Using this act, Amsterdam has refused to renew many brothels’ licenses.

During brothel inspections, police occasionally are able to identify trafficked women. As Zaitch and Staring explain in their article, “Trends and Policies on Women Trafficking in the Netherlands”:

“As a consequence (of legalizing brothels), the actors inside these brothels are treated as customers and tax payers rather than potential offenders. Not much effort is put into concealing these visits, and pimps as well as illegal

prostitutes have all opportunities to hide, to flee and to inform other brothels and colleagues.”²⁷

However, if police do encounter a prostitute of illegal immigration status, they cannot by law take the individual into custody if they suspect he or she is a victim of trafficking. Unfortunately, as Daalder states in a report issued in collaboration with the Ministry of Justice, “the municipalities have a reasonable control of the location-bound prostitution businesses...(but)...With regard to the non-location-bound businesses...the situation is more complicated.”²⁸

Non-location-bound prostitution, such as escort services and prostitution that occurs at saunas, massage parlors, and couples clubs, creates a much larger challenge for law enforcement to regulate, as these forms of prostitution are often not licensed, and whatever standards exist vary greatly throughout the municipalities.²⁹ According to a study commissioned by the Ministry of Security and Justice, only half of Dutch municipalities have an official policy regarding escort services and home prostitution. The study also found that 2% officially allow street walking and only two thirds have a policy regarding its legality. Different studies and reports suggest that the majority of sex trafficking in the Netherlands occurs within the non-licensed sector, specifically escort services, and massage parlors.³⁰ Therefore, the discrepancies in these policies potentially make it easier for traffickers and businesses to exploit prostitutes.³¹

According to Dutch penal law, individuals suspected of trafficking in persons can be prosecuted without a victim’s

²⁴ A.L. Daalder, “Prostitution in the Netherlands since the lifting of the brothel ban,” Ministry of Security and Justice: Research and Documentation Center. (The Hague: Boom Juridische uitgevers, WODC, 2007) <http://english.wodc.nl/onderzoeksdatabase/1204e-engelse-vertaling-rapport-evaluatie-opheffing-bordeelverbod.aspx>

²⁵ Netherlands Ministry of Foreign Affairs. “Dutch policy on prostitution Q&A”, 2.004: 2

²⁶ Daalder, *Prostitution in the NL*, 49.

²⁷ Zaitch and Staring, *Trends and Policies*, 20.

²⁸ Ibid., 11.

²⁹ BNRM, *Human Trafficking- 10 years*.

³⁰ Daalder, *Prostitution in the NL*;

US Department of State, *TPR*;

Zaitch and Staring, *Trends and Policies*, 15-22.

³¹ Daalder, *Prostitution in the NL*.

testimony³². Under Chapter B-9 of the Aliens Act Implementation Guidelines (B-9 regulation), trafficking victims are given three months to decide whether they want to file a trafficking complaint. During this grace period, they are allowed to remain in the Netherlands and are granted access to all public services and facilities, including legal and financial assistance, social and psychological counseling, and healthcare.³³ As of 2004, victims are also allowed to work within this period. If the victim decides to report their trafficking, they are granted a residence permit for a determined amount of time, typically until the trial is over. If it is agreed upon that it is too dangerous for the victim to return to their home country, they can apply for permanent residence. Although it is rare, the Dutch government occasionally grants this request. However, after the three-month grace period, if the victim decides not to file a complaint they are sent back to their home country.³⁴

All identified trafficking victims are registered with the Coordination Center for Human Trafficking (CoMensha), formally known as the Foundation against Trafficking in Women (STV). Only those registered are entitled to resources and support dispensed by national service providers, such as a care coordinator assigned to each individual to assist in attaining specific needs like education, financial aid, child support, and psychological help.³⁵ Along with increased efforts in the prosecution of traffickers, the

Ministry of Justice, National Rapporteur on Trafficking, and the trafficking task force have focused some of their efforts on prevention campaigns and awareness programs.

Awareness campaigns have targeted sex workers, brothel owners, schools, and state employees, as well as the general public. Many campaigns have been directed at schools to warn and educate young girls about 'loverboys', an increasingly used method of trafficking used in nearly half of the cases of youth prostitution.³⁶ Loverboys are young men (mostly in their 20s) that entrap underage and vulnerable girls by posing as 'boyfriends' and then force them into prostitution, often 'grooming' them for their entry into the licensed sector when they turn eighteen. Other campaigns such as the Schijn Bedriegt (Appearances are Deceptive) campaign, target clients of sex workers encouraging them to report suspected instances of forced prostitution. Although awareness campaigns appear to have increased awareness among brothel owners and sex workers, the estimated number of prostitutes under the control of pimps still has not decreased.³⁷

The underground sex industry continues to operate and contribute to the illegal activities the above regulations and campaigns intended to eradicate. While the policies managed to help sex workers in many ways, it has only addressed a portion of the problem. As Vanwesenbeeck et al. explains:

"The combination of inspections in the regulated sector and . . . limited enforcement efforts in the unregulated

³² Zaitch and Staring, *Trends and Policies*, 15-22.

³³ NMFA, *Prostitution Q&A.*, 7.

³⁴ Zaitch and Staring, *Trends and Policies*, 15-22.

³⁵ Mike Dottridge, et al. "E-Notes: Report on the implementation of anti-trafficking policies and interventions in the 27 EU Member States from a human rights perspective." European NGOs Observatory on Trafficking, Exploitation and Slavery, (Associazione On the Road: Italy, 2009): 184-185

³⁶ Anke van den Borne (ECPAT NL) and Karin Kloosterboer (Unicef NL), "Investigating Exploitation: Research into Trafficking in Children in the Netherlands." Stichting Defense for Children International: Amsterdam, 2005.
http://polis.osce.org/library/details?doc_id=2716&lang_tag=&qs=

³⁷ Daalder, *Prostitution in the NL*.

sector results in a situation where involuntary prostitutes, underage prostitutes or illegal prostitutes have relocated from the regulated sector to the unregulated sector. These forms of prostitution are characterized by a lack of supervision and by poor accessibility for support workers, leaving [them] even more vulnerable to exploitation and making their position worse rather than better.”³⁸

Prior to the legalization of brothels there were thought to be between 8000 and 10,000 prostitutes in Amsterdam. Now, as studies show there are approximately only 1500 that work in the licensed sector, suggesting that many have been ‘displaced’ and are working in the unregulated and unlicensed sector.³⁹ Recent plans by the Dutch government to limit the licenses given to brothels, and to close the Red Light District in Amsterdam indicates that, when it comes to curbing illegal activities, the policy of regulated tolerance has largely failed.⁴⁰

Proposed Policy

While there are no examples of a policy that has succeeded in eradicating sex trafficking, a combination of policies might produce better results. For example, should all legal sex workers be required to obtain a license to perform sex work and carry papers identifying them as licensed, clients will be required under threat of prosecution to verify sex workers’ legal status prior to purchasing services. This proposed approach

is based on the Swedish model, which prosecutes clients for procuring rather than the sex workers for selling. This approach would place a responsibility on the clients to ensure they are not purchasing services from a minor, an illegal sex worker, and/or victim of trafficking. In 2009 a bill was proposed (it was defeated), that along with more comprehensive regulations and increased penalties, called for the registration, by name, address and passport information of all legal sex workers.⁴¹ However, it proposed the criminalization of those that were unregistered. A major difference in the proposal put forth in this paper, is that unregistered sex workers would not be prosecuted themselves but rather only their clients would for having attained services from an illegal sex worker. This would prevent unregistered sex workers (more likely to be trafficking victims) from being criminalized. However, implementing this type of policy is not without its challenges.

To begin with, a uniform set of standards must be agreed upon and upheld for all forms of prostitution, not just brothel-based. In addition, a larger emphasis needs to be placed on policing the illegal sector. Therefore funding for greater manpower and resources need to be provided to local law enforcement to accomplish this. “The lack of capacity is the main reason for the fact that a lot of offenders are not prosecuted...the Public Prosecutor agrees that the police do not take up many trafficking cases.”⁴² Currently there are few municipalities within the Netherlands that have a specific police team devoted to investigating and prosecuting trafficking offenses. The establishment of such a team would be beneficial to all municipalities. As it is, most of the routine brothel inspections are carried out by local law enforcement, which puts an unnecessary burden on the

³⁸ Ine Vanwesenbeeck, Maria Honing, and Paul Vennix, “The social position of prostitutes in the regulated circuit a year after the change.” Utrecht and Den Haag: Rutgers Nisso Groep/WODC, Ministerie van Justitie (2002):50

³⁹ Hubbard, Matthews, and Scoular, *Regulating Sex Work*, 137-152.

⁴⁰ Kathryn Cullen-DuPont, “Global Perspective-Netherlands.” In *Global Issues: Human Trafficking*, (NY: Infobase Publishing, 2009), 68-76.

⁴¹ Dottridge, *E-Notes: Report*, 184.

⁴² Zaitch and Staring, *Trends and Policies*, 19.

officers. The Labor Inspectorate trained in identifying situations of sex trafficking, could perform these inspections instead as has been suggested in the past.⁴³ Nonetheless, without clearer and more standardized sex work policies and without an increase in funding and resources allocated to local law enforcement to combat sex trafficking, the proposed policy will most likely fail.

There is a legitimate concern because of the stigma that still exists surrounding sex work that an official register of sex workers would be highly susceptible to misuse and could easily be abused. Many sex workers and sex workers' rights advocates fear that sex workers identified in a register would be discriminated against and see mandatory registration as a violation of their right to privacy⁴⁴. Therefore as a way of preventing abuse or misuse of the list, the official register of licensed sex workers should be maintained by an organization independent of the government that supports sex workers' rights such as CoMensha (the NGO that is responsible for maintaining the registry of trafficking victims) or De Rode Draad (The Red Thread, an advocacy support group for sex workers),

Requiring individual sex workers to be licensed will help further expose and identify the current unlicensed and unregulated sectors of the sex industry, such as non-brothel based sex work. However, licensing sex workers by name rids them of their anonymity, leaves them more vulnerable to discrimination, and may infringe on their right to privacy. As outlined by the Dutch constitution Article

10, "Everyone shall have the right to respect for his privacy, without prejudice to restrictions laid down by or pursuant to Act of Parliament (and the) rules to protect privacy shall be laid down by Act of Parliament in connection with the recording and dissemination of personal data".⁴⁵ Therefore strict standards similar to those used in protection of medical records, must be developed and strictly adhered to in order to protect the registry of licensed sex workers from being used or abused by the government, law enforcement and/or other organizations. In an effort to protect the identity of licensed sex workers, technology could be identified to ensure the anonymity of the list, such as fingerprinting. If sex worker licenses were linked with their fingerprints rather than names, where fingerprints and names would be linked in a separate database, it would allow law enforcement to ensure the validity of the licenses while avoiding the creation of a named list of sex workers, which could be leaked and abused. It would also ensure that sex workers could still maintain anonymity with their clients if they so choose.

Another area of concern voiced by sex worker advocates is that pimps of trafficked individuals may use the licensing system to their advantage. Chairman of the De Rode Draad, Jan Fisher worries that "the ones who are trafficked may be forced by their pimps to register so they have a kind of legal status."⁴⁶ However, if workers at the licensing offices are trained in identifying victims of sex trafficking, the licensing process itself could provide another opportunity to identify situations of trafficking. Also, if emergency counseling, information, and resources regarding trafficking is available in those locations, then licensing offices could provide a safe

⁴³ Daalder, *Prostitution in the NL*, 83-84.

⁴⁴ Marijke Peters, "Sex Workers Say 'No' to Licensing Law," Radio Netherlands Worldwide, December 2, 2009. <http://www.rnw.nl/english/article/sex-workers-say-no-licensing-law> (accessed July 15, 2012)

⁴⁵ The Constitution of the Kingdom of the Netherlands 2002; Article 10

⁴⁶ Peters, "Sex Workers Say 'No'"

place for victims to seek help as well. Like many policies, a policy requiring individuals to obtain a license to perform sex work is not without its pitfalls but it would bring more exposure to the unlicensed and underground side of the sex industry and provide a means to help regulate the currently unregulated sectors.

Conclusion

Since the 1980s, the Netherlands has been very concerned with sex trafficking, and over the last few years it has consistently responded to rising issues with regulation and adaptation of related policies. Lifting the brothel ban was a deliberate response to the growing exploitation throughout the Dutch sex industry. The legislation was passed as a way of, increasing transparency of this hidden industry, providing the means for regulation, and providing help and assistance to those exploited in it without criminalizing them. While succeeding in some areas, the policy failed in others. Focused attention on the licensed sector coupled with insufficient enforcement throughout the illegal sector, and non-uniform standards regarding unlicensed prostitution, allows the exploitation to continue. A new approach combining improved enforcement of existing regulations and accountability of sex workers' clients is recommended for additional progress to be made.