

GENDER, SEX WORK, AND HUMAN RIGHTS: A STUDY OF THE LEGAL REFORM OF  
COMMERCIAL SEX IN CONTEMPORARY TAIWAN

By

Yi-Lu Wang

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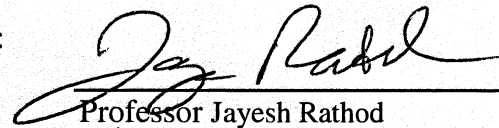
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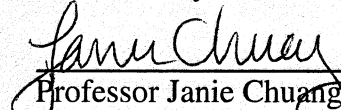
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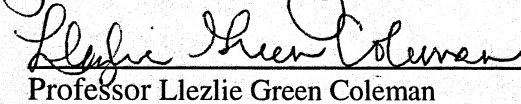
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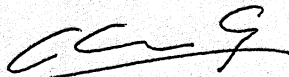
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ABSTRACT

This dissertation discusses the issue of commercial sex in Taiwan. In Today's Taiwan, the only place to conduct legal sexual transaction is in the very few licensed brothels. Even though the Social Maintenance Law (SOMA) allows the local governments to establish red-light district in their territories; however, none of them so far have considered establishing such red-light district. Outside of the red-light district that does not exist and the licensed brothels, Article 80 of SOMA sanctions sex workers and their clients with administrative fines. With almost no place to conduct legal sexual transactions, the sex industry hides in shadows. Murders, exploitations, and trafficking are haunted in this underground industry. In order to protect human rights of sex workers, legal reform is needed. I use this dissertation to argue the current criminalization legal regime in Taiwan is not working and should be discarded, and the new legal regime focusing on protecting the human rights of sex workers should be established.

In order to find the best approach that assures human rights of sex workers, I discuss and analyze the policies of the United States (Criminalization Approach and Legalization of brothels), Sweden (Criminalizing clients), the Netherlands (Legalization Approach), and the New Zealand (Decriminalization Approach). I concluded the Decriminalization Approach is so far the best approach to ensure the human rights of sex workers. I argue the Constitutional Court in Taiwan should issue Interpretation to recognize the legal status of sex work and the SOMA should cease to be implemented. Lastly, for establishing the new decriminalization regime, I propose my own suggestions toward the new legislation regulating commercial sex.

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## TABLE OF CONTENTS

ABSTRACT .....	ii
ACKNOWLEDGMENTS .....	iii
LIST OF TABLES .....	vii
LIST OF ILLUSTRATIONS .....	viii
CHAPTER 1: INTRODUCTION .....	1
CHAPTER 2: THE PRINCIPAL APPROACHES TO REGULATING COMMERCIAL SEX IN THE WORLD .....	8
2.1. The Introduction to the International Approaches toward Commercial Sex.....	9
2.1.1. Criminalization Approach.....	9
2.1.2. Legalization Approach.....	15
2.1.3. Decriminalization Approach.....	17
2.2. The Examination of Human Rights Protection of Sex Workers in Distinct Legal Regimes: the US, Sweden, the Netherlands, and New Zealand.....	19
2.2.1. United States: Criminalization in California and Legalization in Nevada .....	19
2.2.2. Sweden: the Swedish Model that Criminalizes Clients .....	34
2.2.3. The Netherlands: the Legalization Approach .....	53
2.2.4. The Pioneer of the Decriminalization Approach: New Zealand.....	66
2.3. Conclusion .....	86
CHAPTER 3: THE POLICIES REGARDING COMMERCIAL SEX IN TAIWAN: THE PAST AND THE PRESENT .....	90
3.1. The Qing Dynasty Period: A Laissez-Faire Policy (The 19 <sup>th</sup> Century).....	90
3.2. The Japanese Colonial Period: The Establishment of Licensed Commercial Sex in Taiwan (1895-1945).....	94
3.3. Chinese Government Period (1945 - ): Tangled Policies toward Commercial Sex.....	97
3.3.1. Licensed Commercial Sex: An Exception to the Criminalization Policy as a Pragmatic Strategy to Regulate Commercial Sex.....	98
3.3.2. Underground Sex Industry: The Criminalization Policy .....	128

CHAPTER 4: COMMERCIAL SEX IN TODAY’S TAIWAN AND THE VULNERABILITIES OF SEXWORKERS UNDER THE CRIMINALIZATION LEGAL FRAMEWORK .....	132
4.1. The De Facto Red-Light Districts.....	133
4.2. Contours of the Sex Industry in today’s Taiwan .....	134
4.3. The Vulnerabilities of Sex Workers in Today’s Taiwan .....	139
4.3.1. Exploitation from Pimps, Brothel Operators and Gangs .....	140
4.3.2. Violence from Clients .....	142
4.3.3. Inconsistent Enforcement and Police Corruption .....	142
4.3.4. Health Risks .....	153
4.3.5. The Vulnerability of Foreign Sex Workers and the Trafficking Problem.....	158
CHAPTER 5: THE MAIN CAUSE OF SEX WORKERS’ VULNERABILITIES IN TODAY’S TAIWAN: IN-DEPTH DISCUSSION OF ARTICLE 80 OF SOMA THAT CRIMINALIZES COMMERCIAL SEX AND THE DEBATES BETWEEN PRO-DECRIMINALIZATION AND ANTI-COMMERCIAL SEX GROUPS.....	164
5.1. The Debates between Pro-Decriminalization and Anti-Commercial Sex Groups: from Anti-Child Prostitution to Decriminalizing Sex Workers .....	164
5.2. The Social Order Maintenance Act: the Gender Issue in SOMA 1991, its Unconstitutionality, and the Hypocritical SOMA 2011.....	179
5.2.1. Social Order Maintenance Act 1991 .....	179
5.2.2. Sex Work under the Constitution, the Unconstitutionality of the SOMA 1991, and the SOMA 2011 .....	181
5.2.3 Social Maintenance Act 2011 .....	187
CHAPTER 6: DECRIMINALIZATION OF COMMERCIAL SEX IN TAIWAN: AN APPROACH FOCUSING ON HUMAN RIGHTS OF SEX WORKERS .....	190
6.1. General policy: Decriminalization.....	190
6.1.1. Decriminalization beyond the Moralistic and Radical Feminist Views .....	190
6.1.2. The Constitutional Court Should Recognize Sex Work as One Type of Legitimate Profession through the J.Y. Interpretation.....	192
6.1.3. Review of Laws against Sex Work and Related Activities .....	194
6.2. New Legislation.....	198
6.2.1. Sex Workers and Advocates Should Have the Means to Participate the Legislative Process.....	198
6.2.2. The Features of the New Legislation .....	198

6.3. Conclusion .....	206
<b>REFERENCES</b> .....	208



## LIST OF TABLES

Table 1 .....	9
Table 2 .....	20
Table 3 .....	27
Table 4 .....	34
Table 5 .....	53
Table 6 .....	66
Table 7 .....	125
Table 8 .....	129
Table 9 .....	194

## LIST OF ILLUSTRATIONS

Illustration 1: The Map of Taiwan .....	92
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## CHAPTER 1: INTRODUCTION

In Taiwan, the general public has considered sex work degenerate and immoral for a long time.<sup>1</sup> However, this “world’s oldest profession” has existed in Taiwan for hundreds of years and has always been a means of livelihood for some segment of the population.<sup>2</sup> In recent years, numerous killings and violence targeting sex workers have increased people’s awareness of the vulnerability of this segment of the population.<sup>3</sup> Under Taiwan’s criminalization regime, sex workers are unable to seek help from the authorities.<sup>4</sup> According to a 2004 study of Taiwanese sex workers, 28.57% of the sex workers interviewed said they had experienced abuse at the hands of clients or pimps, and 16.2% of the workers interviewed did not use condoms.<sup>5</sup> Many of the workers interviewed had been infected with sexually transmitted diseases (STDs) in the past.<sup>6</sup> As these data reflect, sex workers, lacking the protection of the law, confront disease, violence, and exploitation alone. The current government’s policy, which criminalizes commercial sex, has failed to achieve the government’s purpose to better regulate commercial sex, and instead has only forced sexual transactions of all types to be conducted underground, and has made sex

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<sup>1</sup> See XIE KUN (謝康), MAIYIN ZHIDU YU TAIWAN CHANGJI WENTI, (賣淫制度與台灣娼妓問題) [THE SYSTEM OF PROSTITUTION AND THE PROBLEMS OF PROSTITUTION IN TAIWAN] 139 (1972).

In Taiwan in Qing Dynasty, sex workers are not allowed to marry government officials. In Ming and Qing Dynasties, offspring of sex workers couldn’t attend the National Exam (科舉).

<sup>2</sup> See *id.*; KE RUI-MING (柯瑞明), TAIWAN FENGYUE (台灣風月) [THE LIFE OF DESIRE IN TAIWAN] 121 (1991).

<sup>3</sup> See Wu Zhao-Jun (吳昭君) & Xu Ji-Hong (徐記宏), *Aihe Liuying Mingan Po Le XiongShou ZhuanSha Laofu* (愛河流鶯命案破了兇手專殺老婦) [The Murder Of Streetwalker In Love River Area Was Cleared Up, The Murderer Targeted Senior Streetwalkers] (Jan. 21, 2004, 10:36 AM), <http://news.tvbs.com.tw/entry/385841>.

<sup>4</sup> See Collective Of Sex Workers And Supporters, *Jingcha Lanquan, Liuying Mei Renquan* (警察濫權、流鶯沒人權) [The Abuse of the police Power, Streetwalkers Don’T Have Human Rights] (Aug. 27, 2002), <http://coswas.org/archives/277>.

<sup>5</sup> Chen Chyi-Pung (陳琪萍), The Study Of Investigating The Sex Experience, Sex Knowledge, Sex Attitude, And Safe Sex Behavior Of Prostitutions In Taiwan (台灣女性性工作者的性經驗、性知識、性態度、安全性行為的調查研究) 66 (2005) (unpublished M.A. thesis, Shu-Te University) (on file with National Central Library).

<sup>6</sup> *Id.* at 68.

workers operate their businesses in perilous isolation, fearful of reaching out for help.<sup>7</sup>

In Taiwan, there is a dual system of commercial sex: the licensed brothels and the underground industry.<sup>8</sup> The former is withering away, as there are fewer than 50 active licensed sex workers working in around 11 licensed brothels today.<sup>9</sup> The underground sex industry is illegal in the current legal framework: operators and pimps can be punished by the Criminal Code<sup>10</sup> and the Social Order Maintenance Act (“SOMA”),<sup>11</sup> and sex workers and their clients can be punished by SOMA.<sup>12</sup>

The SOMA reflects the Taiwanese government’s inconsistent and contradictory policy toward regulating commercial sex. Before its revision in 2011, Article 80 of the SOMA (“SOMA 1991”) punished sex workers and third parties but not their clients.<sup>13</sup> The reason for not sanctioning clients is because when the SOMA 1991 draft was being discussed in the Legislative Yuan, some male legislators considered sex work to be a necessary evil in the society since there

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<sup>7</sup> See Fu Chao-Biao (傅潮標), *Faguan Beilian Qiong Sichang Jiao Bu Chu Fahuan Mianguan* (法官悲憐窮私娼 繳不出罰鍰免關) [The Judge sympathized poor sex worker, decided not to put the sex worker into prison because she couldn't afford the fine] (June 17, 2012), <http://www.libertytimes.com.tw/2012/new/jun/17/today-so11.htm>.

<sup>8</sup> See Guo Ming-Xu (郭明旭), *The Possibility Between Abolishment And Preserve Of Sex Industry- The Development And Controversy Of Taiwan'S Sex Industry* (存廢之間的可能—台灣性產業的發展與爭論) (Mar.15, 2003), <http://mail.nhu.edu.tw/~society/e-j/29/29-18.htm>.

<sup>9</sup> *Quan Tai 11 Gongchangguan Ke Yuandi Yingye* (全台 11 公娼館 可原地營業) [The 11 existed licensed brothels can continue to operate in the same locations] (Jul. 15, 2011), <http://www.appledaily.com.tw/appledaily/article/headline/20110715/33529810/>.

<sup>10</sup> Arts. 231, 231-1 of the Criminal Code (中華民國刑法) (2014), available at <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=C0000001>.

<sup>11</sup> Arts. 80, 81, 91-1 of Social Order Maintenance Act (社會秩序維護法) (2011), available at <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=D0080067>.

<sup>12</sup> *Id.*

<sup>13</sup> Social Order Maintenance Act (社會秩序維護法) (1991), available at <http://db.lawbank.com.tw/FLAW/FLAWDAT08.aspx?lsid=FL004501&ldate=19910629>.

were more and more single males with sexual needs to be taken care of.<sup>14</sup> Later their opinions resulted in the deletion of the section in the SOMA 1991 that would have punished clients.<sup>15</sup> According to the SOMA 1991, one will be fined or detained if she or he engages in sexual transactions or solicits in a public place.<sup>16</sup> According to unofficial statistics from 1991 to 2002, at least 20,000 sex workers were fined and detained under Article 80 of the SOMA 1991.<sup>17</sup>

In late 2011, in accordance with the Constitutional Interpretation No. 666 (“The J.Y. Interpretation No. 666”) issued in 2009, Article 80 of SOMA that punished sex workers was revised because of its violation of the principle of gender equality that the Constitution assures.<sup>18</sup> The revised Article 80 and the newly-added Article 91-1 allow the local governments to establish their own red-light districts where commercial sex is a legal business.<sup>19</sup> However, all local governments have so far opposed the establishment of such red-light district in their areas.<sup>20</sup> As a

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<sup>14</sup> *Wei Yuan Hui Jilu* (委員會紀錄) [*The Record of the Committee*], 80 Lifayuan Gongbao (立法院公報) [The Official Gazette of the Legislative Yuan], no. 74, 1991, at 136.; Wang Fang-Ping (王芳萍), Nu: Xingyundongzhe De Zhengzhixing Shengcheng -Taibeishi Gongchang Kangzheng Han Ririchun Yundong Jishi (女性運動者的政治性生成—台北市公娼抗爭和日日春運動紀實) [The Politicization of a Female Activist: Documenting the Campaign of “Licensed Prostitutes” in Taipei, and The Movement of the “Collective Of Sex Workers And Supporters”] 61 (2009) (unpublished M.A. thesis, Fu-Jen Catholic University) (on file with National Central Library).

<sup>15</sup> *Id.*

<sup>16</sup> Social Order Maintenance Act (社會秩序維護法), *supra* note 13.

<sup>17</sup> Chiao Hui-Lin (喬慧玲), *Fei Fachang Tiaokuan Ririchun Xiang Lanlu Zhenying Qiangsheng* (廢罰娼條款 日日春向藍綠陣營嗆聲) [*Requesting to abolish the Article that punishes sex workers, COSWAS “talking aloud” to Pan Blue and Pan Green groups*] (Feb. 3, 2004), [http://gsrat.net/news2/newsclipDetail.php?pageNum\\_RecClipData=1&&ncdata\\_id=817](http://gsrat.net/news2/newsclipDetail.php?pageNum_RecClipData=1&&ncdata_id=817).

<sup>18</sup> J.Y. Interpretation No. 666 (釋字第 666 號) (2009), *available at* [http://www.judicial.gov.tw/constitutionalcourt/en/p03\\_01.asp?expno=666](http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=666); Social Order Maintenance Act (社會秩序維護法), *supra* note 11.

<sup>19</sup> Social Order Maintenance Act (社會秩序維護法), *supra* note 11.

<sup>20</sup> Tang Zhen-Yu (唐鎮宇), *Lifa Zhounian Xingzhuanqu Deng Long Fu Zhi Ji Qingse Manjie* (立法周年性專區等擁擠直擊情色滿街) [*The anniversary of the revised SOMA, No Red-Light District, the observation on the sex businesses full of the streets*] (Nov.4, 2012), <http://www.appledaily.com.tw/appledaily/article/headline/20121104/34619107/>.

result, under the new Articles of the SOMA, all sexual transactions, apart from the very few conducted in the licensed brothels, are illegal; sex workers and their clients have no other lawful setting in which to practice their transactions, and both parties will face fines of up to 30,000 Taiwan Dollars.<sup>21</sup> The new law seemingly legalized commercial sex by letting the local governments establish red light districts, but in reality seems only to reflect the government's long-time inconsistent, vacillating, and hostile attitude toward commercial sex. The sex industry, consequently, is further hidden in the shadows and sex workers have become more vulnerable.

Until now, no red-light districts have been established by the local governments, and they may never be established because of the political considerations (the governments have concerns they may lose the votes in elections).<sup>22</sup> In the absence of a grace period or related measures for the newly revised article of the SOMA, the police started law enforcement immediately and arrested sex workers and their clients.<sup>23</sup> As a result, the vast majority of enforcement efforts have targeted low-end sex workers (such as streetwalkers) and their low-income clients, because they are the most visible ones who solicit in public places and practice sexual transactions in low-end hotels, public bathrooms, or saunas that are easily raided by the police.<sup>24</sup> According to the statistics issued by the police departments of Taipei City and Kaohsiung City, the new law has

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<sup>21</sup> Social Order Maintenance Act (社會秩序維護法), *supra* note 11.

<sup>22</sup> See Wu Xian Shi Yuan She Hongdengqu Zhengce Meixiao Lai Luan (無縣市願設紅燈區 政策沒效來亂) [No Local Governments Willing To Establish Red-Light District, The Policy Is Invalid, What A Mess] (Apr. 8, 2011), <http://www.appledaily.com.tw/appledaily/article/headline/20110408/33304474/>; Pinlun: Shandingdongren Yao She Hongdengqu (蘋論：山頂洞人要設紅燈區) [The Comments Of The Appledaily: Cavemen Want To Establish Red-Light District] (Apr.8, 2011), <http://www.appledaily.com.tw/appledaily/article/headline/20110408/33304078/>.

<sup>23</sup> Xin Fa Shang Lu Xinzhushi Jingfang Kai Chu Fadan (新法上路 新竹市警方開出罰單) [New Soma Is Effective, The Police in Hsin Chu Issued The Ticket To Fine Sex Workers And Clients] (Nov.9,2011), <http://www.hccg.gov.tw/web/News?command=showDetail&postId=232013>.

<sup>24</sup> See Hong Ling-Ling et al. (洪玲玲等), Fa Chang Piao Qifu Ruoshi Zhua Pin Bu Zhua Fu (罰娼嫖 欺負弱勢 抓貧不抓富) [Punishing Sex Workers And Clients, Bullied The Minority, Caught Poor Ones Only] (Nov.14, 2011), <http://www.appledaily.com.tw/appledaily/article/headline/20111114/33813714/>.

little effect to decrease sexual transactions; the number of cases of violating the SOMA remained steady and even increased.<sup>25</sup> Consequently, the sex industry is driven completely underground, and sex workers face more dangers and exploitation from clients, pimps, brothel operators, and even the police.<sup>26</sup> The enforcement of the revised Article 80 of the SOMA directly contradicts both the reasoning of the J.Y. Interpretation No. 666 and the messages conveyed through the concurring opinions and dissenting opinions by the Honorable Justices who expressed the great sympathy toward low-end sex workers who were continuously punished and lived in unfavorable conditions.<sup>27</sup> In addition, the enforcement of the revised Article 80 also undermines the tacit consensus among pro-decriminalization groups and anti-commercial sex groups to at least decriminalize sex workers.

Taiwan's current legal framework regarding commercial sex is an ineffective system of condemnation without compassion. It has done little in practice to discourage sex work as the government expected or to advance the prevention of sexually-transmitted diseases. It has not helped to get sex workers off the streets, nor has it provided any protection from abuse for sex workers. Law reform is clearly needed.

In this dissertation, from the viewpoint of human rights, I argue that the current laws that

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<sup>25</sup> Jhang Yong-Jhih (張詠智),

The Effects of the Amendment to the Social Order Maintenance Act on the Strategies, Performance, and Administrative Discretion of the Police's Sexual Transaction Clampdown: An Example of Kaohsiung City (社維法修法對警察取締性交易的策略、績效及行政裁量之影響-以高雄市為例) 39 (2014) (unpublished M.A. thesis, National Sun Yat-Sen University) (on file with National Central Library).; *Violation of the Law for Maintaining Social Order in Taipei* (臺北市違反社會秩序維護法案件), TAIPEI CITY DEPARTMENT (May 26, 2014), [http://police.gov.taipei/site/tcg/public/MMO/Statistics\\_File/table17.pdf](http://police.gov.taipei/site/tcg/public/MMO/Statistics_File/table17.pdf).

<sup>26</sup> See Shi Qian-Ling (史倩玲), *Shewei Xinfu Shengxiao Xingchanye Nan Jian Guang* (社維新法生效 性產業難見光) [*The new SOMA is effective, sex industry hides in the shadow*] (Nov.6, 2011), <http://www.lihpao.com/?action-viewnews-itemid-112415>.

<sup>27</sup> See J.Y. Interpretation No. 666 (釋字第 666 號), *supra* note 18. Those who participated in the making of J.Y. Interpretations are entitled to submit the concurring or dissenting opinions to comment on the interpretations; however, these opinions, though conveyed various thought of the Honorable Justices, do not have binding force as the Interpretation itself.

punish consensual sexual transactions only encourage exploitation and victimization of sex workers. I firstly introduce and analyze the main approaches in the world for regulating commercial sex: the United States (Criminalization and Legalization of brothels approach), Sweden (Criminalizing clients approach), the Netherlands (Regulation approach), and New Zealand (Decriminalization approach). I will analyze these distinct approaches and argue the decriminalization approach is the one that provides the best human rights protections to sex workers.

Then I discuss commercial sex in Taiwan. I firstly introduce the history of commercial sex in Taiwan and then point out how they influenced today's Taiwan's policy toward commercial sex. Second, I analyze the legal framework of commercial sex and argue that the current commercial sex policy is unworkable and hypocritical. Next, I discuss the vulnerabilities of sex workers in Taiwan under the current legal regime, including how their human rights have been violated and ignored. Thereafter, I explain the causes contributing to today's paradoxical commercial sex policy. I will analyze the deadlock in the dialogue between Pro-decriminalization groups and anti-commercial sex groups, and how the unclear legal status of sex work under the Constitution intensified their debates. I discuss why the J.Y. Interpretation No. 666 gave the chance to the Legislation Yuan (parliament) to pass the SOMA 2011 that punish both sex workers and clients outside of red-light district and licensed brothels. Then I explain how the new law resulted in pushing commercial sex underground in the context of no official red-light district being established by any of the local governments and only few existing licensed brothels for people to conduct legal sexual transactions.

Lastly, I make my suggestions regarding the legal reform of commercial sex in Taiwan. I hope that this research will provide the government with a new legislative attitude, one guided by



a respect for basic human rights.

## CHAPTER 2: THE PRINCIPAL APPROACHES TO REGULATING COMMERCIAL SEX IN THE WORLD

In today's world, there are three main approaches toward regulating commercial sex: criminalization (with two subtypes, prohibitionist and abolitionist), legalization, and decriminalization. Each approach has its own characteristics and specific aims. The criminalization approach, which is based on moralistic concerns, radical feminist discourse, and the assumption that commercial sex is a vector of sexual diseases and crimes, aims to eliminate commercial sex altogether. The legalization approach, on the other hand, recognizes sex work and allows it to a certain degree; however, its main goal is to better control the sex industry in order to efficiently prevent crime and tackle the nuisances surrounding it. The decriminalization approach, which differs from the other two approaches that consider sex work to be a "problem," recognizes sex work's legitimate legal status without discrimination, focusing on improving sex workers' rights and empowering them in the industry. Sex workers under the decriminalization approach are seen as everyday "workers" and enjoy all rights under the law that are afforded to workers.

These approaches toward commercial sex will be introduced and analyzed in the following section. Then, three selected countries (representing each of the approaches) will be discussed to examine if and how workers' rights are protected under these distinct legal regimes. Following that examination, the chapter will assess the relative strengths and weaknesses of the approaches, ultimately concluding that the decriminalization approach is the best one for protecting the human rights of sex workers.

## 2.1. The Introduction to the International Approaches toward Commercial Sex

### 2.1.1. Criminalization Approach

This approach, supported by moralists, feminists, and religious people, aims to “reduce or eliminate the sex industry.”<sup>28</sup> Under the criminalization approach, with its prohibitionist and abolitionist subtypes, the laws against the activities related to commercial sex can be categorized into the following three types:<sup>29</sup> laws against sex work, which the prohibitionist subtype adopts; laws against clients, which both the prohibitionist and abolitionist subtypes adopt;<sup>30</sup> laws against third parties engaging in commercial sex, which both prohibitionist and abolitionist types adopt.

Table 1

Laws Against Parties Engaging In Commercial Sex: The Main Three Types <sup>31</sup>	
1. Laws against sex workers and their clients: Prohibitionist Approach	Selling sex for a financial gain
	Solicitation
	Prohibiting kerb crawling and purchasing sexual services.

<sup>28</sup> Elaine Mossman & Pat Mayhew, *Key Informant Interviews Review of the Prostitution Reform Act 2003* 11 (Oct. 2007), <http://www.justice.govt.nz/policy/commercial-property-and-regulatory/prostitution/prostitution-law-review-committee/publications/key-informant-interviews/documents/report.pdf>.

<sup>29</sup> *Id.* at 13.

<sup>30</sup> Susan Pinto et al., *Prostitution laws in Australia*, *TRENDS & ISSUES IN CRIM. & CRIM. JUST.*, no. 22, May 1990, at 1, 2-4.

<sup>31</sup> MOSSMAN & MAYHEW, *Supra* note 13.

	<p>Criminalizing certain types of commercial sex:</p> <p>(i) In some countries, indoor commercial sex is legal while the street-based sector is prohibited.</p> <p>(ii) Go to client's location vs. work from residence: for example, criminalizing an outcall or escort service.</p>
2. Laws against clients: Abolitionist Approach	Prohibiting kerb crawling and purchasing sexual services.
3. Laws against third parties engaged in the sex industry: Prohibitionist and Abolitionist Approach	It may constitute an offense to live off the earnings of sex workers (immoral earnings), for example, when pimps' or sex workers' partners take money from sex workers. <sup>32</sup>
	It may constitute an offense to run a brothel <sup>33</sup>
	It may constitute an offense to procure or pander (Introducing sexual services to clients and sex workers) <sup>34</sup>

<sup>32</sup> *Living off immoral earnings*, IN BREIF, <http://www.inbrief.co.uk/offences/living-off-immoral-earnings.htm> (last visited Jan. 21, 2015). ; Sexual Offences Act 2003, 2003, c.42, §52 (U.K.).

<sup>33</sup> Sexual Offences Act 2003, 2003, c.42, §55 (U.K.).

<sup>34</sup> Sexual Offences Act 2003, 2003, c.42, §§52-53 (U.K.).

Violating these laws can trigger punishments from fines to imprisonment, and the degree is differentiated when it comes to voluntary versus involuntary sexual transactions.<sup>35</sup> In general, soliciting in public places and operating a brothel are the two activities that are most often prohibited and prosecuted in most of the common law jurisdictions.<sup>36</sup> The prohibitionist and abolitionist subtypes of the criminalization approach are discussed below.

#### a. Prohibitionist:

Under this subtype, every aspect of commercial sex is prohibited, including sex work, purchase of sexual service, and the activities that are closely related to sexual transactions, such as solicitation, advertisement, keeping sex businesses, pimping, procuring are all criminalized.<sup>37</sup> A prohibition on commercial sex can be due to various reasons, depending on the jurisdiction. For example, in Saudi Arabia, religious and moral ideologies are the reasons to prohibit commercial sex, and violators are punished through imprisonment and flogging.<sup>38</sup> In China, the moral reasons to ban commercial sex are that commercial sex is against “socialist norms” and the government sees commercial sex as exploiting women.<sup>39</sup> Sex workers under the current regime

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<sup>35</sup> Elaine Mossman, *International Approaches to Decriminalising or Legalising Prostitution* 13 (Oct.2007), <http://www.justice.govt.nz/policy/commercial-property-and-regulatory/prostitution/prostitution-law-review-committee/publications/international-approaches/documents/report.pdf>.

<sup>36</sup> Sandra Egger, *Review Essay: Criminal justice policy in late modernity: The significance of local experiences in global trends*, 28 MELBOURNE U.L.R., 736, 750 (2004).

<sup>37</sup> Peter De Marneffe, *Liberalism And Prostitution* 28-31 (2010).; Thukral, Jubu, *Prohibition*, in 2 ENCYCLOPEDIA OF PROSTITUTION AND SEX WORK 369 (Melissa Hope Ditmore ed. 2006).

<sup>38</sup> Agence France-Presse, *Saudi police seize 80 for prostitution and pimping* (Jun. 22, 2007), [http://newsinfo.inquirer.net/breakingnews/world/view/20070622-72793/Saudi\\_police\\_seize\\_80\\_for\\_prostitution\\_and\\_pimping\\_](http://newsinfo.inquirer.net/breakingnews/world/view/20070622-72793/Saudi_police_seize_80_for_prostitution_and_pimping_).

<sup>39</sup> Jinmei Meng, *On The Decriminalization Of Sex Work In China* 52 (2013).; *Jiangsu sheng dui maiyin piaochang jieding hebchufa zuo chu mingque guiding* (江蘇省對賣淫嫖娼界定和處罰作出明確規定) [*Jiangsu Stipulated regulations for punishing Commercial Sex*] (June.1, 2006), [http://big5.xinhuanet.com/gate/big5/news.xinhuanet.com/legal/2006-06/01/content\\_4632135.htm](http://big5.xinhuanet.com/gate/big5/news.xinhuanet.com/legal/2006-06/01/content_4632135.htm).

will face up to 15 days of detention by the police.<sup>40</sup> Under the prohibitionist subtype, law enforcement can be inconsistent and the sex industry might actually be tolerated. For example, in Thailand, on the surface the laws prohibit doing sex work to make one's living and related activities of commercial sex; however, brothels and other various sexual businesses are actually tolerated.<sup>41</sup> Another example is that in the Philippines, the sex industry continues to prosper with an estimated more than half a million female sex workers in the sex businesses, even though the laws in the country prohibit sex work, brothel keeping, and pimping.<sup>42</sup> In the West, the United States offers an example of a western country to adopt a prohibition approach; only several counties in Nevada have legalized brothel keeping, and all of the other states prohibit commercial sex (some criminalize sexual transactions and some criminalize solicitation, procurement, and brothel keeping).<sup>43</sup> Take California for instance, where a sex worker can be charged with a misdemeanor and face imprisonment for 90 days if she is convicted more than two times of prostitution.<sup>44</sup>

The criticisms of this subtype are many. Under this regime, sex workers, especially those who are already marginalized, are vulnerable. For instance, streetwalkers of low-income and minority ethnic groups are obvious targets for police to conduct arrests.<sup>45</sup> In addition,

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<sup>40</sup> *Id.*

<sup>41</sup> *Prostitution is Not a Choice*, SOROPTIMIST 14-16 (Nov. 2010), <http://www.soroptimist.org/whitepapers/whitepaperdocs/wpprostitution.pdf>; *Current Legal Framework: Prostitution in Thailand*, IMPOWR.ORG (June 27, 2012, 18:02 PM), <http://www.impowr.org/content/current-legal-framework-prostitution-thailand>.

<sup>42</sup> *Id.*; *100 Countries and Their Prostitution Policies*, PROCON.ORG, <http://prostitution.procon.org/view.resource.php?resourceID=000772#saudi> (last visited Oct. 20, 2014).

<sup>43</sup> *Prostitution is Not a Choice*, *supra* note 41.; Caryn E. Neuman, & Melissa Hope Ditmore, *Mann Act*, in 1 ENCYCLOPEDIA OF PROSTITUTION AND SEX WORK 285-86 (Melissa Hope Ditmore ed. 2006).

<sup>44</sup> Cal. Penal. Code § 647 (West 2014).

<sup>45</sup> *See* Thukral, *supra* note 37.

criminalizing sex work means that sex workers cannot seek help from the police since they are technically “criminals” who engage in illegal behavior.<sup>46</sup> The violence and abuse from third parties and police can happen easily.<sup>47</sup> The social stigma may make sex workers reluctant to get social services because they seek to avoid unwanted judgments and discrimination from people.<sup>48</sup> Moreover, because of the discrimination, service providers may refuse to provide consultations or medical treatment to sex workers.<sup>49</sup> On the other hand, the advocates for this approach consider that it maintains social morality, and combats crimes associated with the sex industry along with sex trafficking.<sup>50</sup> The Prohibitionist subtype may be categorized into more detailed subtypes: some jurisdictions may not directly ban the purchase and sale of sexual services; however, they prohibit the related activities such as kerb crawling and streetwalking.<sup>51</sup>

#### b. Abolitionist:

The Abolitionist subtype is adopted by countries including Canada, New Zealand before 2003, the United Kingdom, and Sweden. Under this subtype, sex work itself is decriminalized but the purchase of sexual service and all of the related activities surrounding sexual transactions are criminalized, including soliciting, living off the earnings of sex workers, brothel keeping, and procurement.<sup>52</sup> Historically, abolitionism was aiming to combat “white slavery” in Europe and

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> See National Aids Trust (NAT), *HIV-related Stigma and Discrimination: Sex Workers Fact Sheet 4.3. 1-2 (Feb. 2003)*, <http://www.hawaii.edu/hivandaids/HIVAIDS%20Stigma%20and%20Discrimination%20%20Sex%20Workers.pdf>.

<sup>49</sup> *Id.*

<sup>50</sup> See Thukral, *supra* note 37.

<sup>51</sup> Marneffe, *supra* note 37.

<sup>52</sup> Mossman, *supra* note 37, at 11.; Prostitution is Not a Choices, *supra* note 41, at 16-17.

the United States in 19<sup>th</sup> century; later, this term motivated the decriminalization advocates who consider sex worker to be the “vulnerable victims of systematic patriarchal exploitation,” and sex workers should be protected but not be punished.<sup>53</sup> Third parties like johns, procurers, and pimps who lure women into prostitution are the evil ones who need to be punished.<sup>54</sup>

Criminalizing these related activities is tantamount to criminalizing sex work because it is virtually impossible to carry out sexual transactions without contravening one law or another.<sup>55</sup> Under the abolitionist regime, sex work is not punished; however, the laws often treat sex workers differently from other citizens. For example, sex workers may not be allowed to work together, or form unions since it is deemed as “promotion of prostitution”; likewise, they often lack legal redress rights when their civil or human rights are violated.<sup>56</sup> Additionally, under this abolitionist subtype, enforcement of the laws may not be carried out consistently. Take New Zealand for example: prior to its legal reform in 2003, keeping a brothel was illegal; however, sexual transactions still existed in the massage parlors that were considered *de facto* brothels.<sup>57</sup>

### c. A Swedish Model: Targeting the Demand Side:

Sweden’s policy can be classified as an abolitionist approach since it does not punish sex workers, but rather clients, people living off the earnings of sex workers, and those who get

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<sup>53</sup> Janet Halley et al., *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism*, 29 HARV. J. L. & GENDER, no. 2, 2006, at 335, 339.; Jo Doezema, *Abolitionism*, in 1 ENCYCLOPEDIA OF PROSTITUTION AND SEX WORK 4-7 (Melissa Hope Ditmore ed. 2006).; Marjan Wijers & Marieke van Doorninck, *Only rights can stop wrongs: A critical assessment of anti-trafficking strategies* (Sept. 18-20, 2002), <http://www.walnet.org/csis/papers/wijers-rights.html>.; Prostitution is Not a Choices, *supra* note 41.

<sup>54</sup> Prostitution is Not a Choice, *supra* note 41.; *Wijers & Doorninck*, *Only Rights Can Stop Wrongs: A Critical Assessment of Anti-Trafficking Strategies*.

<sup>55</sup> Mossman, *supra* note 35, at 5.

<sup>56</sup> Doezema, *supra* note 53, at 5.

<sup>57</sup> Mossman, *supra* note 35, at 11.



benefits from sex workers.<sup>58</sup> The theory behind the Swedish model is that in Sweden, “[p]rostitution is seen as sexual abuse and an act of violence against women.”<sup>59</sup> The advocates of the Swedish approach argue that by decreasing the demand in the sex industry, the government and society can reach the goal of eliminating the industry. This approach is contradictory in that it’s lawful to sell sexual services, however there are no qualified legal customers.<sup>60</sup> Therefore, sex work cannot be free from the interference of the police and authorities, and sex workers are often subject to a dangerous working environment where they cannot use their discretion and judgment on choosing their preferred client.<sup>61</sup> Moreover, the decrease on the demand side may mean that the competition among sex workers becomes fiercer; it may lead to lower transactional prices and undesired and unsafe sex in response to clients’ requests.<sup>62</sup>

Currently, in addition to Sweden, other Nordic countries such as Norway and Iceland had passed the similar laws criminalizing clients in 2008 and 2009 respectively.<sup>63</sup>

### 2.1.2. Legalization Approach

Under the legalization approach, commercial sex is “controlled by government and is legal only under certain state-specified conditions.”<sup>64</sup> Under this regime, sex work and purchasing

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<sup>58</sup> Jay Levy & Pye Jakobsson, *Sweden’s abolitionist discourse and law: Effects on the dynamics of Swedish sex work and on the lives of Sweden’s sex workers*, 14 CRIMINOLOGY & CRIM. JUST., no. 5, Nov. 1, 2014, at 593.; Aziza Ahmeda, *Feminism, Power, And Sex Work In The Context Of Hiv/Aids: Consequences For Women's Health*, 34 HARV. J. L. & GENDER, 225, 233-234 (2011).

<sup>59</sup> Mossman, *supra* note 35, at 11.

<sup>60</sup> Jubu Thukral, *Criminalization of Clients*, in 1 ENCYCLOPEDIA OF PROSTITUTION AND SEX WORK 124-25 (Melissa Hope Ditmore ed. 2006).

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *What Is The ‘Nordic Model’?*, EQUALITYNOW.ORG., [http://www.equalitynow.org/sites/default/files/Nordic\\_Model\\_EN.pdf](http://www.equalitynow.org/sites/default/files/Nordic_Model_EN.pdf) (last visited Feb.3, 2015).

<sup>64</sup> Mossman, *supra* note 35, at 11.

sexual services are not criminalized. Moreover, the related activities such as brothel keeping, solicitation, kerb crawling are not banned either.

A presumption underlying the legalization approach is that commercial sex is “necessary for stable social order.”<sup>65</sup> This approach generally has the purpose to supervise sex workers’ activities to ensure the public health goal of preventing sexual diseases is realized.<sup>66</sup> The crucial feature of legalization is the specific regulations toward sex businesses.<sup>67</sup> The sex industry should be subject to specific regulations and laws in order to maintain the public order and health, such as a licensing system, restrictions on age, registration system of the authorities, zoning and location restrictions, and compulsory health checks.<sup>68</sup> The licensing system may be governed by the police, judiciary, municipal authorities, or independent specialist boards.<sup>69</sup> Under such licensing systems, brothel operators and sex workers that fail to obey the registration rules will face criminal punishments.<sup>70</sup>

Some countries have adopted the legalization approach in order to prevent crimes related to the sex industry, such as organized crime, underage prostitution, and trafficking in women.<sup>71</sup>

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<sup>65</sup> *Id.*

<sup>66</sup> Barbara G. Brents & Kathryn Hausbeck, *State-Sanctioned Sex: Negotiating Formal and Informal Regulatory Practices in Nevada Brothels*, 44 SOC. PERSP., no. 3, 2001, at 307, 311.; Ahmeda, *supra* note 58, at 233.

<sup>67</sup> Mossman, *supra* note 35, at 11.

<sup>68</sup> Marneffe, *supra* note 37, at 28-31; Halley, *supra* note 35, at 339.; Melissa Hope Ditmore, *Legal Approaches*, in 1 ENCYCLOPEDIA OF PROSTITUTION AND SEX WORK 249 (Melissa Hope Ditmore ed. 2006).; Mossman, *supra* note 35, at 11.

<sup>69</sup> Mossman, *supra* note 35, at 12.

<sup>70</sup> Mossman, *supra* note 35, at 11.

<sup>71</sup> *Id.*

However, a common criticism about this approach is that it does not effectively eliminate organized crime, sex trafficking, exploitation of sex workers, or underage prostitution.<sup>72</sup>

Though legalization adopts a more liberal view toward commercial sex compared to the criminalization approach, this approach is disfavored by both anti-prostitution feminists and feminists who support commercial sex.<sup>73</sup> Anti-prostitution feminists consider that this approach “represents ongoing regulation of women's bodies”;<sup>74</sup> on the other hand, the support-commercial-sex feminists think that it's not appropriate to impose enforcement measures on sex workers to address public health concerns.<sup>75</sup> Countries adopting this legalization approach include the Germany, Netherlands, Switzerland, and the state of Nevada in the United States.<sup>76</sup>

### 2.1.3. Decriminalization Approach

Under a decriminalization regime, all laws against commercial sex are demolished;<sup>77</sup> however, only voluntary sexual transactions between adults are decriminalized; sexual transactions with underage and coerced individuals are still illegal.<sup>78</sup> The distinction between the legalization and decriminalization approaches is that the latter doesn't stipulate specific

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<sup>72</sup> Donna M. Hughes, *The Demand: Where Sex Trafficking Begins, Speech at A Call to Action: Joining the Fight Against Trafficking in Persons* (June 17, 2004), [http://www.uri.edu/artsci/wms/hughes/demand\\_rome\\_june04.pdf](http://www.uri.edu/artsci/wms/hughes/demand_rome_june04.pdf). ; Prostitution is Not a Choice, *supra* note 41, at 14-16.

<sup>73</sup> KATHLEEN BARRY, FEMALE SEXUAL SLAVERY 130 (1979).; BRENTS & HAUSBECK, *supra* note 66, at 310.; Ahmeda, *supra* note 58, at 233.

<sup>74</sup> Barry, Female Sexual Slavery at 130-34.; Ahmeda, *supra* note 58, at 233-34.

<sup>75</sup> See, *Canadian HIV/AIDS Legal Network, Sex, Work, Rights: Reforming Canadian Criminal Laws on Prostitution (2005)*, <http://www.aidslaw.ca/site/wp-content/uploads/2013/04/SWreport+-+ENG.pdf>.; Ahmeda, *supra* note 58, at 225.

<sup>76</sup> Mossman, *supra* note 35, at 11.

<sup>77</sup> *Id.* at 12.

<sup>78</sup> *Id.*

regulations targeting sex work.<sup>79</sup> Under a decriminalization regime, the sex industry is not subject to a special legal framework but is governed by the country's existing laws and regulations.<sup>80</sup> Under decriminalization, sex work is a legitimate profession like other types of professions and is regulated by the existing regulations regarding employment and health.<sup>81</sup> Sex workers share the same rights and bear the same responsibilities under the laws as other workers.<sup>82</sup> The purpose of decriminalization, as opposed to legalization, which emphasizes the maintenance of social order, is to protect sex workers' human rights, and to improve their health, safety and working conditions.<sup>83</sup> Advocates of decriminalization claim that a sexual transaction should not be seen as illegal because it is conducted between adults with mutual consent; moreover, "the cost of keeping prostitution illegal largely outweighs the gains."<sup>84</sup>

The decriminalization approach purports to terminate the isolation and disadvantaged conditions that the society imposed on sex workers, which has made sex workers more vulnerable to danger and exploitation and may make it more difficult for them to leave the industry.<sup>85</sup> Sex workers are not seen as victims or criminals but citizens of the country and as individuals who can actively claim their rights legally, instead of relying on third parties in the industry or risking exploitation. Decriminalization removes the illegal sectors of the sex industry

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<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Part I: The Sex Industry in New Zealand 4, The sex industry in New Zealand: A literature review*, JUSTICE.GOV.T.NZ, <http://www.justice.govt.nz/publications/global-publications/s/the-sex-industry-in-new-zealand-a-literature-review/part-i-the-sex-industry-in-new-zealand-4> (last visited Oct. 25, 2014).

<sup>85</sup> Mossman, *supra* note 35, at 13.

from society, ending the “two-tier reality of legal and illegal operations;” under this approach, the underground sex industry will no longer need to hide in the shadows.<sup>86</sup> Jurisdictions adopting this decriminalization approach include New South Wales (in Australia) and New Zealand.<sup>87</sup>

## 2.2. The Examination of Human Rights Protection of Sex Workers in Distinct Legal Regimes: the US, Sweden, the Netherlands, and New Zealand

### 2.2.1. United States: Criminalization in California and Legalization in Nevada

In the United States, the general policy toward commercial sex is criminalization, except in the State of Nevada.<sup>88</sup> Criminalization makes it illegal to engage in solicitation and sexual transactions; pimping, pandering, and procuring are criminalized. In several states, operating a brothel and accommodating in a brothel are punished separately.<sup>89</sup> Under the U.S. federal law, sex trafficking and child prostitution are prohibited.<sup>90</sup> Additionally, it is prohibited to conduct sexual services (including solicitation) within a “reasonable distance” from military areas.<sup>91</sup>

Although the federal government has introduced some specific laws and regulations, most of the measures are decided by the state jurisdictions, in an effort to control the sex-related businesses in their territories.<sup>92</sup> Currently, only Nevada has legalized commercial sex in the brothel form.<sup>93</sup>

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<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> Laura Barnett et al., *Prostitution: A Review of Legislation in Selected Countries* 17 (Nov.3 2011), <http://www.parl.gc.ca/content/lop/researchpublications/2011-115-e.pdf>.

<sup>89</sup> KATHRYN HAUSBECK & BARBARA G. BRENTS, *INSIDE NEVADA’S BROTHEL INDUSTRY, SEX FOR SALE* 159 (Ronald Weitzer ed. 2000).

<sup>90</sup> Crimes and Criminal Procedure, 18 U.S.C. §§1590-1592, §§ 2421-2424 (2014). ; *Citizen's Guide to U.S. Federal Law on the Prostitution of Children*, THE DEPARTMENT OF JUSTICE OF THE UNITED STATES, [http://www.justice.gov/criminal/ceos/citizensguide/citizensguide\\_prostitution.html](http://www.justice.gov/criminal/ceos/citizensguide/citizensguide_prostitution.html) ( last visited Feb. 3, 2015).

<sup>91</sup> BARNETT ET AL., *supra* note 88.

<sup>92</sup> *Id.*

a. California: Criminalization Approach:

Table 2

The State California: Criminalization Approach	
Key Legislation: California Penal Code: Sections 647, 653.20-653.28	
Prohibited Activities:	Sex work, Loitering, Solicitation, Pandering, Living off the earnings of sex workers
Human Rights Issues of Sex Workers under this legal regime:	<ol style="list-style-type: none"><li>1. Streetwalkers are the obvious targets of law enforcement; the already “marginalized,” such as immigrant sex workers, suffer the most.</li><li>2. Sex workers cannot report to the authorities about violence, exploitation, and dangers; they either work in solitude in a risky environment or rely on pimps or third parties for protection.</li><li>3. Safe sex cannot be implemented thoroughly.</li><li>4. As sex work is not accepted nor recognized under a criminalization regime, the stigma on sex work is strong.</li></ol>

<sup>93</sup> *Id.*

Commercial sex in California, contrary to Nevada, which legalized brothels, is illegal per the California Penal Code. The person will be “guilty of disorderly conduct, a misdemeanor” if she/he solicits or agrees to engage in prostitution.<sup>94</sup> In addition to sex work, loitering and solicitation (whether in public or private areas) for the purposes of sexual transaction are prohibited too; those who engage in these activities will be charged with misdemeanors.<sup>95</sup> Moreover, pandering and living off the earnings of sex workers are prohibited.<sup>96</sup> The ban on living off the earnings of the sex workers is to prevent exploitation from pimps or brothel operators.<sup>97</sup> This ban even makes it difficult for maintaining personal and familial relationships; in Santa Barbara, California in 2010, a husband was charged under this ban because his sex worker wife operated her business with him.<sup>98</sup> In some local jurisdictions in California, additional regulations have been enacted to further deter commercial sex.<sup>99</sup> For instance, San Bernardino has stipulated restraining orders targeting sex workers and they prevent sex workers from attending certain activities in several areas.<sup>100</sup> Similar to California, in Washington D.C. where commercial sex is also prohibited, in order to better control and to further deter commercial sex, “prostitution free zones” can be established and the police can “make arrests for

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<sup>94</sup> Cal. Penal. Code § 647 (West 2014).

<sup>95</sup> BARNETT ET AL., *supra* note 88.

<sup>96</sup> *Id.* at 18.; CAL. PENAL. CODE § 647 (West 2014).; CAL. PENAL. CODE §§ 653.20-653.28 (West 2014).

<sup>97</sup> MELISSA HOPE DITMORE, PROSTITUTION AND SEX WORK 93 (2010).

<sup>98</sup> *Id.*; Chris Meagher, *Santa Barbara Fugitive Arrested After 10 Years on the Run*, SANTA BARBARA INDEP. (Nov. 13, 2008), <http://www.independent.com/news/2008/nov/13/santa-barbara-fugitive-arrested-after-10-years-run/>.; Beware: Living with a Prostitute Can Be Illegal and Land You in Prison, *Beware: Living with a Prostitute Can Be Illegal and Land You in Prison*, GREG HILL & ASSOCIATES, <http://www.greghillassociates.com/lawyer-attorney-1942782.html> (last visited Oct 20, 2014).

<sup>99</sup> BARNETT ET AL., *supra* note 88, at 18.

<sup>100</sup> *Id.*; MICHAEL S. SCOTT & KELLY DEDEL, *STREET PROSTITUTION*, U.S. DEPARTMENT OF JUST. 28-29 (NOV. 2006), <http://www.cops.usdoj.gov/files/RIC/Publications/e10062633.pdf>.

up to 24 consecutive days if two or more people congregate in public in certain neighborhoods and ignore dispersal orders.”<sup>101</sup> In some cities, including San Francisco, a special kind of “John’s School” has been established in order to deter clients. These schools use the strategy of shaming and educating the sex buyers to deter them from buying sex again.<sup>102</sup>

The reasons behind the adoption of a criminalization approach are many, including preventing sexual diseases, curbing organized crime, protecting family integrity, protecting sex workers, and eliminating underage prostitution.<sup>103</sup> The important assumption underlying criminalization is that law enforcement is crucial to reduce commercial sex.<sup>104</sup> However, according to the Bureau of Justice Statistics, in just 2010, there were 11,334 people arrested for commercial sex in the State of California.<sup>105</sup> Apparently, the criminalization approach fails to deter many people from engaging in sex businesses.

The enforcement of the prohibition law can be inconsistent and “appears to be largely dictated by citizens’ complaints.”<sup>106</sup> Under the criminalization regime, among all the sex workers, streetwalkers are the most obvious targets to be arrested and they “account for ninety percent of

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<sup>101</sup> Tim Craig, *D.C. ‘prostitution-free zones’ probably unconstitutional, attorney general’s office says*, WASHINGTONPOST.COM (Jan. 24, 2012), [http://www.washingtonpost.com/local/dc-politics/districts-prostitution-free-zones-likely-unconstitutional-ags-office-says/2012/01/24/gIQAe3qNOQ\\_story.html](http://www.washingtonpost.com/local/dc-politics/districts-prostitution-free-zones-likely-unconstitutional-ags-office-says/2012/01/24/gIQAe3qNOQ_story.html).

<sup>102</sup> Ronald Weitzer, *Prostitution control in America: Rethinking public policy*, 32 CRIME L. & SOC. CHANGE, 83, 96-7 (1999).; BARNETT ET AL., *supra* note 88, at 18.

<sup>103</sup> RICHARD A. POSNER & KATHARINE B. SILBAUGH, *A GUIDE TO AMERICA’S SEX LAWS* 155 (1996); BARNETT ET AL., *supra* note 88, at 18.

<sup>104</sup> Pasqua Scibelli, *Empowering Prostitutes: A Proposal for International Legal Reform*, 10 HARV. WOMEN’S L.J. 117, 117 (1987).

<sup>105</sup> *US and State Prostitution Arrests, 2001-2010*, PROCON.ORG (Dec. 4, 2012), <http://prostitution.procon.org/view.resource.php?resourceID=000120>.

<sup>106</sup> BARNETT ET AL., *supra* note 88, at 18.



those arrested for prostitution.”<sup>107</sup> The inconsistent enforcement of the law and the “Prostitution-free zones” only make sex workers change the place they work.<sup>108</sup> Sex workers, because of the fear of being arrested and punished, are reluctant to report to authorities when they encounter dangers.<sup>109</sup> It should be noted that, according to Lucas’s research in 2013, women of color were disproportionately arrested and sentenced to jail.<sup>110</sup> This may indicate that those who suffer from the criminalization regime are already members of minority groups. On the other hand, sex workers working indoors, such as those working in escort agencies, massage parlours, and illegal brothels, are less visible to the police and thus are able to avoid confrontations with law enforcement agencies.<sup>111</sup>

In the past, the conventional tactic for cities in California to combat street-based commercial sex resulted in arrests of sex workers.<sup>112</sup> Recently, this tactic has changed in some areas.<sup>113</sup> Views toward sex workers have evolved from that of criminals to victims of coerced prostitution and human trafficking.<sup>114</sup> Law enforcement has changed to target pimps and clients

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<sup>107</sup> Ann M. Lucas, *Race, Class, Gender, and Deviancy: The Criminalization of Prostitution*, 10 BERKELEY WOMEN’S L.J., 47, 49 (1995).

<sup>108</sup> BARNETT ET AL., *supra* note 88, at 18.; Sandra L. Moser, *Anti-Prostitution Zones: Justifications for Abolition*, 91 J. OF CRIM. LAW & CRIMINOLOGY, no. 4, 2001, at 1101, 1116-1117.

<sup>109</sup> SCOTT & DEDEL, *supra* note 100, at 6.; Stephen Nessen, *Reluctant to Turn to Authorities, Sex Workers Attempt to Safeguard against Crime*, WNYC NEWS (Apr. 13, 2011), <http://www.wnyc.org/story/124120-sex-workers-reluctant-work-police-long-island-investigation/>.

<sup>110</sup> Lucas, *supra* note 107.

<sup>111</sup> BARNETT ET AL., *supra* note 88, at 18.

<sup>112</sup> Steve Marcin, *Prostitution and Human Trafficking: A Paradigm Shift*, <http://leb.fbi.gov/2013/march/prostitution-and-human-trafficking-a-paradigm-shift> (last visited Jan. 31, 2015).

<sup>113</sup> Kelly Goff, *Prostitution in Los Angeles: Cracking down on johns and pimps*, LOS ANGELES DAILY NEWS (May 18, 2014), <http://www.dailynews.com/social-affairs/20140518/prostitution-in-los-angeles-cracking-down-on-johns-and-pimps>.; Steve Marcin, *Prostitution and Human Trafficking: A Paradigm Shift*, THE FBI (Mar.5, 2013), <http://leb.fbi.gov/2013/march/prostitution-and-human-trafficking-a-paradigm-shift>.

<sup>114</sup> *Id.*

more than sex workers.<sup>115</sup> Since 2013, sex workers can even be entitled to compensation under a victim's fund if they are beaten or raped.<sup>116</sup> It appears that California has adopted a more radical-feminist point of view toward commercial sex and sees sex workers as victims who are lured and mistreated by vicious pimps and clients and need to be "rescued."<sup>117</sup>

Nevertheless, in some cities, the criminalization approach does not exclusively target streetwalkers. In these cities, a great amount of police resources have been dispatched to combat indoor commercial sex as well. In these areas, criticisms have surfaced, arguing that this type of law enforcement may drive indoor sex workers to work in the streets.<sup>118</sup> Strengthening law enforcement by the police in both sectors (indoors and outdoors) might temporarily curb commercial sex; however, commercial sex under California's criminalization regime has never ceased to exist, even during times of strict enforcement.<sup>119</sup> In addition, using too many resources on combating commercial sex is unrealistic. There are criticisms about the cost and great amount of resources used for enforcing the law under the criminalization approach.<sup>120</sup> For example, in Ohio, from 2006-2011, some area authorities arrested the same sex workers and incarcerated them "over and over again" and spent "hundreds of thousands of taxpayer dollars" to enforce the laws.<sup>121</sup> According to the news report, the police in Montgomery County, Ohio arrested many

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<sup>115</sup> Goff, *supra* note 113.

<sup>116</sup> Susan Abram, *California prostitutes win victim compensation*, LOS ANGELES DAILY NEWS (Dec.12, 2013), <http://www.dailynews.com/social-affairs/20131212/california-prostitutes-win-victim-compensation>.

<sup>117</sup> Marcia *supra* note 113.

<sup>118</sup> Weitzer, *supra* note 102, at 90-1.

<sup>119</sup> Kelly Goff, *Prostitution in Los Angeles: City changes its game to combat sex trade on the streets*, LOS ANGELES DAILY NEWS (May 18, 2014), <http://www.dailynews.com/social-affairs/20140518/prostitution-in-los-angeles-city-changes-its-game-to-combat-sex-trade-on-the-streets>.

<sup>120</sup> BARNETT ET AL., *supra* note 88, at 19.

sex workers who had been arrested “at least 15 times” because of prostitution and drug related charges between 2006 and 2011.<sup>122</sup> Dayton Police Chief Richard Biehl acknowledged that this “cat and mouse game” between police and sex workers made “no true beneficial result” and they didn’t have “a particularly effective way to deal with this issue,” even though much money had been spent in the law enforcement.<sup>123</sup> In Texas, the situation is similar. Many sex workers had been arrested repeatedly.<sup>124</sup> According to Texas law, sex workers can be charged with a felony and sent to state lockups “after three misdemeanor prostitution convictions.”<sup>125</sup> This law has cause hundreds of sex workers to be imprisoned and their incarceration costs lots of money.<sup>126</sup> State leaders used the Legislative Budget Board calculations to explain why it’s not appropriate to send sex workers to jails.<sup>127</sup> According to the news report, it costs 18,538 USD to accommodate an individual in state prison per year, and even in a lower-security state jail, it costs around 15,500 USD per year.<sup>128</sup> The State officials, who noticed the budget issue, were trying to find alternatives, such as the rehabilitation programs, to replace the imprisonment sanction.<sup>129</sup> Similarly, in Illinois, the budget for incarcerating sex workers became an issue.

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<sup>121</sup> Lucas Sullivan et al., *Prostitution Policing Efforts are Costly for Taxpayers*, SPRINGFIELD NEWS –SUN (July 2, 2011), <http://www.springfieldnewsun.com/news/news/local/prostitution-policing-efforts-are-costly-for-taxpa/nNpRG/>.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> Mike Ward, *Texas rethinks law making repeat prostitution a felony*, STATEMAN (Aug. 26, 2012), <http://www.statesman.com/news/news/state-regional-govt-politics/texas-rethinks-law-making-repeat-prostitution-a-fe/nRNmt/>.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*; KHOU Staff, KHOU Staff, *Millions of tax dollars spent yearly to incarcerate prostitutes*, KHOU.Com (Jan. 28, 2011), <http://www.khou.com/story/news/investigations/2014/07/14/11431228/>.

According to news reports, in 2012, in Cook County alone, it was estimated around 5.3 to 9.5 million dollars per year were spent to jail sex workers who were charged with a felony.<sup>130</sup> These anti-prostitution policies, such as criminal sanctions and incarceration, are not backed by evidence that they are really able to deter sex workers from selling sex.<sup>131</sup> What makes sex workers more vulnerable is that under the criminalization regime, once sex workers are arrested and convicted, the criminal records will follow with them and it will become harder for sex workers to leave the sex industry and find other jobs.<sup>132</sup> And once sex workers are convicted, they may need “to commit more prostitution to pay the fines.”<sup>133</sup> Moreover, the health of sex workers under the current criminalization regime in the U.S. cannot be assured at all. Condoms are seen as evidence for criminal investigations and sex workers might decide not to bring condoms with them to avoid “police harassment.”<sup>134</sup>

In the United States, in order to reach the goal to eradicate commercial sex, recently, some authorities have changed their strategy by targeting clients instead of sex workers. Sex workers are now considered as victims, and the police collect clients’ personal information such as names, emails, phone numbers, and hotel-room dates to conduct the investigation.<sup>135</sup> In some

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<sup>130</sup> Emily Morris, *Felony Prostitution Approach Should be Dropped, Say Preckwinkle, Gainer*, DNAINFO (Mar. 21, 2013), <http://www.dnainfo.com/chicago/20130321/chicago/prostitution-charged-as-felony-should-be-dropped-say-preckwinkle-gainer>.

<sup>131</sup> Moser, *supra* note 108.; BARNETT ET AL., *supra* note 88, at 18-9.

<sup>132</sup> BARNETT ET AL., *supra* note 88, at 19.

<sup>133</sup> SCOTT & DEDEL, *supra* note 100, at 21.

<sup>134</sup> Margaret H Wurth ET AL., *Evidence of Prostitution in the United States and the Criminalization of Sex Work*, JIAS (May 24, 2013), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3664300/>.; *Public health crisis: the impact of using condoms as evidence in New York City*, PROS NETWORK (Apr. 2012), <http://sexworkersproject.org/downloads/2012/20120417-public-health-crisis.pdf>.

<sup>135</sup> Katie Baker, *The Prostitutes Aren’t the Problem: Targeting the Johns*, THE DAILY BEAST (May 22, 2013), <http://www.thedailybeast.com/witw/articles/2013/05/22/the-hookers-aren-t-the-problem-end-prostitution-by-targeting-the-johns.html>.

jurisdictions, men who bought sex had their mug-shots taken by the police and then their names and pictures were revealed to the media and the Internet so as to curb people from purchasing sexual services.<sup>136</sup>

Overall, commercial sex remains a controversial issue in the United States.<sup>137</sup> It is agreed by many Americans that criminalization is not likely to eradicate commercial sex in a short time and there is no general agreement about how to accomplish that goal.<sup>138</sup> Unlike European countries, in the United States, neither decriminalization nor legalization approaches have received much attention, nor are they seen as good options for replacing the current criminalization policy.<sup>139</sup>

b. Nevada: Legalization Approach (Brothels):

Table 3

Nevada: Legalization of brothels	
Key Legislation: Section 244.345 of the Nevada Revised Statutes	
Counties with a population of residents fewer than 700,000 are allowed to license brothels	
Prohibited Activities	Conducting sexual transactions and solicitations outside of legal brothels are misdemeanors

<sup>136</sup> Michael Zennie, *Don't be Ridiculous, He's 79!' Wives and Families of Men Arrested in 'Flush the Johns' Prostitution Bust React to Public Wall of Shame*, DAILY MAIL (June 4, 2013), <http://www.dailymail.co.uk/news/article-2335855/Operation-Flush-Johns-Wives-families-react-Long-Island-prostitution-arrests.html>; Matthew Guariglia, *'Flush the Johns': Names of 104 Men Revealed in Long Island Hooker Sting*, HEAVY (June 3, 2013), <http://heavy.com/news/2013/06/flush-the-johns-names-of-104-men-revealed-in-long-island-hooker-sting/>.

<sup>137</sup> BARNETT ET AL., *supra* note 88, at 19.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*; Weitzer, *supra* note 102, at 86-7.

<p>Human Rights Issues of Sex Workers under this regime</p>	<ol style="list-style-type: none"> <li>1. Sex workers are subjected to the rules imposed by brothel operators, which strictly deprive sex workers' freedom of movement.</li> <li>2. Sex workers' status is independent contractor and they cannot enjoy the same rights as other workers, including "access to health insurance, sick leave, or unemployment and retirement benefits." In addition, state labor law does not include sex workers and they may be subjected to poor working conditions and/or threats to their health and safety.</li> <li>3. Sex workers in brothels generally have to pay for their health checks and accommodations.</li> <li>4. The underground sex industry keeps growing.</li> <li>5. The intensified social stigma toward sex workers.</li> </ol>
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Nevada is the only state in the United States that has legalized brothel keeping; that said, not every local authority has licensed brothels in their jurisdictions.<sup>140</sup> Commercial sex is allowed only in licensed brothels in certain areas, and all other types of commercial sex remain illegal.<sup>141</sup> Nevada's policy on licensed brothels purports to keep the brothels away from communities and to control sexually transmitted diseases.<sup>142</sup> The legal basis for the legalization

<sup>140</sup> BARNETT ET AL., *supra* note 88, at 19.

<sup>141</sup> *Id.*

<sup>142</sup> BRENTS & HAUSBECK, *supra* note 66, at 313-14.

of commercial sex in Nevada is the Nevada Revised Statutes. According to Section 244.345 of those statutes, counties that have a population of residents fewer than 700,000 are allowed to license brothels.<sup>143</sup> Legal sexual services should be conducted in the licensed brothels, and it constitutes a misdemeanor if sexual transactions and solicitation are conducted outside of these licensed brothels.<sup>144</sup>

Only a few counties in Nevada allow licensed brothels.<sup>145</sup> Most brothels are located in suburban areas.<sup>146</sup> In larger cities, such as Las Vegas, Reno, and Carson City, brothel keeping is prohibited.<sup>147</sup> The licensed brothels generally have to obey strict regulations enacted by the county in which they are located.<sup>148</sup> To obtain a license to keep a brothel, the brothel owner must submit extensive materials including their family background, employment, criminal history, and financial records.<sup>149</sup> The authorities may request more information to ensure the brothel will not jeopardize the health, welfare, and safety of the city.<sup>150</sup>

The state statute and zoning provisions of the counties further limit the locations where the licensed brothels can be established.<sup>151</sup> According to section 201.380 of the Nevada Revised Statutes, the brothels cannot be established “within 400 yards of any school or place of

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<sup>143</sup> NEV. REV. STAT. § 244.345 (2013)

<sup>144</sup> NEV. REV. STAT. § 201.354 (2013)

<sup>145</sup> BARNETT ET AL., *supra* note 88, at 19.

<sup>146</sup> Lenore Kuo, *Licensed Prostitution, Nevada*, in 1 ENCYCLOPEDIA OF PROSTITUTION AND SEX WORK 252-55 (Melissa Hope Ditmore ed. 2006).

<sup>147</sup> BARNETT ET AL., *supra* note 88, at 19.

<sup>148</sup> *Id.*; Eleanor Maticka-Tyndale & Jacqueline Lewis, *Escort Services In A Border Town* (September 16, 2000), <http://walnet.org/csis/papers/lewis-escorts.html>.

<sup>149</sup> BARNETT ET AL., *supra* note 88, at 19-20.

<sup>150</sup> BRENTS & HAUSBECK, *supra* note 66, at 317.

<sup>151</sup> BARNETT ET AL., *supra* note 88, at 19.

worship.”<sup>152</sup> In some counties, brothels are limited to specific buildings.<sup>153</sup> Through these strict regulations, authorities are able to control the sex industry and keep it to a limited size.<sup>154</sup> In fact, the number of licensed brothels has remained fairly steady since the 1970s (33 in 1973, 36 in 2000, and 24 in 2014); indeed, because of the strict policy, “[i]t is virtually impossible to build a new brothel.”<sup>155</sup>

Many counties have enacted regulations for supervising the day-to-day businesses of the brothels in their jurisdictions. These oversight mechanisms ensure the size of these brothels is restricted, and the numbers of sex workers and their working hours are limited, too.<sup>156</sup> Furthermore, the advertising rights of the brothels are limited by Sections 201.430 and 201.440 of the Nevada Revised Statutes. Per these laws, brothels cannot advertise their businesses “on public streets and highways or in theatres.”<sup>157</sup> There are more restrictions stipulated by the counties.<sup>158</sup>

In Nevada, all sex workers in licensed brothels need to register with the police. Work permits are issued to sex workers who have completed the mandatory HIV/STD health checks.<sup>159</sup> For example, in Nye County, it is required for sex workers to undergo weekly medical check-ups

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<sup>152</sup> NEV. REV. STAT. § 201.380 (2013)

<sup>153</sup> BARNETT ET AL., *supra* note 88, at 20.

<sup>154</sup> *Id.*

<sup>155</sup> BRENTS & HAUSBECK, *supra* note 66, at 322.; *Nevada brothel finder*, <http://www.nevadabrothelfinder.com/delivery> (last visited Oct. 25, 2014).

<sup>156</sup> ROMENESKO MILLER & WONDOLKOWSKI, PROSTITUTION, AN INTERNATIONAL HANDBOOK 309 (1993).; BARNETT ET AL., *supra* note 88, at 20.; Kuo, *supra* note 146.

<sup>157</sup> BARNETT ET AL., *supra* note 88, at 19-20.

<sup>158</sup> HAUSBECK & BRENTS, *supra* note 89, at 229-30.

<sup>159</sup> BARNETT ET AL., *supra* note 88, at 19-20.



for sexual diseases including chlamydia and gonorrhea as well as monthly check-ups for HIV and syphilis.<sup>160</sup> This measure is designed to keep sexual diseases out of the brothels, and anyone who sells sex with an HIV-positive status can be convicted of a felony; moreover, brothel operators will be responsible for damages if clients contract HIV through the sexual services.<sup>161</sup> Through these regulations on safe sex, there has been no documented transmission of HIV via these licensed brothels.<sup>162</sup> Nevertheless, these regulations on safe sex seem to be made more for the clients' health concern but not to the welfare of both parties.<sup>163</sup>

In some jurisdictions, sex workers' rights have been extensively restricted. For example, in some counties, sex workers have to stay in the brothel during their shifts except in emergency situations; if she needs something for personal use such as shampoo, she has to hire a brothel staff to buy it for her.<sup>164</sup> Sex workers are not treated as normal citizens and in some counties they have to leave town when they are off work; in some places, sex workers' children cannot reside in the communities.<sup>165</sup> In Winnemucca, sex workers have to arrive in the brothel by 5 p.m.;<sup>166</sup> women who are not sex workers are not allowed to visit sex workers or drive to them.<sup>167</sup>

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<sup>160</sup> Kuo, *supra* note 146.

<sup>161</sup> Nev. Rev. Stat. § 41.1397 (2013)

<sup>162</sup> Ken Ritter, *Nevada Considers Adopting Brothel-Type Regulations for Adult Productions Fleeing California*, Startribune (Jan. 24, 2015), <http://www.startribune.com/lifestyle/health/289666871.html>.

<sup>163</sup> Ditmore, *supra* note 97, at 55.

<sup>164</sup> Kuo, *supra* note 146.

<sup>165</sup> *Id.*

<sup>166</sup> Ditmore, *supra* note 97, at 55.

<sup>167</sup> *Id.*; Kuo, *supra* note 146.

Moreover, the cars of sex workers have to be registered; the use of the car and where they may go are also restricted.<sup>168</sup> In some other jurisdictions, it may not be allowed for sex workers to own cars at all.<sup>169</sup> In Ely, sex workers are restricted from going to the bars.<sup>170</sup> If sex workers want to go to a restaurant with a bar, then such restaurant should have a separate entrance.<sup>171</sup> In practice, according to the research, the counties have stopped supervising such activities of sex workers;<sup>172</sup> nevertheless, sex workers may still be subject to rules imposed by brothel operators themselves.<sup>173</sup> For example, in a brothel called “Ranch,” sex workers are considered as “self-employed” and should bear all tax obligations.<sup>174</sup> In addition, sex workers should pay for their own accommodations.<sup>175</sup> Sex workers can’t leave the brothel without notifying the bartender first and they must return to the brothel by 4 PM.<sup>176</sup> The language of the brothel rules seems unfriendly and stern, for example, an Article states, “clean up yourself... The Ranch is not a hotel and you are not on vacation.”<sup>177</sup>

Sex workers have to pay for their own room for working, and must endure a search of their suitcases upon arrival to the brothels.<sup>178</sup> Some brothels require long work hours, including 12- or

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<sup>168</sup> *Id.*

<sup>169</sup> Kuo, *supra* note 146.

<sup>170</sup> *Id.*; Ditmore, *supra* note 97, at 55.

<sup>171</sup> Kuo, *supra* note 146.

<sup>172</sup> HAUSBECK & BRENTS, *supra* note 89, at 231-41.

<sup>173</sup> *Id.*

<sup>174</sup> HAUSBECK & BRENTS, *supra* note 89, at 240-41.

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> Kuo, *supra* note 146.

14-hour shifts each day.<sup>179</sup> The right to choose her own preferred clients is deprived as well; in many of the brothels in Nevada, sex workers may not be entitled to reject the transactions “for any reason except race.”<sup>180</sup>

Under Nevada’s regime, licensed sex workers are categorized as independent contractors; that means they cannot enjoy the same employee benefits as other workers, including health insurance, related employment rights such as sick leave, unemployment protections, and retirement plans.<sup>181</sup> Without the protection of the labor laws, sex workers may need to compromise to unsatisfactory working conditions and their health and safety are not assured.<sup>182</sup> What makes sex workers’ condition more disadvantaged is that they have to pay high fees to the brothels. When splitting the earnings of the sex workers, brothel keepers may take a high percentage of the earnings of the sex workers (for example, 50 percent), and in the end, sex workers may get only 20 percent of her earnings after paying off other fees to the brothels.<sup>183</sup> If a sex worker wants to avoid these restrictions from the brothel keepers, can she choose to establish her own working studio? The answer is likely no, because of the sizeable fees that the local authority requires. In 1994, for example, Storey County required a \$35,000 annual fee for getting license for running a brothel. This large fee creates a big obstacle for a sex worker if she wants to have her own brothel.<sup>184</sup>

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<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*; BARNETT ET AL., *supra* note 88, at 21.

<sup>182</sup> BRENTS & HAUSBECK, *supra* note 66, at 326.

<sup>183</sup> Kuo, *supra* note 146.

<sup>184</sup> *Id.*

The unattractive working conditions in Nevada urge sex workers to turn to work in illegal sectors.<sup>185</sup> In big cities, such as Las Vegas and Reno, commercial sex is prohibited but the underground sex industry keeps growing.<sup>186</sup> In Las Vegas, solicitation on the street has expanded from the Strip area to other locations.<sup>187</sup> On the billboards and Yellow pages, advertisements for commercial sex are easy to find, and sex workers look for their clients in the casinos and tourist areas.<sup>188</sup>

### 2.2.2. Sweden: the Swedish Model that Criminalizes Clients

Table 4

Sweden: a Model that Criminalizes Clients but not sex workers	
Key Legislation: Legislation on the purchase of sexual services (1999)	
Prohibited Activities	Purchase of sex, pandering, providing accommodations for prostitution
Claimed successes of the official report (Swedish Government Report (2010), Evaluation of the Prohibition of the Purchase of Sexual Services 1999- 2008, (SOU 2010:49).)	1. Street prostitution reduced by half 2. No overall increase in prostitution in Sweden 3. Ban on the purchase of sexual services has counteracted the establishment of organized crime

<sup>185</sup> *Id.*

<sup>186</sup> BARNETT ET AL., *supra* note 88, at 21.

<sup>187</sup> *Id.*

<sup>188</sup> Bob Shmeligian, *Welcome to the Jungle*, LAS VEGAS MERCURY (Aug. 21 2003), <http://www.lasvegasm Mercury.com/2003/MERC-Aug-21-Thu-2003/21954263.html>.; *Craigslist Making it Easier to Solicit in Las Vegas*, LAS VEGAS DEFENSE GROUP, (Dec. 23, 2009), [http://www.las-vegas-criminal-defense-blog.com/2009/12/craigslist\\_making\\_it\\_easier\\_to.html](http://www.las-vegas-criminal-defense-blog.com/2009/12/craigslist_making_it_easier_to.html).

	4. Increased public support for the ban
Rebuttals to the official report	<ol style="list-style-type: none"> <li>1. The number of the sex workers may not have decreased as the report claimed</li> <li>2. There's limited information that proves a decrease in sex trafficking after the enactment of the legislation</li> <li>3. There's no obvious effect to deter purchasers</li> </ol>
Negative effects of the Swedish legislation	<ol style="list-style-type: none"> <li>1. Intensified stigma toward sex workers</li> <li>2. Prevents sex workers from seeking help from authorities and instead leads them to rely on third parties</li> <li>3. Weaker negotiating power of sex workers and more risky working environment</li> <li>4. Risky health conditions because of the effects of the stigma and the incentive to agree to unprotected sex because of the decrease in clients</li> <li>5. Clients are less willing to assist as witnesses in court because of the fear of being charged with a crime</li> </ol>

In Sweden, sex work is regarded as that the imposition of male violence upon women and children.<sup>189</sup> The efforts to combat trafficking and commercial sex have been deemed as the fundamental strategy to realize the goal of creating a society where gender equality truly exists.<sup>190</sup> It is generally accepted in Sweden that in order to fully protect the rights of women and children, including their social and legal rights, a female's body cannot to be sold as commodity to satisfy male desires.<sup>191</sup>

To realize the ideal of the gender-equality and the aim to end trafficking, Sweden adopted a policy that targets the demand for commercial sex. The policy criminalizing purchasers was conceived in the Swedish women's movement. In Swedish feminist discourse, commercial sex was "another patriarchal tool" and makes women succumb to the negative effects that prostitution brings about.<sup>192</sup> The Swedish government hypothesized that if there's no demand by men for sexual services (which they deem a form of sexual exploitation of women), then the sex businesses in the world cannot develop and prosper.<sup>193</sup>

Commercial sex in Sweden is considered not only harmful to sex workers but also society as a whole.<sup>194</sup> Trafficking for sexual purposes is seen as inherently connected with commercial sex and both activities are harmful and cannot be accepted.<sup>195</sup> The operations of brothels,

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<sup>189</sup> Gunilla Ekberg, *The Swedish Law That Prohibits the Purchase of Sexual Services Best Practices for Prevention of Prostitution and Trafficking in Human Beings*, 10 VIOLENCE AGAINST WOMEN, no.10, Oct. 2004, at 1187, 1188.

<sup>190</sup> *Id.*

<sup>191</sup> *Id.* at 1189.

<sup>192</sup> *Id.* at 1191.

<sup>193</sup> *Id.* at 1189.

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

pimping, trafficking, purchasing sex, and other activities surrounding commercial sex are seen as endangering gender equality and eroding the rights of women.<sup>196</sup> According to the Swedish view, if commercial sex were to be legalized, not only would the male domination of women be reinforced, but violence toward women would also be normalized.<sup>197</sup>

Since January 1999, legislation on the purchase of sexual services has been in effect.<sup>198</sup> Under the law, any man who buys sexual services will be punished by fines or imprisonment. The law aims to crack down on the sex industry and on human trafficking for sexual purposes.<sup>199</sup> The Swedish model has its own history and development. Beginning in the 1980s, criminalization of the demand side of the sex industry has been raised in feminists' arguments.<sup>200</sup> In these arguments, female and girls are presented as the victims in the sex industry and as persons who deserve assistance to exit the industry.<sup>201</sup>

In 1987, the project of criminalizing purchasers of commercial sex was included in the yearly Plan of Action, developed by the National Organization for Women's Shelters and Young Women's Shelters in Sweden (ROKS), for presentation to female parliamentarians.<sup>202</sup> Afterwards, through the great efforts of the feminists, who conducted intense lobbying and policy advocacy work, and with the assistance of the female politicians, the law that criminalizes

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<sup>196</sup> *Id.* at 1190.

<sup>197</sup> *Id.*

<sup>198</sup> *Id.* at 1191.; *Legislation on the purchase of sexual services*, GOVERNMENT OFFICES OF SWEDEN (Sept. 5 2012), <http://www.government.se/sb/d/4096/a/119861>.

<sup>199</sup> *Id.* at 1191.

<sup>200</sup> TEELA SANDERS ET AL., PROSTITUTION: SEX WORK, POLICY AND POLITICS 87 (2009).; Yvonne Svanström, *Prostitution In Sweden: Debates And Policies 1980-2004*, in INTERNATIONAL APPROACHES TO PROSTITUTION: LAW AND POLICY IN EUROPE AND ASIA 83 (Geetanjali Gangoli & Nicole Westmarland eds., 2006).

<sup>201</sup> Ekberg, *supra* note 189, at 1191.

<sup>202</sup> *Id.*

clients was presented to the parliament and was successfully passed with majority vote.<sup>203</sup> The law came into force on January 1, 1999.<sup>204</sup>

This law was included in the Act on Violence Against Women (Kvinnofrid) that was enacted on July 1, 1998, a product of two Commissions of Inquiry (the Commission on Prostitution 1995 and the Commission on Violence against Women 1995) combining amendments to the laws relating to male violence against women, including a fortified sexual harassment law.<sup>205</sup> Under this legal regime, the government provided funding and assistance for sex workers to exit the sex industry and to provide them with refuge and necessary education, job training and counseling.<sup>206</sup> The municipalities, according to the law, should take the direct responsibility to offer assistance to help sex workers and those who are trafficked.<sup>207</sup> In 2001, the Parliamentary Sexual Crimes Committee issued a report to propose amendments to the laws criminalizing the purchase of sex.<sup>208</sup> The Committee suggested making it a crime to purchase casual sexual services, as the behavior was not criminalized in the previous legislation.<sup>209</sup> “Casual sex” in this regard includes hiring a sex worker for a bachelor party or hiring an escort worker to provide sexual services for a customer for business purposes.<sup>210</sup> The bill of the

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<sup>203</sup> *Id.*

<sup>204</sup> *Id.* Svanström, *supra* note 200, at 75.

<sup>205</sup> Ekberg, *supra* note 189, at 1191-92.

<sup>206</sup> *Id.*

<sup>207</sup> *Id.*

<sup>208</sup> *Id.* at 1203.

<sup>209</sup> *Id.*

<sup>210</sup> *Id.* at 1204.



amendment came into force in 2005, and a person who “obtains a casual sexual relation in return for payment” will face a fine or imprisonment up to one year.<sup>211</sup>

The Swedish legislation thus makes it illegal to purchase all forms of sexual services, including purchasing on the street, indoor brothels or massage parlors, escort services, and other occasions.<sup>212</sup> Beginning on July 1, 2011, the maximum penalty of imprisonment for purchasing sexual service was raised from six months to one year.<sup>213</sup> According to the document of the Ministry of Education and Research published on the website of Government Offices of Sweden, the aim of strengthening the penalty is for the more serious cases where the law of purchasing sex is violated.<sup>214</sup> One of the aims of the legislation is to deter purchasers of sexual services, reduce the demand, and then decrease the number of streetwalkers and newly recruited people engaged in the industry.<sup>215</sup> Moreover, it aims to limit the ability of foreigners to get involved in the sex businesses and related activities in Sweden.<sup>216</sup> The legislation claimed to be gender-neutral because females can also be buyers and males can be sellers.<sup>217</sup> It should be noted that the attempt of purchasing sexual serviced is also illegal.<sup>218</sup> Today, there are three main laws that together constitute the Swedish criminalization model. They are as follows:

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<sup>211</sup> 6 ch. 11 § Brottsbalk (the Swedish Penal Code) (SFS 1962:700) (Swed.).

<sup>212</sup> Ekberg, *supra* note 189, at 1192.

<sup>213</sup> *Legislation on the purchase of sexual services*, *supra* note 198.

<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

a. Purchase of Sex:

Legislation on the purchase of sexual services, entered into force in 1999 and amended in 2005, prohibits people to obtain sexual services for compensation.<sup>219</sup> “Compensation” in this regard can also be “alcohol, drugs, meals or gifts that have been agreed upon on in advance.”<sup>220</sup> The law also makes it illegal to receive sexual services that are paid by a third party.<sup>221</sup> Those who violate this law will face a fine or imprisonment up to one year.

b. Pandering:

The Pandering law makes it illegal to pimp or procure, and those who violate this law will face a fine and imprisonment of up to four years.<sup>222</sup> Pandering means “a person promotes or improperly financially exploits a person’s engagement in casual sexual relations in return for payment.”<sup>223</sup>

c. Brothel Keeping and Providing Accommodations for Prostitution:

Under the Swedish model, renting premises for people to conduct sexual transactions is illegal.<sup>224</sup> The laws governing this matter include section 12.2 of the Penal Code Chapter 6, section 42.1.9 of the Land Code Chapter 12, and section of 18.8 of the Condominium Act Chapter 7; upon learning that tenants rent the premises to do sex work, a landlord should

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<sup>219</sup> Susanne Dodillet & Petra Östergren, *The Swedish Sex Purchase Act: Claimed Success and Documented Effects* 4 (Mar. 3 & 4, 2011), <http://gup.ub.gu.se/records/fulltext/140671.pdf>.

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

terminate the lease and the sex worker tenant should move out.<sup>225</sup> If the landlord fails to terminate the lease and instead collects money from the sex worker's earnings, he/she may face the charge of pimping.<sup>226</sup> The police may pressure the landlord to evict his/her sex worker tenant by warning the landlord of the charge of pimping.<sup>227</sup> Brothel keeping and procurers are criminalized under the Penal Code chapter 12 s. 12.<sup>228</sup> In addition to the laws mentioned above, there are laws prohibiting trafficking, underage prostitution, and foreign sex workers.<sup>229</sup>

#### d. How the Criminalization Framework Has Disadvantaged and Marginalized Sex Workers:

Under the Swedish regime, sex workers face disadvantages on tax payment, according to the current tax laws.<sup>230</sup> The tax office refuses to admit the legitimacy of sex work and sex workers cannot register a company with "sex work" as a business.<sup>231</sup> Sex workers therefore are not entitled to benefit from the tax deductions they would accrue if allowed to register a company.<sup>232</sup> They have to pay taxes at the normal rate, and if they fail to follow the tax law and are discovered by the authorities, they may face "arbitrary tax assessments" and the Treasury

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<sup>225</sup> *Id.*

<sup>226</sup> Michelle Goldberg, *Swedish Prostitution Law is Spreading Worldwide—Here's How to Improve It*, PULITZER CENTER (Aug. 11, 2014), <http://pulitzercenter.org/reporting/europe-sweden-prostitution-laws-sex-work>.

<sup>227</sup> *The Swedish Model of Ceiminalizing sex work since 1999-Breifing Paper 3* (Jun.10 2011), [http://scarletalliance.org.au/issues/swedish\\_model/Swedish\\_briefing/](http://scarletalliance.org.au/issues/swedish_model/Swedish_briefing/).

<sup>228</sup> DODILLET & ÖSTERGREN, *supra* Note 219, at 4.

<sup>229</sup> *Id.* at 4-7.

<sup>230</sup> *Id.* at 6.

<sup>231</sup> *Id.*

<sup>232</sup> *Id.*

may use its discretion to decide the earnings of the sex workers and order them to pay the taxes that they were supposed to pay according to the law and an amount that may be large.<sup>233</sup>

e. The Evaluation of the Legislation:

To evaluate the impact of the policy, a government report entitled the “The Ban against the Purchase of Sexual Services. An evaluation 1999-2008 (SOU 2010:49, “SOU”)” was issued on July 2, 2010.<sup>234</sup> The report claimed that the legislation was successful and had reached its goal to reduce the number of streetwalkers and trafficking crimes. The claimed successes include the following:

i. Street prostitution reduced by half

According to the SOU, the decrease of street-based commercial sex was due to the criminalization legislation.<sup>235</sup> The SOU compared the neighboring Nordic countries, Norway and Denmark, and claimed that streetwalkers increased drastically in those two countries: in 2008, the number of streetwalkers in Norway and Denmark was three times higher than in Sweden.<sup>236</sup> The SOU then stated that the study by Bergen Municipality also supported its claim; the study showed that the drastic reduction of streetwalkers also happened in Norway when it adopted the Swedish model in 2009.<sup>237</sup>

ii. No overall increase in prostitution in Sweden

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<sup>233</sup> *Id.*

<sup>234</sup> Swedish Institute, *Selected Extracts Of The Swedish Government Report SOU 2010:49: The Ban Against The Purchase Of Sexual Services An Evaluation 1999-2008* (Nov. 2010) <http://www.government.se/content/1/c6/15/14/88/0e51eb7f.pdf>.

<sup>235</sup> *Id.* at 7.

<sup>236</sup> *Id.*

<sup>237</sup> *Id.*

The SOU claims that neither the number of sex workers in indoor-based sex businesses nor the street-based sector had increased since the enactment of the criminalization legislation.<sup>238</sup> It also explained that the people working in the sex industry did not feel there had been an increase in sexual transactions since the ban on purchasing sex. The SOU compared the conditions in the neighboring Nordic countries where commercial sex proliferated, arguing that criminalization curbs the increase of commercial sex and “criminalization has helped to combat prostitution.”<sup>239</sup>

iii. Ban on the purchase of sexual services has counteracted the establishment of organized Crime.

The SOU stated that according to the police, it is obvious that the legislation created an obstacle for sex trafficking and procurers who intended to establish in Sweden.<sup>240</sup>

iv. Increased public support for the ban

According to the SOU, the ban on purchasing sexual services is carrying the message to the society that “prostitution is an undesirable phenomenon.”<sup>241</sup> The SOU developed surveys to evaluate people’s views on the purchase of sex. The surveys showed that “more than 70 percent of those asked had a positive view of the ban.”<sup>242</sup>

#### f. The Rebuttals to the Official Report:

Though the official report claimed the legislation had been a success, a study conducted by Swedish scholars challenged the claimed successes of the official report with detailed analysis.

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<sup>238</sup> *Id.* at 8.

<sup>239</sup> *Id.* at 9.

<sup>240</sup> *Id.*

<sup>241</sup> *Id.*

<sup>242</sup> *Id.*

This study was developed over the course of several years and one of the authors even carried out field work among the sex workers.<sup>243</sup> In this subsection, the relevant portions of the study will be introduced and discussed in order to offer a balanced view of the impact of the Swedish legislation and the possible negative effects that the Swedish model may bring to sex workers.

This study argued the official report is problematic, including its subjective presumption that “the purchase of sex must continue to be illegal.”<sup>244</sup> Moreover, the authors of the non-government study argued that the definition of prostitution is not generally accepted, and the various factors of “ideology, method, sources and possible confounding factors” were not been considered.<sup>245</sup> They also challenged the inconsistent and contradictory references and inaccurate comparisons, and charged that “conclusions were made without factual backup and were at times of a speculative character.”<sup>246</sup>

Through examining the available related reports issued by government, the authors stated that the Sex Purchase Act didn't have the successes as it claimed on decreasing the number of sex workers, combating sex trafficking problems, and deterring the purchasers.<sup>247</sup> Moreover, according to the authors, it seems the public attitude toward commercial sex had not changed meaningfully “in the desired radical feminist direction.”<sup>248</sup> The authors further argued that,

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<sup>243</sup> *Id.* at 3.

<sup>244</sup> *Id.* at 2.

<sup>245</sup> *Id.*

<sup>246</sup> *Id.*

<sup>247</sup> *Id.* at 3.

<sup>248</sup> *Id.*

instead, there were reports about the serious negative effects that the Sex Purchase Act had induced, especially in relation to the issues of health conditions of sex workers.<sup>249</sup>

In examining the claimed successes of the legislation, the study discussed and analyzed various materials made by the authorities “that have been responsible for reporting on prostitution and evaluating the policy,”<sup>250</sup> including the National Board of Health and Welfare, the National Council for Crime Prevention, the National Police Board, and the 2010 official evaluation of the Sex Purchase Act.<sup>251</sup> This study also discussed other useful materials, including “Purchasing sexual services in Sweden and the Netherlands,” a 2004 report by Norwegian Ministry of Justice and the Police, which examines the role of the police in the law enforcement regarding commercial sex and the policy history; “Prostitution in the Nordic Countries,” a 2008 study by the Nordic Gender Institute (NIKK, a research organization on gender equality issues in the Nordic countries) which discusses commercial sex and sex trafficking in the Nordic countries,<sup>252</sup> and the 2011 report by the Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights (RFSL, a non-profit organization working for the rights of the LGBT groups) which asserts that people should be skeptical about the claimed successes stated in the official reports.<sup>253</sup> The following are the arguments the study made to challenge the official report:

i. The prevalence of commercial sex in Sweden

The study pointed out the following unpersuasive statements in the official report:

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<sup>249</sup> *Id.*

<sup>250</sup> *Id.* at 7.

<sup>251</sup> *Id.*; DODILLET & ÖSTERGREN, *supra* note 219, at 7.

<sup>252</sup> Charlotta Holmström & May-Len Skilbrei, *Prostitution in the Nordic Countries* (Oct. 16-17, 2008), [http://www.nikk.no/wp-content/uploads/NIKKpub2008\\_prostitution\\_conferanceEng1.pdf](http://www.nikk.no/wp-content/uploads/NIKKpub2008_prostitution_conferanceEng1.pdf); *This is NIKK* (Oct. 2, 2014), <http://www.nikk.no/en/about-nikk/>.

<sup>253</sup> DODILLET & ÖSTERGREN, *supra* note 219, at 7.

## (1) The Number of Sex Workers Has Decreased after the Enactment of the Law

### (a) Street-based Sector

According to the statistics in the official report, the estimated number of street-based sex workers was around 650 in the three largest cities, Stockholm, Malmö, and Gothenburg, and the number of those working indoors was two to three times more than the street-based sector.<sup>254</sup>

The rebuttal study questioned how the number of 650 had been calculated. It stated the official report did not say if it calculated “on any given day, or if it is an annual estimate on how many women sell sex during a year.”<sup>255</sup> Furthermore, the official report did not clarify and distinguish if sex workers sold sex part-time or full-time and the duration they worked.<sup>256</sup> The official report also neglected the population of male and transgender workers.<sup>257</sup> For these reasons, “one could conclude that comparing statistics before and after the Sex Purchase Act is simply not feasible.”<sup>258</sup>

The study then argued that the decline in the number of street-based sex workers may not be attributable to the legislation.<sup>259</sup> According to the report of the National Council for Crime Prevention, ascertaining the actual number of sex workers is not easy because they have “moved to side streets and cover a larger area than before.”<sup>260</sup> Moreover, the decline may be due to police

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<sup>254</sup> DODILLET & ÖSTERGREN, *supra* note 219, at 8.

<sup>255</sup> *Id.*

<sup>256</sup> *Id.*

<sup>257</sup> *Id.*

<sup>258</sup> *Id.*

<sup>259</sup> *Id.*

<sup>260</sup> *Id.*



enforcement for other purposes (such as maintaining peace in nighttime) rather than combating commercial sex.<sup>261</sup>

(b) Overall sex workers: outdoor and indoor in total

Though the official report claimed that the overall number of sex workers had decreased since the enactment of the law, it also acknowledged that the information about the indoor sector was limited.<sup>262</sup> The decline in the street-based sector did not mean there were fewer sex workers in all venues. However, according to a 2008 report made by The National Board of Health and Welfare (Socialstyrelsen), a government agency in Sweden under the Ministry of Health and Social Affairs,<sup>263</sup> technological developments have allowed sex workers to solicit clients through mobile phones and the Internet.<sup>264</sup> It was also possible that sex workers met their client in bars, restaurants and hotels.<sup>265</sup> This suggests that the decrease in the street-based workers is not definitely linked to the law, but rather because modern technology has been introduced in the industry and sexual transactions will no longer be conducted only through conventional ways.<sup>266</sup>

The study therefore concluded that though the street-based sector declined right after the enactment of the law, it returned slowly; coupled with the trend that indoor commercial sex may have increased due to the developments in technology, it's uncertain whether the law really impacted the sex businesses. The study indicated that according to the 2007 report of the

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<sup>261</sup> *Id.* at 9.

<sup>262</sup> SWEDISH INSTITUTE, *supra* note 134, at 19.

<sup>263</sup> *The National Board of Health and Welfare*, <http://www.socialstyrelsen.se/english> (last visited Oct 25, 2014).

<sup>264</sup> Annik Eriksson et al., *Prostitution in Sweden 2007* 27 (Nov. 2008), [http://www.socialstyrelsen.se/lists/artikelkatalog/attachments/8806/2008-126-65\\_200812665.pdf](http://www.socialstyrelsen.se/lists/artikelkatalog/attachments/8806/2008-126-65_200812665.pdf).

<sup>265</sup> *Id.* at 19.; DODILLET & ÖSTERGREN, *supra* Note 219, at 10.

<sup>266</sup> DODILLET & ÖSTERGREN, *Supra* note 219, at 10-11; ERIKSSON ET AL., *supra* note 264, at 63.

National Board of Health and Welfare, it may be difficult to prove the legislation had the impact on reducing the prevalence of commercial sex.<sup>267</sup>

ii. Did the legislation effectively combat trafficking for sexual purposes?

The official report claimed that the legislation successfully combated trafficking crimes; however, the rebuttal study pointed out the available trafficking statistics in Sweden are not reliable.<sup>268</sup> According to the National Council for Crime Prevention (Brottsförebyggande rådet - Brå), an agency under the Ministry of Justice charged with research and development within the judicial system,<sup>269</sup> the legislation functioned as “a hindrance to traffickers.”<sup>270</sup> However, the authors, based on the observation of the official report and the press release of the National Police Board press release, argued that this situation may on the other hand attract traffickers to conduct sex trafficking for more lucrative profits due to the imbalanced market supply of sexual services.<sup>271</sup>

The rebuttal study further pointed out the limited information that can be gleaned regarding any change in trafficked victims after the enactment of the legislation.<sup>272</sup> From the available materials, it seems that there had not been many people convicted of trafficking, and there may exist drastic differences in the definition of trafficking among Sweden and other countries that make it difficult to compare Sweden’s trafficking situation to other countries’.<sup>273</sup>

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<sup>267</sup> DODILLET & ÖSTERGREN, *supra* note 219, at 11.

<sup>268</sup> *Id.* at 12.

<sup>269</sup> *About Brå*, <http://www.bra.se/bra/bra-in-english/home/about-bra.html> (last visited Oct 25, 2014).

<sup>270</sup> DODILLET & ÖSTERGREN, *supra* note 219, at 12.

<sup>271</sup> *Id.*

<sup>272</sup> *Id.* at 13.

<sup>273</sup> *Id.*

In addition, a separate study developed by Malmö University similarly criticized the unpersuasive evidence relating to the deterrence of traffickers.<sup>274</sup>

iii. Had the legislation deterred purchasers?

The rebuttal study concluded that, according to the reports they investigated, the Sex Purchase Act fails to deter clients.<sup>275</sup> For example, the Board of Health and Welfare indicated that the ban did not deter most of the clients who bought sexual services.<sup>276</sup> Even in the official report, some police stated “the punishment clients risk is not particularly discouraging.”<sup>277</sup>

Furthermore, in 2009, a survey was conducted by the Swedish National Radio. The station put a fake advertisement on the Internet to solicit clients, and to their surprise, they got a tremendous number of replies. The radio then concluded that the legislation did not scare clients away.<sup>278</sup> To sum up, it appears there’s no obvious effect to deter the purchasers. Though according to the official evaluation report, it stated that street prostitution had decreased, some of the sex workers interviewed in the report stated that criminalizing clients had limited deterrence value because “so few of them get caught and the sentences are so mild.”<sup>279</sup> The official report then supported their success in deterring clients by mentioning the “Kuosmanen’s 2008” study presented in the research “Prostitution in the Nordic Countries”; the “Kuosmanen’s 2008” study explored whether the prohibition on the purchase of sexual services changed the attitude of sex

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<sup>274</sup> *Id.* at 14.

<sup>275</sup> *Id.*

<sup>276</sup> *Id.*

<sup>277</sup> *Id.* at 15.

<sup>278</sup> *Id.*

<sup>279</sup> SWEDISH INSTITUTE, *supra* note 134, at 32.

buyers.<sup>280</sup> The study showed that clients tended to prefer buying sex abroad than in Sweden and clients' attitude had changed and they gave up or reduce on buying sexual service since the ban.<sup>281</sup> However, according to the discussions above, the opinions on this issue is are consistent and it is hard say if the ban effectively deters clients.

#### iv. Possible Negative Effects of the Swedish Legislation

In addition to the rebuttals to the claimed successes of the official report, the response study argued that the legislation has had several negative impacts on sex workers and clients.<sup>282</sup>

##### (1) Negative effects on sex workers

###### (a) Intensified Stigma

The more intense stigmatization after the legislation became the serious issue that sex workers complained about.<sup>283</sup> Some criticized that the legislation deprived them of their human rights and they felt they “are not regarded as fully worthy members of society.”<sup>284</sup> They complained that they were not able to participate in the process of law making and they felt weak because they couldn't do meaningful things to influence their legal and social conditions.<sup>285</sup> The ideology that presumed all sex workers are exploited victims was further strengthened because “the law propagates stereotypical notions about sex workers.”<sup>286</sup>

###### (b) Prevent Sex Workers from Seeking Help from Authorities and Instead Rely on Third Parties

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<sup>280</sup> *Id.*

<sup>281</sup> *Id.*

<sup>282</sup> DODILLET & ÖSTERGREN, *supra* note 219, at 21.

<sup>283</sup> *Id.*

<sup>284</sup> *Id.*

<sup>285</sup> *Id.*

<sup>286</sup> *Id.*

According to the National Board of Health and Welfare's report, since the enactment of the legislation, sex workers felt the authorities, including social authorities, police, and the legal system less trustful; the legislation seemed to prevent sex workers from seeking help.<sup>287</sup> In the sex workers' eyes, police in the current legal regime acted more like a hunter, as opposed to a protector.<sup>288</sup> Moreover, the position of sex workers in the legal field has become awkward; sex workers "can be made to testify in a trial but they neither enjoy the rights of the accused nor of the victim."<sup>289</sup>

Several reports found that sex workers increasingly depend on third parties, such as pimps, to contact clients.<sup>290</sup> The study concluded that after the enactment of the legislation, street-based work had decreased but instead the streetwalkers encountered higher risks when they contacted their clients.<sup>291</sup> It is because sex workers had weaker negotiating power when the clients decreased; this, in turn, may lead sex workers to agree to unsafe sex and accept lower prices.<sup>292</sup>

### (c) The Riskier Environment and the More Difficult Lives of Sex Workers

Some reports argued that the law may make streetwalkers with drug habits even more marginalized because they desperately needed money to support their drug addiction, and the more dangerous environment (and fewer clients) made them even more vulnerable.<sup>293</sup>

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<sup>287</sup> *Id.* at 21-22; ERIKSSON ET AL., *supra* note 264, at 12-13

<sup>288</sup> DODILLET & ÖSTERGREN, *supra* note 219, at 21.

<sup>289</sup> *Id.*

<sup>290</sup> *Id.*

<sup>291</sup> *Id.*

<sup>292</sup> *Id.*

<sup>293</sup> *Id.* at 22.

Because of the client's fear of getting caught, the negotiation will be conducted in a rapid way, which affords sex workers less time to considering if the clients are decent or not. And with fewer clients, sex workers were forced to transact with "unstable and dangerous clients than they would have accepted before the law."<sup>294</sup> In addition, the negotiation locations tend to be more "hidden, and therefore more unprotected, areas."<sup>295</sup>

#### (d) The Sex Workers' Health Conditions

Finally, the legislation may have a negative effect on the sex workers' health. In addition to the aforementioned, namely that sex workers may agree to engage in unprotected sex, the stigma may also influence the willingness of sex workers to talk about their sex work when getting tested for sexual diseases. Moreover, "strengthen[ing] the stigma will lessen the chances to reach people who sell sex and to conduct harm reduction measures."<sup>296</sup> The Board of Health and Welfare also expressed their worries that it stated in the 2010 Swedish UNAIDS report, that only 18.5 per cent of sex workers who used drugs practiced protected sex during their most recent sexual transactions.<sup>297</sup>

#### (2) Negative effects on clients: The Unwillingness to Assist as Witness in Legal Proceedings and Male Stigma

Because of the legislation, clients are now more reluctant to assist in the legal proceedings as witnesses for proving exploiters' crimes because they are afraid of being prosecuted under the

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<sup>294</sup> Don Kulick, *Sex in the New Europe: The Criminalization of Clients and Swedish Fear of Penetration*, 3 ANTHROPOLOGICAL THEORY, no. 2, June 2003, at 199, 204.

<sup>295</sup> DODILLET & ÖSTERGREN, *supra* note 219, at 22.

<sup>296</sup> *Id.*

<sup>297</sup> *Id.* at 21.

criminalization regime.<sup>298</sup> By violating the law, they will face fines or imprisonment of up to one year.<sup>299</sup> This situation is similar to that of Taiwan. Because the revised SOMA punishes clients for engaging sexual transactions, clients became more reluctant to cooperate with the police and confess.<sup>300</sup> Moreover, because purchasers are depicted as perpetrators of violence on vulnerable females, it may lead the individual to quit his job assuming they are found to purchase sexual services.<sup>301</sup> There is also concern that under the regime that criminalizes clients, clients may be robbed or blackmailed by sex workers if they don't pay more money.<sup>302</sup> 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."<sup>303</sup>

### 2.2.3. The Netherlands: the Legalization Approach

Table 5

The Netherlands: Legalization with stricter control
Key Legislation: Operating a brothel was legalized when articles 250bis and 432 were removed from the Criminal Code and the ban on brothels and pimping was lifted on October 1, 2000

<sup>298</sup> *Id.*

<sup>299</sup> *Legislation on the purchase of sexual services, supra note 198.*

<sup>300</sup> Jian Guang-Yi (簡光義), *Piaoke Buyuan Zai Peihe Zuozheng Changpiao Jie Fa Hou Qudi Jixiao Ju Jian* (嫖客不願再配合作證 娼嫖皆罰後 取締績效劇減) [*Clients Unwilling To Assist To Be Witnesses After The Passage Of SOMA That Punishes Both Sex Workers And Clients, The Performance Of Law Enforcement Is Decreasing*] (Feb.24, 2012), <https://tw.news.yahoo.com/%E5%AB%96%E5%AE%A2%E4%B8%8D%E9%A1%98%E5%86%8D%E9%85%8D%E5%90%88%E4%BD%9C%E8%AD%89-%E5%A8%BC%E5%AB%96%E7%9A%86%E7%BD%B0%E5%BE%8C-%E5%8F%96%E7%B7%A0%E7%B8%BE%E6%95%88%E5%8A%87%E6%B8%9B-213000625.html>.

<sup>301</sup> DODILLET & ÖSTERGREN, *supra* note 219, at 21.

<sup>302</sup> Kulick, *supra* note 294, at 205.

<sup>303</sup> DODILLET & ÖSTERGREN, *supra* Note 219, at 21.

<p>Human Rights Issues of Sex Workers under this legal regime</p>	<ol style="list-style-type: none"> <li>1. The majority of prostitutes work without contracts, thus they cannot access social benefits.</li> <li>2. Street-based sector is almost prohibited, and individuals have to work in brothels and pay rent fees to operators.</li> <li>3. Pimps are still common and involuntary prostitution still exists.</li> <li>4. Organized crime, trafficking in women, and underage and forced prostitution still exist.</li> </ol>
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In the world, the most famous country that attracts people to conduct sexual business may be the Netherlands. In Amsterdam, every night, the tourists “are flocking to the Red Light District” to visit the girls who welcome them.<sup>304</sup> This prosperous and mysterious red-light district could not exist without visitors.<sup>305</sup> Before 1911, in the Netherlands, sex work itself was not been criminalized as long as it was conducted with consent between adults.<sup>306</sup> In 1911, with the efforts of abolitionists, religious groups, and feminists, “the Morality Laws of 1911” were introduced and enacted to prohibit brothel keeping, pimping, and living off earnings of sex workers. Sex workers, however, were deemed as “women in need of redemption.”<sup>307</sup> Article 250bis of the

<sup>304</sup> *Network of human traffickers forced women into prostitution in Amsterdam*, DUTCH AMSTERDAM.COM (Dec. 14, 2014), <http://www.dutchamsterdam.nl/865-human-trafficking-amsterdam-forced-prostitution>.

<sup>305</sup> *Id.*

<sup>306</sup> Dutch Ministry of Foreign Affairs, *Dutch Policy on Prostitution Questions and Answers 2012* 4 (2012), [http://www.minbuza.nl/binaries/content/assets/minbuza/en/import/en/you\\_and\\_the\\_netherlands/about\\_the\\_netherlands/ethical\\_issues/faq-prostitutie-pdf--engels.pdf-2012.pdf](http://www.minbuza.nl/binaries/content/assets/minbuza/en/import/en/you_and_the_netherlands/about_the_netherlands/ethical_issues/faq-prostitutie-pdf--engels.pdf-2012.pdf).

<sup>307</sup> Joyce Outshoorn, *Policy Change in Prostitution in the Netherlands: from Legalization to Strict Control*, SEXUALITY RES. & SOC. POL. 233,234 (2012).



penal code had banned brothel operations, in order to “protect prostitutes from exploitation.”<sup>308</sup> Though brothel keeping had been prohibited in 1911, the law ceased being enforced around 1962.<sup>309</sup> The local authorities responded to the legislation with a pragmatic attitude,<sup>310</sup> noting they would only intervene when there were “criminal activities or disturbed public order.”<sup>311</sup> However, there were still ongoing exploitation issues remaining in the industry.<sup>312</sup>

On October 1, 2000, the ban on brothel keeping and pimping was abolished with elimination of articles 250bis and 432 of the Criminal Code.<sup>313</sup> Before the reform of legalizing brothel keeping in 2000, it was estimated that there were 25,000 sex workers throughout the country; around 12,500 worked actively in 6,000 locations.<sup>314</sup> The percentage of migrant sex workers was high. In 1999, the statistics showed that the percentage of the native Dutch was not beyond one-third, and others came from 44 countries.<sup>315</sup>

In order to prevent exploitation and efficiently regulate the sex industry, the Netherlands decided to lift the law because it did not reflect reality.<sup>316</sup> The government hoped to accomplish the following goals by lifting the ban on keeping a brothel:<sup>317</sup> (1) control the employment of sex

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<sup>308</sup> Johannes C. J. Boutellier, *Prostitution, Criminal Law and Morality in the Netherlands*, 15 CRIME, L.& SOC. CHANGE, issue 3, May 1991, at 201, 202.; DUTCH MINISTRY OF FOREIGN AFFAIRS, *supra* note 306, at 5.

<sup>309</sup> DUTCH MINISTRY OF FOREIGN AFFAIRS, *supra* note 306, at 5.

<sup>310</sup> Outshoorn, *supra* note 307, at 233.

<sup>311</sup> DUTCH MINISTRY OF FOREIGN AFFAIRS, *supra* note 306, at 5-6.

<sup>312</sup> *Prostitution in Amsterdam*, <http://www.amsterdam.info/prostitution/> (last visited Oct. 25, 2014).

<sup>313</sup> DUTCH MINISTRY OF FOREIGN AFFAIRS, *supra* note 306.

<sup>314</sup> DUTCH MINISTRY OF FOREIGN AFFAIRS, *supra* note 306, at 11.

<sup>315</sup> *Id.* at 12.

<sup>316</sup> *Id.* at 5.

<sup>317</sup> *Id.* at 6.

workers through a municipal licensing system; (2) prevent coerced sex work; (3) prevent underage sex workers; (4) reduce the number of illegal foreign sex workers; and (5) target crimes relating to the sex industry, such as trafficking, underage prostitution, and forced prostitution.

Since the ban on brothel keeping was lifted, in the current legal regime in the Netherlands, commercial sex is no longer prohibited if the sex worker is an adult and voluntarily provides sexual services.<sup>318</sup> Nevertheless, at the same time when the ban on brothel keeping was lifted, stricter measures to prevent exploitation of sex workers were incorporated into the criminal law so as to assure sex workers' human rights.<sup>319</sup> The government had not enacted specific national legislation governing commercial sex after lifting the ban on brothels in 2000; since then, the power to regulate the sex industry has been left to local authorities.<sup>320</sup> Nevertheless, the Association of Netherlands Municipalities, in an effort to provide information and guidance to local authorities, has published guidelines for regulating brothels, sex shops, and streetwalkers.<sup>321</sup> Through local regulations regarding the establishment of brothels, local governments can limit the location of the businesses to ensure the community peace and residential quality.<sup>322</sup> The local regulations regarding the premises include the regulations about the appropriate size for working areas, hygiene, safety, and fire precaution issues.<sup>323</sup> For the

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<sup>318</sup> *Id.* at 5.

<sup>319</sup> *Id.*

<sup>320</sup> *Id.*

<sup>321</sup> BARNETT ET AL., *supra* note 88, at 10.

<sup>322</sup> DUTCH MINISTRY OF FOREIGN AFFAIRS, *supra* note 306, at 5.

<sup>323</sup> *Id.*

operation of brothels, the local regulations specify the legal status of sex workers so as to avoid forced and underage sex workers as well as illegal migrant workers.<sup>324</sup>

The power delegated to the local governments can be exerted to control the sex industry and local police can supervise the brothels in their territories to prevent crimes and human trafficking.<sup>325</sup> Currently, in the absence of a national licensing system, local authorities can decide whether to allow the establishment of brothels through their own licensing systems and can also make regulations to control the sex businesses.<sup>326</sup> In Amsterdam, for example, the city had established the license system; sexual businesses, including Window prostitution, brothels, and escort services, must obtain a license beforehand to legally run their businesses.<sup>327</sup> However, working from home, call girls, and sexual services provided through the internet are exempted from the license system.<sup>328</sup>

Regarding the health issue, it is also the local authorities' responsibility to ensure sex workers have access to the available health care and services.<sup>329</sup> The local authorities, through their licensing system, can set requirements about health and working conditions for brothel operators to obey.<sup>330</sup> Generally, operators of brothels are responsible for establishing a safe sex plan that gives the employed sex workers full safe-sex information when conducting services,

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<sup>324</sup> *Id.*

<sup>325</sup> *Id.*

<sup>326</sup> *Id.*

<sup>327</sup> *Which forms of prostitution are legal and which are illegal?*, IAMSTERDAM.COM, <http://www.iamsterdam.com/en-GB/Media-Centre/city-hall/dossier-red-light-district/red-light-district-faq-3> (last visited Oct. 25, 2014).

<sup>328</sup> *Id.*

<sup>329</sup> DUTCH MINISTRY OF FOREIGN AFFAIRS, *supra* note 306, at 10.

<sup>330</sup> *Id.*

and encourages them to undergo regular health checks to avoid STDs.<sup>331</sup> However, sex workers will not be obligated to undergo medical checkups because of the concern that a mandatory measure would “reinforce the idea that sex workers transmit infections.”<sup>332</sup> Furthermore, mandatory check-ups may cause the clients to think that unprotected sex is safe and then ask sex workers to abandon condoms.<sup>333</sup> However, sex workers are generally asked to have health checks four times per year.<sup>334</sup> There are free-of-charge anonymous check services provided by the cities for sex workers to make use of.<sup>335</sup>

However, the Netherland’s original goal with legalization, to empower sex workers and eradicate crimes in the sex industry, has not been very successful and the local authorities have tended to tighten up their policies toward sex businesses.<sup>336</sup> For example, Amsterdam has currently adopted a more unfriendly attitude toward sex businesses in the city. It has closed many brothels in recent years, as the result of a policy to “clean up” the city, which includes reducing the operations of bars, casinos, and marijuana cafes.<sup>337</sup>

The form of sexual businesses is diverse in today’s Netherlands.<sup>338</sup> The most common are sex clubs and red-light windows, which are legal venues with licenses.<sup>339</sup> Hotels, bars, escort

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<sup>331</sup> *Id.*

<sup>332</sup> *Id.*

<sup>333</sup> *Id.*

<sup>334</sup> *Id.*

<sup>335</sup> *Id.*

<sup>336</sup> Outshoorn, *supra* note 307, at 233.

<sup>337</sup> RONALD WEITZER, LEGALIZING PROSTITUTION FROM ILLICIT VICE TO LAWFUL BUSINESS 159-160 (2012).

<sup>338</sup> DUTCH MINISTRY OF FOREIGN AFFAIRS, *supra* note 306, at 10.

<sup>339</sup> *Id.*

services, and massage parlours are becoming more popular; however, they will be illegal if they don't have a license issued from local authorities to run sexual businesses.<sup>340</sup> It should be noted that, in recent years, the Internet has become a place to advertise and promote the use of web-cam sexual services.<sup>341</sup> Regarding the street-based sector, many local authorities ban this venue because they consider that it will cause nuisances and the public order will be disturbed.<sup>342</sup> During late 1980s and 1990s, there were eight Tipplezones (Dutch word, meaning “soliciting on the street”) established in the Netherlands for street-based commercial sex.<sup>343</sup> The context to establish these zones was that street-based commercial sex disturbed the public order and the peace of residential areas; drug issues, crimes, and nuisances such as littering and noise made the authorities establish these zones for street solicitation.<sup>344</sup>

In these zones, a “living room” was set up and in it sex workers can enjoy their free time and get condoms.<sup>345</sup> To ensure the health of sex workers, a medical doctor would go to the place to provide medical consultations.<sup>346</sup> The sexual services would be conducted in the “parking boxes” and working in these zones was safe because the police were in charge to ensure the activities were conducted in a legal way.<sup>347</sup> Results showed that these Tipsezones had reduced violence against sex workers and sex workers appeared to be satisfied with the resources these

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<sup>340</sup> *Id.*

<sup>341</sup> *Id.* at 11.

<sup>342</sup> *Id.* at 10.

<sup>343</sup> Van Doorninck, Marieke, *Tipplezones*, 2 ENCYCLOPEDIA OF PROSTITUTION AND SEX WORK 480-82 (Melissa Hope Ditmore ed. 2006).

<sup>344</sup> *Id.*

<sup>345</sup> *Id.* at 481.

<sup>346</sup> *Id.*

<sup>347</sup> *Id.*

zones provided; however, due to the concerns of morality, politics, crimes, drug abuse, and the fact that many of workers in the zones tended to be victims of sex trafficking, the Tipplezones closed one by one between 2002 and 2006.<sup>348</sup> In Amsterdam, the street nearby the Amsterdam Central Station was once the hot spot for looking for sexual services from streetwalkers.<sup>349</sup> However, the people engaged in the street-based sector were often illegal foreign sex workers and had drug addiction problems therefore the street-based venue was banned by the government of Amsterdam.<sup>350</sup> Currently, the street-based sector has almost disappeared in the Netherlands.<sup>351</sup>

Since the ban on brothels was lifted, sex work in Netherlands has been recognized as one of the legitimate professions and sex workers have been entitled to enjoy the same rights and bear the same responsibilities (such as paying tax and social insurance) under laws as other workers.<sup>352</sup> However, under the current regime, the employment relationship between the brothel operator and the sex workers can be an issue when it comes to tax payment.<sup>353</sup> Since sex workers are now seen as regular workers, they need to obey the labor laws and bear the obligations of paying tax and social insurance as other workers.<sup>354</sup> In the current environment, brothel operators refuse to enter into employment contracts with sex workers in order to avoid

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<sup>348</sup> *Id.* at 481-82.

<sup>349</sup> *Amsterdam Prostitution - The Facts about Brothels and Call Girls in Amsterdam*, AMSTERDAM ADVISOR, <http://www.amsterdam-advisor.com/amsterdam-prostitution.html> (lasted visited Oct. 25, 2014).

<sup>350</sup> Which forms of prostitution are legal and which are illegal?, *supra* note 327.; *Amsterdam Prostitution - The Facts about Brothels and Call Girls in Amsterdam*, *supra* note 349.

<sup>351</sup> DUTCH MINISTRY OF FOREIGN AFFAIRS, *supra* note 306, at 11.

<sup>352</sup> *Id.* at 6.; Outshoorn, *supra* note 307, at 242.

<sup>353</sup> DUTCH MINISTRY OF FOREIGN AFFAIRS, *supra* note 306, at 6.

<sup>354</sup> *Id.*

paying income tax or social insurance.<sup>355</sup> Similarly, for tax concerns, sex workers consider themselves as self-employed even if they work in brothels.<sup>356</sup> The government, in this regard, has published booklets with information on tax matters for sex workers and brothel operators to know their rights and obligations.<sup>357</sup> Apparently, even after the normalization of sex work through legislation, people in the sex industry do not fully see themselves as regular workers.

Since the legalization in 2000, there have been several reports issued to evaluate the impact of lifting the ban on brothels.<sup>358</sup> According to the document “Dutch Policy on Prostitution Questions and Answers 2012” published by the Dutch Ministry of Foreign Affairs, it stated according to the studies they collected, exploitation and crimes in the sex industry seemed to have improved after the legalization.<sup>359</sup> However, the government also acknowledged that serious crimes including sex trafficking, underage prostitution, and forced prostitution still remains problems.<sup>360</sup> In addition, the number of illegal workers from Eastern Europe might have increased, “though this is chronologically difficult to estimate,” since the legalization; the illegal workers may encounter exploitation from third parties and have no ability to seek help.<sup>361</sup>

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<sup>355</sup> *Id.*

<sup>356</sup> *Id.* at 7.

<sup>357</sup> *Id.*

<sup>358</sup> Karin Werkman, *Briefing On Legal Prostitution in the Netherlands: Policies, Evaluations, Normalisation* (May 25 2014), <http://feminismandhumanrights.files.wordpress.com/2013/04/brief-on-legal-prostitution-in-the-netherlands-policies-evaluations-and-normalisation-20140421.pdf>.

<sup>359</sup> DUTCH MINISTRY OF FOREIGN AFFAIRS, *supra* note 306, at 7.

<sup>360</sup> *Id.*; Outshoorn, *supra* note 307, at 242.

<sup>361</sup> Michael Goodyear & Ronald Weitzer, *International Trends in the Control of Sexual Services*, in *POLICING PLEASURE: SEX WORK, POLICY, AND THE STATE IN GLOBAL PERSPECTIVE* 19 (Susan Dewey & Patty Kelly eds., 2011).

a. The future legal reform: Strengthened Control from the Central Government:

Though the legalization of commercial sex was realized in 2000, the crimes surrounding commercial sex remain an issue. For example, in Amsterdam, exploitation and abuse of sex workers, money laundering, and sex trafficking are carried out in “a large scale” in the sex industry.<sup>362</sup> In an effort to tightening up control over sex industry, in 2013 Amsterdam raised the legal age for doing sex work from 18 to 21.<sup>363</sup> Moreover, operators bear more responsibilities in hiring and managing the working environment. For example, in addition to prevent sex trafficking and protecting the rights of sex workers, operators should notice if the workers are able to express herself adequately in Dutch or English so as to understand her rights and assure efficient communication with the social workers and clients.<sup>364</sup> In addition, the open hours of the businesses, such as brothels and windows, are restricted.<sup>365</sup> The businesses have to close during certain hours (4 to 9 AM on weekdays and 5 to 9AM on weekends) because during those hours there’s less supervision and sex workers may be likely to encounter “drunk and aggressive customers;” restricting working times can be also beneficial to sex workers’ health.<sup>366</sup> It is estimated the number of sex workers in Amsterdam is between 5,000 and 8,000; however, it is “not clear how many women or men work in the legal and illegal sectors.”<sup>367</sup> Therefore,

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<sup>362</sup> *FAQ Red Light District*, I AMSTERDAM, <http://www.iamsterdam.com/en/Media-Centre/city-hall/dossier-red-light-district/red-light-district-faq> (last visited Jan.22, 2015).

<sup>363</sup> *Id.*

<sup>364</sup> *City Of Amsterdam Takes New Steps Towards Regulating Prostitution In The Red-Light District*, NOT FOR SALE (Apr. 25, 2013), <http://notforsalecampaign.org/stories/2013/04/25/city-of-amsterdam-takes-new-steps-towards-regulating-prostitution-in-the-red-light-district/>.

<sup>365</sup> *Amsterdam increases legal age for prostitutes*, DUTCH DAILY NEWS (Feb. 26, 2013), <http://www.dutchdailynews.com/amsterdam-increases-legal-age-for-prostitutes/>.

<sup>366</sup> *Id.*

<sup>367</sup> *FAQ Red Light District*, *supra* note 362.



Amsterdam is trying to take measures, including some mentioned above, to tackle illegal issues in sex businesses.<sup>368</sup> In Ramon's 2013 work, she stated that according to the report "Beneath the Surface" commissioned by the National Prosecutors' Office, criminals were controlling women over many years in the licensed sector of the sex industry; some women were forced to work for long hours, get abortions, or even get plastic surgery for enlarging their breasts (the criminals may even ask the doctors to get the woman a certain size of breasts).<sup>369</sup> These situations reveal that crimes are still widespread and haunt the sex industry in the Netherlands.

On the national level, in order to get rid of the existing crimes linked to the sex industry and to better control the industry, in 2009, a bill (Wet regulerend prostitutie en bestrijding misstanden seksbranche) to reform the current regime was presented in parliament.<sup>370</sup> The cabinet Balkenende IV "proposed a national register for sex workers, mandatory registration and increased supervision and enforcement,"<sup>371</sup> so as to crack down sex trafficking and other crimes but with strengthened control over the sex industry and sex workers.<sup>372</sup> The bill's major aim was to regulate prostitution in order to fight human trafficking, crime, and abuse in the sex industry.

The features of the bill included:

- all types of businesses are required to obtain permits;
- sex workers are required to register and those who do not register are to be punished;
- purchasers who transact with illegal workers will be punished;

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<sup>368</sup> Amsterdam increases legal age for prostitutes, *supra* note 365.

<sup>369</sup> JANICE G. RAYMOND, NOT A CHOICE, NOT A JOB EXPOSING THE MYTHS ABOUT PROSTITUTION AND THE GLOBAL SEX TRADE 90 (2013).

<sup>370</sup> *Id.*

<sup>371</sup> Outshoorn, *supra* note 307, at 241. ; BARNETT ET AL., *supra* note 88, at 9-12.

<sup>372</sup> Outshoorn, *supra* note 307, at 233.

- local authorities would have the right to prohibit all sex businesses in their territories; and
- the legal age of sex workers will be raised to 21 years old.<sup>373</sup>

The bill makes brothel operators bear heavier obligations to ensure their employed sex workers are free from exploitation.<sup>374</sup> With a registration system in place, health, safety, and self-determination are expected to be ensured. Moreover, clients will bear more responsibility to choose registered sex workers to get sexual services, and those who purchase sexual services from unregistered sex workers can be prosecuted under the new bill.<sup>375</sup> The responsibility of ensuring the conditions of the brothels lies with the local authorities. In the pre-existing legal regime, local police conducted inspections of brothels.<sup>376</sup> Under the new bill, local authorities bear joint liability with the police for enforcing the licensing law.<sup>377</sup> The police will no longer be entirely responsible for preventing exploitation and trafficking.<sup>378</sup>

Moreover, the local authorities, under the new bill, can exert their power in deciding to ban sexual services in their jurisdictions altogether.<sup>379</sup> In the current regime, the local authorities may not prohibit the operation of a brothel simply because of ethical concerns or ban all sex businesses altogether.<sup>380</sup> However, according to a judgment from the administrative court, the

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<sup>373</sup> Werkman, *supra* note 358.

<sup>374</sup> DUTCH MINISTRY OF FOREIGN AFFAIRS, *supra* note 306, at 7.

<sup>375</sup> *Id.*; Outshoorn, *supra* note 307, at 242.

<sup>376</sup> DUTCH MINISTRY OF FOREIGN AFFAIRS, *supra* note 306, at 8.

<sup>377</sup> *Id.*

<sup>378</sup> *Id.*

<sup>379</sup> *Id.*

<sup>380</sup> *Id.*

refusal or prohibition of sex businesses can happen for reasons of spatial planning.<sup>381</sup> Many local authorities used this zoning and environmental planning power to limit sex businesses operating in certain areas in their jurisdictions.<sup>382</sup> Under the new bill, the local authorities will have even stronger discretionary power in deciding whether to allow brothels to set up in their jurisdictions, and they may decide to prohibit all forms of sex businesses in their territories.<sup>383</sup> However, the bill targets only brothels, and local authorities cannot prohibit sex workers to work from home.<sup>384</sup> This “zero option” policy is designed to assure public order, environmental peace, and the well-being and safety of sex workers and their clients.<sup>385</sup>

However, the new bill does not seem to change sex workers’ disadvantaged conditions much.<sup>386</sup> Instead, according to some, raising of the legal age and the registration requirement “are new infringements of their civic and social rights.”<sup>387</sup> The registration obligation may endanger the privacy of sex workers especially because of the Dutch state’s poor history in assuring citizens’ privacy rights.<sup>388</sup> The unregistered workers will face harder conditions because their illegal status makes it difficult to find clients (who are not allowed to transact with unregistered workers) and of the workers may fear being blackmailed.<sup>389</sup>

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<sup>381</sup> *Id.*

<sup>382</sup> Outshoorn, *supra* note 307, at 236.

<sup>383</sup> DUTCH MINISTRY OF FOREIGN AFFAIRS, *supra* note 306, at 9.

<sup>384</sup> *Id.*

<sup>385</sup> *Id.*

<sup>386</sup> *Id.* at 7.; Outshoorn, *supra* note 307, at 242.

<sup>387</sup> *Id.*

<sup>388</sup> Outshoorn, *supra* note 307, at 242.

<sup>389</sup> *Id.*; DUTCH MINISTRY OF FOREIGN AFFAIRS, *supra* note 306, at 7.

To conclude, The Netherlands' policy moved from a tolerant era to the legalized regime, and then drifted towards a national control system. The policy toward commercial sex tends to be tighter due to the tenacious crimes and trafficking problems existing in the sex industry.

#### 2.2.4. The Pioneer of the Decriminalization Approach: New Zealand

Table 6

New Zealand: The Decriminalization Approach	
Key Legislation: Prostitution Reform Act 2003	
Sex work is recognized as one type of legitimate profession and all surrounding activities, such as brothel keeping, procurement, and solicitation are also decriminalized.	
The Key Features of the PRA	<ol style="list-style-type: none"> <li>1. Contracts for commercial sexual services are not void.</li> <li>2. Health and safety requirements of the sex industry should be promoted and assured.</li> <li>3. Local authorities have the power to make bylaws regarding the sex industry; however, they cannot ban it.</li> <li>4. Coerced prostitution is prohibited and sex workers are entitled to reject undesirable sexual transactions.</li> <li>5. Foreign sex workers and foreign investment in the sex industry are not allowed.</li> <li>6. Licensing system implemented to ensure operators are not criminals and can obey all</li> </ol>

	requirements of the PRA.  7. A review committee periodically reviews the impact of the PRA; committee members should include sex workers and brothel operators.
Current unsolved problems	A small amount of underage prostitution and trafficking still exists.

Commercial sex in New Zealand was criminalized until 2003.<sup>390</sup> Before 2003, various activities surrounding commercial sex were illegal.<sup>391</sup> According to the Crimes Act 1961, it was prohibited to operate a brothel, live on the earnings of sex workers, and procure.<sup>392</sup> Those who were convicted could face up to five years' imprisonment.<sup>393</sup> Solicitation was illegal under the Summary Offences Act 1981.<sup>394</sup> Nevertheless, providing sexual service itself was not punished.<sup>395</sup>

Under this prior criminalization regime, safe sex could be hard to practice because the police, similar to Taiwan's police investigations of commercial sex, might seize safe-sex

<sup>390</sup> *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003* 21 (May 2008), <http://www.justice.govt.nz/policy/commercial-property-and-regulatory/prostitution/prostitution-law-review-committee/publications/plrc-report/documents/report.pdf>.

<sup>391</sup> *Id.*

<sup>392</sup> *Id.*

<sup>393</sup> *Id.*

<sup>394</sup> *Id.*

<sup>395</sup> *Id.*

literature and condoms for prosecuting brothel operators and sex workers.<sup>396</sup> Moreover, section 148 of the Crimes Act prohibited people from living on the earnings of sex workers; that is to say, sex workers' partners and their adult children would face criminal sanctions if they received financial support from their partners or mothers who did sex work.<sup>397</sup> Additionally, according to section 149, procurers could face imprisonment not exceeding for 5 years.<sup>398</sup>

In 1978, the Massage Parlours Act (repealed by PRA 2003) was enacted since the massage parlors were de facto brothels where people conducted sexual transactions.<sup>399</sup> However, sex workers in massage parlours could still be arrested for solicitation by undercover police.<sup>400</sup> Once the sex worker was convicted, she would be disqualified to work in the massage parlours for years and would be stuck with a criminal record.<sup>401</sup> Under this situation, the sex worker may be forced into streetwalking because of an inability, caused by the criminal records, to make a living by means other than sex work.<sup>402</sup> In short, before 2003, sex workers in New Zealand faced exploitation from operators of massage parlours and possessed little negotiating power.<sup>403</sup>

In 1987, the New Zealand Prostitutes' Collective (NZPC) entered into a contract with the Minister of Health to “provide a range of services to sex workers with a focus on HIV and

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<sup>396</sup> Gillian Abel et al., *The Prostitution Reform Act, in Taking The Crime Out Of Sex Work, New Zealand Sex Workers' Fight For Decriminalization* 76 (Gillian Abel eds., 2010).

<sup>397</sup> *Id.*

<sup>398</sup> *Id.*

<sup>399</sup> Jan Jordan, *Of Whalers, Diggers and 'Soiled Doves': A History of the Sex Industry in New Zealand*, in *TAKING THE CRIME OUT OF SEX WORK, NEW ZEALAND SEX WORKERS' FIGHT FOR DECRIMINALIZATION* 37 (Gillian Abel eds., 2010).

<sup>400</sup> *Id.*

<sup>401</sup> *Id.*

<sup>402</sup> *Id.*

<sup>403</sup> Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003, *supra* note 390.

AIDS.”<sup>404</sup> The NZPC, in 1994, along with lawyers, students, and academics, drafted a bill to “meet the needs of sex workers.”<sup>405</sup> Though the bill had been changed several times, “many of the concepts from the original text were eventually incorporated in the PRB [the Prostitution Reform Bill].”<sup>406</sup> In 2003, during a period of government led by the Labor Party, the amended Bill was finally passed into law and named “Prostitution Reform Act” (PRA) in the parliament.<sup>407</sup> The PRA intended to:

- assure the human rights of sex workers and shield them from exploitation;
- assure welfare, occupational health, and safety of sex workers as well as the environment in which the public health can be protected; and
- avoid underage prostitution.<sup>408</sup>

The PRA decriminalizes commercial sex in New Zealand.<sup>409</sup> All the laws that criminalized activities surrounding commercial sex were repealed with the passage of the PRA in 2003.<sup>410</sup> New Zealand’s moralistic policy toward commercial sex was abandoned and replaced by a policy that emphasized sex workers’ human rights and health conditions.<sup>411</sup> Under the PRA, sex businesses can be operated legitimately, just like other regular businesses.<sup>412</sup> The same health

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<sup>404</sup> *Our History*, NZPC.ORG. (Jan.25, 2015) , <http://www.nzpc.org.nz/index.php?page=AboutNZPC>.

<sup>405</sup> Tim Barnett et al., *Lobbying for Decrimination*, in TAKING THE CRIME OUT OF SEX WORK, NEW ZEALAND SEX WORKERS’ FIGHT FOR DECRIMINALIZATION 62 (Gillian Abel eds., 2010).

<sup>406</sup> *Id.*

<sup>407</sup> MICHAEL GOODYEAR & RONALD WEITZER, *supra* note 361, at 25-26 ; Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003, *supra* note 390, at 22.

<sup>408</sup> Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003, *supra* note 390, at 22.; Section 3 of Prostitution Reform Act 2003 (N.Z.).

<sup>409</sup> MICHAEL GOODYEAR & RONALD WEITZER, *supra* note 361, at 25-26; Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003, *supra* note 390, at 22-23.

<sup>410</sup> ABEL ET AL., *supra* note 396.

<sup>411</sup> *Id.*

<sup>412</sup> *Id.* at 77.

and safety rules that apply to other businesses are applied to sex-related businesses, as well.<sup>413</sup> After the enactment of the PRA, the Department of Labour's Occupational Safety and Health division issued guidelines for sex workers and brothel operators to follow.<sup>414</sup> The guidelines were originally developed by Scarlett Alliance (a sex workers' rights organization in Australia) and the Australian Federation of AIDS Organizations.<sup>415</sup> The NZPC worked with Scarlett Alliance to convince the Department of Labour to amend the original guidelines to fit New Zealand's context by consulting with sex workers and operators.<sup>416</sup> In this context, it can be observed that the NZPC not only participated in the law making process but also actively played a role in making related documents for the sex industry. The guidelines cover extensive information about the sex industry, and they outline the obligations of persons engaged in the sex businesses, including business operators, their managers and receptionists, and sex workers in the private or managed sectors under the PRA and the 1992 Health and Safety in Employment Act.<sup>417</sup> Moreover, information about the requirements for operation management, working environment, and the health and education of sex workers and their clients is also included.<sup>418</sup>

#### a. The Key Features of the PRA:

In the following section, the features of the PRA will be introduced to understand how the human rights of sex workers have been protected under this decriminalization regime.

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<sup>413</sup> *Id.*

<sup>414</sup> *Id.*

<sup>415</sup> *Id.*; David Edler, *A guide to best practice: Occupational health and safety in the Australian sex industry*, <http://www.hivpolicy.org/Library/HPP000370.pdf> (last visited Jan.22, 2015).

<sup>416</sup> ABEL ET AL., *supra* note 396, at 77.

<sup>417</sup> *Id.*

<sup>418</sup> *Id.*



#### i. Contracts for Commercial Sexual Services are Not Void

Section 7 of the PRA provides that a contract made for sexual services will not be “illegal or void on public policy or other similar grounds.” That means sex workers have a legal basis to claim their payment from their clients. In Taiwan, on the contrary, a contract for sexual services will be void under the civil law because it violates “public orders and good morals.”

#### ii. Health and Safety Requirements

Sections 8 and 9 address the health and safety requirements for conducting sexual transactions. Section 8 provides that the operators of sex businesses should ensure and promote sexual services conducted with safe and protected measures. In particular, operators should “take all reasonable steps” to ensure sex workers use a “prophylactic sheath or other appropriate barrier” when conducting sexual services so as to prevent sexual diseases. Furthermore, operators should provide health information, whether in oral or written form, to sex workers and clients. The operator should “not state or imply” that per the health check, the sex worker is not infected or likely to be infected with a sexually transmitted disease.<sup>419</sup> This measure aims to prevent the clients from asking for unprotected sex under the assumption that the sex worker is free of sexual diseases. Those who violate these regulations commit “an offence and [are] liable on conviction to a fine not exceeding \$10,000.”

In addition to putting responsibilities on brothel operators for ensuring safe sex, section 9 provides that sex workers and clients also have the duty to engage in safe sex. Consistent with section 8, sex workers are not allowed to reveal her health check showing she is not infected or likely to be infected with a sexually transmitted disease. Anyone who violates section 9 “commits an offence and is liable on conviction to a fine not exceeding \$2,000.”

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<sup>419</sup> Section 8 of Prostitution Reform Act 2003 (June 2003).

### iii. Advertising Restrictions

Though commercial sex has been decriminalized in New Zealand, there are still some restrictions on advertisement. Section 11 provides that advertising commercial sex on television, radio, or via cinema is not allowed; putting advertisements in newspaper and periodicals is prohibited except in certain classified advertisement sections. Violating this Section 11 results in being punished by fines (not exceeding 50,000 New Zealand dollars for a corporate body and \$10,000 for individuals). Advertisement on the Internet is not covered by Section 11; therefore, nowadays many brothel and sex workers are putting advertisements on their websites.<sup>420</sup> Moreover, the brothel operators can advertise to recruit workers so the applicant will be able to know what work is expected.<sup>421</sup> Prior to the enactment of the PRA, the recruiting advertisement could be ambiguous, leaving the applicant ignorant that the job is actually sex work.<sup>422</sup>

### iv. Territorial Authority'S Power to Make Bylaws toward Sex Businesses

Under sections 12 to 14 of the PRA, territorial authorities are vested with rights to regulate signage and the locations for the establishment of brothels.<sup>423</sup> Under Section 12, the territorial authority can decide the content or form of signage and prohibit the signage of sex businesses if it may cause nuisances or clash with the character of the place.<sup>424</sup> Under Section 14, the territorial authority can make bylaws about the location of the brothels in consideration of avoiding nuisance, assuring public health and safety, reducing offensive behaviors in public, or

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<sup>420</sup> ABEL ET AL., *supra* note 396, at 79.

<sup>421</sup> *Id.*

<sup>422</sup> *Id.*

<sup>423</sup> *Id.*

<sup>424</sup> *Id.*

for water or land use concerns.<sup>425</sup> That said, “it was made clear that local councils could not use by-laws to completely ban prostitution.”<sup>426</sup>

#### v. Protecting Sex Workers from Coercion

Section 16 prohibits any person to force anyone to provide sexual services, including using their “occupational or vocational position” and “any relationship” to compel anyone to provide sexual services. Threatening anyone by making an accusation or disclosure (whether true or false) of the person for the purpose for compelling the person to provide sexual service is also prohibited.

#### vi. The Right to Refuse to Provide Commercial Sexual Services

Section 17 provides although there may be a contract for providing sexual services, a sex worker can withdraw her/his consent and refuse to conduct sexual services as she/he wishes. Section 18 further provides that refusal to conduct sex work will not affect a sex worker’s entitlements under the laws.

#### vii. Limitation on Foreign Sex Workers

Section 19 provides that no foreigners can enter New Zealand to do sex work or invest in sex businesses. Any foreigner found to be involved in the sex businesses will be deported from New Zealand.

#### viii. Prohibition on Underage Sex Workers

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<sup>425</sup> Section 14 of Prostitution Reform Act 2003 (N.Z.); Sections 145-146 of Local Government Act 2002 (N.Z.).

<sup>426</sup> Section 12 of Prostitution Reform Act 2003; *2 Local and central government roles*, JUSTICE.GOV.T.NZ, <http://www.justice.govt.nz/policy/commercial-property-and-regulatory/prostitution/prostitution-law-review-committee/publications/central-local-govt-responses/2-local-and-central-government-roles> (last visited Jan. 25, 2015).

Sections 20-23 prohibit the underage from getting involved in the sex industry; clients and operators who violate these regulations will face imprisonment.

#### ix. Regulation on Certificates of Brothel Keeping

Under sections 34 and 35, to run a brothel, an operator is required to apply for a certificate granted by the Registrar of the District Court at Auckland, or the Registrar of any other District Court; otherwise he/she “commits an offence and is liable on conviction to a fine not exceeding \$10,000.” Under the PRA, there is no limit on the number of the certificates and the Registrar will have to issue a certificate if the application requirements are met, including the payment of application fees, completed application forms, identification material, a recent photo, and the applicant is 18 years or older.<sup>427</sup> The certificate should be renewed annually.<sup>428</sup> Under Section 40, when the police believe an individual is running a brothel, then the operator should produce his/her certificate to the police otherwise he/she will be fined not exceeding 2000 New Zealand dollars. Section 36 provides that a person will be disqualified from holding a certificate if he/she commits crimes including participation in an organized criminal group, sexual crimes, murder, manslaughter, assault, abduction, robbery, extortion, burglary, money laundering, drug related crimes, and other offenses under the PRA.

#### x. Review of Operation of Act and the Prostitution Law Review Committee

Sections 42 and 43 detailed the formation of the Prostitution Law Review Committee and the tasks of the committee, which relate to examining and evaluating the impact of the PRA. According to the law, after the commencement of the PRA, the committee should first assess how many sex workers are in New Zealand and “any prescribed matters relating to sex workers

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<sup>427</sup> ABEL ET AL., *supra* note 396, at 81.

<sup>428</sup> *Id.*

or prostitution” and then develop a report to the Minister of Justice. Second, during the third and fifth years after the enactment of the PRA, the committee should review the operation and the impact of the PRA and other matters to improve the system, such as the sufficiency of means to help those who want to exit the sex industry, the effectiveness of the certificate system, and amendments to the laws that would be “desirable in relation to sex workers.”

Section 43 provides details regarding the composition of the Committee. The committee should consist of 11 members appointed by the Minister of Justice. Of the 11, two people should represent “operators of businesses of prostitution,” and three people are to be nominated by the NZPC. This provision ensures that the voices of operators and sex workers are heard.

b. Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003:

According to report issued by the Law Review Committee in 2008, the members of the committee included “a nun, sex workers, and brothel operators” in addition to people from other fields.<sup>429</sup> This diverse background of the members “was achieved through deliberately not focusing on the political or moral aspects of the sex industry.”<sup>430</sup> The members worked together with the focus “on the human rights, welfare, occupational health and safety” of sex workers and the prohibition on underage prostitution.<sup>431</sup> In addition, the report was developed based on an “evidence-based” research method.<sup>432</sup> The report examines the impact of the PRA three to five years after its enactment in 2003. The report was based in significant part on the reports of the

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<sup>429</sup> Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003, *supra* note 390, at 3.

<sup>430</sup> *Id.*

<sup>431</sup> *Id.*

<sup>432</sup> *Id.*

Christchurch School of Medicine (CSOM) and Victoria University's Crime and Justice Research Centre (CJRC).<sup>433</sup>

i. Estimation of the Number of Sex Workers in New Zealand

The first task of the Committee was to estimate the number of the sex workers in New Zealand.<sup>434</sup> Around the time of the enactment of the PRA, there were 5,932 sex workers working as private indoor workers, streetwalkers, and managed workers (generally those working in brothels); in 2007, there were an estimated 2,332 active sex workers in New Zealand.<sup>435</sup> The Committee opined that the decreased number may not indicate an actual reduction in sex workers; rather, the differences may be attributable to the "limitations of the initial data collection methods" and the "robust methodology used to estimate numbers in the [later] report."<sup>436</sup> The Committee recognized that to ascertain an accurate number of sex workers was difficult, but concluded that the PRA "has had little impact on the numbers of people working in the sex industry."<sup>437</sup>

ii. The PRA and Human Rights

Based on international human rights norms, New Zealand's case law, and the perspectives of the sex workers, the committee concluded that PRA ensures the prevention of child and coerced prostitution (including the right to refuse a particular client); and "the right not to be

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<sup>433</sup> *Id.* at 13.

<sup>434</sup> *Id.*

<sup>435</sup> *Id.*

<sup>436</sup> *Id.*

<sup>437</sup> *Id.*

subject to exploitative, degrading employment practices.”<sup>438</sup> Regarding international conventions, the Human Rights Commission provided the relevant conventions signed by New Zealand in order to evaluate the PRA’s compliance with human rights principles.<sup>439</sup> The Committee concludes that the conventions convey two messages – that child prostitution and forced prostitution are not tolerable.<sup>440</sup> For case law, after the enactment of PRA 2003, up to the publishing date of the “Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003,” there is only one case regarding the PRA. Section 3(a) of the PRA was discussed in *J B International v.s Auckland City Council* about whether a bylaw was against the principles of the PRA.<sup>441</sup>

From the perspectives of sex workers, a survey conducted by CSOM, showed that sex workers felt their rights regarding health, safety, and employment were safeguarded and they were “very aware that they have ‘legal rights’.”<sup>442</sup> According to the qualitative interviews conducted by CSOM, most interviewed sex workers stated they have rights under the PRA, especially about safe sex and occupational health and safety.<sup>443</sup>

Moreover, according to the CSOM’s research, which involved interviews of sex workers about their feelings toward the PRA, more than 90 percent of the interviewed workers expressed

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<sup>438</sup> *Id.* at 14.

<sup>439</sup> *Id.* at 42.

<sup>440</sup> *Id.*

<sup>441</sup> *Id.* at 44.

<sup>442</sup> Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003, *supra* note 390, at 44.

<sup>443</sup> *Id.*

that they felt they were entitled to legal rights through the PRA and more than 60 percent felt they had the power to reject the unwanted clients.<sup>444</sup>

The Committee summarized that section 3(a) of the PRA ensures the human rights that the International Conventions provide: prohibition on underage prostitution and forced prostitution, and the right to be free from exploitative employment.<sup>445</sup>

The Committee acknowledged that the PRA had an extensive positive impact on the sex industry and in empowering sex workers; however, it noted that there were still some sex workers who were forced by operators to provide unwilling sexual services.<sup>446</sup> According to the CJRC report, most of the interviewed sex workers felt that they were free to refuse to take a client; however, some said that the rejection should be accompanied with “a good reason.”<sup>447</sup> However, in some cases, it was difficult to reject a client even if a sex worker had a “good reason.”<sup>448</sup> According to the CSOM survey, around two-thirds stated that they felt they were more able to reject an unwanted case after the enactment of the PRA; however, many said that they had to accept unwanted clients anyway.<sup>449</sup> The Committee concluded that there is a positive effect on the matter of refusing unwanted sexual services; however, there were still cases of sex workers accepting unwanted businesses.<sup>450</sup> The committee recommended that educational

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<sup>444</sup> *Id.* at 14.

<sup>445</sup> *Id.* at 45.

<sup>446</sup> *Id.* at 14.

<sup>447</sup> *Id.* at 45.

<sup>448</sup> *Id.*

<sup>449</sup> *Id.*

<sup>450</sup> *Id.* at 47.



materials regarding the right to refuse clients be provided to brothel keepers, so as to ensure sex workers' right in this regard.<sup>451</sup>

### iii. Health, Safety and Well-being of Sex Workers

The Committee, based on the findings of the CSOM and CJRC, concluded that sex workers in New Zealand have been practicing safe sex when conducting sexual services since the 1980s HIV/AIDS prevention campaign.<sup>452</sup> The influence of the PRA in this regard appears not that decisive.<sup>453</sup> Studies also indicated that sex workers were not the vector of sexual diseases and the rate of the overall infection was very low.<sup>454</sup>

### iv. Safety issues

The committee stated that the PRA enabled sex businesses to be governed and regulated by the Health and Safety in Employment Act 1992 and in the sex businesses there is high awareness that there are requirements of Occupational Safety and Health (OSH) for the sex businesses to follow.<sup>455</sup> However, due to the lack of mechanisms to conduct regular inspections of sex businesses, the compliance of the operators is difficult to evaluate.<sup>456</sup>

Regarding safety issues, sex workers expressed mixed opinions. Quite a few sex workers stated they felt the PRA could hardly help them when encountering violence; nevertheless, some

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<sup>451</sup> *Id.*

<sup>452</sup> *Id.* at 14.

<sup>453</sup> *Id.*

<sup>454</sup> *Id.*

<sup>455</sup> *Id.*

<sup>456</sup> *Id.*

said they have seen improvement.<sup>457</sup> However, this split of opinions, “to a certain extent, reflected the sector of the industry about which informants were speaking.”<sup>458</sup> For those working in parlors, although they noted little change in violence issues, they also stated that violence had never “been particularly problematic.”<sup>459</sup>

For the small owner-operated brothels (SOOBs), some operators felt “safe and in control.”<sup>460</sup> However, some noted “the isolated nature of the work, and the increased numbers of SOOBs now potentially at risk.”<sup>461</sup> For those working on the street, the situation is very different from those working indoors.<sup>462</sup> According to the official report published in 2008, following the enactment of the PRA, two Christchurch streetwalkers were murdered in 2005 and the murderers were later arrested and sentenced to life imprisonment.<sup>463</sup> To evaluate and compare the violation of human rights of sex workers before and after the enactment of the PRA, including violence, the committee had tried to contact the Human Rights Commission (HRC) for information about the number of complaints made by sex workers before and after the passage of the PRA; however, because of various reasons, this information is not included in the database of the HRC.<sup>464</sup> In the official report, the CSOM asked sex workers if they had encountered the following adverse conditions during the previous 12 months: client’s refusal to pay the service,

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<sup>457</sup> MOSSMAN & MAYHEW, *supra* note 28, at 10.

<sup>458</sup> *Id.*

<sup>459</sup> *Id.*

<sup>460</sup> *Id.*

<sup>461</sup> *Id.*

<sup>462</sup> *Id.*

<sup>463</sup> Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003, *supra* note 390, at 122-123.

<sup>464</sup> *Id.* at 56-7.

money stolen by clients, assaulted by clients, threatening and physical violence, or raped by a client.<sup>465</sup> The result of the surveys showed that sex workers appeared to prefer to report the adverse conditions they experienced to another person instead of the police.<sup>466</sup> The CSOM's report indicated that according to the 1999 study by Plumridge and Abel in Christchurch, New Zealand, women appeared to be more willing to report and deal with their adverse encounters through friendship, work relationships, or NZPC instead of the police or professionals offered help to sex workers.<sup>467</sup> The committee stated that the reluctance to report to the police may be due to the social stigma as well as the lack of trustful relationship between sex workers and the police.<sup>468</sup>

To conclude, it appears that violence still exists in the sex industry, especially in the street-based sector, even under the decriminalization regime.<sup>469</sup> Though it seems the PRA had limited impact to curb violence toward sex workers, the comments of the informants in the CJRC research stated that the PRA made the sex workers more willing to report the violence to the police;<sup>470</sup> however, "willingness to carry the process through to court was less common."<sup>471</sup>

#### v. Avoiding or Exiting the Sex Industry

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<sup>465</sup> *Id.* at 55.

<sup>466</sup> *Id.*

<sup>467</sup> *Id.* at 58; Libby Plumridge & Gillian Abel, *A 'segmented' sex industry in New Zealand: sexual and personal safety of female sex workers*, 25 AUSTL. & N. Z. J. PUB. HEALTH, issue 1, Feb. 2001, at 78.

<sup>468</sup> *Id.*

<sup>469</sup> MOSSMAN & MAYHEW, *supra* note 28, at 10.

<sup>470</sup> *Id.*

<sup>471</sup> *Id.* at 40.

The Committee concluded, based on the CSOM research, that the primary reason to enter the sex industry was financial concerns and “the most effective way to ensure people do not enter the sex industry is to help them find other means of earning money.”<sup>472</sup> The committee further concluded that exiting the sex industry requires multiple attempts. Not all sex workers wanted to exit and some felt uncomfortable that people thought they need help to get out from the sex work that they liked to engage in; therefore, an assertive and singular approach for assisting sex workers to exit the industry may not be appropriate.<sup>473</sup>

It should be noted that the report showed that, contrary to the widespread presumption that a majority of sex workers were forced to do sex work, only a very low percentage of sex workers (an average of 3.9% across all of the sectors examined) stated that they were forced to work by someone in the sex industry.<sup>474</sup>

#### vi. The Brothel Operator Certification System

For the evaluation of the certificate system required by the PRA, the committee suggested adding to the existing law “a criterion that a certificate holder must be willing to facilitate inspections” and that the Department of Labour should be the lead agency to arrange and supervise the inspections of brothels.<sup>475</sup>

#### vii. Underage Prostitution

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<sup>472</sup> Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003, *supra* note 390, at 15.

<sup>473</sup> *Id.*

<sup>474</sup> *Id.*

<sup>475</sup> *Id.*

Though underage sexual service is strictly prohibited in New Zealand, the CSOM research revealed that 1.3 percent of sex workers are still underage.<sup>476</sup> Nevertheless, the Committee stated the PRA did not increase the number of underage workers and that the PRA positively addresses the issue of underage prostitution.<sup>477</sup> According to “Trafficking in Persons Report 2014” issued by the U.S. State Department, there is still “[a] small number of girls and boys, often of Maori or Pacific Islander descent, [who] are subjected to street prostitution, and some are victims of gang-controlled trafficking rings.”<sup>478</sup>

#### viii. Street-Based Sex Workers should be discouraged

Regarding the impact on street-based sex workers, the Committee concluded, based on the CSOM study, that “the numbers of street-based sex workers have remained stable since the enactment of the PRA, with comparable numbers on the streets to estimates done prior to decriminalisation.”<sup>479</sup> According to the CSOM study, 11% of sexual transactions were conducted through the street-based sector, and it was the smallest sector.<sup>480</sup>

The Committee suggested that persons should be discouraged from engaging in the street-based sector to conduct sexual businesses.<sup>481</sup> It stated that streetwalkers induced complaints from the communities; moreover, underage sex workers are more likely to enter the street-based

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<sup>476</sup> *Id.* at 16.

<sup>477</sup> *Id.*

<sup>478</sup> UNITED STATES DEPARTMENT OF STATE, TRAFFICKING IN PERSONS REPORT (2014), available at [www.state.gov/j/tip/rls/tiprpt/2014/index.htm](http://www.state.gov/j/tip/rls/tiprpt/2014/index.htm).; Brendan, Manning, 'NZ A 'Destination Country' For Sex Trafficking', THE NEW ZEALAND HERALD (June 22, 2014), [http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=11279379](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11279379).

<sup>479</sup> Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003, *supra* note 390, at 16.

<sup>480</sup> *Id.*

<sup>481</sup> *Id.*

sector.<sup>482</sup> The committee suggested these negative effects of the street-based sector can be controlled by the passage of local legislation.<sup>483</sup> It includes lighting and cleaning, the police’s supervision, and NGOs that offer supporting services.<sup>484</sup>

To conclude, the Committee summarized that in the street sector, the wellbeing, health, and safety of streetwalkers cannot be efficiently assured, and considering the inherent danger of street-based sector and the community’s complaints, the streetwalkers “should be encouraged to either move to a safer, indoor setting, or leave sex work altogether.”<sup>485</sup>

#### ix. Response of Territorial Authorities toward the PRA

The Committee noted that some Territorial Authorities had tried to push SOOBs, the brothels where no more than four sex workers work and every sex worker has the right to keep her earnings, to operate in the same industrial and commercial zones as larger brothels.<sup>486</sup> The Committee considered that the commercial and industrialized locations may produce more risks for sex workers working in SOOBs due to their lack of the strong security systems of larger brothels and suggested that SOOBs should be regulated like other businesses that are conducted from home, which means “by general rules provided for in a district plan regarding home-based employment.”<sup>487</sup> Other than this advice, the Committee reservedly stated that it is better to leave the power to designate locations of brothels to local authorities instead of making nationwide

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<sup>482</sup> *Id.*

<sup>483</sup> *Id.*

<sup>484</sup> *Id.*

<sup>485</sup> *Id.*

<sup>486</sup> *Id.* at 17.

<sup>487</sup> *Id.*

rules, because local authorities “can most effectively respond to the needs of their communities consistent with the aims of the PRA.”<sup>488</sup>

#### x. Employment Conditions of Sex Workers

The Committee concludes that, regarding employment conditions, there have been limited improvements since the enactment of the PRA.<sup>489</sup> The conditions essentially stayed the same: brothel keepers who treated their workers well prior to the PRA continued to keep good relationships with their workers; however, those with poor management and treated their workers poorly did not improve either.<sup>490</sup> The Committee suggests that in order to respect the employment relationship formed voluntarily and freely between sex workers and operators, there should not be an assertive regulation on “what the employment status of all brothel-based sex workers should be,” since there may be workers hoping to be independent contractors to enjoy flexibility and freedom while others may hope to develop an employment relationship with their employers.<sup>491</sup> Instead, any disputes arising from the employment should be solved through mediation and court proceedings.<sup>492</sup> The Committee reasoned that since the purpose of the PRA is to remove the “taint of criminality from their occupation” and empower sex workers, deciding one’s employment conditions is part of empowerment.<sup>493</sup> The Committee, nevertheless, suggested a standard “best employment contract” between operators and sex workers should be

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<sup>488</sup> *Id.*

<sup>489</sup> *Id.*

<sup>490</sup> *Id.*

<sup>491</sup> *Id.*

<sup>492</sup> *Id.*

<sup>493</sup> *Id.*

developed with the help with the Department of Labour and others so as to better protect sex workers' human rights and well-being.<sup>494</sup>

### 2.3. Conclusion

After discussing these four countries' policies on commercial sex, it can be observed that the reasons for adopting a specific approach are not linked to a single factor; instead, the historical context, ideological perspectives, and social background toward sex work all have their influences on developing the distinct policies in these jurisdictions. Therefore, when comparing these distinct approaches, one has to bear in mind that an approach that is successful in one country does not mean it will necessarily be successful in another. Nevertheless, through the comparison of the different approaches toward regulating commercial sex, it can be concluded that human rights of sex workers can be best protected and assured in the decriminalization regime, and on the other hand, criminalization exacerbates sex workers' marginalized conditions and make them more vulnerable.

Under the decriminalization regime, commercial sex no longer has to be hidden in the shadows, and all laws that ensure workers' rights protect sex workers, too. Through the common labor laws and occupational safety and health law, a sex worker can legally claim her rights for health, safety, and employment relationships, just as workers in other fields do; there will be no discrimination or double standards under laws like the situation in California where sex workers are not entitled to enjoy benefits as regular employees because sex work is criminalized and is not seen as a profession.

In New Zealand's experience with decriminalization, there are criticisms arguing that the approach does not improve conditions of sex workers; for example, there were still murders of

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<sup>494</sup> *Id.* at 18.



sex workers and the bargaining power of sex workers is still not strong enough. However, it cannot be denied that the sex workers in New Zealand appear to be empowered and more confident in their work.<sup>495</sup>

The legalization approach, in contrast to the decriminalization approach that aims to protect sex workers and ensure their rights, proposes to reduce the crimes surrounding the sex industry and efficiently control the industry. From the Netherlands' experience, the sex industry has undergone eras from tolerance to legalization. The government's decision to legalize commercial sex was to reflect the reality and to better regulate the industry. Though sex work has been recognized ever since and there are some improvements of sex workers' conditions, human trafficking and forced prostitution remained unsolved issues in the sex industry.<sup>496</sup> The Netherlands government, to tackle these problems, plans to pass a new bill for stricter control over the industry. The new bill asks all sex workers and brothel operators to be registered with the authorities, and clients bear more responsibilities to choose registered sex workers for sexual transactions. To conclude, under the legalization approach, some of the human rights of the sex workers may be improved such as freeing sex workers from violence and exploitation that are prohibited by laws. However, because there are specific laws toward commercial sex, such as mandatory or encouraged (like the Netherlands policy) medical checks for sex workers but not

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<sup>495</sup> *Part I: The Sex Industry in New Zealand 4, The sex industry in New Zealand: A literature review*, Justice.Govt.Nz, <http://www.justice.govt.nz/publications/global-publications/s/the-sex-industry-in-new-zealand-a-literature-review/part-i-the-sex-industry-in-new-zealand-4> (last visited Oct. 25, 2014).

<sup>496</sup> *Network of human traffickers forced women into prostitution in Amsterdam, Dutch Amsterdam.com* (Dec. 14, 2014), <http://www.dutchamsterdam.nl/865-human-trafficking-amsterdam-forced-prostitution>.

clients, mandatory registration, and restrictions on working places (e.g. in the red-light district and licensed brothels), sex work cannot be truly normalized.<sup>497</sup>

Lastly, the criminalization approach, compared to the other two approaches, infringes the human rights of sex workers to the greatest extent. Under the criminalization regime, sex workers can be convicted for simply doing or attempting to do sex work. The criminal record makes the marginalized sex workers, for example, poor or drug-addicted ones and streetwalkers, trap themselves in a vicious cycle. They cannot quit doing sex work because of their lack of other living skills, and their conditions are worsened by the criminal records and criminal sanctions. Sex workers under this regime generally have to rely on third parties such as pimps and operators, people who may exploit sex workers, for getting business and protection. Moreover, when encountering violence, danger, and exploitation, sex workers cannot report to the authorities because they fear arrest. Regarding health issues, criminalization makes safe sex difficult because authorities may use condoms as evidence for conviction and the weak negotiating power of sex workers may also lead them to consent to unprotected sex. Besides, education about safe sex is hard to promote because the whole sex industry is completely underground. Finally, under this regime, the stigma toward sex work is intensified, which can lead to the mental distress of sex workers.

To sum up, the three main approaches toward regulating commercial sex, with their social context and historical background, have resulted in distinct attitudes toward commercial sex. There are moral, religious, public order, health, and feminist discourses that shaped these

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<sup>497</sup> DUTCH MINISTRY OF FOREIGN AFFAIRS, *supra* note 306, at 10.; Cheryl Overs & Bebe Loff, *Toward a legal framework that promotes and protects sex workers' health and human rights*, 15 HHR HEALTH AND HUM. RTS. J., issue 1,2013, at 186.

approaches and it's hard to make all the advocates who have different point of views agree on one approach. However, if we examine this from the human rights perspective, it appears the decriminalization approach provides the best opportunity for sex workers to improve their lives, including their health, safety, dignity, and self-esteem. Moreover, if we look at human history, commercial sex never disappears; it developed to adapt under any regime. That means a pragmatic attitude toward commercial sex should be valued and decriminalizing commercial sex should also be seriously considered because sex workers are also humans and their rights that should not be deprived categorically without letting them speak for themselves.

## CHAPTER 3: THE POLICIES REGARDING COMMERCIAL SEX IN TAIWAN: THE PAST AND THE PRESENT

This chapter provides an overview of the historical development of commercial sex in Taiwan. I introduce and discuss commercial sex in the following three stages: the Qing Dynasty period (1821-1895), the Japanese colonized period (1895-1945), and the Chinese ruling period (1945- ). I analyze and explain how the social context of the different regimes and the governments' variant policies shaped and influenced commercial sex in today's Taiwan.

### 3.1. The Qing Dynasty Period: A Laissez-Faire Policy (The 19<sup>th</sup> Century)

Commercial sex was first documented in Taiwan during the early Daoguang period of the Qing Dynasty (1821-1830).<sup>498</sup> The waves of immigration from China made Monga (Wanhua Dist.), near the Dansui River where the main harbor was located, prosper with commercial activities.<sup>499</sup> In the early Qing Dynasty period (1684-1790), according to the immigration policy, male immigrants were prohibited from bringing their partners or family members to Taiwan and this policy led to a gender imbalance in the population; with the large number of male immigrants, commercial sex began to emerge.<sup>500</sup>

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<sup>498</sup> XIE KUN(謝康), MAIYIN ZHIDU YU TAIWAN CHANGJI WENTI, (賣淫制度與台灣娼妓問題) [THE SYSTEM OF PROSTITUTION AND THE PROBLEMS OF PROSTITUTION IN TAIWAN] 139 (1972).

<sup>499</sup> *Id.*

<sup>500</sup> Hong, Wan-Chi (洪婉琦), Taibeishi Changji Guanlibanfa Zhi Yanjiu 1967 -1999 (台北市娼妓管理辦法之研究 1967 -1999) [A Study Of The Prostitute Regulations Of Taipei From 1967 to 1999] 17 (2001) (unpublished M.A. thesis, National Normal University) (on file with National Central Library). ; QIU XU-LING (邱旭伶) THE GRACE OF TAIWAN GEISHA 29 (台灣藝旦風華) (1999).; *Understanding Taiwan*, [http://distance.shu.edu.tw/taiwan/ch09/CH09\\_SEC02.HTM](http://distance.shu.edu.tw/taiwan/ch09/CH09_SEC02.HTM) (last visited Jan. 10, 2015).

During the Qing Dynasty period, sex workers could be categorized into two types: Geisha (藝姐) and the common sex worker (土娼).<sup>501</sup> Geisha were mostly talented in singing, dancing, and playing musical instruments.<sup>502</sup> In addition to entertaining their guests with their talents, they provided sexual services upon clients' requests.<sup>503</sup> The clients of Geisha were coming from the upper-class society; they were typically businessmen or land owners.<sup>504</sup> Common sex workers,

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<sup>501</sup> Lin Guo-Ming (林國明), *Xingjiaoyi Ying Bu Yinggai Chufa Gongmin Huiyi Jielun Baogao (性交易應不應該處罰公民會議結論報告) [Should we punish sexual transaction? The Conclusion of the Citizen conference]* 16 (Nov. 2008), <http://tycf.files.wordpress.com/2009/08/e3808ce680a7e4baa4e69893e68789e4b88de68789e8a9b2e8a2abe89995e7bdb0e3808de59fb7e8a18ce5a0b1e5918ae88887e585ace6b091e7b590e8ab96e5a0b1.pdf>.; Lin, Hong-Xun (林弘勳), *Taibeishi Feichang yu Taiwan Changji Shi (台北市廢娼與台灣娼妓史) [The Discussion of Taipei City's Abolition of Licensed Prostitution and the History of Prostitution in Taiwan]*, 4 CONTEM. MONTHLY, 106, 106-115 (1997).; Ding Yun-Ting (丁勻婷), *Politics of Media Representation: A Case Study in the Abolishment of Taipei's Legal Prostitution (台北市廢除公娼事件的媒體再現政治)* 9 (2002) (unpublished M.A. thesis, Fu Jen Catholic University) (on file with National Central Library).

<sup>502</sup> Lin, *supra* note 501.

<sup>503</sup> *Id.*; Xie, *supra* note 498, at 141.

<sup>504</sup> Lin, *supra* note 501.; Mo, Hui-Lin (莫慧玲), *Taiwan Xingjiaoyi Guanli Zhengce Zhi Yanjiu (台灣性交易管理政策之研究) [Issues And Problems Of Commercial Sex In Taiwan]* 13-14 (2001) (unpublished M.A. thesis, Central Police University) (on file with National Central Library).; Xie, *supra* note 498, at 141. ; KE, RUI-MING (柯瑞明), *TAIWAN FENGYUE (台灣風月) [THE LIFE OF DESIRE IN TAIWAN]* 122 (1991).; Chang, Mei-Fong (張美鳳), *The Power Of The Imagination Of Classy And Fashion: The Analysis Of The Culture Of Geisha In The Japanese Colonized Time (風雅想像) 的權力意涵: 日治時期藝旦文化之分析* 71-3 (2007) (unpublished M.A. thesis, Fo Guang University) (on file with National Central Library).

on the other hand, provided direct sexual services and their clients were from lower classes.<sup>505</sup> Compared to common sex workers, the Geisha charged a higher price for the sexual transactions.<sup>506</sup>

At the time, in Taipei, Monga was the most prosperous place for commercial sex, and the clients were the native people, the businessmen, or the boatmen working in the harbor.<sup>507</sup> Having prospered for a



Illustration 1: The Map of Taiwan<sup>508</sup> long

period of time, the river channel gradually silting up made Monga start to decline; as a result, the commercial center gradually moved to the nearby township Twatiutia (大稻埕).<sup>509</sup> Twatiutia continued to prosper in the Japanese Colonized period, leading to a famous saying at that time: “If you don’t see geishas, don’t tell people you’ve visited Twatiutia”.<sup>510</sup> Nevertheless, the areas like Baodao Dist. (寶斗里) and Huaxi St. (華西街) in Monga still remained the popular places

<sup>505</sup> Lin, *supra* note 501.

<sup>506</sup> *Id.*

<sup>507</sup> Xie, *supra* note 498.

<sup>508</sup> Map, TAIWAN HOLIDAYS, <http://www.taiwanholidays.com.au/about-taiwan> (last visited Mar. 28, 2015).

<sup>509</sup> *Id.*

<sup>510</sup> *Dadaocheng Fenghua (大稻埕風華) [The Elegant History of Dadaocheng]*, <http://junior.cyhs.tp.edu.tw/junsoc/data/%E8%A3%9C%E5%85%85%E6%95%99%E6%9D%90%E5%A4%A7%E7%A8%BB%E5%9F%95%E9%A2%A8%E8%8F%AF.htm> (last visited Jan. 10, 2015).

for seeking for sexual services for low-income clients.<sup>511</sup> These aforementioned places later became the regions for licensed commercial sex in the 1950s during the Chinese government's regime.<sup>512</sup>

In addition to Taipei, commercial sex in southern Taiwan also flourished in Qing Dynasty period. For example, Takao Harbor (打狗港) in Kaohsiung, which had become a busy commercial harbor because of the investments from foreign countries, was one of the most widely known places to conduct commercial sex in southern Taiwan.<sup>513</sup>

Overall, the Qing Dynasty adopted a laissez-faire policy toward commercial sex, and it did not enact any regulations toward it.<sup>514</sup> The government's tolerant policy was challenged by a scholar in Taiwan named Xi-Yun Deng (鄧錫雲); he criticized the phenomenon of brothels located in residential areas in addition to the commercial places.<sup>515</sup> He asked the government to take action to regulate commercial sex by making brothels move out from residential areas and establish a licensing system.<sup>516</sup> However, these proposals were never considered seriously or adopted by the Qing Dynasty.<sup>517</sup>

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<sup>511</sup> Zhuang Hua-Tang (莊華堂), *MengJia Diqu De Seqing Chanye* (艋舺地區的色情產業) [*The sex industry in Monga District*], <http://www.95cc.com/trad/6.htm> (last visited Jan. 10, 2015).

<sup>512</sup> *Id.*

<sup>513</sup> ZHUO YI-WEN (卓意雯), *QINDAI TAIWAN FUNU DE SHENGHUO* (清代臺灣婦女的生活) [THE LIVES OF TAWNESES WOMEN IN QING DYNASTY] 127 (1993).

<sup>514</sup> Feng Yong (馮用), *Liu Ming-Chuan Fu Tai Dangan Zheng Ji Lu* (劉銘傳撫臺檔案整輯錄), 7 TAIWAN HISTORICA, no.3, 1957, at 33, 79.; QIU XU-LING (邱旭伶) *THE GRACE OF TAIWAN GEISHA* (台灣藝旦風華) 34-36 (1999).

<sup>515</sup> *Id.*

<sup>516</sup> *Id.*

<sup>517</sup> *Id.*

### 3.2. The Japanese Colonial Period: The Establishment of Licensed Commercial Sex in Taiwan (1895-1945)

In 1895, after the First Sino-Japanese War, Taiwan was ceded to Japan from the Qing Dynasty, according to the Treaty of Shimonoseki.<sup>518</sup> Fearing that its people would contract sexually transmitted diseases (STDs) from Taiwanese sex workers, the Japanese government introduced female sex workers from Japan to Taiwan for the purpose of providing sexual services to Japanese settlers who came from all walks of life, including agricultural immigrants, laborer immigrants, and fishermen immigrants, commercial and industrial immigrants.<sup>519</sup> In 1898, the Japanese government opened the first official brothel in Monga in Taipei.<sup>520</sup> In the same year, the government enacted a policy for licensing commercial sex.<sup>521</sup> According to this policy, all sex workers, whether they were Japanese or Taiwanese, had to apply for a license (鑑札) to engage in the business.<sup>522</sup> This licensing policy was designed to prevent the rampant transmission of STDs such as Syphilis, which had increased at a rapid rate because of prosperous commercial sex.<sup>523</sup>

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<sup>518</sup> DAI TIAN-ZHAO (戴天昭), TAIWAN GUOJI ZHENGZHISHI (台灣國際政治史) [THE HISTORY OF INTERNATIONAL POLITICS OF TAIWAN] 222-25 (2002).

<sup>519</sup> Qiu, *supra* note 513, at 37-45. ; Lin Cheng-jung (林呈蓉), *The Japanese experience in Taiwan: the immigrant village during The Japanese period* (日本人的臺灣經驗~日治時期的移民村) (July 30, 2001), <http://www.twhistory.org.tw/20010730.htm>.

<sup>520</sup> Qiu, *supra* note 513, at 37. ; Ding Yun-Ting (丁勻婷), *Politics of Media Representation: A Case Study in the Abolishment of Taipei's Legal Prostitution* (台北市廢除公娼事件的媒體再現政治) 8 (2002) (unpublished M.A. thesis, Fu Jen Catholic University) (on file with National Central Library).

<sup>521</sup> Qiu, *supra* note 513, at 37-45.; Wu, Song-Gu (吳松谷), *Mengjia Youkuo Huiгутan* (艋舺遊廓回顧談) [The talk about "You Kuo" in Monga], TAIPEI HIST. DOCUMENTS Q., no.9-10, 1969, at 110.; Hong, *supra* note 500, at 38-39.

<sup>522</sup> *Id.*

<sup>523</sup> Shiao-min Chang (張曉旻), *Implementation of Venereal Disease Prevention Policies in Japanese Colonial Taiwan* (日治時期臺灣性病防治政策的展開), 20 TAIWAN HIST. RES., no. 2, June 2013, at 77, 86. ; Qiu, *supra* note 513, at 40. ; Wu, *supra* note 520.; Hong, *supra* note 500, at 38-39.



In 1896, the Standard of Avoiding Sexually Transmitted Diseases Regulation (花柳病預防標準) was stipulated and executed; according to this regulation, the licensed sex workers were required to get regular health check-ups so as to prevent the transmission of STDs.<sup>524</sup> The “Institute of Health-Check and Supervision”(檢番) was established under this regulation to implement the health check requirement and supervise sex workers.<sup>525</sup> If a sex worker was found to be infected with an STD, she had to be sent to a designated hospital for treatment and could not resume her business before she fully recovered.<sup>526</sup> Under the supervision of the Institute, sex workers’ freedoms were deprived.<sup>527</sup> They could not leave the brothels without prior approval from the Institute, and if they arrived late, they would be punished.<sup>528</sup> In addition, the licensed sex workers were required to pay taxes according to the amount they earned.<sup>529</sup> With the strict licensing policy, the government in the meantime made great efforts to eradicate the underground sex businesses to curb the STD epidemic.<sup>530</sup>

With the prosperity of the commercial sex sector and the good profits, the phenomenon of “selling daughters” (including both biological and adopted ones) began to prosper during this period (the phenomenon was also found in the Qing Dynasty period).<sup>531</sup> At the time, daughters

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<sup>524</sup> Qiu, *supra* note 513, at 37-45.; Wu, *supra* note 520.; Hong, *supra* note 500, at 38-39.

<sup>525</sup> *Id.*

<sup>526</sup> *Id.*

<sup>527</sup> Ding, *supra* note 519.

<sup>528</sup> *Id.*

<sup>529</sup> Qiu, *supra* note 513, at 37-45.; Wu, *supra* note 520.; p.17 Hong, *supra* note 500, at 38-39.

<sup>530</sup> Chang, *supra* note 522, at 80.

<sup>531</sup> Xie, *supra* note 498, at 101.

were seen as property for exchanging for financial benefits.<sup>532</sup> Parents sold their daughters to brothels or rich families to make money.<sup>533</sup>

Under the Japanese licensed system, one could operate as sex worker upon reaching 15 years of age.<sup>534</sup> Brothel operator and parents would sign an employment agreement and a “Selling Certificate” (身元引受證) to apply for the license from police departments.<sup>535</sup> This certificate was a document proving both the parents’ agreement to sell their daughters to the brothel, and the brothel operator’s agreement to accept the daughters to work in the brothels.<sup>536</sup>

In Japan, licensed commercial sex had been criticized since the 1880s, as some people thought it improper to sell daughters to brothels and felt that commercial sex disrupted the marriage system.<sup>537</sup> The dispute regarding licensed commercial sex in Japan spilled over into Taiwan, leading the government in Taiwan to raise the legal age of sex workers to 16 years old, and to restrict the period of validity of a license: it was not permanent and would expire 4 years from the date of issue.<sup>538</sup> This was to prevent the brothel owners from manipulating and renewing their hire agreement continually, which essentially forced sex workers to engage in the business forever.<sup>539</sup>

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<sup>532</sup> Qiu, *supra* note 513, at 49-58; Xie, *supra* note 498, at 101-02.

<sup>533</sup> Xie, *supra* note 498, at 101-02.

<sup>534</sup> Lin, *supra* note 501, at 17.

<sup>535</sup> *Id.*

<sup>536</sup> *Id.*

<sup>537</sup> *The Japanese Military “Comfort Women” Issue Website Production Committee, 0-3 Was the Licensed Prostitution System Commonplace?: Even in Pre-war Japan, the Licensed Prostitution System Was Criticized as “Slavery”*, FIGHT FOR JUSTICE, [http://fightforjustice.info/?page\\_id=2869&lang=zh-hans](http://fightforjustice.info/?page_id=2869&lang=zh-hans) (last visited Oct.20, 2014).

<sup>538</sup> Lin, *supra* note 501, at 17.

<sup>539</sup> *Id.*

Sex businesses became diverse in the Japanese period.<sup>540</sup> By the 1930s, coffee houses, dancing halls, and tea houses had proliferated throughout Taiwan.<sup>541</sup> These businesses attracted a large number of female sex workers, and sexual transactions in these places were common.<sup>542</sup>

### 3.3. Chinese Government Period (1945 - ): Tangled Polices toward Commercial Sex

After World War II, Japanese rule ended and the Nationalist Government led by the Chinese Nationalist Party took control of Taiwan. The government saw commercial sex as an immoral activity that should be prohibited.<sup>543</sup> In order to reach the goal of establishing a country without commercial sex, beginning in 1946, the government made various futile attempts to wipe out the sex industry, including the licensed brothels.<sup>544</sup> With the acknowledgement that commercial sex could not be eradicated, in 1960, licensed brothels were established.<sup>545</sup> Since that time, there has existed a dual form of commercial sex in Taiwan.<sup>546</sup> On one hand, the government has allowed people to conduct sexual transactions in the licensed brothels; on the other hand, the government has cracked down on illicit brothels so as to diminish commercial sex.<sup>547</sup> The

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<sup>540</sup> *Id.* at 17-19

<sup>541</sup> *Id.*

<sup>542</sup> *Id.*, at 18.

<sup>543</sup> TAIWAN JING WU (臺灣警務) [THE POLICE DUTIES OF TAIWAN] 109, 109 (1946).; Lin, *supra* note 501, at 111.

<sup>544</sup> Hong, *supra* note 500, at 57-58.

<sup>545</sup> Tai, Tung-Mei (戴冬梅), Gongzuoquan Guandian Tanta Xingjiaoyi Guanzhi Zhi Xianfa Zhengyi (工作權觀點探討性交易管制之憲法爭議) [The Constitutional Issues On Regulations Of Sex Trade From The Viewpoint Of The Right To Sex Work] 24 (2007) (unpublished M.A. thesis, National Taiwan University) (on file with National Central Library).

<sup>546</sup> Tai, Gongzuoquan Guandian Tanta Xingjiaoyi Guanzhi Zhi Xianfa Zhengyi (工作權觀點探討性交易管制之憲法爭議) [The Constitutional Issues On Regulations Of Sex Trade From The Viewpoint Of The Right To Sex Work].

<sup>547</sup> Sun, I-Hsuan (孫一萱),

following discussion will be divided into two parts: the first part introduces and discusses the history and the development of licensed commercial sex and how it withered away under the government's anti-commercial sex policy. The second part discusses the criminalization legal framework toward unlicensed commercial sex.

### 3.3.1. Licensed Commercial Sex: An Exception to the Criminalization Policy as a Pragmatic Strategy to Regulate Commercial Sex

#### a. The Establishment of Licensed Brothels: From Resistance to Acceptance of Reality:

After taking over Taiwan from Japanese rule, the new government labeled licensed commercial sex as a type of degeneration improperly encouraged by the Japanese.<sup>548</sup> On March 8, 1946, the Women's Association of Taipei City issued the "Declaration to the Women on Women's Day in Taiwan" (三八婦女節告台灣女同胞書) to request the government to take concern of women's basic rights.<sup>549</sup> The declaration claimed that licensed commercial sex and adult entertainment businesses were intolerable and asked the government to take action to wipe them out so as to keep women from being exploited.<sup>550</sup> In June of the same year, the "Taiwan Administrative Agency"(台灣省行政長官公署) responded positively to the Association's proposal and announced the "Project of Improving Women's Social Status and Social Customs" (正俗工作) to ban maid service in the dancing halls and to close all licensed brothels established

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Rethinking the theory of the regulation on commercial sex in Taiwan-the regulation after the J.Y. No.666(台灣性交易管制法理與現狀的再思考—釋字第 666 號之後的管制) 10-11 (2014)  
(unpublished LL.M. thesis, Chung-Cheng University) (on file with National Central Library).

<sup>548</sup> Lin, Chiu-Min (林秋敏), *Xie E Yu Taiwansheng Funuhui De Chengli Ji Chuqi Gongzuo 1946-1949* (謝娥與臺灣省婦女會的成立及初期工作 1946-1949) [*Xie E And The Women's Association Of The Taiwan Province And The Early Works 1946-1949*], 63 TAIWAN HISTORICA, no.1, 2012, at 287, 309.

<sup>549</sup> Lin, *supra* note 501, at 19.

<sup>550</sup> *Id.*

in the country during the Japanese colonial period.<sup>551</sup> The government claimed that all the 1,704 licensed sex workers who worked in the existing licensed brothels established by the Japanese had been assisted successfully to change to other professions or got married. In fact, this project never really took sex workers out of the sex industry but only drove them to underground sexual transactions.<sup>552</sup>

In 1949, the government signed the United Nations Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others.<sup>553</sup> This Convention does not set forth a clear definition of trafficking; instead, it “equates trafficking with the exploitation of prostitution.”<sup>554</sup> Moreover, this convention adopts the stance of criminalizing the activities associated with commercial sex.<sup>555</sup> As Taiwan (under the name of the Republic of China) had signed this Convention, it had officially become an anti-commercial sex country.<sup>556</sup>

Aware of the reality that commercial sex could not be eradicated and in order to regulate commercial sex to prevent the spread of STDs, in 1950, the government issued “The Measures for Special Wineshops in the Taiwan Province” (台灣省各縣市特種酒家管理辦法) to allow the

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<sup>551</sup> Chen Yu-Jen(陳玉箴), *Transformation of Consumption Space under Political Transition: “Public Canteen” and “Liquor House” during the Post-war Taiwan (1945-1962)* (政權轉移下的消費空間轉型: (戰後初期的公共食堂與酒家 1945-1962), 3 J. HIST., NCCU, no. 39, May 2013, at 183, 205.; Wang, Wei-Long (王偉龍), *Sex, Human Rights, and Work Comparative Discussion on the Adult Sex Trade Regulations* Graduate Institute of National Development, National Taiwan University (性、人權與工作成人性交易規範法制之比較探討) 76 (2008) (unpublished M.A. thesis, National Taiwan University) (on file with National Central Library).

<sup>552</sup> Wang, *Sex, Human Rights, and Work Comparative Discussion on the Adult Sex Trade Regulations* Graduate Institute of National Development, National Taiwan University (性、人權與工作成人性交易規範法制之比較探討).

<sup>553</sup> Lin, *supra* note 501, at 112.

<sup>554</sup> *Stop Violence against Women: Trafficking in Women- Law and Policy the International Legal Framework*, <http://www1.umn.edu/humanrts/svaw/trafficking/law/intl.htm> (last visited Jan. 10, 2015).

<sup>555</sup> *Id.*

<sup>556</sup> Tai, *supra* note 244, at 23.

local governments to establish official special wineshops for people to conduct sexual transactions.<sup>557</sup> However, underground sex businesses still existed for serving people who couldn't afford to go the wineshops and the government's goal of using these special wineshops to eradicate underground sexual businesses thus failed.<sup>558</sup> In 1956, these measures for special wineshops were replaced by "the Prostitute Regulations of Taiwan Province" (台灣省管理妓女辦法).<sup>559</sup> According to this regulation, the special wineshops should be abolished and the local governments have the discretion to establish a "sexual business area"(妓女區) for brothels and sex workers to conduct their business.<sup>560</sup> The regulation asked the local governments to crack down on underground sexual transactions and try to assist licensed sex workers to leave the sex industry within two years.<sup>561</sup> The final goal was to eliminate all underground commercial sex and then abolish licensed brothels in Taiwan.<sup>562</sup> However, this attempt at extirpating commercial sex failed again, and the underground sex industry continued to bloom in Taiwan.<sup>563</sup> With the acknowledgement that commercial sex could not be eradicated, the government in 1960 revised this regulation and renamed it as "the Regulations of Prostitution in the Counties in Taiwan

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<sup>557</sup> P.112-113 Lin, *supra* note 501, at 112-13 .After the Nationalist Government led by Chang Kai-Shek retreated to Taiwan in 1949, alderman Chang Ji-u in Pingtung suggested the Provincial Government to establish "special wineshop" to solve single men's needs. This kind of wineshop was not the place to serve wines but the brothels that provided sex services.

<sup>558</sup> Xie, *supra* note 498, at 207.

<sup>559</sup> *Id.* at 208.; Art. 4-8 of Taiwansheng Guanli Jinu Banfa (台灣省管理妓女辦法) [the Prostitute Regulations of Taiwan Province] (1956), available at <http://www.6law.idv.tw/6law/law3/%E8%87%BA%E7%81%A3%E7%9C%81%E5%90%84%E7%B8%A3%E5%B8%82%E7%AE%A1%E7%90%86%E5%A8%BC%E5%A6%93%E8%BE%A6%E6%B3%95.htm>.

<sup>560</sup> *Id.*

<sup>561</sup> Arts. 3, 6, 28-31 of Taiwansheng Guanli Jinu Banfa (台灣省管理妓女辦法); Xie, *supra* note 498, at 207-211.

<sup>562</sup> Art. 3 of Taiwansheng Guanli Jinu Banfa (台灣省管理妓女辦法); Xie, *supra* note 498, at 208, 214.

<sup>563</sup> Xie, *supra* note 498, at 212.

Province” (台灣省各縣市管理娼妓辦法) and later in 1962 revised its Article 32 and deleted the time limit for the local government to accomplish the goal to eradicate commercial sex.<sup>564</sup> From 1960 to 2002, most of the local governments were subject to “The Regulations of Prostitution in the Counties in Taiwan Province” to regulate licensed commercial sex in their territories.<sup>565</sup> The exceptions were Taipei City and Kaohsiung City, which enacted their own regulations toward licensed commercial sex in 1973 and 1974 respectively after they became special municipalities that were no longer supervised by Taiwan Provincial Government.<sup>566</sup>

After the government resumed the licensed brothels, there were criticisms from society.<sup>567</sup> In 1964, the Taiwan Provincial Women's Association (臺灣省婦女會 1946-) held a seminar to discuss the negative effects of the licensed brothel system.<sup>568</sup> The association criticized the phenomenon of underage and forced prostitution in Taiwan and asked the government to abolish the licensing system and eradicate all commercial sex.<sup>569</sup> In 1967, the Association made a petition to the government again and expressed its deep concern about the “selling daughter to brothels” phenomenon at the time.<sup>570</sup> In 1968, the Interior Committee of the Control Yuan held the meeting and concluded that the government shall abolish the licensed commercial sex and

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<sup>564</sup> Lu, Ying-Min (呂英敏), A Study on the Problem of Prostitution in Taiwan (台灣娼妓問題之研究) 40-41 (1976) (unpublished M.A. thesis, Central Police University) (on file with Library and the World Police Museum, Central Police University).; Hong, *supra* note 500, at 58.

<sup>565</sup> *Id.*

<sup>566</sup> Gaoxiongshi Guanli Changji Banfa(高雄市管理娼妓辦法) [Prostitute Regulations of Kaohsiung City] (1974), available at <http://www.rootlaw.com.tw/LawContent.aspx?LawID=B180080000001600-0820311>.; Taibeishi Guanli Changji Banfa(臺北市管理娼妓辦法) [Prostitute Regulations of Taipei City] (1973), available at <http://www.rootlaw.com.tw/LawContent.aspx?LawID=B010100010001700-0860904>.

<sup>567</sup> Hong, *supra* note 500, at 58-61.

<sup>568</sup> *Id.*

<sup>569</sup> *Id.*

<sup>570</sup> *Id.*

assist the sex workers to learn living skills and leave sex businesses.<sup>571</sup> The Executive Yuan then responded to the Control Yuan's petition and claimed that commercial sex should disappear in Taiwan and sex workers should get mental training, health checks, and living skill training.<sup>572</sup> However, these proposals lacked support and failed to pass before the Taiwan Provincial Consultative Council.<sup>573</sup> In 1973, a sunset clause toward licensed brothels added in "the Regulations of Prostitution in the Counties in Taiwan Province"(台灣省各縣市管理娼妓辦法) finally passed in the Council.<sup>574</sup> This sunset clause was designed to make the existing licensed brothels die out gradually.<sup>575</sup> According to this sunset clause, the local governments were not allowed to license new brothels.<sup>576</sup> In addition, the existing licensed brothels could not expand in scale, move to other places, change their names, assign the brothels to others, nor be inherited by the operators' offspring. Once the operators died, the brothels would have to cease to operate automatically.<sup>577</sup>

After the Taiwan Provincial Government was merged into the central government in 1998,

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<sup>571</sup> *Id.*

<sup>572</sup> *Id.*

<sup>573</sup> *Id.*

<sup>574</sup> *Id.*

<sup>575</sup> Arts. 2, 31 of Taiwansheng Ge Xianshi Guanli Changji Banfa (台灣省各縣市管理娼妓辦法) [The Regulations of Prostitution in the Counties in Taiwan Province] (1960), *available at* <http://www.6law.idv.tw/6law/law3/%E8%87%BA%E7%81%A3%E7%9C%81%E5%90%84%E7%B8%A3%E5%B8%82%E7%AE%A1%E7%90%86%E5%A8%BC%E5%A6%93%E8%BE%A6%E6%B3%95.htm>.

<sup>576</sup> *Id.*

<sup>577</sup> Arts. 2, 31, 32 of Taiwansheng Ge Xianshi Guanli Changji Banfa (台灣省各縣市管理娼妓辦法) [The Regulations of Prostitution in the Counties in Taiwan Province] (1960), *available at* <http://www.6law.idv.tw/6law/law3/%E8%87%BA%E7%81%A3%E7%9C%81%E5%90%84%E7%B8%A3%E5%B8%82%E7%AE%A1%E7%90%86%E5%A8%BC%E5%A6%93%E8%BE%A6%E6%B3%95.htm>.



“The Regulations of Prostitution in the Counties in Taiwan Province” was abolished in 2002.<sup>578</sup> The local authorities that were originally subordinated by the Taiwan Provincial Government later enacted their own local regulations and this sunset clause was also included in these local regulations.<sup>579</sup>

In addition to these regulations targeting commercial sex, the government enacted regulations for the adult entertainment businesses. In 1962, the government enacted “The Regulations for Special Businesses in Taiwan Province” (臺灣省特定營業管理規則) to regulate dancing halls, bars, teahouses, and coffee shops where female maids were hired to serve male clients by chatting, drinking, singing, and dancing.<sup>580</sup> According to the regulations, sexual transactions in these businesses were prohibited.<sup>581</sup> Nevertheless, under the table transactions were very common.<sup>582</sup> The prosperity of these adult entertainment businesses had made Taiwan a

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<sup>578</sup> *Fei Zhi Taiwansheng Ge Xianshi Guanli Changji Banfa* (廢止「臺灣省各縣市管理娼妓辦法」)[Abolishing the Regulations of Prostitution in the Counties in Taiwan Province] (Oct. 1, 2002), [http://www.tpg.gov.tw/tpg/info\\_lawpub.php?ID=61](http://www.tpg.gov.tw/tpg/info_lawpub.php?ID=61).

<sup>579</sup> Taizhongshi Changji Guanli Zizhi Tiaoli (臺中市娼妓管理自治條例) [Self-Regulation Of Prostitution In City Of Taichung] (2010), available at <http://210.69.115.31/GLRSout/NewsContent.aspx?id=287>; Taoyuanxian Xingjiaoyi Guanli Zizhi Tiaoli (桃園縣性交易管理自治條例) [Self-Regulation Of Prostitution In City Of Taoyuan] (2014), available at <http://law.tycg.gov.tw/LawContentDetails.aspx?id=FL023518&KeyWordHL=&StyleType=1>.

<sup>580</sup> *Taiwansheng Teding Yingye Guanli Guize* (臺灣省特定營業管理規則) [The Regulations for Special Businesses in Taiwan Province] (1962), available at <http://www.rootlaw.com.tw/LawContent.aspx?LawID=B240090020000300-0930201>.

<sup>581</sup> Gu, Yan-Ling (顧燕翎), *Xingjiaoyi de Jinzhi yu Chuzui : Taiwanfunuyundong de Xingzhengzhi* (性交易的禁制與除罪：台灣婦女運動的性政治) [Inhibition or Decriminalization? the Politics of Sex in Women's movements in Taiwan], NUXING ZHUYI QIDIAN ZHAN (女性主義起點站) [FEMINIST THEORIES STATION] (March 3, 2011), <http://feminist-original.blogspot.com/2011/03/blog-post.html>; Huang, Shu-Ling (黃淑玲), *Women in Sex Industries: Victims, Agents or Deviants?* (臺灣特種行業婦女：受害者？行動者？偏差者？), 22 TAIWAN: A RADICAL QUART. IN SOC. STUD., 103, 104-105 (1996).

<sup>582</sup> Huang Shu-ling (黃淑玲), *Taiwan "Maixiao" Yu "Maishen" De Seqingxingye Xingtai* (台灣“賣笑”與“賣身”的色情行業型態) [The Types Of The Porn Businesses Of “Selling Smile” And “Selling Body” In Taiwan] (Sept.7, 1997), [http://taiwan.yam.org.tw/womenweb/papers/0003\\_1.htm](http://taiwan.yam.org.tw/womenweb/papers/0003_1.htm); Huang, *Women in Sex Industries: Victims, Agents or Deviants?* (臺灣特種行業婦女：受害者？行動者？偏差者？), at 104-05.; Chen Xuan-Yu (陳瑄喻), *Wenjuandiaocha – Liulian Fengyuechang suo Yi Nian 47 Wan Tai Nan Maichun* (問卷調查 – 流連風月場所一年

haven for foreign tourists looking for sexual services and entertainment in the 1960s.<sup>583</sup> For example, Beitou, a township located in the rural area of the Taipei City, was depicted as “Men’s paradise for tenderness and comforts” by tourists because of its beloved hot springs and “special saunas” that provided sexual services.<sup>584</sup> The saunas hired maids to bathe with clients and provide sexual services to them.<sup>585</sup> On Dec. 22, 1967, the Asia version of Time Magazine reported on the sauna in Beitou, and printed a picture showing a soldier bathing with maids.<sup>586</sup> The long-time notoriety made Mayor Lee Teng-hui issue a declaration in 1979 to abolish all of the special saunas in Beitou in order to protect the township’s image.<sup>587</sup> In Kaohsiung city in Southern Taiwan, similar to the Monga (Wanhua Dist.) area in Taipei, commercial sex had been prosperous along the harbor area.<sup>588</sup> Street walkers solicited in public places along the banks of the Love River and then brought their clients to the private brothels or the nearby hotels to

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47 萬台男買春) [*The Survey: Around 470,000 Men Bought Sex For One Year*] (Dec. 25, 2014), <http://www.chinatimes.com/newspapers/20141225000859-260113>.

<sup>583</sup> Chen Mei-Hua (陳美華), *Jiutuan Maichun Qu: Taiwan Nan Yu Zhongguonü De Fuza Duoyuan Xingguanxi* (揪團買春去：台灣男與中國女的複雜多元性關係) [*Let’s go but sex together: the complexity of the sexual relationships between Taiwanese men and Chinese Women*] (Jun. 10, 2013), <http://twstreetcorner.org/2013/06/10/chenmeihua/comment-page-1/>.

<sup>584</sup> Shi Ru-Xuan (施如瑄), *Wenquanxiang Ye Shi Wenrouxiang* (溫泉鄉也是溫柔鄉) [*The home of Springs is also the home of tenderness*], (Dec.15, 2010 19:42) [http://beitoutime.blogspot.com/2010/12/blog-post\\_1681.html](http://beitoutime.blogspot.com/2010/12/blog-post_1681.html).

<sup>585</sup> *Id.*

<sup>586</sup> Guan Ren-Jian (管仁健), *Shidai Zhoukan* 《Yinbao Quan Tai De Antusuo 「ji」》 (《時代週刊》引爆全台的按圖索「妓」) [*The Time Magazine sensation: to look for sex according to the map*] (Jan. 2, 2009), <http://mypaper.pchome.com.tw/kuan0416/post/1311693559>.

<sup>587</sup> Liao Xiao-Long (廖嘯龍), *Songlin Zaihui La Beitou Nakaxi Cheng Juexiang* (松林再會啦 北投那卡西成絕響) [*Goodbye “Song-Lin” There Will Be No More Nakaxi In Beitou*] (Aug.12,2008), [http://geo-economic03.blogspot.tw/2008/08/blog-post\\_17.html](http://geo-economic03.blogspot.tw/2008/08/blog-post_17.html).

<sup>588</sup> Chang, Kuei-Ying (張貴英), *The history of legal prostitution system and social impact in Kaoshiung City* (高雄市公娼制度的歷史脈絡與存廢之社會影響) 92-93 (2004) (unpublished M.A. thesis, National Kaohsiung Normal University) (on file with National Central Library).

conduct sexual transactions.<sup>589</sup> In addition to the private brothels, special teahouses, dance halls, and barbershops were opened one by one to serve people working in the harbor and the nearby areas.<sup>590</sup>

After 1998, with the reorganization of the government, the Provincial Government no longer had the authority to supervise the local governments, and “the Regulations of Prostitution in the Counties in Taiwan Province” (台灣省各縣市管理娼妓辦法) ceased to be effective; “The Regulations for Special Businesses in Taiwan Province” was likewise abolished in 2004.<sup>591</sup> The local governments were told to enact their own regulations for licensed commercial sex in their territories.<sup>592</sup> The local government then used “the Regulations of Prostitution in the Counties in Taiwan Province” (台灣省各縣市管理娼妓辦法) as the model to stipulate their own local regulations to regulate licensed commercial sex.<sup>593</sup> However, not all of the jurisdictions enacted their own local regulations. For example, Keelung City decided not to enact its regulations because there would be no brothels in its territory after the last brothel, known as “the Fifth

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<sup>589</sup> *Laochang Zhanbi Lake Aihe Pan Yingyingyanyan (老娼站壁拉客 愛河畔鶯鶯燕燕) [Old Streetwalkers Solicited Along The Love River]* (Nov.5, 2010). <http://www.nownews.com/n/2010/11/05/579251>.

<sup>590</sup> *Id.*

<sup>591</sup> *Liang Tian-Yi (梁添義), Nantouxianfu Tian Feizhi 「Nantouxian Changji Guanli Zizhi Tiao li」 (南投縣府提案廢止「南投縣娼妓管理自治條例) (Dec.5, 2013),* [http://www.tpg.gov.tw/tpg/info\\_lawpub.php?ID=98%E5%BB%A2%E6%AD%A2%E3%80%8C%E8%87%BA%E7%81%A3%E7%9C%81%E7%89%B9%E5%AE%9A%E7%87%9F%E6%A5%AD%E7%AE%A1%E7%90%86%E8%A6%8F%E5%89%87%E3%80%8D](http://www.rvn.com.tw/?www=info&info=view&view=53766.;Feizhi「Taiwansheng Teding Yingye Guanliguize」(廢止「臺灣省特定營業管理規則) (Feb.1, 2004),</a> <a href=).

<sup>592</sup> *Id.*

<sup>593</sup> Before July 1st 1999, the Ministry of Interior asked the local governments to enact self-regulations for licensed commercial sex and let the regulations be effective since Jan. 1st of 2001 to let the original licensed brothels can keep their legal status. The general principle was to regulate licensed one and crack down unlicensed one.; *Yilanxian Yihui Di 14 Jie Di 7 Ci Dahui Yian Ziliao(宜蘭縣議會第14屆第7次大會議案資料)* (Apr. 26, 2002), [http://www.ilcc.gov.tw/CSource/C06/C0601M01.aspx?Fmotion\\_instanceOS=%ACF%A9%B2%B4%A3%AE%D7910426002&Sysno=H\\_08&System\\_work=6&btSearch=+-%B7j%B4M-&code=e&item=1](http://www.ilcc.gov.tw/CSource/C06/C0601M01.aspx?Fmotion_instanceOS=%ACF%A9%B2%B4%A3%AE%D7910426002&Sysno=H_08&System_work=6&btSearch=+-%B7j%B4M-&code=e&item=1).

Brothel” at the time, ceased to operate because of poor business.<sup>594</sup>

Currently, there are a total of 9 local governments out of 22 that have enacted self-regulations.<sup>595</sup> All of these local-regulations contain a sunset clause as in the “the Regulations of Prostitution in the Counties in Taiwan Province,” including a stop to licensing new brothels and sex workers, restrictions on the expansion of already existing licensed brothels. When the operators die, the licenses will automatically expire and the brothels should be closed.<sup>596</sup> Similarly, according to these local-regulations, the governments should assist licensed sex workers to change to other professions if they want and provide health checks to them for the prevention of STDs.<sup>597</sup>

#### b. The “Paradise in the Army” (1952-1992): Licensed Brothels in the Army and the Paradoxical Attitude of the Government on Prostitution:

Though the government’s policy toward prostitution was hostile, there was a different picture in the army. Contrary to the licensed brothel system that was established by the Japanese government, the Army brothel system was established by the Ministry of National Defense of the

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<sup>594</sup> Luo Zhong-Wei (羅忠偉), *Jilong Gongchang 「Wenbie」 Enke (基隆公娼「吻別」恩客)* [The licensed sex workers in Keelung kissed goodbye to their guests], CHINA TIMES (Jul.8, 2010), <http://bbs.nsysu.edu.tw/txtVersion/boards/hope/M.964692300.A.html>.

<sup>595</sup> Including Taichung City, Tainan City, Taoyuan City, Taichung County, Nantou County, Tainan County, Penghu County, and Taitung County.

<sup>596</sup> See Yilanxian Changji Guanli Zizhi Tiaoli (宜蘭縣娼妓管理自治條例) [The Self-Regulation On Regulating Prostitutes In Yilan County] (2002), available at <http://www.6law.idv.tw/6law/law4/%E5%AE%9C%E8%98%AD%E7%B8%A3%E5%A8%BC%E5%A6%93%E7%AE%A1%E7%90%86%E8%87%AA%E6%B2%BB%E6%A2%9D%E4%BE%8B.htm>.; Taizhongshi Changji Guanli Zizhi Tiaoli (臺中市娼妓管理自治條例) [Self-Regulation Of Prostitution In City Of Taichung] (2010), available at <http://210.69.115.31/GLRSout/NewsContent.aspx?id=287>.; Taoyuanxian Xingjiaoyi Guanli Zizhi Tiaoli (桃園縣性交易管理自治條例) [Self-Regulation Of Prostitution In City Of Taoyuan] (2014), available at <http://law.tycg.gov.tw/LawContentDetails.aspx?id=FL023518&KeyWordHL=&StyleType=1>.

<sup>597</sup> See Yilanxian Changji Guanli Zizhi Tiaoli (宜蘭縣娼妓管理自治條例) [The Self-regulation on regulating prostitutes in Yilan County].

government led by Chinese Nationalist Party.<sup>598</sup> From the 1950s to the early 1990s, brothels for serving soldiers revealed a special phenomenon during the post-Chinese civil war years. Women were employed in the army brothels and provided sexual services to soldiers. This practice showed the government's hypocritical attitude towards prostitution. To the general public, the government showed its intolerant and hostile attitude toward commercial sex; however, when it came to the army, commercial sex was acceptable and reasonable. There was a Chinese rhyming couplet posted on the wall of the entrance of the "831" army brothel in Kinmen saying "大丈夫效命沙場磨長槍，小女子獻身家國敞篷門", meaning soldiers used their guns (implying male genitals) to fight for the nation, while women open their doors (implying female genitals) for contributing the nation.<sup>599</sup> This paradox of the government view toward commercial sex revealed policies toward prostitution during these times that were inconsistent and illogical. The story of the army brothels is told briefly below. During the 1950s to early 1990s, in addition to the common licensed brothels, there existed another licensed type of commercial sex in Taiwan, called "Special Teahouse in the Army" (軍中特約茶室). This form of commercial sex was established to serve soldiers for satisfying their sexual needs.<sup>600</sup>

The context of this special teahouse policy was that in 1949, there were an estimated 100,000 soldiers retreating from Mainland China with the Nationalist Government after the Chinese Civil

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<sup>598</sup> CHEN CHANG-QING (陳長慶), ZOU GUO FENG HUO SUI YUE DE JIN MEN TE YUE CHASHI (走過烽火歲月的金門特約茶室) [THE HISTORY OF THE 831 SPECIAL TEAHOUSE IN KINMEN] 18-19 (2005).

<sup>599</sup> Chuang Tsunghan, *Fenghuo Jinmen-Xiao Jing Teyuechashi-Dazhangfu Xiaoming Shachang Xiaonuzi Xianshen Baoguo*(烽火金門-小徑特約茶室-大丈夫效命沙場 小女子獻身報國) [Fire in Kinmen Island-The Special Teahouse-Men Devoted Themselves in War, Women Devoted Their Bodies for the Nation] (Aug.11,2013), [http://discoverkinmen.blogspot.tw/2013/08/blog-post\\_11.html](http://discoverkinmen.blogspot.tw/2013/08/blog-post_11.html).

<sup>600</sup> Chen, *supra* note 597.

War.<sup>601</sup> Most of them were young and unmarried.<sup>602</sup> Under the “The Regulation for Marriage of Soldiers in the War Time” (戡亂時期陸海空軍軍人婚姻條例) at the time, male soldiers were not allowed to get married until the age of 38.<sup>603</sup> Under this context, the government enacted “The Regulations for the Establishment of Special Teahouses” (特約茶室設置與管理辦法) to establish brothels exclusively for soldiers.<sup>604</sup> In 1951, the first soldier’s special teahouse was opened in Kinmen to serve the soldiers who defended the country on the front lines, among the islands near mainland China.<sup>605</sup> After that, more and more special teahouses opened and people called these special teahouses “831” in Kinmen because it was believed the phone number to access to these teahouses was 831.<sup>606</sup>

At their peak, there were a total of 11 special teahouses operating in Kinmen Island and more than one hundred sex workers were employed.<sup>607</sup> The sex workers in the Special Teahouse were called “service maids” (侍應生).<sup>608</sup> It was believed that many of the maids were indigenous

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<sup>601</sup> Jhang, *supra* note 25, at 6.

<sup>602</sup> Chen, *supra* note 597, at 48-49.

<sup>603</sup> Arts. 3, 6, 7 of Kanluan Shiqi Luhaikong Jun Junren Hunyin Tiaoli (戡亂時期陸海空軍軍人婚姻條例) [The Regulation for Marriage of Soldiers in the War Time (1952), available at <http://lis.ly.gov.tw/lghhtml/lawstat/version2/01413/0141346010400.htm>.

<sup>604</sup> Junzhongleyuan-Zhandi Jinmen De Yi Ye Fengyue Shi (軍中樂園-戰地金門的一頁風月史)[*The paradise in the army: the history of sex in Kinmen in the war time*], FORMOSA COMMUNITY, <http://sixstar.moc.gov.tw/blog/w321461/knowHowFronListAction.do?method=doReadKnowHow&source=1&knowhowId=2070> (last visited Oct.20, 2014). ; Jhang, *supra* note 25, at 6.

<sup>605</sup> Chen, *supra* note 597, at 47.

<sup>606</sup> *Id.* at 59-60.

<sup>607</sup> Liao Yu-Ru(廖玉如), *Jinmen Jie Zhandi Mima Tan Teyuechashi* (金門揭戰地密碼 探特約茶室) [*To Decode the Code of War Place in Kinmen, Visting the Special Teahouse*] (Sept. 23, 2011) <http://www.appledaily.com.tw/appledaily/article/supplement/20110923/33686795/>; Li Mu-Long(李木隆), *Fuwei Guo Wushu Jimo Xinling Jinmen 831 jiebi* (撫慰過無數寂寞心靈 金門831 揭秘)[*Comforting Numerous Men, Revealing the 831 in Kinmen*] (Nov.13, 2010 3:20), <http://blog.yam.com/cicihsieh315/article/70532619>.

<sup>608</sup> Chen, *supra* note 597, at 47.

young females living in mountainous areas and they were sold into the hands of brothel operators by their poor families.<sup>609</sup> There were also accusations that some of the maids were working in the special teahouses involuntarily.<sup>610</sup> Some of them were criminals (mostly drug users or streetwalkers) who chose to work in the special teahouses instead of serving their jail terms; some of them had heavy debts and were persuaded by the armies to do sex work to make money to pay off their debts.<sup>611</sup>

Starting in the 1970s, with the abolition of marriage restrictions for soldiers and growing criticisms from women's groups, these special teahouses closed one by one.<sup>612</sup> The last ones, located on Kinmen Island and Matsu Island, closed in the early 1990s.<sup>613</sup>

### c. The Abolition of Licensed Commercial Sex in Taipei City in 1997: The Key Incident that Inflamed Debates on Commercial Sex among Women's Groups and Pro-Sex-Worker Groups:

The abolition of licensed brothels in Taipei City in 1997 was a significant and symbolic event for Taiwan's reform of commercial sex. Before 1997, the issue of "sex work" had never been discussed seriously and there existed no sex workers' group. Most of the women's groups considered brothels to be places full of exploitation and they urged the government to save the

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<sup>609</sup> Guan Ren-Jian (管仁健), *Qiang Bi Younu Maiyin De Guojun Te Yue Chashi* (強逼幼女賣淫的國軍特約茶室) [*The Army Brothels That Forced Underage Girls To Prostitute*] (Feb.6, 2010 22:29:45 PM), <http://mypaper.pchome.com.tw/kuan0416/post/1320612663>.

<sup>610</sup> JUNZHONGLEYUAN-ZHANDI JINMEN DE YI YE FENGYUE SHI (軍中樂園-戰地金門的一頁風月史) [THE PARADISE IN THE ARMY: THE HISTORY OF SEX IN KINMEN IN THE WAR TIME], *supra* note 603.

<sup>611</sup> *Id.*

<sup>612</sup> Rongyuan Guanbing Jiashu Jiedai Zhong xin Lieyu GuanCha Biji (榕園官兵家屬接待中心) [*The Reception Center for the family of the soldiers in "Rong-Yuan"*] (Mar.15, 2012), <http://taconet.pixnet.net/blog/post/37073648-%E8%A5%BF%E5%AE%85%E3%80%82%E5%85%AB%E4%B8%89%E4%B9%88>.

<sup>613</sup> *Na Ge Junren Bu Qu Piao? Guanyu 831 Leyuan De Xing Ai Chuanshuo!* (哪個軍人不去嫖?關於831樂園的性愛傳說!) [*Which Soldier Not Going To Buy Sex? The Sex Legend Of 831 Paradise!*], NOWNEWS (Feb. 24, 2009), <http://www.nownews.com/n/2009/02/24/962964>.



victims of child prostitution and forced prostitution. This event marked the beginning of the sex workers' movement. Since the Taipei's abolition of licensed brothels, sex workers group had been established, and women's groups had split into two camps: the pro-decriminalization camp and the anti-commercial sex camp. Some chose to stand by the side of the sex workers' group and advocated to decriminalize commercial sex while some used the radical feminists' discourse to advocate for eradicating commercial sex. The protests and efforts by sex workers' group, beginning in 1997, captured people's attention and the concept of "sex work" began to be discussed. The discussion on commercial sex among women's groups became deeper and intense and their efforts influenced the policies of the government and the SOMA's punishing sex workers regulation became the focus of the discussion. Overall, Taipei's abolition of its licensed commercial sex was a key event for the development of Taiwan's policy on commercial sex. This section will give the reader the context of this event and how it influenced Taiwan's policy on commercial sex deeply.

Prior to the abolishment of licensed brothels in Taipei City, there were already strong voices from women's groups in favor of abolishing licensed brothels in order to prevent the rampant underage prostitution and forced prostitution in these brothels (see Ch.4). As noted above, a sunset clause was added in "The Regulations of Prostitution in the Counties in Taiwan Province" which prevented the licensed brothels from expanding; however, in the eyes of anti-commercial sex advocates, this measure was not enough, as they thought all forms of commercial sex should be abolished. The abolition of licensed brothels in Taipei City in 1997 was not the result of a single reason, but rather various factors from political competition and entanglement, women's groups' criticisms of commercial sex, responding to the unhappy residents who thought solicitation and brothels were nuisances, and the mayor's personal ideal to



bring revolutionary measures to the city. This crucial incident not only reignited the debates on commercial sex that had begun in the late 1980s but also conceived the sex workers' movement; it also let the society and government rethink the policy and underscored why discussion on commercial sex matters.

During the 1970s and 1980s, licensed brothels were prosperous throughout Taiwan.<sup>614</sup> In 1971, in Taipei City alone, there were 135 licensed brothels and 1,750 licensed sex workers working in them.<sup>615</sup> During this period, child prostitution was common, and many indigenous girls were sold to the brothels by their families.<sup>616</sup> This phenomenon was noticed by the women's groups at the time, and their accompanying social movements laid the groundwork for the abolition of licensed commercial sex in Taipei City in 1997.

Taiwan's booming economy and the drastic democratic movement in the 1980s offered fertile soil for the social movements to grow, especially women's movements.<sup>617</sup> During this period, it was still common for parents to sell their daughters to the brothels, especially indigenous families with financial difficulties.<sup>618</sup> There were many underage girls who were

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<sup>614</sup> *Gongchang Lishi Nianbiao* (公娼歷史年表) [*The Chronology of the History of the Licensed Commercial Sex*](Nov. 1, 2006), <http://coswas.org/archives/542>.

<sup>615</sup> *Id.*; The numbers and locations of the brothels in Taipei: The licensed brothels in Taipei City gathered in the following four areas: Beitou, Longshan (Wanhua), Yanping District (now combined into ), Datong District. The numbers of the brothels and sex workers in these places are: Beitou: 36 brothels and 800 sex workers, Lonhshan: 40 brothels and 250 sex workers, Yangpin: 44 brothels and 500 sex workers, Datong: 15 brothels and 200 sex workers. In total, there were 135 brothels and 1750 sex workers.

<sup>616</sup> *The lost lotus, the story of an aboriginal child prostitute* (失落的蓮花 原住民雛妓的故事), <http://www.ptt.cc/man/sttmountain/DC2C/DC2E/M.1211690028.A.C7E.html> (last visited Oct.20, 2014).

<sup>617</sup> Zhang Hui-Tan (張輝潭), TAIWAN DANGDAI FUNU YUNDONG YU NUXINGZHUYI SHIJIAN CHUTAN: YI GE LISHI DE GUANDIAN (台灣當代婦女運動與女性主義實踐初探:一個歷史的觀點)[CONTEMPORARY WOMEN'S MOVEMENT AND FEMINIST PRACTICES IN TAIWAN] 60-61 (2006).

<sup>618</sup> LIN WAN-YI (林萬億), TAIWAN DE SHEHUI FULI: LISHI JINGYAN YU ZHIDU FENXI (台灣的社會福利: 歷史經驗與制度分析) [SOCIAL WELFARE IN TAIWAN: THE HISTORICAL EXPERIENCE AND ANALYSIS OF THE SYSTEM] 372-73 (2006).

forced to do sex work, including some who were injected with hormones so they could mature more quickly.<sup>619</sup> This tragic phenomenon ignited the women's movement in the 1980s.<sup>620</sup> During 1987 and 1988, the news reports astonished society by displaying tragic stories of underage or teenage indigenous females who were sold to brothels.<sup>621</sup> Take Jane-Jane's story for example, who was sold to a brothel by her family when she was 14 because her poor family needed money for her father's medical treatment.<sup>622</sup> Before she grew into adulthood, she was forced to offer sexual services by the brothel operator and had to hand in to the operator all the money she made.<sup>623</sup> She was forced regularly to inject growth hormones into her body so that she could mature faster.<sup>624</sup> After she grew up, she started to send money to support her family.<sup>625</sup> Jane-Jane's and other victims' stories astonished the society and ignited the movement toward eradicating child prostitution.

On January 10, 1987, enraged with the rampant child prostitution in the Monga (Wanhua Dist.) area of Taipei City, more than thirty groups (including religious, human rights, and

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<sup>619</sup> Wu Xia & Yao Xiaomin (武俠 & 姚小敏), *Taiwan Nu Lushi Tingshen Wei Fuquan* (台灣女律師 挺身維婦權) [*Taiwanese Lawyer Stands Up for Women's Rights*] (Nov. 22, 2001), <http://www.people.com.cn/BIG5/paper39/4772/520860.html>.

<sup>620</sup> Li Wu Niu (李元貞), *Taiwan Fuyun Ji Qi Zhengzhi Yihan* (台灣婦運及其政治意涵) [*The Women's Movement And Its Political Meanings*], AWAKENING FOUNDATION, [http://www.awakening.org.tw/chhtml/topics\\_dtl.asp?id=91](http://www.awakening.org.tw/chhtml/topics_dtl.asp?id=91) (last visited Oct.20, 2014).

<sup>621</sup> *Funu Jiuyuan Jijinhui De Yuanqi Ji Zongzhi* (婦女救援基金會的緣起及宗旨) [*The Objective of the Establishment of the Taipei Women's Rescue Foundation*], [https://www.igiving.org.tw/npo/introduce?n\\_id=198](https://www.igiving.org.tw/npo/introduce?n_id=198) (last visited Jan 10, 2015). ; *Fan Chu Ji Yundong* (反雛妓運動) [*The Movement of Anti-Underage Prostitution*], <http://proj1.sinica.edu.tw/~video/main/people/2-women/women2-all.html> (last visited Jan 10, 2015).

<sup>622</sup> *Gongchang Gongzuo Gushi Gongchang Yu Changguan Laoban De Guanxi* (公娼工作故事 公娼與娼館老闆的關係) [*The Story Of The Licensed Sex Worker The Relationship Between Licensed Sex Workers And Brothel Operators*], [http://coswas.org/www/work\\_story.htm](http://coswas.org/www/work_story.htm) (last visited Jan 10, 2015).

<sup>623</sup> *Id.*

<sup>624</sup> *Id.*

<sup>625</sup> *Id.*

indigenous groups), led by women's groups, held a large-scale demonstration on Huaxi St. of Wanhua Dist (Monga).<sup>626</sup> After this big demonstration, the Taipei City government responded by launching "the project of correcting bad customs" (正風方案) to crack down on child prostitution and successfully rescued around 800 underage sex workers.<sup>627</sup> On January 9, 1988, the Taipei Women's Rescue Foundation invited around fifty groups from different fields and held a second demonstration on Huaxi Street.<sup>628</sup> The groups criticized the weak law enforcement record on illegal sexual transactions and they asked the government to revise "The Protection of Children and Youths Welfare and Rights Act" to better prevent child prostitution.<sup>629</sup> They criticized the licensed brothels for using their legal status to engage in illegal activity, and for making poor females, especially indigenous girls, have miserable lives.<sup>630</sup>

Several years later, in 1996, an young unlicensed sex worker was found in a licensed brothel by the police in Taipei City, leading the Taipei Association for the Promotion of Women's Rights (TAPWR) to criticize the licensed brothels' illegal deeds and to argue they should be abolished.<sup>631</sup> The Taipei City government then ordered the Taipei Police Office to invite the

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<sup>626</sup> Liu Huan-Rong (劉煥榮), *1988 Nian 1 Yue 9 Ri Jiuyuan Chuji Huaxijie Da Youxing (1988年1月9日救援雛妓華西街大遊行)* [Parade on Huaxi Street to rescue Child prostitute] (Jan.9, 1988), <http://women.nmth.gov.tw/zh-tw/Content/Content.aspx?para=386&page=0&Class=83>; Li, *supra* note 619.; YANG TSUI (楊翠), ZAI XIAN TAIWAN- TAIWAN FUNU YUNDONG (再現台灣-台灣婦女運動) [DISCOVERY FORMOSA-WOMEN'S MOVEMENT IN TAIWAN] 30-31 (2008).

<sup>627</sup> Liu, 1988 Nian 1 Yue 9 Ri Jiuyuan Chuji Huaxijie Da Youxing (1988年1月9日救援雛妓華西街大遊行) [Parade on Huaxi Street to rescue Child prostitute].

<sup>628</sup> Li Qiong Yue (李瓊月), *The another attempt to rescue child prostitutes(救援雛妓再出擊)*, 69 AWAKENING (婦女新知) 1, 1-5 (1988).

<sup>629</sup> *Id.*

<sup>630</sup> Niu Qing-Fu & Chen Zhi-Hua (牛慶福 & 陳智華), *Huigu/Feihuanchang Sanbuqu (回顧/廢娼三部曲)* [Looking back: the trilogy of abolishing licensed commercial sex], UNITED DAILY NEWS, Mar. 26, 2001, at 18.

<sup>631</sup> *Id.*

related departments of the city government, experts in the related fields, and scholars to attend public hearings to discuss and reexamine the policy on the licensed form of commercial sex.<sup>632</sup> The attendees' opinions were divided; however, many of them supported an anti-commercial sex policy and considered it better to abolish licensed brothels.<sup>633</sup>

That same year, in 1996, Mayor Chen of Taipei City, who belonged to the Democratic Progressive Party (DPP), launched "the anti-pornography project" to respond to the citizens' complaints that their living quality had been affected by the sex businesses in residential areas. His government began to crack down on illegal sexual transactions in the adult entertainment businesses and caused several hundred wineshops to close temporarily.<sup>634</sup> In 1997, an alderman from the Chinese Nationalist Party (KMT) criticized Mayor Chen's project; he accused Mayor Chen of being hypocritical because he on one hand cracked down on adult entertainment businesses but on the other hand still allowed the Police Department to license brothels and sex workers.<sup>635</sup>

The alderman's criticism of Mayor Chen was endorsed by other eight aldermen from KMT.<sup>636</sup> On January 21, 1997, these eight KMT aldermen questioned Mayor Chen in the Council about why he launched "the anti-pornography project" but allowed the police office to issue

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<sup>632</sup> Id

<sup>633</sup> Chen Zhong-Sheng (陳重生), *Beishifu Jueyi Feichu Gongchang Zhidu* (北市府決議廢除公娼制度) [*The Taipei City Government Decided To Abolish Licensed Commercial Sex*], China Times, Feb.4, 1997, <http://forums.chinatimes.com/special/ban/03270203.htm>. ; 「*Taibeishi Guanli Changji Banfa*」 *Feizhi An Da Shi Ji* (台北市管理娼妓辦法) 廢止案大事紀 [*The Chronology of the abolition of "Prostitute Regulations of Taipei City*] (Sept. 3, 1997), <http://apsy.psy.twbbs.org/sex/de-law.htm>.

<sup>634</sup> *Feichang* (廢娼) [*Abolishing Licensed Commercial Sex*], <http://www.twwiki.com/wiki/%E5%BB%A2%E5%A8%BC> (last visited Jan. 10, 2015).

<sup>635</sup> Wang, *supra* note 14, at 4-45.

<sup>636</sup> *Id.*

licenses to brothels and sex workers.<sup>637</sup> These eight aldermen made an official petition requesting Mayor Chen to order the Police Department to stop licensing brothels and sex workers.<sup>638</sup> Mayor Chen immediately responded to the aldermen's petition and stated he would abolish licensed commercial sex in Taipei City immediately.<sup>639</sup> He also cited the conclusion of a public hearing held a year prior, in 1996, as evidence supporting his decision.<sup>640</sup> Mayor Chen's sudden decision was unexpected. It produced fierce disputes and criticisms; Alderman Yang (楊鎮雄) from New Party and Independent Alderman Li (李承龍) helped the licensed sex workers to protest the city government to criticize Mayor Chen's decision as a reckless one without careful discussion and evaluation.<sup>641</sup>

In fact, the sudden abolishment of licensed commercial sex in Taipei City was the result of rivalry between political parties.<sup>642</sup> The aldermen used the opportunity to criticize Mayor Chen's policy to let the citizens feel dissatisfied with the Mayor, and Mayor Chen used the "the anti-pornography project" and the abolishment of licensed commercial sex as strategies to impress the citizens with his law enforcement ability. He also sought to create a wholesome and righteous image that was different from the previous KMT Mayors who held an ambiguous attitude toward

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<sup>637</sup> *Id.*

<sup>638</sup> *Id.*

<sup>639</sup> *Id.*

<sup>640</sup> *Gongchang Kangzheng Shiqi Dashiji 1997 Nian*, (公娼抗爭時期大事紀(1997年)) [*The History Of Licensed Sex Worker'S Protest (1997)*], COSWAS (Oct.6, 2006), <http://coswas.org/archives/20>. ; 卡維波 (Ka Wei-Po), *Youguan Chenshuibian Feichang Zhengce De Yixie Shidai Zhengzhi* (有關陳水扁廢娼政策的一些時代政治背景) [*Beijing The Background Of Taipei City's Abolishment Of Licensed Commercial Sex*] (Jul.29,2004),<http://sex.ncu.edu.tw/reset/?p=570>.

<sup>641</sup> *Id.*

<sup>642</sup> *Id.*

commercial sex.<sup>643</sup>

To evaluate the likely impact of the imminent abolishment of licensed commercial sex, the Department of Social Welfare visited the licensed sex workers, interviewed them and listened to their opinions about the abolishment.<sup>644</sup> Based on the interviews, the Department prepared a report and proposed to the City government to enact a supplemental measure with a 2-year grace period for licensed sex workers to make related adjustments and to change to other professions.<sup>645</sup> However, this report was ignored by the government and though there were objections, on July 30, 1997, the Taipei City Council passed the abolishment of Regulations for licensed commercial sex in Taipei City (台北市娼妓管理辦法) without any grace period or supplementary measures.<sup>646</sup>

On September 1, 1997, around one hundred licensed sex workers attended the "The conciliation commission on the abolition of licensed commercial sex" (公娼廢除問題協調會) and they marched to the Taipei City Government to protest.<sup>647</sup> On September 3, 1997, Ms. Guan, the representative of the licensed sex workers, attended "The Seminar on the abolition of licensed commercial sex" (公娼存廢座談會) and expressed her disagreement with the abolition.<sup>648</sup> Despite the strong controversy, the abolishment of Regulations for licensed

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<sup>643</sup> See Wang, Fang-Ping (王芳萍), *Walk out of Pan Blue and Pan Green: The politics of the demonstration of licensed sex workers* (走出藍綠：公娼抗爭的底邊政治) 13-14 (Jan. 10, 2010), [http://www.csat.org.tw/paper/F42\\_%E7%8E%8B%E8%8A%B3%E8%90%8D\\_%E5%85%A8%E6%96%87.pdf](http://www.csat.org.tw/paper/F42_%E7%8E%8B%E8%8A%B3%E8%90%8D_%E5%85%A8%E6%96%87.pdf).

<sup>644</sup> *Id.* at 45.

<sup>645</sup> Wang, *supra* note 14, at 45,182.

<sup>646</sup> *Id.* at 182-83.

<sup>647</sup> *Gongchang Kangzheng Shiqi Dashiji* (公娼抗爭時期大事紀) [*The History Of Licensed Sex Worker'S Protest*] (Mar. 28, 1999), <http://coswas.org/www/history1.htm>.

<sup>648</sup> *Id.*

commercial sex in Taipei City took effect on September 6, 1997.<sup>649</sup> The licensed sex workers later received notification from the government and were told to cease conducting their business within one week.<sup>650</sup> At the time, there were 128 licensed sex workers working in 18 brothels in Taipei City.<sup>651</sup> This sudden abolition triggered sex workers to take action, including protests on streets to fight for their rights.<sup>652</sup>

On September 4, 1997, with support from grassroots organizations from different fields, the “Taipei Licensed Sex Worker Self Rescue Association” (台北市公娼自救會) was established.<sup>653</sup> The Self Rescue Association aimed to advocate for licensed sex workers and ask the City Council for a grace period to the abolition so that sex workers could temporarily resume their work and have the time to change to other professions.<sup>654</sup> To reach this goal, the Self Rescue Association held numerous seminars and led street demonstrations to get people’s attention.<sup>655</sup> Eventually, the Association’s continuous efforts successfully allowed them be heard and made the Taipei City Council rethink its abolition of “Regulations for prostitutes in Taipei City.”<sup>656</sup>

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<sup>649</sup> NIU & CHEN, *supra* note 629.

<sup>650</sup> Guo, *supra* note 8.

<sup>651</sup> Gongchang Lishi Nianbiao (公娼歷史年表) [The Chronology of the History of the Licensed Commercial Sex], *supra* note 613.

<sup>652</sup> *Gongchang Kangzheng Shiqi Dashiji* (公娼抗爭時期大事紀) [The History Of Licensed Sex Worker’S Protest], *supra* note 646.

<sup>653</sup> *Gongchang Kangzheng Shiqi Dashiji*, (公娼抗爭時期大事紀) [The History Of Licensed Sex Worker’S Protest], *supra* note 639.

<sup>654</sup> *Id.*; *Shisi Hanwei Shengcunquan-Taibeishi Feichu Gongchang Shijian (1997.09 –1999.03)* (誓死捍衛生存權—臺北市廢除公娼事件 (1997.09 –1999.03)) [Vow to Fight for Right to Live, The Event of the Abolishment of the Licensed Commercial Sex in Taipei city], <http://women.nmth.gov.tw/zh-tw/Content/Content.aspx?para=390&page=0&Class=83> (last visited Mar.1, 2015).

<sup>655</sup> *Id.*

At the end of October 1997, the Taipei City Council admitted its careless abolition of “Prostitute Regulations of Taipei City” (台北市娼妓管理辦法) and then the Council passed “The Regulations For Licensed Commercial Sex In Taipei City” (台北市公娼管理辦法) with a grace period of two years to postpone the abolition of the licensed brothels.<sup>657</sup> However, Mayor Chen refused to execute these measures and the Taipei City Government asked the City Council to make the City Council overturn these measures.<sup>658</sup> On December 17, 1997, the City Council decided to maintain the legislation of “the Regulations for licensed commercial sex in Taipei City” with a grace period of two years.<sup>659</sup> The City Government, however, refused to enforce these regulations.<sup>660</sup> In order to put pressure on Mayor Chen to enforce “the Regulations for licensed commercial sex in Taipei City” with the grace period , the Self-Rescue Association launched the “Sex Workers Will Follow” (娼影隨行) protest, which meant the sex worker would trace the public activities of Mayor Chen and then show up to the places he appeared and would protest.<sup>661</sup> Later, they even submitted an appeal to Control Yuan (equivalent to the Government Accountability Office in the U.S.) in order to impeach Mayor Chen, but this was in vain.<sup>662</sup> Subsequently, the Self-Rescue Association submitted a petition to the Ministry of Interior to ask it to declare that the abolishment of “Regulations for prostitutes in Taipei City” was illegal, but

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<sup>656</sup> *Id.*

<sup>657</sup> *Gongchang Kangzheng Shiqi Dashiji* (公娼抗爭時期大事紀) [The History Of Licensed Sex Worker’S Protest], *supra* note 646.

<sup>658</sup> *Id.*

<sup>659</sup> Wang, *supra* note 14, at 84.

<sup>660</sup> *Id.* at 91.

<sup>661</sup> *Id.* at 84-88

<sup>662</sup> *Id.*



that effort was also in vain.<sup>663</sup> In February 1998, the Self-Rescue Association filed a lawsuit to ask the court to take appropriate action on Mayor's Chen refusal to implement the regulation with a 2-year grace period for abolishing licensed brothels.<sup>664</sup> After losing the lawsuit, they filed an application to ask the Constitutional Court to make interpretations on this issue; however the Constitutional Court rejected the application because this issue was not qualified for an Interpretation.<sup>665</sup>

During the process of the abolition of licensed commercial sex, the long-time stigma and prejudice attached to sex workers was obvious.<sup>666</sup> The stigma made it harder for sex workers to speak out in public and fight for their rights. In the society, there were many people who thought sex work was not respectable and that sex workers made easy money.<sup>667</sup> Though some people had sympathy toward senior sex workers, many felt sex work was shameful and immoral.<sup>668</sup> Because of these prevalent prejudices, most of the sex workers who appeared in the media or protest parades wore masks and hats to hide their faces and refused to be interviewed because they feared people would recognize them and that would bring shame upon their families or acquaintances.<sup>669</sup>

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<sup>663</sup> *Id.*

<sup>664</sup> *Id.* at 192.

<sup>665</sup> *Id.*; To my best of knowledge, according to the present material, I couldn't find explanation why Constitutional Court rejected their petition. However, according to the Article 5 of Constitutional Interpretation Procedure Act, the reason may be that Mayor Chen's refusal to implement a regulation is not related to constitutional principles or the sex workers' rights have not infringed under the abolition (since their sex work is not recognized as a working right in the current legal framework of Taiwan).

<sup>666</sup> *Id.*

<sup>667</sup> Lk, *GongCchang Yu Bingsi Zhu (公娼與病死豬) [Licensed Sex Workers And The Sick Dead Pig]*, <http://a2z.fhl.net/paper/paper47.html> (last visited Jan.10,2015).

<sup>668</sup> *Id.*

While defending his decision regarding abolition before the City Council, the Mayor Chen showed a set of unverified records listing the properties and savings of the licensed sex workers. He stated that “people thought licensed sex workers are poor but I am telling you they are not. There are 58 licensed workers out of 128 having 1 to 5 houses; 58 have 1-7 lands; 31 have savings of more than 500,000 Taiwan Dollars, and more than 10 have more than 2,000,000 Taiwan Dollars. There is one even who has savings beyond 14,000,000.”<sup>670</sup> This statement enraged licensed sex workers and they argued the Mayor’s accusations were untrue.<sup>671</sup> Similar hostile statements regarding commercial sex were repeated by officials many times. For example, in 1998, the chairman of the Department of Social Welfare of the Taipei City Government, Chen Chu, said to a reporter in public that if prostitution can be considered as a profession and sex workers could claim the right to sex work, then gun owners and drug dealers could also claim their working rights, to express her disagreement toward commercial sex.<sup>672</sup>

Another example of the stigma can be observed from the story of the former licensed sex worker, Xiaoli. Xiaoli was a 51-year-old former sex worker who worked for more than 10 years in the licensed brothel “Spring Wind” in Taipei City.<sup>673</sup> Following the abolition, with only a

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<sup>669</sup> *Taiwan Jinu De Zui Yu Fa Jin Chang Bei Hou De Shu Bai Yi Xing Chan Ye* (台灣妓女的罪與罰 禁娼背後的數百億性產業) [*The Crime And The Punishment Of Taiwanese Sex Workers The Billion Dollar’S Sex Businesses Behind The Prohibition Of Commercial Sex*], Jul.4, 2009, <http://dailynews.sina.com/bg/tw/twpolitics/phoenixtv/20090704/2300432219.html>.

<sup>670</sup> Dong Zhi-Sen (董智森), *Fei Chang Feng Po A Bian Da Po Chenmo Zhize Gongchang Fuyun Tuanti* (廢娼風波 阿扁打破沉默 指責公娼 婦運團體) [*The Issue Of Abolition Of Commercial Sex Mayor Chen Broke The Silence And Balmed Licensed Sex Workers And Women’S Groups*], UNITED DAILY NEWS, Sept 10, 1997, at 14.; Wang, *supra* note 14, at 84.

<sup>671</sup> Wang, *supra* note 14, at 84.

<sup>672</sup> *Gongchang Ye Su* (公娼夜宿) [*The night accomodation of licensed sex workers*], <http://www.womenet.org.tw/news/text/news18.html> (last visited Mar.1, 2015).

<sup>673</sup> Xu Pei-Jun (徐珮君), *Liuluo Seqing Changsuo Taoshenghuo Manfu Xinsuan* (流落色情場所討生活 滿腹心酸) [*Making livings by doing sex work, Full of Sadness*] (July. 1 2003), <http://www.appledaily.com.tw/appledaily/article/headline/20030701/152621/>.

junior-high school degree, she couldn't help but became a day laborer.<sup>674</sup> She said: "I was afraid people will recognize me as a former sex worker so I haven't talked to people for three months. I've been working as a day laborer for around one year, and I went to do sex work again after I found I really need money to pay for my children's tuition and my mother's medical treatment for her oral cancer."<sup>675</sup> Her history as a sex worker became an obstacle for her to return to the workforce because of her fear of stigma from society.<sup>676</sup>

In 1998, Mayor Chen completed his term of office and was replaced by Mayor Ma.<sup>677</sup> Mayor Ma positively responded to sex worker groups' requests and finally executed "the Regulations for licensed commercial sex in Taipei City" that the Taipei City Council previously passed (with a two-year grace period) on January 25, 1999.<sup>678</sup> In the meantime, the city government launched the "Rainbow Project" to assist licensed sex workers to learn living skills in preparation for going back to the workforce, or professional skills to start their own small businesses during the grace period.<sup>679</sup>

With the establishment of the two-year grace period, the licensed sex workers and the brothel operators temporarily resumed their business.<sup>680</sup> On March 28, 2001, the grace period

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<sup>674</sup> *Id.*

<sup>675</sup> *Id.*

<sup>676</sup> *Id.*

<sup>677</sup> *Li Ren ShiZhang (歷任市長) [the Mayors of the Taipei City]*  
<http://www.taipei.gov.tw/fp.asp?fpag=cp&xItem=41165&CtNode=5298&mp=100001>  
(last visited Jan.10, 2015).

<sup>678</sup> Qin Fu-Zhen & Dai An-Wei (秦富珍 & 戴安瑋), *Zhanhuan Fuchang Funu Tuanti Youshuo (暫緩復娼 婦女團體遊說) [To No To Abolishing Licensed Commercial Sex Temporarily, The Women'S Groups Actioned To Lobby]* (Jan.5, 1999), <http://www.feminist.sinica.edu.tw/push/push1-1999.01.06.htm>.

<sup>679</sup> NIU & CHEN, *supra* note 629.

<sup>680</sup> *Id.*

ended, and licensed commercial sex in Taipei City formally became history.<sup>681</sup> At the time, throughout Taiwan, there were 23 licensed brothels in 9 cities or counties and 119 active sex workers.<sup>682</sup> In contrast to the prosperous adult entertainment businesses, where unlicensed workers engaged in commercial sex with white-collar patrons, the clients of the licensed brothels were primarily laborers and elder people.<sup>683</sup>

After the abolition, licensed sex workers faced difficulty in making a living immediately, and a large portion of them went to the underground industry to resume sex work.<sup>684</sup> According to the Collective of Sex Workers And Supporters (“COSWAS”), after the abolition of licensed brothels in Taipei City, at least one-third of the 128 former licensed sex workers went to do sex work in the underground sex industry or became streetwalkers.<sup>685</sup> Some were repeatedly arrested

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<sup>681</sup> Xiao Cheng-Xun (蕭承訓), *Gongchang Bian Sichang Di Yi Tian Shanggong Beizhua (公娼變私娼 第一天上工被抓)* [The First Day Of Unlicensed Sex Worker, Being Caught, China Times] (Sept. 8, 1997), <http://forums.chinatimes.com/special/ban/03270309.htm>.

<sup>682</sup> *Id.*

<sup>683</sup> Gaoshi, *Yixian Shengyi Jiao Jia XiaoFeiCceng Duo Shi Laoren, Laogong (高市、宜縣生意較佳 消費層多是老人、勞工)* [The Brothels In Kaohsiung And Yilan: The Consumers Were Most Elders And Labors], *United Daily News*, Mar. 28, 2001, at 5.; Wang Chao-Qun (王超群), *Guan Le Men Xi Le Deng BeiSshi Gongchang Quzhongrensan (關了門 熄了燈 北市公娼曲終人散)* [Closing doors, turning off the lights. The Licensed commercial sex's curtain falls], *China Times*, Mar. 28, 2001, <http://forums.chinatimes.com/special/ban/main.htm>.

<sup>684</sup> Han Zhi-Xian & Zheng Sheng-Wei (韓智先 & 鄭勝為), *Fei Gongchang 8 Nian Dang Nian Gong chang Rujin Diaoling (廢公娼 8 年 當年公娼如今凋零)* [After Eight Years, Former Licensed Workers Failed] (Sept.6, 2005), <http://news.tvbs.com.tw/entry/428455>(last visited Oct.20, 2014). ; Li Ruo-Ci (李若慈), *Feichang 10 Nian Gongchang Paihuai Shehui Bianyuan (廢娼 10 年 公娼徘徊社會邊緣)*, [After 10 years of abolishment of licensed commercial sex, sex workers were at the bottom of the society] (Sept. 6, 2007), <http://news.tvbs.com.tw/entry/312208>.

According to news report, after 10 years, many of the former licensed sex workers were struggling with their lives and quite a few of them went to do sex work underground. XiaoChin was a 60 year-old former licensed worker was one of them. She went to work as a dish wash labor and then went to the governmental organization to work but she decided to quit because she could hardly make enough money. She said the lack of education and the age kept her from finding a decent job. After 9 years of fighting for sex worker's right, the former licensed sex worker Ms. Guan drowned herself because of financial hardship. At the time when her body was found, there were only 350 Taiwan dollars in her wallet and two packs of cigarettes.

<sup>685</sup> Huang Xing-Han (黃興漢), *Taoxian / Fei Chang Zhengce Xia Gongchang Xianshen Shuofa Ling Ren Dongrong (桃縣 / 廢娼政策下 公娼現身說法令人動容)* [Taoyuan County/ under the abolition policy; the

and fined by the SOMA 1991 and thus had financial problems.<sup>686</sup> Some had poor financial conditions and got usurious loans; in the end some were unable to continue with their normal lives, had mental problems, and even committed suicide.<sup>687</sup> Most of the former licensed workers were struggling with financial problems and couldn't find other work to make a living because of the lack of education, living skills, and their older age, which made competition in the workforce nearly hopeless.<sup>688</sup> In 2006, Ms. Guan, a former licensed sex worker who engaged in the business for more than 25 years and led numerous demonstrations for sex workers' rights beginning in 1997, drowned herself because of financial hardships after the abolition.<sup>689</sup> Her tragic death astonished Taiwanese society and encouraged people from different fields to step out to advocate for sex workers.<sup>690</sup>

After Taipei City abolished licensed commercial sex, other local governments followed in

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*touching stories of licensed sex workers*] (Jul.23, 2004) <http://intermargins.net/repression/sexwork/news/2004Jul-Dec/20040811c.htm>.

<sup>686</sup> Xiao, *supra* note 680.

<sup>687</sup> HAN & ZHENG, *supra* note 683.

<sup>688</sup> Huang, *supra* note 684.

<sup>689</sup> Shao Bing-Ru (邵冰如), *Guanjie Zisha Ta Ceng Da Ma 「Ruan Shi Yai Bian De Cha Mou」* (官姐自殺 她曾大罵「阮是崖邊的查某」) [Ms. Guan Committed Suicide: She Had Baled: "I Am The Woman Standing On The Cliff"], United Evening News Aug. 17, 2006, at 9. ; Cai Jin-Nan (蔡進男), *Gongchang Dou Shi Guan Jie Shi Fu Ji Long* (公娼鬥士官姐 屍浮基隆) [The Licensed Sex Worker Fighter Ms. Guan The Corpse Was Found In Water In Keelung] (Aug. 17, 2006), <http://www.appledaily.com.tw/appledaily/article/headline/20060817/2824718/>.

<sup>690</sup> Yang Zhong-Han & Tu Feng-Jun (楊忠翰, 塗豐駿) *Guan Xiu-Qin Kang Bian Fei Chang Li Zheng Ji Quan* (官秀琴抗扁廢娼 力爭妓權) [Guan Xiu-Qin protested the abolishment of licensed commercial sex by the Mayor Chen, fighting for sex worker's rights] (Aug. 17, 2006), <http://www.appledaily.com.tw/appledaily/article/headline/20060817/2824722/>; *Jinian Ji yun Doushi Guan Xiu-Qin -2006 Xingchanye Zhengce Guoji Huiyi Yuriri Chun 2006 Di Wu Jie Taibei Guoji Changji Wenhua Ji Xingdong Luntan* (紀念妓運鬥士官秀琴-2006 性產業政策國際會議 與 日日春 2006 第五屆台北國際娼妓文化暨行動論壇) [In memory of sex worker's activist Ms. Guan: The 2006 International meeting on sex industry and the cultural and action forum of the No.5 Taipei International sex worker's] (Nov.13, 2006), <http://coswas.org/archives/105>.

Taipei City's steps and abolished their licensing systems one by one.<sup>691</sup> Kaohsiung City, the second largest city in Taiwan, abolished the licensed form of commercial sex in 2003.<sup>692</sup> On October 11, 2003, Mayor Hsieh of Kaohsiung City decided to abolish the only existing licensed brothel, "Joy and Happy Palace," because he planned to turn the "Love River" area into a tourist attraction area and thought the brothel would damage the city's image.<sup>693</sup> At the time, the secretary of COSWAS criticized the mayor's decision and stated that there was a hotel where around 60-70 sex workers from Mainland China frequently conducted commercial sex located on the opposite side of the street.<sup>694</sup> Nevertheless, the mayor chose to ignore it and only targeted the licensed brothel.<sup>695</sup> The secretary of COSWAS thought the reason for the mayor of Kaohsiung to close the licensed brothels was because at the time there were only four active licensed sex workers so it was easier to use this abolition to impress the citizens, like what Mayor Chen did in Taipei City.<sup>696</sup> Some cities chose not to enact their self-regulations to regulate licensed commercial sex, or simply abolished their self-regulations after the original existed licensed brothels ended their businesses.<sup>697</sup> Contrary to the sex workers' movement in Taipei, the

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<sup>691</sup> Zhong Jun Zhu (鍾君竺), *Gaoxiong Feichang Erdu Na Ruoshi Kaidao ; Bian Ma Zuo Yan Jiu Jin Zhi Yu Yan Jiu* (高雄廢娼 二度拿弱勢開刀；扁馬作研究 僅止於研究?) [*Kaohsiung Abolished Its Licensed Commercial Sex: The Second Time To Target And Sacrifice The Minority*] (Oct. 13, 2003), <http://www.coolloud.org.tw/node/62201>.

<sup>692</sup> *Id.*

<sup>693</sup> Lai Zhen-Zhan (賴振展), *Xilegong Zou Ru Li Shi Gao Shi Zuihou Yi Jia Gongchangguan Jie shu Yingye* (喜樂宮走入歷史 高市最後一家公娼館結束營業) [*Happy Palace went into history, the last licensed brothel ended business*], eeWOW.com (Oct. 11, 2003), <http://www.eewow.com/utf-8/a/10/11-5354.htm>.

<sup>694</sup> Zhong, *supra* note 690.

<sup>695</sup> *Id.*

<sup>696</sup> *Id.*

<sup>697</sup> Li Hua-Jun (李華峻), *Meiyou Gongchang Zhihou...Feizhi Changji Guanli zizhitiaoli* [*Without licensed sex workers thereafter...abolish self-regulation*] (沒有公娼之後...廢止娼妓管理自治條例) (Dec. 11, 2013), <http://leeneews.com.tw/km-master/front/bin/ptdetail.phtml?Part=20131211-04>.

abolishment of licensed brothels in Kaohsiung City was ignored by the public, and one of the reasons was that the number of the sex workers was so low (only four at the time) so they couldn't take action to advocate for themselves like their counterparts in Taipei.<sup>698</sup>

Table 7

The Chronology of the Licensed Form of Commercial Sex in Taiwan	
1950	The Measures for Special Wineshops in the Taiwan Province (台灣省各縣市特種酒家管理辦法) allow the local governments to establish official special wineshops for people to conduct sexual transactions.
1956	The Prostitute Regulations of Taiwan Province (台灣省管理妓女辦法) allow local governments to temporarily resume licensing brothels and sex workers, similar to the licensing policy the Japanese government adopted before.
1960	The government decides to completely restore licensed commercial sex. It revises the Prostitute Regulations of Taiwan Province and renames it as The Regulations of Prostitution in the Counties in Taiwan Province (台灣省各縣市管理娼妓辦法). These regulations are subsequently revised several times, and in 1973, a sunset clause is added into the regulations.
1973 and 1974	Taipei City and Kaohsiung City enact Prostitute Regulations of Taipei City (台北市管理娼妓辦法) and Prostitute Regulations of Kaohsiung City (高雄市管理娼妓辦法) respectively to regulate licensed commercial sex.

<sup>698</sup> Chang, *supra* note 587, at 63.

07/1997	The Taipei City Council passes the abolishment of Prostitute Regulations of Taipei City (台北市管理娼妓辦法)
10/1997	At the end of October of 1997, the Taipei City Council admits their careless abolishment of 台北市娼妓管理辦法 (Regulations for prostitutes in Taipei City, RPTC) and passes the 台北市公娼管理辦法 (Regulations for licensed commercial sex in Taipei City, RLCSTC) with a grace period of two years. However, Mayor Chen refuses to execute the newly enacted law.
1999	The structure of the local governments is reorganized and the Provincial Government no longer has the authority to supervise the local governments. The 台灣省各縣市管理娼妓辦法 (The Regulations for Regulating Prostitute in the Counties in Taiwan Province) ceases to be effective and the local governments begin to enact their own self-regulations to regulate licensed brothels and sex workers.
1999	Under the leadership of a new mayor, Taipei City finally executes the 台北市公娼管理辦法 (Regulations for licensed commercial sex in Taipei City) on January 25, 1999. With the 2 year grace period, the licensed sex workers and the brothel operators temporarily resume their business.



March 28, 2001	The grace period expires, and licensed commercial sex in Taipei City formally ceases to exist.
October 11, 2003	Mayor Hsieh of Kaohsiung City decides to abolish the only existing licensed brothel “喜樂宮” in that city.
2011	According to statistics from 2011 issued by the National Police Agency, there were only 11 active licensed brothels with 49 sex workers throughout Taiwan. <sup>699</sup>
The Chronology of the Licensed Form of Commercial Sex in the Military in Taiwan	
1951-1992	The 特約茶室設置與管理辦法 (The Regulations for the Establishments of Special Teahouses) is enacted in this specific context. In 1951, based on the regulations, the army in Kinmen island establishes the first soldier’s special teahouse. The special teahouses are eventually closed one by one, and the last two located in Kinmen and Matsu close in 1990 and 1992.

<sup>699</sup> Lin Shu-Hui (林恕暉), 「Xing Zhuan Qu」 Shezhi Jiang Shou Quan Difang Zhengfu (「性專區」設置將授權地方政府) [The Power To Establish Red Light District Will Be Delegated To Local Authorities], LIBERTY TIMES NET (Jul.15, 2011), <http://news.ltn.com.tw/news/society/paper/508705>.

### 3.3.2. Underground Sex Industry: The Criminalization Policy

Having discussed licensed commercial sex in Taiwan in the previous section, this section introduces and discusses the laws regulating unlicensed commercial sex in Taiwan. The section aims to provide the readers the knowledge of these laws and how they shaped today's legal framework toward unlicensed commercial sex.

Unlicensed commercial sex is regulated by the Criminal Code and the SOMA (administrative law). The third parties (including brothel operators, pimps, and procurers) can be sanctioned under both the Criminal Code and the SOMA under any circumstances. Adult sex workers and clients will not be punished by the Criminal Code for voluntary sexual transactions. The SOMA, on the other hand, punishes both sex workers and clients with administrative fines if they engage in sexual transactions outside of the red-light district and licensed brothels. The SOMA has been controversial since it was enacted in 1991 and the debates surrounding it continue today. Discussions of the laws regarding unlicensed commercial sex are provided as below.

#### a. Voluntary Commercial Sex between Adults:

Under the Criminal Code of Taiwan, sex workers and their clients are not punished unless there is an involuntary aspect to the transaction.<sup>700</sup> However, brothel operators and pimps who intend to gain financial benefit from facilitating sexual transactions will face punishment including imprisonment up to five years and fines.<sup>701</sup>

#### b. Involuntary and Underage Sexual Transactions are Prohibited:

Under the Criminal Code and Child and Youth Sexual Transaction Prevention Act,

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<sup>700</sup> Arts. 231 & 231-1 of The Criminal Code (中華民國刑法), *supra* note 10.

<sup>701</sup> *Id.*

involuntary and underage commercial sex are prohibited, even if the underage person agrees to do the transaction.<sup>702</sup> Along these lines, in 2009, the Human Trafficking Prevention Act was enacted and according to this Act, human trafficking for the purpose of gaining benefits from commercial sex is prohibited.<sup>703</sup>

c. Administrative Sanctions on Unlicensed Commercial Sex: The Social Maintenance Act (SOMA):

The Article 80 and Article 90-1 of Social Maintenance Act (SOMA 2011) allow commercial sex to be conducted in red light districts that have yet to be established.<sup>704</sup> Outside of such districts, both sex workers and their clients will face administrative fines.<sup>705</sup> Third parties, such as pimps, procurers, and brothel operators who facilitate the sexual transactions, also face administrative sanctions imposed by the SOMA, both in the original and revised Article 81.<sup>706</sup>

Table 8

Sexual Transactions between Voluntary Adults outside of Licensed Brothels			
	Sex Workers	Clients	Pimps, brothel operators

<sup>702</sup> Art. 233 of The Criminal Code (中華民國刑法) (2014), *supra* note 10.; Child and Youth Sexual Transaction Prevention Act(兒童及少年性交易防制條例)(2007), *available at* [http://law.moj.gov.tw/LawClass/LawOldVer\\_Vaild.aspx?PCODE=D0050023](http://law.moj.gov.tw/LawClass/LawOldVer_Vaild.aspx?PCODE=D0050023).

<sup>703</sup> Arts. 31-35 of Human Trafficking Prevention Act (人口販運防制法) (2009), *available at* <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=D0080177>.

<sup>704</sup> Arts. 80 & 90-1 of Social Order Maintenance Act (社會秩序維護法) (2011), *available at* <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=D0080067>.

<sup>705</sup> *Id.*

<sup>706</sup> Art. 81 of Social Order Maintenance Act (社會秩序維護法) (2011), *available at* <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=D0080067>.

The Criminal Code	No Punishment	No Punishment	Article 231 sentenced to imprisonment of not more than five years; a fine not more than one hundred thousand yuan (Taiwan dollars)
The SOMA 2011 (2011-present)	Article 80: A fine not exceeding 30,000 Taiwan dollars.	Same as Sex workers	Article 81 Three to five days of detention and a fine of between 10,000 and 50,000 Taiwan dollars.

d) Sex Workers are Not Entitled to Ask for Fees for Sexual Transactions under the Civil Code

Notably, under the Civil Code, unlicensed sex workers have no legal grounds to ask for fees for their sexual services from their client because the contract made between the parties, whether in written or oral form, will be void because it violates “good morals and social orders” under the Civil Code.<sup>707</sup> This Article in the Civil Code was not intended for sexual transactions

<sup>707</sup> Art. 72 of Civil Code (中華民國民法) (2015), available at <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=B0000001>.

exclusively, but covers all contracts against “good morals and social orders.” Though there have been no cases filed by sex workers seeking recovery of their fees, it is very likely they would lose any such lawsuits because of this Article. Under the criminalization policy, there’s no legal basis to ask for their fees, and for fear that their clients would refuse to pay, sex workers are often forced to seek assistance from brothel operators, pimps, or even gangs to assure the payments from clients.<sup>708</sup>

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<sup>708</sup> Chen Mei-Hua (陳美華), *Exploitation or Reciprocity? The Intersectionality of Gender, Class and Sexuality in Cross-Strait Commercial Sex Networks* (層層剝削？互利共生？：兩岸性交易網絡中的交織政治), 48 TAIWANESE J. SOC. 1 (2011).

#### CHAPTER 4: COMMERCIAL SEX IN TODAY'S TAIWAN AND THE VULNERABILITIES OF SEXWORKERS UNDER THE CRIMINALIZATION LEGAL FRAMEWORK

In this chapter, I discuss the wretched situation that sex workers are facing in the underground sex industry in Taiwan. I first discuss the existence of de facto red-light districts throughout Taiwan and the various sex businesses from low-end special massage parlors to high-end wineshops. Today, commercial sex is per se prohibited in Taiwan except for the very few licensed sex workers (fewer than 50 in total) who can conduct business legally.<sup>709</sup> Due to the imbalance of the supply and demand, underground sex businesses have continued to prosper under the anti-commercial sex regime.

Second, I discuss the vulnerabilities of the sex workers in Taiwan. Within that topic I begin by discussing the exploitation sex workers face from pimps, brothel operators and gangs. I then discuss the inconsistent law enforcement by the police. I show and explain how low-end sex workers and streetwalkers became the easy targets for the police and got penalized by the SOMA. Thereafter, I discuss the health issue in the underground sex industry to show how safe sex cannot be ensured because of the “condom as evidence” policy and the how sex workers lacked access to health services and education. Lastly, I discuss the trafficking issue in Taiwan and the vulnerability of foreign sex workers. I argue all of these numerous vulnerabilities of sex workers flow from a criminalization policy that creates disadvantaged surroundings, and that keeps sex workers from gaining necessary protection and help in time.

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<sup>709</sup> *Mingtian Qi Changpiao Dou Fa 3 Wan 《She Wei Fa》 Hu Lan Quan Tai Wu Xing Jiao Yi Zhuan Qu (明天起娼嫖都罰3萬《社維法》唬爛 全台無性交易專區) [From Tomorrow, Both Sex Workers And Clients Will Be Fined Up To NTD 30,000 SOMA Is A Lie, There'S No Red-Light District In Taiwan] (Nov. 5, 2011), <http://www.appledaily.com.tw/appledaily/article/headline/20111105/33793982/>.*

#### 4.1. The De Facto Red-Light Districts

In addition to the few licensed brothels, there are many unlicensed brothels operating throughout Taiwan. These brothels have often gathered together and formed de facto “red light districts.”<sup>710</sup> For example, in Wanhua (Monga), the historical location of commercial sex since the Qing Dynasty, whether in day time or night time, streetwalkers and private brothels can be seen in the alleys and arcades.<sup>711</sup> They target low-income people like laborers, migrant workers, and seniors.<sup>712</sup> Even after the abolition of licensed commercial sex in Taipei City, the Wanhua (Monga) still remained a prosperous place with thriving sex businesses.<sup>713</sup> The residents in this area often complained about the soliciting activities and they called for “beefed-up police patrols to rein in what they say is a social blight spreading in their area: prostitutes hustling aggressively in the streets.”<sup>714</sup>

In San Chung in New Taipei City, people can see the famous brothels called “bean curds” (豆干厝); they got the name because of their square shape, located along the alleys. This type of brothel hires sex workers from Southeast Asia (e.g. Vietnam and Thailand) and offers inexpensive services.<sup>715</sup> Outside of Taipei, in Taichung City, around the Taichung Park, even in

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<sup>710</sup> Lu Yun-Sheng ET AL. (陸運陞等), *Liuying Mei Zai Pa Bo Sha Man Jie La Ke* (流鶯沒在怕 薄紗滿街拉客) [*Streetwalkers Soliciting Everywhere, But The Five Cities Rejected To Establish Red-Light District*] (Oct. 17, 2011), <http://www.appledaily.com.tw/appledaily/article/headline/20111017/33744364/%E6%B5%81%E9%B6%AF%E6%B2%92%E5%9C%A8%E6%80%95%E8%96%84%E7%B4%97%E6%BB%BF%E8%A1%97%E6%8B%89%E5%AE%A2>.

<sup>711</sup> Sung Hsiao-Hai & Jason Pan, *Aggressive Sex Workers Ruining Wanhua, Locals Say* (Sept. 23, 2013), <http://www.taipeitimes.com/News/taiwan/archives/2013/09/23/2003572817/2>.

<sup>712</sup> *Id.*

<sup>713</sup> *Bosha Liuying Lu Bian Zhan Mei Hong Deng Qu Zhao La Ke* (薄紗流鶯路邊站 沒紅燈區照拉客) [*Nearly Naked Streetwalkers Soliciting On Streets*] (Oct.17, 2011), <http://www.appledaily.com.tw/realtimenews/article/new/20111017/82629/>.

<sup>714</sup> SUNG & PAN, *supra* note 710.

day time, streetwalkers can be seen soliciting or waiting for guests on the streets.<sup>716</sup> In Tainan City, in the Hsinying area, people can visit brothels that have operated since the Japanese colonial period; the sex workers sit inside the houses, and solicit clients through the windows with iron grating for a price of around 800 Taiwan dollars.<sup>717</sup>

To sum up, throughout Taiwan, the underground sex industry is prosperous and the de facto red-light districts have long existed.<sup>718</sup> Obviously, law enforcement has never successfully driven these brothels and streetwalkers out of business.

#### 4.2. Contours of the Sex Industry in today's Taiwan

In addition to unlicensed brothels, there are various adult-entertainment businesses operating throughout Taiwan, such as wineshops, saunas, barbershops, and tea houses, and usually they provide under the table sexual transactions. These adult-entertainment businesses can be legally established under the self-regulations for “special businesses” of the local government. For example, in Taipei City, according to “the Self-Regulation of Dance Halls, Wineshops, and special Tea/Coffee Shops of the Taipei City” (臺北市舞廳舞場酒家酒吧及特種咖啡茶室管理自治條例), dance halls, wineshops, bars, special coffee shops, karaoke, and barbershops that hire maids to accompany guests, along with saunas, are subject to these self-

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<sup>715</sup> *Quantai Wan Jia Anmoguan Cang Chunse Tucheng Renrou Shichang Xiaohun Zhiji* (全台萬家按摩館藏春色 土城人肉市場銷魂直擊) [More Than 10 Thousands Massage Parlors Doing Illegal Sex Businesses The View On The Sex Market In Tu Cheng], CHINATIMES.COM (Mar. 17, 2013), <http://mag.chinatimes.com/print.aspx?artid=18773>.

<sup>716</sup> Boshu Liuying Lu Bian Zhan Mei Hong Deng Qu Zhao La Ke (薄紗流鶯路邊站 沒紅燈區照拉客) [Nearly Naked Streetwalkers Soliciting On Streets ], *supra* note 712.

<sup>717</sup> *Id.*

<sup>718</sup> *Id.*



regulations.<sup>719</sup> According to the Article 8 of the regulations, sexual services are prohibited; however, under the table sexual transactions are rampant.<sup>720</sup>

The various businesses targeting different groups of clients reflect a wide network that serves clients from all walks of life with different consuming capacities. Both white-collar and blue-collar people can find services they prefer. With the long-term criminalization policy, the businesses have become flexible and have adapted to the market; they identified ways to survive and continued to thrive. The most systematic type of these adult entertainment businesses is the “wineshop.” For long, there has been a “wineshop culture” in Taiwan; businessmen go to wineshops to socialize with their colleagues and clients.<sup>721</sup> According to a 2003 study, it was estimated that at least one-third of the male adults in Taiwan had patronized a wineshop and one-fifth of them had had sexual transactions with sex workers.<sup>722</sup> In wineshops, young females are hired as maids to entertain guests through singing, dancing, and drinking.<sup>723</sup> There are various wineshops to cater to clients’ preferences; traditionally there are three main types: the uniform

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<sup>719</sup> Taibeishi Wuting Wuchang Jiujiu Jiuba Ji Tezhong Kafei Chashi Guanli Zizhi Tiaoli (臺北市舞廳舞場酒家酒吧及特種咖啡茶室管理自治條例) [The Self-Regulation Of Dance Halls, Wineshops, And Special Tea/Coffee Shops Of The Taipei City] (2008), available at <http://www.rootlaw.com.tw/LawContent.aspx?LawID=B010040030000100-0970115>.

According to arts. 3 and 17 of the regulation that hire staff to dance with guests, that serve alcohol and foods and hire staff to accompany guests that serve beverages and hire staffs to accompany guest.

<sup>720</sup> Caftommy, *Jiudian Xiaojie Gongzuo Suode Laiyuan* (酒店小姐工作所得來源) [The Income Source of Bar Girls] (Aug. 13, 2012), <http://caftommy.pixnet.net/blog/post/37011925-%E9%85%92%E5%BA%97-%E5%B0%8F%E5%A7%90-%E5%B7%A5%E4%BD%9C-%E6%89%80%E5%BE%97-%E4%BE%86%E6%BA%90>.

<sup>721</sup> Shu-Ling Hwang (黃淑玲), *Masculinity and Taiwan's Flower-drinking Culture* (男子性與喝花酒文化), TAIWANESE SOC., no.5, June 2003, at 73, 75.

<sup>722</sup> *Id.* at 75-76.

<sup>723</sup> Dino (迪諾), *Jiudian Shangban Daodi Dou Zai Zuo Shenme* (酒店上班到底都在做甚麼) [What Is Exactly The Work In Wineshops] (Feb. 15, 2014), <http://dino194340.pixnet.net/blog/post/24381099-%3C%3Cq%26a%3E%3E%E9%85%92%E5%BA%97%E4%B8%8A%E7%8F%AD%E5%88%B0%E5%BA%95%E9%83%BD%E5%9C%A8%E5%81%9A%E4%BB%80%E9%BA%BC%3F>.

one, the causal-wear one, and the evening dress one.<sup>724</sup> Their prices vary and normally the casual-wear ones charge the most because of their high standards for hiring their maids.<sup>725</sup> Though most of the wineshops hire their own maids, there are wineshops that choose to cooperate with an “Agent Company” (傳播公司) to save the cost of hiring maids by themselves.<sup>726</sup> Agent Companies recruit and hire maids and when there are requests from wineshops, they will send maids to the designated wineshops to work.<sup>727</sup> Although sexual transactions are not legally allowed in wineshops, under-the-table transactions are very common.<sup>728</sup> Clients can pay extra “go-out fees” to maids and operators of wineshops and then take the maids out for further sexual transactions.<sup>729</sup>

Snack huts (小吃部) and traditional karaoke houses, the actual unlicensed brothels, target elderly and low-income clients.<sup>730</sup> It is common to see foreign sex workers from Mainland China, Vietnam, or Indonesia working in these places. In addition to the low price, a feature of these businesses is that sex workers are very compliant to clients’ audacious requests. Massage parlors, saunas, special barbershops, and motels are also common places for conducting low-

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<sup>724</sup> *Id.*

<sup>725</sup> *Id.*

<sup>726</sup> *Chuanbomei Bei Da Qiang Jiu Dian Qiang Ji Jing Dai 12 Xian* (傳播妹被打檯酒店檯擊警逮12嫌) [The Call Girls Were Rejected And The Wineshop Shot The Police] (Aug. 31, 2013), <http://www.appledaily.com.tw/appledaily/article/headline/20130831/35261116/>.

<sup>727</sup> *Id.*

<sup>728</sup> Dino, *supra* note 722.

<sup>729</sup> *Id.*

<sup>730</sup> *Yuenan Xiaochibu Qingse Xi Nantai* (越南小吃部 情色襲南台) [The Vietnamese Snack Huts Prospered In The Southern Taiwan], LIBERTY TIMES NET (Apr. 2, 2006), <http://www.libertytimes.com.tw/2006/new/apr/2/today-so1.htm>.

priced sexual transactions.<sup>731</sup> Massage parlors and saunas provide so called full-service (全套) and half-service (半套) sexual services to clients.<sup>732</sup> Staff at these places will approach clients and then tell them about their sexual services; if clients agree to the transactions, they will then be taken into private rooms to conduct the services.<sup>733</sup> Special barbershops that hire mostly elder maids often use shop signs with words like “grand barbershop,” and have dark doors or windows to imply they offer sexual services.<sup>734</sup> Motels are mostly located at highway ramps and they attract drivers to stay; operators typically contact pimps to bring the maids to the motels to serve the guests.<sup>735</sup>

In these various low-end venues for conducting commercial sex, with more and more sex workers from Mainland China and Southeast Asia, Taiwanese sex workers are facing fierce competition and even becoming the minority.<sup>736</sup> For example, in Wanhua District, sex workers

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<sup>731</sup> *Ancang Chunse Lifating Tebie Fuwu Xingjiaoyi (暗藏春色理髮廳 特別服務性交易) [Special Sexual Services Hidden In The Barbershops]*, NOWNEWS (Sept. 23, 2012), <http://health.nownews.com/2012/09/23/11490-2856759.htm>.

<sup>732</sup> *Anmonu Quan Luo Bang Nan Ke Zuo 「Bantao」 Bian Cheng 「Pa Yi Fu Bei Nong Zang」 (按摩女全裸幫男客做「半套」 辯稱「怕衣服被弄髒」) [The Female Massager Provided “Half-Service” To Male Client Naked, Arguing “Afraid Of Making Clothes Dirty”]*, Nownews (Nov.7, 2013), <http://www.nownews.com/n/2013/11/07/1013067>.

<sup>733</sup> *Tibao Sanwennuan Mishi Mai Seqing Gaizhuang Yushi She An Men Yu Huojing Nan Taoshen (踢爆三溫暖密室賣色情改裝浴室設暗門遇火警難逃生) [The Fire Broke Out In The Sauna That Provided Sexual Services, The Layout Made People Hard To Escape]* (Jan. 31, 2004), <http://www.appledaily.com.tw/appledaily/article/headline/20040131/681550/>.

<sup>734</sup> *Lifating Jianying Seqing Xingjiaoyi Chiluo Huo Dai (理髮廳兼營色情 性交易赤裸活逮) [Arrested Naked, The Barbershop Provided Sexual Service Illegally]* (July 16, 2012), <http://tw.news.yahoo.com/%E7%90%86%E9%AB%AE%E5%BB%B3%E5%85%BC%E7%87%9F%E8%89%B2%E6%83%85-%E6%80%A7%E4%BA%A4%E6%98%93%E8%B5%A4%E8%A3%B8%E6%B4%BB%E9%80%AE-141621220.html>.

<sup>735</sup> *Zhaoji Bei Huo Dai Piao Ke: Zhuan Dao Special (召妓被活逮 嫖客：賺到 Special) [The clients caught for sexual transaction, the client still happy for he was caught after being serviced]* (Dec. 10, 2013), <http://www.appledaily.com.tw/appledaily/article/headline/20131210/35496507/>.

from Mainland China have claimed certain areas.<sup>737</sup> Taiwanese sex workers were forced to move to other cities such as New Taipei City and Taoyuan, and some of them even became streetwalkers.<sup>738</sup> Recently, individual studios for commercial sex have begun to emerge in Taiwan.<sup>739</sup> Sex workers rent rooms in residential buildings and they cooperate with pimps to get business.<sup>740</sup> Pimps usually post ads in online forums or send text messages to potential guest to solicit.<sup>741</sup> It is estimated by the police that around 30,000 sex workers are working in this type of arrangement in Taiwan today.<sup>742</sup>

In addition to the aforementioned mentioned businesses, there are quite a few who choose to work on the streets.<sup>743</sup> Lots of streetwalkers are older in age and they may not possess other skills to make their living.<sup>744</sup> They charge a much lower price compared to other sex workers

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<sup>736</sup> Ba Mao, *La Ba Zhijie Lai Meng Jia Cha Dian Zi Lumei Chengba Gan Zou Taimei* (拔毛、喇叭直接來 艋舺茶店仔陸妹稱霸趕走台妹) [*Sex Workers Form Mainland Drove Away Taiwanese Sex Workers In The Tea House In Monga*], ETTODAY (Jul. 10, 2013), <http://www.ettoday.net/news/20130710/238683.htm>.

<sup>737</sup> *Id.*

<sup>738</sup> *Id.*

<sup>739</sup> *Pinguo Diaocha: Wan Shuangfei Zuo Dianliao 1 Lou 1 Feng Xi Piaoke 3 Wan Ji Gao 「Ge Gong」 Gehouzhan* (蘋果調查：玩雙飛做電療1樓1鳳吸嫖客3萬妓搞「個工」割喉戰) [*The Survey: Studio Station Is Popular, 30,000 Independent Sex Workers Competed For Businesses The “One Studio, One Se Worker” Attracted Clients*] (Nov. 4, 2013), <http://www.appledaily.com.tw/appledaily/article/headline/20131104/35413553/>.

<sup>740</sup> *Id.*

<sup>741</sup> *Id.*

<sup>742</sup> *Id.*

<sup>743</sup> Huang Rui-Dian & Zhang Nian-Ci (黃瑞典 & 張念慈), *Liuying Xinsuan Zhanbi Bei Hou... Zhi Wei Hun Kou Fan Chi* (流鶯辛酸 站壁背後... 只為混口飯吃) [*The Sadness Of Streetwalker: They Only Wanted To Survive*] (May 13, 2009), <http://city.udn.com/54543/3429082>.

<sup>744</sup> *Cong "Gongchang" Dao "Liuyig" Jie Bi Taiwan Xingongzuozhe Xin Suan Xie Lei Shi* (從「公娼」到「流鶯」揭秘 台灣性工作者辛酸血淚史) [*From licensed sex worker to streetwalker: the pain of sex workers in Taiwan*] (Jan. 7, 2014), [http://big5.china.com.cn/gate/big5/guoqing.china.com.cn/2014-01/07/content\\_31118046.htm](http://big5.china.com.cn/gate/big5/guoqing.china.com.cn/2014-01/07/content_31118046.htm).

working indoors; their target clients are laborers and people with low income.<sup>745</sup> Streetwalkers are mostly seen soliciting in train stations, parks, or on streets near motels.<sup>746</sup>

#### 4.3. The Vulnerabilities of Sex Workers in Today's Taiwan

There is a hierarchy among sex workers in Taiwan. At the top of the structure are young and attractive workers, and usually they are native Taiwanese. They work in wineshops, karaoke bars, or they cooperate with call-girl rings. They charge higher fees as compared to other sex workers. They normally possess better bargaining power and enjoy comparatively greater freedom to choose their clients. For them, the reasons to engage in sex work may not relate exclusively to the survival concern but also include the benefit of higher payment compared to other jobs.<sup>747</sup> In the middle of the structure are workers who operate in saunas, barbershop, tea houses, and snack huts. Sex workers in these venues attract their clients by their bold services with low prices. In these venues, there are large numbers of foreign sex workers (mainly from Southeast Asia) and workers from Mainland China. Streetwalkers, at the very bottom of the structure, are the most vulnerable.<sup>748</sup> Their lack of bargaining power and solitude when working on the streets can make them succumb more easily to health risks (e.g. they may agree to not use condoms upon a client's request, or they may give up using condom because the police use it as

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<sup>745</sup> *Id.*

<sup>746</sup> *Id.*

<sup>747</sup> Music080520, *Chuanbomei He Jiudian Jianchamei De Butong* (傳播妹和酒店兼差妹的不同) [*The Difference between Call Girls and Bar Girls*], (May 20, 2008), <http://music080520.pixnet.net/blog/post/17820274-%E6%89%93%E5%B7%A5-%E5%82%B3%E6%92%AD%E5%A6%B9%E5%92%8C%E9%85%92%E5%BA%97%E5%85%BC%E5%B7%AE%E5%A6%B9%E7%9A%84%E4%B8%8D%E5%90%8C>.

<sup>748</sup> *Xingjiaoyi Chufahua (4) Boxiao Wusuobuzai* (性交易除罰化(4)剝削無所不在) [*Decriminalizing Commercial Sex (4) Exploitation Is Everywhere*] (Nov.18, 2010), <http://pnn.pts.org.tw/main/2010/11/18/%E6%80%A7%E4%BA%A4%E6%98%93%E9%99%A4%E7%BD%B0%E5%8C%96%EF%BC%884%EF%BC%89%E5%89%9D%E5%89%8A%E7%84%A1%E6%89%80%E4%B8%8D%E5%9C%A8/>.

evidence), exploitation (e.g., “protection fees” requested by pimps or brothel operators, or forced work), and violence (from pimps, brothel operators, or clients); moreover, they even have to endure harassment from the police.<sup>749</sup> In order to quickly fulfill the duties and tasks ordered by their supervisors, police often target streetwalkers because they are “easiest to catch.”<sup>750</sup> Similar to streetwalkers, workers in barbershops, snack huts, and saunas, the places with weak security protection, are often raided by the police.<sup>751</sup>

#### 4.3.1. Exploitation from Pimps, Brothel Operators and Gangs

In order to avoid the risks of being arrested and unpredictable violence from clients when working alone, sex workers may choose to be employed in unlicensed brothels or for the cover provided by the operators and pimps.<sup>752</sup> In these venues, they have to share their income with pimps and brothel operators and they may have to: (1) give a larger proportion of their income to operators, as compared to practices in licensed brothels; (2) agree to accept unwanted clients as a result of pressure from pimps and brothel operators; and (3) encounter various kinds of restrictions of freedom and even violence and control with drugs.<sup>753</sup> For example, a former licensed sex worker, Xiaoli, lost her job in a licensed brothel after Taipei abolished licensed commercial sex in 1997. In order to make her living, she went to massage parlors and

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<sup>749</sup> *Id.*

<sup>750</sup> Peng Yen-Wen (彭滄雯), *An Implementation Research on How the Street-Level Police Curb Prostitution: The Use of a Critical Interpretative Approach* (基層員警取締性交易的執行研究), J. PUB. ADMIN., no.28, Sept. 2008, at 115, 140.

<sup>751</sup> *Id.* at 140-144.

<sup>752</sup> Zhong Jun-Zhu (鍾君竺), *Xing Gong Zuo Zhe Laodongquan He Zai* (性工作者勞動權何在) [*Sex Workers Where are Their Working Right*] (Nov. 6, 2012), <http://www.appledaily.com.tw/appledaily/article/forum/20121106/34622672/>.

<sup>753</sup> *Id.*

barbershops to conduct illegal sexual transactions.<sup>754</sup> She complained that her income declined because the operators wanted to get more money from the women. In the licensed brothel, the operator took 30% of the income; however, in the unlicensed settings, the operator took 40%.<sup>755</sup> Moreover, Xiaoli had to please the brothel operator so as to get more business; otherwise, the operator might not be willing to recommend her if she did not maintain a good relationship with him.<sup>756</sup>

Another example comes from 2013, in the Wanhua District of Taipei city, when the female leader of a gangster group called “Tien-Doa Meng” forced streetwalkers to hand in some portion of their earnings as “protection fees.”<sup>757</sup> If the streetwalkers rejected this demand, then the female leader would order her people to use violence against those streetwalkers and make them succumb.<sup>758</sup> Moreover, if streetwalkers lied about the real numbers of clients they serviced, then the gangs would threaten and beat them to make them obedient.<sup>759</sup> The leader even forced streetwalkers provide sexual services to her people without charge.<sup>760</sup> Even worse, the gangs used drugs to control streetwalkers; one streetwalker, named Hsu, was forced to take drugs and she died suddenly because of an overdose.<sup>761</sup> These examples reveal that without the protections

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<sup>754</sup> Xu Pei-Jun(徐珮君), *Zheng Xingongzuoquan Gongchang Zai Shangjie* (爭性工作權公娼再上街) [Go Back To The Street Demonstration Again For Fighting For Right To Sex Work] (July 1, 2003), <http://www.appledaily.com.tw/appledaily/article/headline/20030701/152621/>.

<sup>755</sup> *Id.*

<sup>756</sup> *Id.*

<sup>757</sup> Liu Qing-Hou(劉慶侯), *Dajietou Qiya Liuying Yao Qian You Yao Ren* (大姊頭欺壓流鶯 要錢又要人) [Female Gang Bullied Streetwalker Asking Money And Body] (Nov.21, 2013), <http://m.ltn.com.tw/news/society/paper/732173>.

<sup>758</sup> *Id.*

<sup>759</sup> *Id.*

<sup>760</sup> *Id.*

of the laws, sex workers' lives, physical bodies, and property are constantly threatened by others who seek to extract benefits from them.

#### 4.3.2. Violence from Clients

There have been numerous cases of sex workers in Taiwan who encountered violence from clients. Some sex workers have even lost their lives at the hands of clients. For example, in 2003, in Kaohsiung City, the police found a senior streetwalker who had been killed in her apartment.<sup>762</sup> Three days later, another senior streetwalker was killed in the same apartment.<sup>763</sup> The murderer turned out to be a man who lacked the money (only 200 NT dollars for each transaction) for the sexual transactions and he decided to kill the two women after having sex with them.<sup>764</sup> This case reveals how sex workers, toiling in solitary conditions, attract criminals who engage in wrongdoing.

#### 4.3.3. Inconsistent Enforcement and Police Corruption

##### a. The Unfair Practices of Law Enforcement:

Law enforcement cracking down on commercial sex in Taiwan is problematic in two ways as discussed below. First, according to the research and interviews of 28 policemen conducted by Peng in 2008, law enforcement is inconsistent: most of the time it is lax but sometimes intense if there is a special project targeting commercial sex.<sup>765</sup> Second, the investigation skills and

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<sup>761</sup> *Id.*

<sup>762</sup> Huang Ming-Shang (黃明賞), *Liuying Shashou Zhuang Tian-Zhu Wei Liang Bai Yuan Sha Ren* (流鶯殺手莊天祝為兩百元殺人) [For 200 dollars, Zhuang Tian-Zhu killed streetwalkers] LIBERTYTIMES.COM (2004), <http://www.libertytimes.com.tw/2004/new/jan/22/today-so4.htm>.

<sup>763</sup> *Id.*

<sup>764</sup> *Id.*



procedures are frequently questionable. In order to minimize their efforts and quickly complete their duties, police target low-end sex workers and use fake customers, a “fishing” strategy, and other controversial ways to conduct investigations. These two concerns are discussed below.

The first issue is the inconsistent law enforcement, which is sometimes tight and sometimes loose, and if the police decided to take action to law enforcement, low-end sex workers often became the targets. Most of the time, police only want to complete their basic duties and might not be willing to do more work on cracking down on commercial sex due to a personal tolerant attitude two commercial sex or the limited police resources available to complete many other duties.<sup>766</sup> To evaluate the police’s performance, the National Police Agency has set up duties for the regional police offices to crack down on illegal commercial sex that violates the SOMA and the Criminal Code.<sup>767</sup> The level of the duties assigned to the police offices in different regions was determined by their past performance and the number of cases they previously investigated.<sup>768</sup> The supervisory police offices then delegated these duties to the local police stations.<sup>769</sup> Periodically, the police stations reported their results of law enforcement to their supervisory offices. According to Peng’s field research, it was not difficult for the police stations to fulfill their duties since the required duties were not too onerous.<sup>770</sup> Therefore, most of the time, the police will not put too much effort into combatting commercial sex. However, when the local government requests tighter law enforcement (e.g. responding to the citizens’

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<sup>765</sup> Peng, *supra* note 749, at 139-41.

<sup>766</sup> *Id.* at 133-141.

<sup>767</sup> *Id.* at 132

<sup>768</sup> *Id.* at 131-133

<sup>769</sup> *Id.*

<sup>770</sup> *Id.* at 132

complaints) the law enforcement on commercial sex is strengthened.<sup>771</sup> The most notable example happened in 2001, when the media made a proactive report on a Japanese book entitled “Paradise Taiwan” (極樂台灣) and it caused a sensation in Taiwanese society.<sup>772</sup> It was a guidebook written by a Japanese writer who introduced adult entertainment businesses throughout Taiwan.<sup>773</sup> The mass media’s intense reports of the book caught people’s attention and the aldermen criticized the local governments’ slack law enforcement that fueled the prosperity of underground sex businesses.<sup>774</sup> The Taipei City government and Kaohsiung City government took action immediately to crack down on illegal sexual transactions in the adult entertainment businesses.<sup>775</sup> However, as time went by, people gradually stopped paying attention and the law enforcement became slack again.<sup>776</sup>

The second issue is the police’s problematic investigation skills and procedures. The police often use entrapment-like (“fishing”) strategies to arrest sex workers and their clients.<sup>777</sup> For

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<sup>771</sup> Nuzi Baoyuan Ke P Sao Huang Hai Ta Mai Yin Bei Dai (女子抱怨柯P 掃黃 害她賣淫被逮) [Female Sex Worker Complained Mayor Ke P for Arrested for Selling Sex] (Jan.30, 2015), <https://tw.news.yahoo.com/%E5%A5%B3%E5%AD%90%E6%8A%B1%E6%80%A8%E6%9F%AFp%E6%8E%83%E9%BB%83-%E5%AE%B3%E5%A5%B9%E8%B3%A3%E6%B7%AB%E8%A2%AB%E9%80%AE-120045824.html>.

<sup>772</sup> Jiang Guan-Ming (江冠明), *Jile Taiwan Jidu Fengkuang* (極樂台灣 極度瘋狂) [Paradise Taiwan, The Extreme Happiness], NEWTAIWAN (Jan. 21, 2002), <http://www.newtaiwan.com.tw/bulletinview.jsp?bulletinid=8083>.

<sup>773</sup> *Id.*

<sup>774</sup> *Id.*

<sup>775</sup> Chen Jun-Xiong & Cai Kun-Liang (陳俊雄&蔡崑亮), *Bei Gao Jingfang Antusuo 「Ji」 Duo Pu Kong* (北高警方按圖索「妓」多撲空) [The Police From Taipei City And Kaohsiung City Started To Crack Down On Sex Industry But Didn'T Get Satisfactory Results] (Jan.14, 2002), [http://forums.chinatimes.com/report/sex\\_taiwan/91011401.htm](http://forums.chinatimes.com/report/sex_taiwan/91011401.htm).

<sup>776</sup> *Jing Sao Huang Zheng Zhi Yan Bi Zhi Yan Xing Gong Zuo Jiang Chu Zui Li Fa Qian Gei Sheng Lu* (警掃黃睜隻眼閉隻眼性工作將除罪 立法前給生路) [Before The Decriminalization, Police May Choose A Loose Law Enforcement] (June 25, 2009), <http://www.appledaily.com.tw/appledaily/article/headline/20090625/31736468/>.

conducting investigations, the police (or persons they hire) will pose as clients and then arrest them on the spot when they are making deals.<sup>778</sup> For sex workers who use the Internet to solicit their clients, the police might talk to them or reply to their advertisements and go to arrest them.<sup>779</sup> While controversial, this fishing strategy is allowed under the current legal regime of Taiwan. According to the precedent of the Supreme Court, it is the entrapment-style investigation that is prohibited and any evidence collected through this way should be excluded. On the other hand, a “fishing” investigation is seen as only an investigative technique and thus allowed.<sup>780</sup> However, differentiating “entrapment” and “fishing” is difficult. Based on the Supreme Court interpretations, the crucial element is whether the suspect had the intention to commit crime at the beginning or not.<sup>781</sup> If the suspect has the intention to commit the crime and the police only provide the chance for the suspect to fulfill his plan, then it is considered as a “fishing investigation” and acceptable. On the contrary, if it is the police who create the suspect’s intent

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<sup>777</sup> Chen Yi-Jun (陳怡君), *Jingcha Ai Diaoyu Rexian Jiao Wangyou Ziji* (警察愛釣魚 熱線教網友自救) [*The Police Liked To Use “Fishing” Strategy, The Hotline Taught People How To Avoid The Situation*] (Jan. 8, 2008), <http://www.lihpao.com/?action-viewnews-itemid-11379>.

<sup>778</sup> Zheng Xue-Yong (鄭學庸), *Fan 「Diaoyu」 Zheng Qu Chuzuihua Xingongzuozhe Gang Beishi Jing* (反「釣魚」爭取除罪化性工作者檳北市警) [*Anti-“Fishing” Fight For Decriminalization Sex Workers Fight With The Police Of The Taipei City*], *Liberty Times Net* (May 1, 2006), <http://news.ltn.com.tw/news/society/paper/69465/print>.

<sup>779</sup> See Guo Zi-Jing (郭子敬), *「Xiaohushi」 Wangzhan Cang Qingyu Jingfang Jiyou Dai Huo Dalu Yuan jiao Nu* (「小護士」網站藏情慾 警方計誘逮獲大陸援交女) [*The Little Nurse” Website Hid Sex; Police Arrested Mainland Se Worker By Strategy*] (July 3, 2002), [http://intermargins.net/repression/sexwork/types/enjo/enjo\\_news/2002Jul-Dec/200207051.htm](http://intermargins.net/repression/sexwork/types/enjo/enjo_news/2002Jul-Dec/200207051.htm);

Yu Heng (余衡), *「QTang」 Maochong 「PinGuo」 Jing Diaoyu Zhua Yuanjiao Mei* (「Q糖」冒充「蘋果」 警釣魚抓援交妹) [*Candy Q pretended “apple”; the police used “fishing” to arrest sex worker*], *Liberty Times Net* (July 28, 2014), <http://news.ltn.com.tw/news/society/paper/799602>.

<sup>780</sup> Case No.: Taishentzu 6755 (九十八年度台上字第六七五五號最高法院刑事判決), 2009 The Judicial Yuan of the Republic of China Laws and Regulations Retrieving System (Zuigao Fayuan (supreme court) Nov. 12, 2009).; Case No.: Taishentzu 7699 (九十八年度台上字第七六九九號最高法院刑事判決), 2009 The Judicial Yuan of the Republic of China Laws and Regulations Retrieving System (Zuigao Fayuan (supreme court) Dec. 18, 2009).

<sup>781</sup> *Id.*

for him to commit the crime, then it will be considered as entrapment and prohibited.<sup>782</sup> However, in real practice, the police will not always follow this standard. In order to fulfill their duties, they will wander into the gray area between entrapment and a fishing investigation.

In order to carry out investigation, policemen often pose as clients. In 2011, a policeman in Tainan City posed as the client and arrested the sex worker when she stripped naked.<sup>783</sup> In another example from 2011, a policeman in Taoyuan County, who, in order to fulfill his duty for cracking down on commercial sex, applied the gentian violet solution on his genital area and posed to have a sexual transaction with a sex worker.<sup>784</sup> As soon as the sex worker touched his genital area, he revealed his identity and arrested her on the spot.<sup>785</sup> This policeman then took pictures of the sex worker's hand with purple color so as to use it as evidence to prove her intent to conduct the sexual transaction.<sup>786</sup> These events demonstrate that in order to carry out their duties, the police may use every possible way to conduct investigations, even if these strategies seem extreme and controversial.

With limited resources and budgets and in order to fulfill the duties quickly, the police frequently target obvious streetwalkers and low-end sex workers working indoors. According to Peng's 2008 study on police enforcement of unlicensed commercial sex, law enforcement efforts

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<sup>782</sup> *Id.*

<sup>783</sup> Huang Bo-Lang (黃博郎), *Jing Ban Piao ke Diaoyu/Yingzhaonu Tuoguangguang Wei Xingjiao Pan Bu Fa* (警扮嫖客釣魚/應召女脫光光 未性交判不罰) [stripped but not started sex, the fishing strategy failed], LIBERTY TIMES NET (Feb. 15, 2011), <http://news.ltn.com.tw/news/society/paper/468628>.

<sup>784</sup> Yang Zong-Hao (楊宗灝), *Jing Lou Niao Pan Yeji Mo Ziyaoshui You Seqing Hufu Xianxing* (警露鳥拚業績抹紫藥水誘色情護膚現形) [Policeman Applied The Gentian Violet Solution On Penis To Arrest Prostitute] (Feb.22, 2011), <http://tw.news.yahoo.com/%E8%AD%A6%E9%9C%B2%E9%B3%A5%E6%8B%9A%E6%A5%AD%E7%B8%BE%E6%8A%B9%E7%B4%AB%E8%97%A5%E6%B0%B4%E8%AA%98%E8%89%B2%E6%83%85%E8%AD%B7%E8%86%9A%E7%8F%BE%E5%BD%A2-20110221-112635-814.html>.

<sup>785</sup> *Id.*

<sup>786</sup> *Id.*

reflect a hierarchical, discriminatory structure: the sex worker groups that were mostly being arrested were streetwalkers, aged, and non-native.<sup>787</sup> According to the study, from 2001-2005, more than half of the arrestees were from Mainland China and foreign countries in Southeast Asia who solicited on the streets or in low-end brothels.<sup>788</sup> These non-native sex workers, facing language barriers and without a legal visa status when they entered Taiwan, had weaker bargaining power and usually worked in the low-end venues of the sex industry, such as saunas, massage parlors and barbershops to serve blue-collar and elderly customers.<sup>789</sup>

Why did the police target non-native sex workers? It is because of the credit system of the police used to evaluate the performance of the policemen: under this system, arresting non-native sex workers can give the police more credits.<sup>790</sup> In addition, the credits for cracking down on cases under the SOMA (administrative sanction) and the crimes under the Criminal Code are different. For example, sex workers, who will be punished by the SOMA but not the Criminal Code, will contribute fewer credits to the police.<sup>791</sup> On the other hand, pimps, traffickers, and brothel operators who are punished by the Criminal Code, contribute more points to the police.<sup>792</sup> Therefore, typically the police will not conduct strict law enforcement to arrest streetwalkers because those arrests do not generate good credits; however, whenever there's a special project, such as the "establishing morality project" that focused on investigating illegal gambling places,

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<sup>787</sup> Peng, *supra* note 749, at 141-44.

<sup>788</sup> *Id.* at 141-42.

<sup>789</sup> Hong Chen-Hong (洪臣宏), *Renkou Fanzi Bao Li Kongzhi Waiji Xinniang Maiyin* (人口販子暴力控制外籍新娘賣淫) [Traffickers Used Violence To Force Foreign Spouses To Sell Sex], LIBERTY TIMES NET (Mar.21, 2007), <http://news.ltn.com.tw/news/local/paper/121425>.

<sup>790</sup> Peng Peng, *supra* note 749, at 141-42.

<sup>791</sup> *Id.* at 132-35.

<sup>792</sup> *Id.*

drug dealing, and sex businesses, or if the police cannot find any other cases to fulfill their duties, then streetwalkers and low-end sex workers become convenient targets.<sup>793</sup> The statistics in Peng's study showed the police tended to target non-native sex workers more than local Taiwanese ones, and in Taiwanese groups, among all the arrested, senior workers were more heavily represented (three-fourths of them were at least 30 years old or above, and more than half were over 40 years old).<sup>794</sup> In short, the arrested persons were mostly elderly and non-native sex workers.

By contrast, compared to low-end sex workers, high-end sex workers are often difficult for the police to arrest because of the stricter security checks at the hotels and wineshops; consequently, the police typically choose to ignore them.<sup>795</sup> Moreover, According to "The Measures for Maintenance of Living Quality of Tourist Hotel" (觀光旅館及旅館旅宿安寧維護辦法), which was enacted to ensure tourists' living quality during their stays in Taiwan, the police are not allowed to conduct investigation in such tourists' hotels without "proper reasons."<sup>796</sup> In addition, before starting investigations, the police should disclose their identities to hotel security staff as well as to the tourists and explain the reason why they need to conduct the investigations.<sup>797</sup> Because of these restrictions under the law, in reality, the police are usually

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<sup>793</sup> *Doushijihua Caifa Yewu Jianjie-Zhengsu Zhuanan Pian* (都市計畫裁罰業務簡介—正俗專案篇) [The Introduction of punishments projects of the Urban Planning—the chapter of the Pro-morality project] (Dec.24, 2014), <http://www.udd.gov.taipei/pages/detail.aspx?Node=105&Page=4220>.

<sup>794</sup> Peng, *supra* note 749, at 141-42.

<sup>795</sup> *Zhi Ji 5 Xing Fandian Bian Yinku* (直擊5星飯店變淫窟) [5 Star Hotels Became The Locations For Conducting Commercial Sex] (Sept. 11, 2011), <http://www.appledaily.com.tw/appledaily/article/headline/20110911/33660929/>.

<sup>796</sup> *Guanguang Luguan Ji Luguan Lusu Anning Weihu Banfa* (觀光旅館及旅館旅宿安寧維護辦法) [The Measures for Maintenance of Living Quality of Tourist Hotel] (2002), available at <http://law.moj.gov.tw/LawClass/LawAll.aspx?PCode=K0110013>.

<sup>797</sup> *Id.*

reluctant to conduct investigations in these higher-end hotels and wineshops.<sup>798</sup>

In fact, before 1991, when the AGPPO was still active, the police had extensive power and they could break into a place they considered suspicious, conduct a search, and seize any evidence they wanted. The mighty power of police vested by the AGPPO was controversial and since the abolishment of the AGPPO in 1991, the police must obey the Criminal Procedure Code when conducting investigations.<sup>799</sup> Under the Criminal Procedure Code, there are many restrictions for investigations. For example, when a police officer wants to conduct an investigation of the places where sexual transactions take place, such as massage parlors or barbershops, the officer should firstly apply for a search warrant from the court.<sup>800</sup>

When it comes to streetwalkers, it is comparatively easier for the police to approach them in public places; however, the spot check on individuals is restricted by the Constitutional Interpretation No. 535. According to this Interpretation, when conducting a spot check, the police officer should disclose their identity and there should be a “reasonable belief that actions taken by such persons have caused or may cause danger.”<sup>801</sup> Whether there is proper reason will be decided by the context, such as illegal activities happening at the moment. Without a proper reason, the police are not allowed to conduct investigation, take the suspect to the police station, or conduct further search and seizure.<sup>802</sup> Despite these restrictions imposed by the laws to

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<sup>798</sup> Peng, *supra* note 749, at 141.

<sup>799</sup> Arts. 132-135 of The Criminal Code (中華民國刑法), *supra* note 10.

<sup>800</sup> Arts. 130-33 of The Code of Criminal Procedure (刑事訴訟法) (2007), *available at* <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=C0010001>.  
; The court will issue such search warrant only if the officer gives enough information or clues of the possible suspicious sexual transactions.; Art. 132 of The Criminal Code (中華民國刑法) (2014), *supra* note 10.

<sup>801</sup> J.Y. Interpretation No. 535 (釋字第 407 號) (2001), *available at* [http://www.judicial.gov.tw/constitutionalcourt/en/p03\\_01.asp?expno=535](http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=535).

constrain the police's power, the police have developed strategies to conduct investigations. For example, in order to get enough information to get a warrant from the court, the police may hire a person to collect information about sexual services and bring it to the police, who use the information to apply for a search warrant from the court.<sup>803</sup>

In addition, under the SOMA 1991's "punishing sex workers but not their clients" regulation, the client's confession was an easy to get evidence.<sup>804</sup> The police persuaded clients to confess about the sexual transactions by informing them that they would not be punished by the law.<sup>805</sup> Normally, clients would cooperate with the police since there would be no punishment for clients.<sup>806</sup> In addition to the Criminal Procedure Code, the police office has enacted "The procedures of cracking down the Offense against Morality" (取締妨害風化(俗)案件作業程序) for the police stations to follow.<sup>807</sup> According to these procedures, when the police investigate the place, they should seize condoms, lubricants, and other items such as account books, monitors, or whatever can be found to be as evidence for proving the transactions.<sup>808</sup> Furthermore, the police may videotape the whole procedure and take pictures of the place and

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<sup>802</sup> *Id.*

<sup>803</sup> *Feng Jing Chi Sousuopiao, Maifu Chahuo Meirongfang Bantao Xingjiaoyi!* (鳳警持搜索票，埋伏查獲美容坊半套性交易!)[Kaohsiung City Police Department Fongshan Precinct *The Police In Fongshan Cracked Down On Beauty Salon And Raided Sexual Transaction With Search Warrant*, Fongshan Precinct (Nov.12, 2014), [http://www.kmph.gov.tw/fengshan/News\\_Content.aspx?n=042F892DDB263029&sms=A4CBA0D7ECC10D67&s=76C684B39CF18312](http://www.kmph.gov.tw/fengshan/News_Content.aspx?n=042F892DDB263029&sms=A4CBA0D7ECC10D67&s=76C684B39CF18312).

<sup>804</sup> Peng, *supra* note 749, at 139-40.; Arts. 150-152 of The Criminal Code (中華民國刑法), *supra* note 10.

<sup>805</sup> Peng, *supra* note 749, at 139-42.

<sup>806</sup> *Id.* at 139-40.

<sup>807</sup> *Qudi Fanghaifenghua (Su) Anjian Zuoye Chengxu* (取締妨害風化(俗)案件作業程序) [*The procedures of cracking down the Offense against Morality*] <http://www.moex.com.tw/pdf/1020312-02.pdf> (last visited Mar.1, 2015).

<sup>808</sup> *Id.*



the suspects.<sup>809</sup> The police see the condom as a very important piece of evidence for proving the occurrence of the sexual transaction.<sup>810</sup> In short, the AGPPO has been abolished and any police investigation should abide by the Criminal Code; in reality, however, the police still use various “investigation skills” to evade the constraints of the laws. The human rights of sex workers, under the current legal regime and law enforcement, are frequently violated.

#### b. Police Corruption:

Under the criminalization legal framework, some corrupt police use the vulnerability of sex workers to ask for bribes or other payments. In 2001, the big scandal of “police kidnapping sex workers” was disclosed by the media.<sup>811</sup> In Taipei city, there were two policemen who cooperated with pimps to kidnap sex workers as hostages and asked for ransom from the brothel operators.<sup>812</sup> This scandal astonished Taiwanese society and the city government immediately sent the two policemen to court and expelled them from the police force.<sup>813</sup> Another scandal happened soon after this, when three policemen posed as clients and then kidnapped sex workers and asked for bribes.<sup>814</sup> This scandal made the aldermen severely criticize the corruption of the

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<sup>809</sup> *Id.*

<sup>810</sup> You Ming-Huang(游明煌), *Fang Liu Zheng Ju... Yezhe Yao Qiu 「Ban Tao」 Shao Yong Baoxiantao(防留證據...業者要求「半套」少用保險套)* [For avoiding leaving evidence, operators asked the sex workers not to use condoms], [http://gsrat.net/news/newsclipDetail.php?ncdata\\_id=8713](http://gsrat.net/news/newsclipDetail.php?ncdata_id=8713).

<sup>811</sup> Wang Rui-De (王瑞德), *Luji Leshu An 3 Yuanjing Tingzhi Songban 9 Jingguan Lianzuo ChuFen (擄妓勒贖案3員警停職送辦9警官連作處分)* [The Nine Police Officers Were Punishment Because Of The Case Of Kidnapping Sex Workers, And The Three Policemen Were Being Asked To Stop Their Works] (Sept. 10, 2001), <http://old.ltn.com.tw/2001/new/sep/10/today-c1.htm>.

<sup>812</sup> *Id.*

<sup>813</sup> *Id.*

<sup>814</sup> Wang Rui-De & Qiu Jun-Fu (王瑞德&邱俊福), *Lujileshu An Yuetan Daan Fenju San Yuanjing (擄妓勒贖案約談大安分局三員警)* [The three policemen from Da-an police station were brought to get more detailed investigation] (Sept. 9, 2001), <http://www.libertytimes.com.tw/2001/new/sep/9/today-c6.htm>.

police and asked the government to conduct a thorough investigation on police corruption.<sup>815</sup> The alderman Li Xin from New Party made the report and stated that there were four main ways that the police would get involved in the sex industry and accept bribery:

- Maintain good relationship with the operators, so as to ask for bribes to facilitate the release of sex workers who get arrested;
- Introduce Taiwanese men to brothel operators for them to arrange sham marriages so as to traffic non-Taiwanese sex workers into Taiwan;
- Share the profit of the business and help operators to deal with the matters when necessary; and
- Some police chose to start up their own sex businesses.<sup>816</sup>

The “kidnapping sex workers” events described above inspired criminal copycats. In June and August of 2001, two men imitated the police’s kidnapping scheme.<sup>817</sup> They called the call girl rings and asked the sex workers to come to the hotel; when sex workers appeared, the men kidnapped them and claimed that they were the police and called the rings and asked for a ransom.<sup>818</sup>

Another example of police corruption occurred in 2013, when two policemen accepted bribes from five adult entertainment businesses in exchange for divulging the information about

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<sup>815</sup> Zhang Guang-Ming (章光明), *Che Di Jie Jue Jing Jie Lu Ji Le Shu Yi An Nei Zheng Zu Te Yue Yan Jiu Yuan* (徹底解決警界擄妓勒贖疑案內政組特約研究員) [To Solve Completely The Problems Of Kidnapping Sex Workers] (Oct. 8, 2001), <http://old.npf.org.tw/PUBLICATION/IA/090/IA-R-090-039.htm>.

<sup>816</sup> Li Xin (李新), “Jingcha Yang Ji” Da Jie Mi! ( ”警察養雞“大揭密!) [The Exposure Of The Secret Of “The Raising Chicken By The Police”!] (Sept. 28, 2001), <http://taipeiinthemaking.tcc.gov.tw/record/6324-08r06-8072-47834787.txt>.

<sup>817</sup> Liu Zhi-Yuan (劉志原), *Lujilshu Ren Tou Hu Zhong Pan 5 Nian* (擄妓勒贖 人頭戶重判5年) [The Kidnapping Of Sex Workers, The Judgment Issued] (May 27, 2003), <http://www.libertytimes.com.tw/2003/new/may/27/today-so3.htm>.

<sup>818</sup> *Id.*

anticipated police raids.<sup>819</sup> In addition to bribery, the business operators even asked their sex workers to provide sexual services and let the policemen share the profits of the operations.<sup>820</sup>

These cases show that under the current criminalization legal framework, sex workers not only cannot rely on the police for protection, they even have to find ways to avoid them so as to not to become the victims of inconsistent law enforcement efforts and police corruption.

#### 4.3.4. Health Risks

Health-related risks have been always a major threat to sex workers.<sup>821</sup> Unsafe sex is still prevalent in sex industry and the criminalization policy makes it harder to promote safe sex during sexual transactions.<sup>822</sup> According to Centers for Disease Control of Taiwan, sex workers are a “vulnerable population at high risk of HIV infection.” And their survey shows that 86% of the workers interviewed did not insist on using condoms.<sup>823</sup> In addition, “unsafe drug-injecting practices often come hand-in-hand with commercial sex in furthering HIV spread.”<sup>824</sup> Low-end sex workers, are more likely for to agree to clients’ requests not to use condoms.<sup>825</sup> Another

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<sup>819</sup> Xiao Bo-Wen (蕭博文), *Maichun Dazhe, Baobi Yanku Jing Zao Pan Xing* (買春打折、包庇豔窟 警遭判刑)[harbor the brothels, the police was being arrested] (Dec.9, 2013), <http://www.chinatimes.com/newspapers/20131209000400-260106>.

<sup>820</sup> *Id.*

<sup>821</sup> Zhuang Ping (莊莘), *Nuxing Xingongzuozhe Xing Chuanranbing Liuxing Qinxing Zhi Yanjiu* (女性性工作者性傳染病流行情形之研究)[The Study On The Situations Of The Female Sex Worker'S Infection Of The Stds And HIV: The 2009 Report Of The Centers Of Disease Control] (2009), <http://www.cdc.gov.tw/uploads/files/dbf375ab-6577-4958-b3f9-7ae65c0e617c.pdf>.

<sup>822</sup> *HIV/AIDS, Center for Disease Control, R.O.C., (Taiwan)*, <http://www.cdc.gov.tw/english/page.aspx?treeid=e79c7a9e1e9b1cdf&nowtreeid=6bb9113c9e323e98> (last visited Jan. 17, 2015).

<sup>823</sup> *Id.*

<sup>824</sup> *Id.*

important factor that deteriorates the situation of condom use in the sex industry is the criminalization policy. As noted above, the condom is always seen as crucial evidence for the police to collect during the investigation. In 2006, the Ministry of Health and Welfare enacted “The Measures for Training on Prevention of HIV and STDs”(人類免疫缺乏病毒及其他性病防治講習辦法). According to these measures, sex workers and their clients will be required to attend public health lectures if they do not use condoms. On the other hand, if they use condoms, they can be exempted from the lectures.<sup>826</sup> The Ministry of Health and Welfare thought it a good way to encourage protected sex.<sup>827</sup> However, this policy was ineffective. Because if condoms continue to be used as evidence, then utilizing condoms would always be a concern for sex workers and unprotected sex cannot be avoided simply because of this minimal incentive of not being required to attend the lectures.<sup>828</sup> That said, the “HIV Prevention Committee of the Administrative Branch”(行政院愛滋病防治推動委員會), fearing that sex workers and their clients may be hesitant to use condoms for the fear of leaving evidence, once promoted the “decriminalizing condom project” and asked the police to collect evidence other than condoms

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<sup>825</sup> Liu Jian-Hong (劉建宏), *Yuenanmei Maichun Bu Dai Tao Wan Ming Piao ke Kong Ran Ai Zi* (越南妹賣春不戴套 萬名嫖客恐染愛滋) [*The Vietnamese Sex Workers Didn't Ask Clients To Wear Condoms, Many Clients May Contract The HIV*] (Mar. 23, 2012), <http://mag.chinatimes.com/mag-cnt.aspx?artid=13167>.

<sup>826</sup> Art. 4 of Regulations Governing Lecture on the Prevention and Control of HIV and Other Sexually Transmitted Diseases (人類免疫缺乏病毒及其他性病防治講習辦法)(2008), available at <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=L0050030>.

<sup>827</sup> Ning Wei-Yu (甯瑋瑜), *Piao ke Duxian Dai Tao Zhe Mian Fa Shangke* (嫖客 毒嫌 戴套者免罰上課) [*Clients, Drug Users Are Waived To Take Lessons If They Wear Condoms*], APPLIEDAILY, (Jan.25, 2008), <http://www.appledaily.com.tw/appledaily/article/headline/20080125/30205008/>.

<sup>828</sup> Art. 4 of Regulations Governing Lecture on the Prevention and Control of HIV and Other Sexually Transmitted Diseases (人類免疫缺乏病毒及其他性病防治講習辦法)(2008), available at <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=L0050030>.

when conducting investigations.<sup>829</sup> However, in practice, the impact of this project was minimal.<sup>830</sup>

Though all sex workers face health risks, unlicensed sex workers face a greater likelihood of getting sexual diseases.<sup>831</sup> First, most unlicensed sex workers do not have regular health checks nor reliable access to sex education.<sup>832</sup> They usually get sex-related knowledge from their colleagues or self-education, and their information can be wrong.<sup>833</sup> For example, a former licensed sex worker, Xiaoli, who went to illicit venues to do sex work, stated that she used the anti-bacterial shower soap “Savlon” after unprotected sex because she heard this soap would be helpful to prevent sexual diseases.<sup>834</sup> Second, unlicensed sex workers tend to be more agreeable to unprotected sex in order to get business.<sup>835</sup> One of the reasons is the fierce competition among sex workers, especially when there is strict enforcement and fewer clients. Sex workers may be

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<sup>829</sup> Wu Pei-Rong (吳佩蓉), *Weishu Cu Baoxiantao Chu Zui Hua (衛署促保險套除罪化)* [Ministry Of Health and Welfare Advocated To Decriminalize Condom] (Feb. 4, 2002), <http://sex.ncu.edu.tw/blognews/?p=6182#more-6182> 衛署促保險套除罪化.

<sup>830</sup> Tong Zhen-Guo(佟振國), *Meirong Xiuxianguan Cang Chunse Baoxiantao Lou Xian (美容休閒館藏春色 保險套露餡)* [Commercial Sex Hidden In Massage Parlors, The Condom Was Found As A Clue ] (Jan.19,2014), <https://tw.news.yahoo.com/%E7%BE%8E%E5%AE%B9%E4%BC%91%E9%96%92%E9%A4%A8%E8%97%8F%E6%98%A5%E8%89%B2-%E4%BF%9D%E9%9A%AA%E5%A5%97%E9%9C%B2%E9%A4%A1-221139931.html>.

According to news report, the police in Nantou conducted investigation in a massage parlor and the sex worker hid the used condom in a cup but it was found by the police and the police used the used condom as a reason to arrest the sex worker.)

<sup>831</sup> Gao Li-Ling (高麗玲), *Anchang Shaijian 6 Cheng 8 Ran Xingbing Waiji Ran Aizi Bilu Gao Yu Bentu(暗娼篩檢 6成8 染性病外籍染愛滋比率高於本土)* [The Health Check Results Showed 68% Of The Unlicensed Sex Workers Had Contracted Stds, The Foreign Workers’ Percentage Is Higher Than The Local’s ], APPLIEDAILY (May 14, 2004), <http://www.appledaily.com.tw/appledaily/article/headline/20040514/929932/>.

<sup>832</sup> *Id.*

<sup>833</sup> Chen, *supra* note 5, at 70.

<sup>834</sup> Xu, *supra* note 753, at 70.

<sup>835</sup> Liu Jian-Hong (劉建宏), *Yuenanmei Maichun Bu Dai Tao Wan Ming Piaokeye Kong Ran Ai Zi (越南妹賣春不戴套 萬名嫖客恐染愛滋)* [The Vietnamese Sex Workers Didn’T Ask Clients To Wear Condoms, Many Clients May Contract The HIV], CHINATIMES.COM (Mar. 23, 2012), <http://mag.chinatimes.com/mag-cnt.aspx?artid=13167>.

accepting unwanted guests and unprotected sex, and they may agree not to use condoms if they need the business badly.<sup>836</sup> Usually, streetwalkers and low-end sex workers who lack bargaining power can be more easily persuaded to engage in unprotected sex.<sup>837</sup> The aforementioned sex worker, Xiaoli, stated when she was a licensed sex worker, she could ask the clients to wear condoms and rejected oral sex.<sup>838</sup> However, when working in the illegal venue, she encountered competition from younger sex workers from Mainland China and she began to agree to unprotected sex and oral sex that she had refused to do in the past.<sup>839</sup>

#### a. Health Treatment of HIV and STDs in Taiwan:

If sex workers unfortunately contract sexual diseases, how can they get treatment in Taiwan? Since 1995, it has been mandatory for “every Taiwanese citizen with official residency or foreign national living in Taiwan with an Alien Resident Certificate (ARC), regardless of age, gender, or employment status” to enroll in “the National Health Insurance program (“TNHIP”).”<sup>840</sup> TNHIP, led by the National Health Insurance Administration, covers the expenses for the treatment of sexually transmitted disease (“STDs”), including but not limited to Syphilis, Genital warts, and Gonorrhea.<sup>841</sup> For HIV treatment, the government has provided

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<sup>836</sup> Chen Yi-Jun (陳怡君), *Xingchanye Bu He Fa Xiaojie Bei Po Bu Dai Tao Jieke* (性產業不合法 小姐被迫不帶套接客) [*Sex Work Is Not Legal, Sex Workers Were Forced To Accept Unprotected Sex*], Lihpao (Sept. 15, 2005), <http://www.lihpao.com/?action-viewnews-itemid-94166>.

<sup>837</sup> Liu Mei-Yu (劉美好), *Ningshi Chuncheng Li De Feihua-Xinggongzuo De QiyiXing Yu Hefa Hua Tanta* (凝視春城裡的飛花一性工作的歧異性與合法化探討) [*The Flying Flower: The Study On The Issue Of Legalization Of Commercial Sex*], POTS (Nov.12, 2010), <http://www.pots.com.tw/node/6706>.

<sup>838</sup> Xu, *supra* note 753, at 70.

<sup>839</sup> Xu, *supra* note 753.

<sup>840</sup> *Program Overview* (Jan.18, 2013), [http://www.nhi.gov.tw/English/webdata/webdata.aspx?menu=11&menu\\_id=590&WD\\_ID=590&webdata\\_id=3139](http://www.nhi.gov.tw/English/webdata/webdata.aspx?menu=11&menu_id=590&WD_ID=590&webdata_id=3139).

<sup>841</sup> *Id.*

“HIV/AIDS patients with free medical treatment since 1988 and free HAART (highly active anti-retroviral therapy) since 1997.”<sup>842</sup> Though the National Health Program can provide Taiwanese sex workers adequate health protection, there are still poor people who choose not to pay the premium and thus lose their coverage.<sup>843</sup>

Compared to Taiwanese sex workers who are qualified to enroll in the National Health Insurance, foreign sex workers without legal residency status (lacking an Alien Resident Certificate) cannot receive treatment under the National Health Plan.<sup>844</sup> They do not have any way to enter the current health care system and their primary health care option is to go to a pharmacy to buy medicine or pay high fees to see doctors.<sup>845</sup> Their immigration status along with language barriers discourage them from seeking appropriate medical care.<sup>846</sup> In addition, In Taiwan, there is a certain portion of foreign spouses who do sex work to make their living.<sup>847</sup> For them, before they officially attain citizenship, if they are found to have HIV and the infection is not due to sex with their spouses or medical malpractice, then they will not qualify for free-of-

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<sup>842</sup> HIV/AIDS, Center for Disease Control, R.O.C., (Taiwan), *supra* note 822.

<sup>843</sup> Qiu Shao-Wen (邱紹雯), *Wu Jianbao Qiongren En You Zhen Suo Mianfei Kanbing (無健保窮人 恩友診所免費看病)* [Enyo clinics provided free health service to the poor who couldn't afford the premium of the health insurance], Liberty Times Net (Dec.11, 2009), <http://news.ltn.com.tw/news/local/paper/357882/print>.

<sup>844</sup> Wu Pei-Fen (吳佩芬), *Waiji Renshi Xiang You Tongdeng Yiliao Bao Zhang (外籍人士享有同等醫療保障)* [The Same Health Protection For Foreigners], DEPARTMENT OF HEALTH (Jan. 2012), <http://www.nhi.gov.tw/epaper/ItemDetail.aspx?DataID=2852&IsWebData=0&ItemTypeID=7&PapersID=243&PicID=>

<sup>845</sup> Gao, *supra* note 831.

<sup>846</sup> *Id.*

<sup>847</sup> Lu Yan-Ting (呂妍庭), *Waijinu Maiyin Chang Zao Tuihuo Tan Pirouqian Nanzhuan (外籍女賣淫常遭退貨 嘆皮肉錢難賺)* [The Foreign Sex Workers Got Repetitive Rejection, They Sighed That It's Hardtop Make Money By Prostitution] (June 28, 2011), [http://gsrat.net/news/newsclipDetail.php?ncdata\\_id=8225](http://gsrat.net/news/newsclipDetail.php?ncdata_id=8225).



charge HIV treatment.<sup>848</sup>

To conclude, sex workers in Taiwan face the health risks under criminalization regime and their health cannot be ensured in the underground businesses. Poor sex workers who aren't able to afford to enroll in the National Health Plan and foreign sex workers who don't have legal immigration status suffer the most.

#### 4.3.5. The Vulnerability of Foreign Sex Workers and the Trafficking Problem

According to 2014 Trafficking in Persons Report prepared by the U.S. Department of State, “Taiwan is a destination territory for men, women, and children subjected to forced labor and sex trafficking and, to a much lesser extent, a source territory for women subjected to sex trafficking.”<sup>849</sup> The Report further notes that “Some women and girls from mainland China and southeast Asian countries are lured to Taiwan through fraudulent marriages and deceptive employment offers for purposes of sex trafficking.”<sup>850</sup> According to the “Statistics of the Cases of Trafficking by Police offices”(各司法警察機關查緝人口販運案件統計表) maintained by Immigration Agency, from January to October 2014, there were 77 foreigners being trafficked and experienced sexual exploitation.<sup>851</sup> There are number of cases of trafficked women who were

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<sup>848</sup> Art. 18 of HIV Infection Control and Patient Rights Protection Act (人類免疫缺乏病毒傳染防治及感染者權益保障條例)(2007), available at <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=L0050004>.; Arts. 8, 9, 13 of National Health Insurance Act (全民健康保險法) (2011), available at <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=L0060001>. ; Wei Han-Ting (衛漢庭), *Waiji Aizi Ganran Zhe Zai Tai Renquan Reng Qian Que (外籍愛滋感染者在台人權仍欠缺) [There Is Not Enough Protection For HIV Infected Foreigners]*, Sunshine Queer Center (July 31, 2012), [http://www.sunshinequeer.tw/ne\\_cont.asp?id=903](http://www.sunshinequeer.tw/ne_cont.asp?id=903).

<sup>849</sup> UNITED STATES DEPARTMENT OF STATE, TRAFFICKING IN PERSONS REPORT (2014), available at [www.state.gov/j/tip/rls/tiprpt/2014/index.htm](http://www.state.gov/j/tip/rls/tiprpt/2014/index.htm).

<sup>850</sup> *Id.*

<sup>851</sup> *Ge Sifa Jingcha Jiguan Chaqi Renkou Fanyun Anjian Tongjibiao (各司法警察機關查緝人口販運案件統計表) [The Statistics Of The Cases Of Trafficking By Police Offices by Immigration Agency]*, National Immigration Agency, <http://www.immigration.gov.tw/ct.asp?xItem=1287427&ctNode=29699&mp=1> (last visited Jan. 18, 2015).



lured through bogus marriages and forced to do sex work involuntarily.<sup>852</sup> Though trafficking in Taiwan has appeared to be decreasing in recent years, there are still recent cases that show that trafficking is still a problem in Taiwan.<sup>853</sup> For example, in 2014, in Tainan City, a man was found to have forced 35 females from the Philippines to work in wineshops to entertain guests with sexual acts.<sup>854</sup> The suspect applied for work permits from the Ministry of Labor for the females, claiming they were dancers. After they entered Taiwan, the suspect took away their passports and forced them to work in wineshops.<sup>855</sup>

Beginning with the economic boom in the 1970s, foreign laborers have been introduced to work in Taiwan. Today, the government has constantly introduced foreign workers from Southeast Asia.<sup>856</sup> According to Ministry of Labor, at the end of 2013, there were 79,667 female foreign workers from Indonesia, Malaysia, Philippines, Thailand, and Vietnam working as laborers in industries and 208,504, as nursing workers (看護工) and as home-maids (家庭幫傭).<sup>857</sup> Home-maids are hired to do house cleaning, cooking, and babysitting while nursing

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<sup>852</sup> Fan Rong-Da (范榮達), *Zhongjie Jia Jiehun Yue Pei Zhuan Tongbao PiRou Qian* (仲介假結婚 越配賺同胞皮肉錢) [Making sham marriages, the Vietnamese spouse made money from her counterparts], Interush (Mar.7, 2012), [http://tw.interush.net/news\\_list\\_1\\_detail.php?fname=6945004.xml](http://tw.interush.net/news_list_1_detail.php?fname=6945004.xml).

<sup>853</sup> Huang Zhao-Ting (黃兆亭), *Taojin Mengsui Waiji Nuzi Can Bi Maiyin Zhu Jing Jishi Jiuchu Huokeng* (淘金夢 碎外籍女子慘逼賣淫 竹警及時救出火坑) [Foreign Females Were Found To Do Sex Work Involuntarily], YAM NEWS (Feb.26, 2014), <http://n.yam.com/greatnews/society/20140226/20140226133541.html>.

<sup>854</sup> Pang Qing-Lian (龐清廉), *Po Renshe Zhuanye Wuzhe Ming Yi Lai Tai Shi Maiyin* (破人蛇 專業舞者名義 來台賣淫) [The syndicates were found, they introduced females from Philippines to Taiwan to do sex work], Chinatimes.com (Jan.17, 2014), <http://www.chinatimes.com/realtimenews/20140117003476-260402>.

<sup>855</sup> *Id.*

<sup>856</sup> *Gongyeju Shencha Zhizaoye Shenqing Yinjin Wailao Zuoye Yaodian* (工業局審查製造業申請引進外勞作業要點) [The Guidelines For Importing Foreign Workers], MINISTRY OF ECONOMIC AFFAIRS, <http://www.moeaidb.gov.tw/external/ctrl?PRO=application.ApplicationView&id=880> (last visited Jan.18, 2015).

<sup>857</sup> Workforce Development Agency, *Table 12-2 Foreign Workers in Productive Industries and Social Welfare by Industry*, <http://statdb.mol.gov.tw/html/mon/c12020.pdf> (last visited Mar.14, 2015).

workers are hired to take care of mentally or physically disabled people in families.<sup>858</sup> Until today, nursing workers and home-maids are excluded from the protection of the Labor Standards Act; they don't get overtime payment or normal holidays.<sup>859</sup> According to the "the statistics of the missing foreign laborers" (行蹤不明外勞人數統計表) issued by the National Immigration Agency, as of 2013, there are more than 41,724 disappeared foreign workers of whom 27,374 are females.<sup>860</sup> Though there are no official statistics that document how many of them went to work in sex-oriented businesses, it is believed that a certain portion of them went to do sex work.<sup>861</sup> For example, in 2014, In Hsinchu, the police found a crime syndicate that targeted run-away foreign workers from Indonesia and Vietnam and lured them to do sex work. The syndicates even used drugs and violence to control the sex workers.<sup>862</sup>

Compared to run-away foreign workers who have visa problems and are investigated by

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<sup>858</sup> *Beishi Laodongju Tixing: Jiating Kanhu Ji Jiating Bangyong Wailao Gongzuo Neirong, Wu Fen Bu Qing!* (北市勞動局提醒：家庭看護及家庭幫傭外勞工作內容，勿分不清!) [Department Of Labor, Taipei City Government Reminds: There's Diction Between Domestic Workers And Domestic Caregiver], MINISTRY OF LABOR (Dec.14, 2011), [http://www.mol.gov.tw/cht/index.php?code=list&flag=detail&ids=24&article\\_id=6270](http://www.mol.gov.tw/cht/index.php?code=list&flag=detail&ids=24&article_id=6270). ; Labor Affairs Bureau, Taichung City Government (臺中市政府勞工局), *Waiji Kanhu, Bangyong Da Bu Tong, Minzhong Bu Yao Hunyao Luo!* 外籍看護、幫傭大不同，民眾不要混淆囉！ [Domestic Workers And Domestic Caregiver Are Different, Please Don'T Mix Them Up] (Oct. 28, 2004), <http://www.labor.taichung.gov.tw/fp.asp?fpage=cp&xItem=1297657&ctNode=8093&mp=117010&Captcha.Image.Validation=92zLv>.

<sup>859</sup> Chen Shi-Bi (陳詩璧), *Wo Yao Xiu Jia* 7 Bai Wai Yong Youxing Zheng Quanli (「我要休假」7百外傭遊行爭權利) [I Want Holidays. 700 Foreign Nursing Workers Demonstrated For Their Rights], TVBS (Dec.9, 2007), <http://news.tvbs.com.tw/entry/302316>.

<sup>860</sup> *Xing Zong Bu Ming Wailao Ren Shu Tongjibiao* (行蹤不明外勞人數統計表) [The statistics of the numbers of disappeared foreign workers], NATIONAL IMMIGRATION AGENCY (Dec. 2013), <http://www.immigration.gov.tw/ct.asp?xItem=1247109&ctNode=29699&mp=1>.

<sup>861</sup> Qi Rong-Yu(祁容玉), *2 Nu Jingying Sichangliao Mei Jie Taoyi Wailao* (2女經營私娼寮 媒介逃逸外勞) [Two Females Lured Runaway Foreign Workers To Work In The Brothels] (May 17, 2013), <http://udn.com/NEWS/SOCIETY/SOC3/7903132.shtml>.

<sup>862</sup> 「150KG」Biaoxing Ju Nan Xiaofa Li OO Sou Pai Yin Zhao, Bing Qiang 「Ya」Yinlao Xing Bo xiao(「150KG」彪形巨男效法李 OO 蒐拍淫照，並強「壓」印勞性剝削) [The Exploited Sex Worker From Indonesia Were Rescued In Hsinchu], National Immigration Agency, <http://www.immigration.gov.tw/ct.asp?xItem=1208094&ctNode=30314&mp=S006> (last visited Jan.18, 2015).

the Immigration Agency, female immigrants who have legal status (usually through marriage with Taiwanese men) have become more attractive targets for brothel operators.<sup>863</sup> Since the 1990s, there have been more and more men getting married with foreigners, especially from Southeast Asia and Mainland China.<sup>864</sup> Foreign spouses are usually married to laborers or blue-collar people and their lack of education, language barriers, financial problems, and an unfriendly workforce full of discrimination in Taiwan have led some of them to work in tea houses or karaoke to make money through entertaining guests by drinking, singing and sexual services.<sup>865</sup>

It is believed that a certain portion of the foreign spouses in Taiwan go to work in adult-entertainment businesses.<sup>866</sup> In 2011, a case emerged involving a call-girl ring that originally targeted run-away foreign workers and recruited them to do sex work.<sup>867</sup> After the investigation for run-away foreign workers became more aggressive, the ring started to recruit foreign spouses and persuade them to do sex work.<sup>868</sup> These foreign spouses included a 34-year-old woman from

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<sup>863</sup> Lin Guo-Xian (林國賢), *Po Maiyin Jituan Yingzhaonu Jie Wai Pei (破賣淫集團 應召女皆外配) [The Call Girls Rings Were Found, Most Of The Sex Workers Are Foreign Spouses]*, LIBERTY TIMES NET (June 29, 2008), <http://www.libertytimes.com.tw/2008/new/jun/29/today-center2.htm>.

<sup>864</sup> Ji Yu-Lin(紀玉臨), *Taiwan Waiji Xinniang Zhi Kongjian Fenxi (台灣外籍新娘之空間分析)[The study on Foreign Spouses in Taiwan]*, J. POPULATION STUD.,no. 38, June 2009, at 67, 69.

<sup>865</sup> Zhanghua Waiji Xinniang Congshi Badaxingye Bi Li Gao (彰化外籍新娘從事八大行業比例高) [Many foreign spouses in Changhua went to work in adult entertainment businesses] (Nov.11, 2004), <http://www.epochtimes.com/b5/4/11/11/n714704.htm>.

<sup>866</sup> Chia-Huei Chen(陳怡樺), *Xie Xinyimin Xielei Nu Laoshi Zou Ru Xiaochibu (寫新移民血淚 女老師走入小吃部) [The Study of The Women of Transnational Marriage Engaging in The Sex-Related Business – Take a Vietnamese Refreshment Room in Tainan County for Example]*, Yahoo! (May.3, 2013), <https://tw.news.yahoo.com/%E5%AF%AB%E6%96%B0%E7%A7%BB%E6%B0%91%E8%A1%80%E6%B7%9A-%E5%A5%B3%E8%80%81%E5%B8%AB%E8%B5%B0%E5%85%A5%E5%B0%8F%E5%90%83%E9%83%A8-161003347.html>.

<sup>867</sup> Lu, *supra* note 847.

<sup>868</sup> *Id.*

Vietnam who said she chose to do sex work to improve her financial conditions.<sup>869</sup> Another woman from Vietnam who originally worked as a laborer on a tea farm said she felt labor work was very exhausting so she did sex work as her part time job.<sup>870</sup> The call-girl ring sent the female workers to snack huts, fishing clubs, and karaoke to accompany and entertain guests and provide sexual services in motels.<sup>871</sup>

Sex workers from mainland China often enter Taiwan via bogus marriages. For example, in 2013, in Hsingchu County, the traffickers were found by the National Immigration Agency.<sup>872</sup> The traffickers introduced Chinese females who wanted to use sham marriage to enter Taiwan and matched the Taiwanese males who wanted to make money via the sham marriages.<sup>873</sup> In this case, the National Immigration Agency estimated there were more than one hundred Chinese females who were trafficked to Taiwan this way.<sup>874</sup> Another example is from 2013, when the Kaohsiung City Police Department ferreted out the largest call-girl ring ever, discovering more than 60 Chinese female sex workers who had used sham marriages to enter Taiwan.<sup>875</sup>

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<sup>869</sup> *Id.*

<sup>870</sup> *Id.*

<sup>871</sup> *Id.*

<sup>872</sup> *Dalu Xiadan, Taiwan Jiedan Chuhuo, Rentou Laogong Wuxianliang Gongying Yiminshu Pohuo Zhong Taiwan Zui Da Rentou Laogong Liangfandian* (大陸下單，臺灣接單出貨，人頭老公無限量供應 移民署破獲中臺灣最大人頭老公量販店) [*Bogus Marriage, Real Prostitution. The Immigration Agency Ferreted Out "Snake Gang"*], NATIONAL IMMIGRATION AGENCY (Dec. 5, 2013), <http://www.immigration.gov.tw/ct.asp?xItem=1238836&ctNode=29710&mp=1>.

<sup>873</sup> *Id.*

<sup>874</sup> *Id.*

<sup>875</sup> Gao Yan-Tai (高燕泰), *Jiajiehun Zhen Maiyin Po Renshe Jituan Dai 60 Lu Nu* (假結婚真賣淫 破人蛇集團逮60陸女) [*Bogus Marriage, Real Prostitution. 60 Females From Mainland China Were Found*], CHINATIMES.COM (Jul.16, 2013), <http://www.chinatimes.com/realtimenews/20130716003109-260402>.; Wang Lluo Aka Waiji Nuzi Maiyin, *Yiminshu Yu Jingzhengshu Po Huo Renkou Fanyun Jituan* (網羅A咖外籍女子賣淫，移民署與警政署破獲人口販運集團) [*The Immigration Agency Found Human Trafficking Criminal Gang*], National Immigration Agency (Jan.20,2014), <http://www.immigration.gov.tw/ct.asp?xItem=1245669&ctNode=32888&mp=soc>.

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The Immigration Agency cracked down on Human Trafficking syndicate In 2013, M, a runaway foreign worker was deceived by the suspect Lin who said that he could get M a nursing job. However Lin kidnapped M and raped her and sent her to the brothels and forced her to do sex work. There were 12 foreign runaway workers from Thailand, Vietnam, and Indonesia working in the Brothel led by Lin.

## CHAPTER 5: THE MAIN CAUSE OF SEX WORKERS' VULNERABILITIES IN TODAY'S TAIWAN: IN-DEPTH DISCUSSION OF ARTICLE 80 OF SOMA THAT CRIMINALIZES COMMERCIAL SEX AND THE DEBATES BETWEEN PRO-DECRIMINALIZATION AND ANTI-COMMERCIAL SEX GROUPS

This chapter provides a thorough discussion of the women's movements (including sex workers' movement) in Taiwan since the 1980s and how they influenced the policy on commercial sex and the creation of the SOMA 2011. I will examine the status of sex work under the Constitution and analyze the Interpretation No.666 that declared the SOMA 1991 unconstitutional because it violated gender equality by punishing sex workers but not their clients. Then I will discuss the SOMA 2011 and explain why it is a product of compromise resulting from the disputes between women's groups and sex workers' groups and how it fails to reflect the true meaning and message that J.Y. No. 666 conveys.

### 5.1. The Debates between Pro-Decriminalization and Anti-Commercial Sex Groups: from Anti-Child Prostitution to Decriminalizing Sex Workers

Women's groups in Taiwan have played an important role in shaping the legislation on commercial sex in Taiwan. They made efforts to lobby the legislature and advocate their ideas through mass media, seminars, and publications. The debate on whether to decriminalize sex work did not start until the abolishment of licensed commercial sex in Taipei City in 1997. Before 1997, because child and forced prostitution were still rampant in Taiwan, women's groups focused their efforts on saving the victims from brothels and did not discuss the issue of "sex work." Taipei's abolishment of licensed commercial sex stimulated the discussion on the national policy on commercial sex and since that time, the women's groups have been split into two camps: Pro-Decriminalization and Anti-Commercial Sex Groups. They have advocated their ideas through feminist discourses and urged the government to reform the policy and laws on commercial sex. Beginning in 1997, the focus was on whether to abolish the SOMA that

punishes sex workers but not their clients. In 2009, the Constitutional Court issued the J.Y. No. 666 and announced the Article of 80 of the SOMA is unconstitutional; the debates since then became even more intense. The pro-decriminalization groups advocate decriminalization legislation under which neither sex workers nor clients will be punished; on the other hand, anti-commercial sex advocates support the Swedish model that punish clients but not sex workers.<sup>876</sup> The entanglement of the debates is reflected in the revised SOMA. In 2011, the revised SOMA was issued and commercial sex was decriminalized only in “red-light districts” that have yet to be established and in the very few existing licensed brothels. Both the pro-decriminalization and anti-commercial sex camps felt dissatisfied with the new legislation.<sup>877</sup> This section discusses the history of the women’s movement regarding commercial sex and analyzes how their views had shaped today’s Taiwan’s legislation on commercial sex. Generally, the women’s movement regarding commercial sex in Taiwan can be categorized into four stages:<sup>878</sup>

- 1987-1999: all of the women’s groups united together to advocate to save underage sex workers (lots of them were indigenous) from brothels;
- 1990-1997: some groups made efforts to push for legislation on sexuality issues (e.g., the enactment of Child and Youth Sexual Transaction Prevention Act Chinese in 1995 and Sexual Assault Crime Prevention Act in 1997); some groups developed their sexual liberation discourse and discussed sexuality issues;
- 1997-1999: the groups held different stances toward the issue of the abolishment of licensed commercial sex;

<sup>876</sup> Tang Zhen-Yu (唐鎮宇), *Ri Ri Chun: Mian Fa Fu Tuan: Cheng Piao* (日日春：免罰婦團：懲嫖) [Coswas: *Totally Decriminalization Women’S Groups: Punish Clients*] (Nov.7, 2009), [http://gsrat.net/news/newsclipDetail.php?ncdata\\_id=5569](http://gsrat.net/news/newsclipDetail.php?ncdata_id=5569).

<sup>877</sup> Mingtian Qi Changpiao Dou Fa 3 Wan 《She Wei Fa》 Hu Lan Quan Tai Wu Xing Jiao Yi Zhuan Qu (明天起 娼嫖都罰 3 萬 《社維法》 唬爛 全台無性交易專區) [From Tomorrow, Both Sex Workers And Clients Will Be Fined Up To NTD 30,000 SOMA Is A Lie, There’S No Red-Light District In Taiwan] , *supra* note 708.

<sup>878</sup> Lu, Jia-Hong (呂嘉鴻) *Gender and State: Rereading Sexuality Discourses In Taiwan's Women's Movement, 1987-1999* (性別與國家:當代台灣婦女運動的性論述,1987-1999) 24-44 (2007) (unpublished M.A. thesis, National Tsing Hua University) (on file with National Central Library).

- 1999-present: Different discourses and debates on decriminalizing commercial sex result in consensus to at least decriminalize sex workers.<sup>879</sup>

For a long time, the sale of indigenous girls to brothels to do sex work remained a problem in Taiwan.<sup>880</sup> In January 1987, the groups including women's, indigenous, human rights, and religious groups worked together and organized a march on Huaxi Street to ask the government to crack down on underage prostitution.<sup>881</sup> There were more than 300 people parading around Huaxi Street and this parade came to be known as the "Big Parade of Huaxi Street."<sup>882</sup> The Awakening Foundation drafted a statement entitled "The Co-statement of the women from the whole country, mountainous areas, human rights, and catholic groups protest the selling of human beings."<sup>883</sup> It criticized the existing patriarchal social structure and mentioned the Universal Declaration of Human Rights to criticize the wretched situation of indigenous girls.<sup>884</sup> It exposed and raised attention about the sympathetic underage indigenous girls who were sold to brothels.<sup>885</sup> It pointed out the tragic conditions of the indigenous girls who were sold by their poor families and criticized the patriarchal system that subordinated women as the property of men.<sup>886</sup> It stated the low employment rate of women forced women to choose sex work when

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<sup>879</sup> *Id.*; Ji Hui-Rong (紀惠容), *Xingjiaoyi Chuzuihua Neng Rang Nuren Ziyou Ma (性交易除罪化能讓女人自由嗎?) [Can Decriminalization Of Commercial Sex Liberate Women?]* (Nov.7, 2010), <http://bible.fhl.net/cover/cover256.html>.

<sup>880</sup> Fan Chuji Yundong (反雛妓運動), *supra* note 620.

<sup>881</sup> *Renkou Fanyun Beihaizhe: Fuwu Beijing (人口販運受害者:服務背景) [The Victims Of Human Trafficking: The Background Of The Service]*, <http://www.twrf.org.tw/p3-service4.asp> (last visited Jan.19,2015).

<sup>882</sup> *Id.*

<sup>883</sup> Gu, *supra* note 580.

<sup>884</sup> *Id.*

<sup>885</sup> *Id.*

<sup>886</sup> *Id.*



they encountered financial difficulties.<sup>887</sup> The announcement pointed out that the people responsible for the suffering of women included clients, traffickers, brothel operators, corrupt police, and an outdated policy for the indigenous population.<sup>888</sup> In addition to requesting that the government prohibit trafficking and reexamine the policy for indigenous people, the announcement asked the government to establish a women's shelter that would provide living skills to sex workers who wanted to get out of the business.<sup>889</sup> According to these groups, buying commercial sex should be seen as an abnormal behavior; those who buy commercial sex should “be given normal and healthy sex education and if they have abnormal sex psychology and behaviors then they should be sent to hospitals for treatment” to decrease the possibility that women would become the victims of men's sexual desire.<sup>890</sup> In the end, the announcement emphasized the importance of establishing a society where gender equality is assured and commercial sex is gradually diminished and abolished in the end. Before abolition, however, the government should make policies to protect sex workers from exploitation.<sup>891</sup>

The movement to rescue underage sex workers emphasized gender equality and an effort to curb pornography, which was consistent with mainstream moral values at the time. Their petition received a positive response from the government, and the National Police Agency launched the “Project of Adjusting social atmosphere”(正風專案), ordering police offices throughout Taiwan to crack down on human trafficking and illegal sexual transactions.<sup>892</sup> Taipei

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<sup>887</sup> *Id.*

<sup>888</sup> *Id.*

<sup>889</sup> *Id.*

<sup>890</sup> *Id.*

<sup>891</sup> *Id.*

Women's Rescue Foundation was established in order to conduct the work of rescuing underage sex workers and exploited women in the long run.<sup>893</sup>

In 1988, the second parade around Huaxi Street was launched. The scale was larger than the previous year, as around 1000 people attended this march.<sup>894</sup> The Youth Welfare Law (少年福利法) was enacted in the same year, and per the draft, the court could terminate the custodial rights of parents who sold their daughters to brothels.<sup>895</sup> In 1993, the draft of the “Prevention of Underage Sex Worker Act” was completed, and later in 1995 it was passed and renamed as “Child and Youth Sexual Transaction Prevention Act.”<sup>896</sup> Under this act, a national rescue network was to be established, including a shelter, investigation plan, and transitional school.<sup>897</sup> The Act also punishes clients, brothel operators and pimps.<sup>898</sup> Several years later, the problems of selling indigenous girls to brothels were greatly decreased.<sup>899</sup>

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<sup>892</sup> *Id.*

<sup>893</sup> *Funu Canzheng-Tizhi Wai De Yundong ~Zijue Yu Gaizao Bingjin* (婦女參政-體制外的運動~自覺與改造並進) [*Women In Politics: The Movement Onsite Of Social Structure*] (Jun.12, 1998), [http://taiwan.yam.org.tw/womenweb/outmov\\_3.htm](http://taiwan.yam.org.tw/womenweb/outmov_3.htm).

<sup>894</sup> Liu Huan-Rong (劉煥榮), *1988 Nian 1 Yue 9 Ri Jiuyuan Chuji Huaxijie Da Youxing* (1988年1月9日救援雛妓華西街大遊行)[*Parade on Huaxi Street to rescue Child prostitute*] (Jan.9, 1988), <http://women.nmth.gov.tw/zh-tw/Content/Content.aspx?para=386&page=0&Class=83>; *Funu Xinzhi Jijinhui Dashiji* (1982-2013.12) (婦女新知基金會大事紀 1982-2013.12) [*The Chronology Of Awakening Foundation*], AWAKENING FOUNDATION, <http://www.awakening.org.tw/chhtml/about.asp?id=6&atype=1> (last visited Jan. 19, 2015).

<sup>895</sup> Gu, *supra* note 580.

<sup>896</sup> *Id.*

<sup>897</sup> Child and Youth Sexual Transaction Prevention Act (兒童及少年性交易防制條例) (2007), *available at* [http://law.moj.gov.tw/LawClass/LawOldVer\\_Vaild.aspx?PCODE=D0050023](http://law.moj.gov.tw/LawClass/LawOldVer_Vaild.aspx?PCODE=D0050023).

<sup>898</sup> *Id.*

<sup>899</sup> Gu, *supra* note 580.

In order to raise the attention of a broad swath of the population, the “Rescue Child Prostitute movement” worked together with conservative groups.<sup>900</sup> At the time, a sexual transaction was associated with a male consumer of a female body; advocates supporting female self-independence, such as the feminists, were supported by conservatives who felt that commercial sex should be regulated.<sup>901</sup> The movement’s anti-pornography attitude brought out a series of criticisms of pornography (books, advertisements) and beauty contests.<sup>902</sup> In their discourse, the female body was seen as the victim of male desire’s violence.<sup>903</sup> This victimization was enabled by the female’s minority status in the fields of politics and economics, and their positioning in the patriarchal society.<sup>904</sup>

Mainstream values in Taiwanese society consider the purchase of sex by men to be tolerable; however, on the other hand, the government’s policy toward commercial sex was unclear, and “cracking down on commercial sex” became the strategy for politicians to establish their own moral reputation or image in order to win voters’ support.<sup>905</sup> Before 1997, the previous Premier, Hau Pei-Tsun, and the Mayor of Taipei City, Huang Dai-Zhou, had launched strict law enforcement efforts to crack down on the sex industry.<sup>906</sup> In 1996, the Mayor of Taipei City, Chen Sui-Bian, intended to impress the citizens, and he declared his intent to wipe out pornography and illegal sexual transactions, including the adult-entertainment business, in

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<sup>900</sup> *Id.*

<sup>901</sup> *Id.*

<sup>902</sup> *Id.*

<sup>903</sup> *Id.*

<sup>904</sup> *Id.*

<sup>905</sup> Ka, *supra* note 639.

<sup>906</sup> Gu, *supra* note 580.

residential areas. This project was supported by “the Garden of Hope Foundation,” “Taipei Women's Rescue Foundation,” and “World Vision.”<sup>907</sup> As a result, the extremist point of view was strengthened: abolitionists argued that all forms of pornography should be wiped out, including in commercial areas.<sup>908</sup> Some people who held this view proposed that Taipei should develop as a “clean” city “without porn but love.”<sup>909</sup> Sex liberalists held the view that supported the sex workers’ ability to sell sex to exchange resources and thereby become financially independent.<sup>910</sup> They criticized the abolitionists who publicly expressed their support for male candidates who promised to eradicate commercial sex if they won the election; the critics also pointed out that abolitionists claimed they wanted to rescue women, but actually deprived poor women of ways of making their living.<sup>911</sup>

In 1997, the Mayor abolished licensed commercial sex in Taipei City. At the time of the abolishment, a women’s group, “Peng Wan-Ru Foundation,” publicly supported Mayor Chen’s abolishment and advocated for the government to assist the licensed sex workers to change jobs.<sup>912</sup> The Peng Wan-Ru Foundation stated that buying sex or going to adult-entertainment places was a behavior for men to socialize and this behavior strengthened the negative sex

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<sup>907</sup> *Id.*

<sup>908</sup> *Id.*

<sup>909</sup> *Id.*

<sup>910</sup> *Id.*; He Chun-Rui(何春蕤), 「*Baozhang Gongchang Gongzuoquan*」 *Gongkai Bianlunhui Fayan gao: Shao Lai Na Tao Daode Lao Diao Ba! –Cong Nuxing Shenti De Wuhua Yu Shangpin Hua Tan Qi* (「保障公娼工作權」公開辯論會發言稿:少來那套道德老調吧!從女性身體的物化與商品化談起) [「*Protecting Licensed Sex Workers' working Rights*」, *the Text of a Statement: Don't Talk about Cliché Morality! Talking about Materialization and Commercialization of Womans' Body*] (Sept.13, 1997), [http://sex.ncu.edu.tw/members/Ho/Mlist\\_03.htm](http://sex.ncu.edu.tw/members/Ho/Mlist_03.htm).

<sup>911</sup> *Id.*

<sup>912</sup> Hong Ming-Xin & Chen Ying-Shan (洪茗馨 & 陳盈珊), *Gongchang Huan Fei Wanhuaeren You Zancheng You Fandui* (公娼緩廢 萬華人有贊成有反對)[*Different Voices Of People In Wanhua Toward The Temporary Resumption Of Licensed Brothels*] (Dec.28, 1998), <http://forums.chinatimes.com/special/ban/03270305.htm>.

culture of men, which had negative influences on male and female relationships and on families.<sup>913</sup> This also caused the expansion of sex industry, increased the market, and attracted women to engage in commercial sex. As a result, women are trapped in sex industry; they are forced to make their living and the negative influence of selling sex may make sex workers suffer mental distress.<sup>914</sup>

Peng Wan-Ru Foundation further argued that if adult women engage in commercial sex because of financial difficulties and family burdens, the punishment under the SOMA would not drive them out of business, but would only force them to seek protections from others involved, such as pimps and brothel operators.<sup>915</sup> On the other hand, if the law punished only pimps, clients, and operators, then sex workers may be able to avoid the exploitation.<sup>916</sup> Awakening Foundation supported the “Self-Rescue Association of licensed sex workers,” agreeing there should be a grace period before the abolishment of commercial sex work.<sup>917</sup> They expressed their deep sympathy toward the women who struggled in the patriarchal society.<sup>918</sup> Awakening Foundation stated marriage and sex work were often used in the capitalist patriarchal society to exchange females, and the oppression and exploitation of females were issues of primary

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<sup>913</sup> Gu, *supra* note 580.

<sup>914</sup> *Id.*; Peng Wan-Ru Found. et al., *Funu Tuanti Jianjue Fandui Xingchanye Zhi Xuanyan Yiji Dui Taibeishi Feichang Houxu Chuli Zhi Jianyi* (婦女團體堅決反對性產業之宣言以及對台北市廢娼後續處理之建議) [*The Declaration of Anti-commercial Sex of the Womens' Groups and the Suggestions toward the Abolishment of the Licensed Commercial Sex in Taipei City*], 84 Training & DEV. in PUB. Service Bimonthly (公訓報導 84 期) 17, 17-18 (1999).

<sup>915</sup> *Id.*

<sup>916</sup> *Id.*

<sup>917</sup> Gu, *supra* note 580.; Awakening Found. Et Al., *Funu Tuanti Dui Gongchang Huanchong Liang Nian De Gongtong Shengming* (婦女團體對公娼緩衝兩年的共同聲明) [*The Joint Statement about the Grace Period to Abolishment of the Licensed Commercial Sex of the Womens' Groups*], 84 TRAINING & DEV. IN PUB. SERVICE BIMONTHLY (公訓報導 84 期), 19 (1999).

<sup>918</sup> *Id.*

concern for the women's groups.<sup>919</sup> They stated women's groups should assist women who are oppressed under the patriarchal marriage system and sex industry to claim their rights.<sup>920</sup> They stated that they could observe, from the sex workers' protest, that these sex workers were the same as the "good women" with mainstream values because they were hard working, cared for their families, and sacrificed themselves.<sup>921</sup> However, some scholars criticized the sex workers' group's request to resume the licensed brothels.<sup>922</sup> They thought the sex workers' supporters neglected the crimes surrounding licensed brothels, especially the ones on Huaxi Street.<sup>923</sup> They stated the gangsters controlled the businesses and the licensed brothel used its legal status to conduct illegal matters, including child prostitution and selling human beings.<sup>924</sup> One of the women's groups, the "Female Worker Consolidation" (女工團結生產線) introduced the International Committee for Prostitutes' Rights and proposed decriminalizing sex work.<sup>925</sup> They thought the stigma on sex workers should be taken out by education in society.<sup>926</sup> This group later supported the establishment of COSWAS, the active sex worker's group in Taiwan.<sup>927</sup>

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<sup>919</sup> *Id.*

<sup>920</sup> *Id.*

<sup>921</sup> *Id.*

<sup>922</sup> Tang Wen-Hui (唐文慧) & Huang Shu-Ling (黃淑玲), *Jie Gou Gongchang Zhidu De Jieji Yu Xingbie Misi* (解構公娼制度的階級與性別迷思) [*The Analysis Of The Licensed Commercial Sex And The Myth Of The Gender*] (Jan. 24, 1999), <http://www.feminist.sinica.edu.tw/woman/talk8-1999.01.24.htm>.

<sup>923</sup> *Id.*

<sup>924</sup> *Id.*

<sup>925</sup> *Gongchang Kangzheng Shiqi Dashiji* (公娼抗爭時期大事紀) [*The History Of Licensed Sex Worker'S Protest*] (Mar. 28, 1999), *supra* 646.

<sup>926</sup> *Id.*

<sup>927</sup> *Id.*

After years of conflict and arguments, dispute among women's groups still existed. Nevertheless according to their discourses toward commercial sex, a general sympathy toward sex workers had formed: they considered that sex workers should be decriminalized. They claimed sex workers' conditions should be improved and sex workers' voices should be heard.<sup>928</sup> The sex workers' group COSWAS was established in April 1999.<sup>929</sup> The COSWAS promoted sex workers' rights aggressively through petitions to the Ministry of Interior, demonstrations, holding international action forums, and seeking to change attitudes among people in the society.<sup>930</sup>

In January, 2004, the Ministry of Interior announced that based on its research and discussion with experts and scholars, it thought the SOMA should be revised because of its unfair punishment on sex workers but not their clients.<sup>931</sup> The ministry stated that it would draft a revised SOMA to decriminalize commercial sex.<sup>932</sup> After learning of the Ministry's announcement, Taipei Women's Rescue Foundation and other women's groups then formed "Association for Diminishing Sex Industry"(推動縮減性產業聯盟) and announced the following recommendations:

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<sup>928</sup> Gu, *supra* note 580.

<sup>929</sup> *Guanyu Ri Ri Chun (關於日日春) [About COSWAS]*, <http://coswas.org/about> (Jan.19, 2015).

<sup>930</sup> *Id.*

<sup>931</sup> Qiu Qiong-Ping (邱瓊平), *Neizhengbu Yanyi Xingchanye Chuzuihua Changpiao Dou Bu Fa (內政部研議 性產業除罪化 娼嫖都不罰) [The Ministry Of Interior: It May Be Possible To Make Decriminalization On Sex Work]* (Jan. 7, 2004), [http://gsrat.net/news2/newsclipDetail.php?pageNum\\_RecClipData=1&&nclid=482.](http://gsrat.net/news2/newsclipDetail.php?pageNum_RecClipData=1&&nclid=482;); Zhang Li-De (張勵德), *Xingchanye Chuzuihua! Funu Tuanti Leguanqicheng Dan Ye You Yin you (性產業除罪化! 婦女團體樂觀其成但也有隱憂) [Decriminalize Sex Industry! Women'S Groups Are Optimistic]* (Jan. 7, 2004), [http://gsrat.net/news2/newsclipDetail.php?pageNum\\_RecClipData=1&&nclid=482.](http://gsrat.net/news2/newsclipDetail.php?pageNum_RecClipData=1&&nclid=482;); He Bo-Wen(何博文), *Xingchanye Wang Ke Chuzuihua Chang Piao Dou Bu Fa (性產業望可除罪化 娼嫖都不罰) [Sex Industry May Be Decriminalized Both Se Workers And Clients Will Not Be Punished]* (Jan. 7, 2004), [http://gsrat.net/news2/newsclipDetail.php?pageNum\\_RecClipData=1&&nclid=482.](http://gsrat.net/news2/newsclipDetail.php?pageNum_RecClipData=1&&nclid=482;)

<sup>932</sup> *Id.*

- Adopt a policy to shrink the sex industry ;
- Decriminalize sex workers;
- Punish clients with fines;
- Punish the third party that gets benefits from the sexual transaction ; and
- Promote equal and non-commercial sex relationships.<sup>933</sup>

To express its support to the Ministry's idea to decriminalize commercial sex, the COSWAS in February 2004, before the presidential election, held the International Sex Workers' Cultural Festival, and they proposed to the candidates from KMT and DPP to sign the petition to revise Article 80 of the SOMA, but was rejected by both parties.<sup>934</sup> As a result, the idea to decriminalize commercial sex had not been realized under the debates of women's groups and sex worker's group.<sup>935</sup>

<sup>933</sup> 「Kangyi Neizhengbu Dui Xingchanye Duice Zhi Fayan」 Jizhehui (「抗議內政部對性產業對策之發言」記者會) [The Press For Protesting The Ministry Of Interior'S Announcement About Decriminalization], the garden of hope foundation (Feb.04. 2004), <http://www.goh.org.tw/chinese/news/2004/0204.asp>.

<sup>934</sup> Bianlun/Zhengqu Xingongzuozhe Quanyi Ri Ri Chun Yao Houzuanren Banlun Xingchanye Yiti (辯論/爭取性工作者權益 日日春要候選人辦論性產業議題) [Debate: the COSWAS requested presidential presidents to debate on the issue of sex industry] (Feb.14, 2004), [http://gsrat.net/news2/newsclipDetail.php?pageNum\\_RecClipData=5&&ncdata\\_id=864.](http://gsrat.net/news2/newsclipDetail.php?pageNum_RecClipData=5&&ncdata_id=864.;); Zhichi Xingongzuozhe Chuzuihua Jingqing Lianshu Zhichi Xiufa Shanchu Sheweifa Di 80 Tiao 「Fa chang Tiaokuan」 (支持性工作者除罪化敬請連署支持 修法刪除社維法第 80 條「罰娼條款」) [Supporting Sex Workers To Advocate Decriminalization, Please Sign The Petition To Abolish The "Punishing Sex Workers" In The Article 80 Of The SOMA] (Oct. 6, 2004), <http://coswas.org/archives/392>.

<sup>935</sup> Ririchun12/4 Dao Neizhengbu Kangyi (日日春 12/4 到內政部抗議) [COSWAS Will Go To Ministry Of Interior To Protest] (Dec.3, 2007) <http://www.coolloud.org.tw/node/12281> 2007/12/03.



In March 2008, again before the presidential election, the COSWAS asked the presidential candidate Ma from KMT and Hsieh from DPP to sign the petition to decriminalize sex work.<sup>936</sup> In the beginning, Ma's campaign team refused to sign because they felt they would be losing votes from conservative voters.<sup>937</sup> However, in the end, the team decided to endorse the proposal of the COSWAS and stated that Article 80's punishing sex worker only policy violated human rights that the Constitution assured and the disputed article should be revised.<sup>938</sup> They promised that any revision of the disputed article would consider different voices in the society, and thus a citizen's forum should be held. In addition to decriminalization of commercial sex, the establishment of red-light districts could be included in the discussion.<sup>939</sup> Hsieh from DPP signed the petition, and stated his intent to abolish the punishing sex workers article and to make supplementary measures in two years. However, this was never mentioned in the campaign and they refused to have further talks with the COSWAS.<sup>940</sup> Though a societal consensus gradually emerged around not punishing sex workers, morality concerns still made politician dare not make a clear promise.<sup>941</sup>

In November 2008, after years of debating prostitution policy issues without reaching any general consensus, the Research, Development and Evaluation Commission of the Executive

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<sup>936</sup> Wang, *supra* note 14, at 148-150 ; Liu-Rong (劉榮), *Ri Ri Chun Yu Xingongzuo Chuzuihua* (日日春 籲性工作除罪化) [COSWAS Hopes The Government To Decriminalize Commercial Sex] (Mar.9, 2008), <http://www.libertytimes.com.tw/2008/new/mar/9/today-taipei3.htm>.

<sup>937</sup> *Id.*

<sup>938</sup> *Id.*

<sup>939</sup> *Id.*

<sup>940</sup> *Id.*

<sup>941</sup> *Xingjiaoyi Chuzui Wu Gongshi? Xingongzuo Jiemei: Si Ye Yao Si De Mingbai* (性交易除罪無共識? 性工作姐妹: 死也要死得明白) [No Consensus About Decriminalization? Sex Workers: We Want Know Why ] (Mar. 8,2008), <http://www.coolloud.org.tw/node/17525>.

Yuan held the “whether sexual transactions should be punished or not ” Citizen’s Forum (性交易應不應該被處罰公民會議) in order to elicit citizens’ opinions regarding the future legislation.<sup>942</sup> There were 18 citizens from all walks of life, including a housewife, teacher, researcher, and student.<sup>943</sup> In order to ensure the participants had the background knowledge regarding commercial sex, seminars were held for them to attend, and the speakers included scholars, professors, a priest, a women’s right advocate, and a sex worker.<sup>944</sup> After four days of discussion, the conclusion without argument was to decriminalize commercial sex.<sup>945</sup>

In April 2009, after knowing the decriminalization conclusion of the “whether sexual transaction should be punished or not ” Citizen’s Forum, legislator Cheng Li-Wen – who had stated she had concerns about commercial sex issue since she was a student and had great sympathy toward sex workers – submitted a proposal to the Legislative Yuan for it to consider revising Article 80 of the SOMA to delete the part that punishes sex workers, decriminalize voluntary sexual transactions between adults, and thereby assure the sex workers’ right to work.<sup>946</sup> In June 2009, the Research, Development, and Evaluation Commission of the Executive Yuan and the National Police Agency respectively submitted reports on “Decriminalizing Sex Workers,” and both of them proposed to decriminalize both sex workers

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<sup>942</sup> Lin, *supra* note 501, at 3.

<sup>943</sup> *Id.* at 5.

<sup>944</sup> *Id.* at 7.

<sup>945</sup> *Id.*

<sup>946</sup> Chen Si-Ying (陳思穎), *Liyuan Kaiyi/Zheng Li Wen Yu Xinggongzuo Chuzui Wu Dun Yi Yun Tuidong* (立院開議／鄭麗文籲性工作除罪 吳敦義允推動) [*Zheng Li-Wen Advocated To Decriminalize Sex Work, Wu Dun-Yi Promised To Promote*] (Sept. 22, 2009), <http://www.nownews.com/n/2009/09/22/862112>.; Lin Xin-Hui (林新輝), *Tian Qian Zheng Li Wen Pai Zhuli Jianxi* (提案前 鄭麗文派助理見習) [*Before Submitting The Proposal, Zheng Li-Wen Dispatched Her Assistant To Intern*] (Apr. 12, 2009), <http://www.cw.org.tw/p/1361>.

and their clients.<sup>947</sup> The Research Commission suggested a total decriminalization; sex workers, clients, and third person all should not be punished.<sup>948</sup>

When the J.Y Interpretation No. 666 was issued in Nov. 2009, the Ministry of Interior in the Executive Yuan had started to draft the revised Article 80 of the SOMA. In 2009, before the Interpretation issued, “the Human Rights Promotion Force” of the Executive Yuan concluded its 15th meeting, and made the following recommendations:

- revise the laws to decriminalize sex workers;
- ask the Ministry of the Interior to draft laws and related supplementary measures;
- regarding the red-light district, allow the local governments and city councils to decide;
- the Ministry of the Interior should cooperate with the Ministry of Health and Welfare to provide free disease checks to sex workers; and
- strengthen the law enforcement on human trafficking, pimping, and rescuing underage sex workers.<sup>949</sup>

However, after knowing the recommendations of “the Human Rights Promotion Force” of the Executive Yuan, the anti-commercial sex groups were unhappy. They responded to the

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<sup>947</sup> Li Shun-De & Yang Yu-Xin (李順德&楊育欣), *Changpiao Dou Bu Fa Xiufa Chuzuihua You Wang (娼嫖都不罰 修法除罪化有望)* [Legislators From Pan Blue Proposed To Decriminalize Both Sex Workers And Clients] (Jun.9,2009), <http://city.udn.com/54543/3381654>.; Lin Xin-Hui (林新輝), *Lan Wei Tian Xingongzuo Chuzui Changpiao Dou Bu Fa 藍委提案性工作除罪 娼嫖都不罰* [Legislator From Pan-Blue Proposed To Decriminalize Sex Work] (Apr. 12, 2009), <http://city.udn.com/54543/3381654#ixzz3EUHJXIdF>.

<sup>948</sup> *Id.*

<sup>949</sup> *Zhengyuan: Xingongzuo Chuzuihua Shifou She Zhuanqu You Difang Jueding (政院:性工作除罪化 是否設專區由地方決定)* [There Will Be Revision To Laws And Decriminalize Commercial Sex And Allows The Government To Establish Red-Lights District, And Within Such Districts] (Jun. 24, 2009), <http://www.coolloud.org.tw/node/42187>.

Executive Yuan's decriminalization announcement by forming the "Anti-Exploitation Association"(反性剝削聯盟), and recommending the adoption of the Swedish model of decriminalizing the sex worker but opposing sexual transactions.<sup>950</sup> They proposed the following principles:

- Prostitution is not a type of work and the sex industry should not exist;
- The government should ban all advertisements of commercial sex;
- The people who benefit from sexual transactions should be punished (except sex workers);
- Most sex workers are struggling with financial difficulties, so they should not be punished, but they don't have a right to do sex work;
- Clients should be fined and be required to take a class to adjust their behavior of buying sex, with all the fees for the classes to be paid by clients;
- The government should make women-friendly welfare and employment policies so women do not turn to sex work; and
- The government should improve education on gender equality and human rights.<sup>951</sup>

On the other hand, COSWAS incorporated handicapped groups, unemployment groups, and gay groups and formed the "Protecting sex worker's labor rights association" (保障性工作勞動權聯盟), advocating for the sexual needs of lower-income individuals and asking for a total

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<sup>950</sup> *Id.*

<sup>951</sup> *Fan Xingboxiao Lianmeng: Yancheng Boxiaoze Fa Piao Bu Fa Chang [Anti-Exploitation Association: Punishing Ones Who Conduct Exploitation, Punishing Clients But Sex Worker]* (反性剝削聯盟：嚴懲剝削者 罰嫖不罰娼) (Jun.12, 2009), <http://www.cooloud.org.tw/node/41630>.

decriminalization of commercial sex.<sup>952</sup> Awakening Foundation, on the other hand, independently made their announcements and suggested decriminalizing both sex workers and clients, and recommended that sex workers form their worker's cooperative, operate them by themselves to earn benefits, and share the profits to avoid exploitation.<sup>953</sup> Around November 2009, when the J.Y Interpretation No. 666 was issued, the discussions and attention towards the commercial sex policy had reached a high level. SOMA 2011 adopted the Executive Yuan's recommendation to decriminalize commercial sex within red-light districts; however, the reality that there are no such districts existing in Taiwan means commercial sex is totally prohibited. The revision of the SOMA failed to extinguish the flames of the debates but has instead created more controversy.<sup>954</sup>

## 5.2. The Social Order Maintenance Act: the Gender Issue in SOMA 1991, its Unconstitutionality, and the Hypocritical SOMA 2011

### 5.2.1. Social Order Maintenance Act 1991

The Social Order Maintenance Act 1991 ("SOMA 1991") was stipulated and issued in 1991 to replace the defunct Act Governing the Punishment of Police Offences ("AGPPO") that was declared unconstitutional because of its unauthorized restrictions on people's freedom.<sup>955</sup>

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<sup>952</sup> Baozhang Xingongzuo Laodongquan Lianmeng Xinwengao (保障性工作勞動權聯盟新聞稿) [The Press Release Of "Protecting Sex Worker'S Labor Rights Association"] (Jun 19, 2009), <http://coswas.org/archives/870>.

<sup>953</sup> Gu, *supra* note 580.

<sup>954</sup> Shelun- 「Changpiao Jie Fa」 Bu Gai Shi Lifa De Xuanziang (社論－「娼嫖皆罰」不該是立法的選項) [Editorial: Punishing Both Sex Workers And Clients Is Not The Choice Of The Legislation] (Nov. 9, 2011), <http://www.coolloud.org.tw/node/64868>.

<sup>955</sup> Yang Fang-Ling (楊芳苓), Sheuuzhixuweihufa Zhong You Guan Cai Fa Chengxu Yu Zhonglei Zhi Yanxi (社會秩序維護法中有關裁罰程序與種類之研析) [The Analysis of the Procedure and Type of the punishments in the Social Maintenance Act], THE LEGISLATIVE YUAN (Apr. 8, 2011), [http://www.ly.gov.tw/05\\_orlaw/search/lawView.action?no=14378](http://www.ly.gov.tw/05_orlaw/search/lawView.action?no=14378).

Under the AGPPO, both sex workers and their clients were punished because they violate public moral.<sup>956</sup>

When the SOMA was drafted, its Article 80 emulated AGPPO, proposing to punish both sex workers and their clients.<sup>957</sup> However, the section on punishing clients was taken out by the male legislators when the draft was discussed in the City Council.<sup>958</sup> They claimed that there were too many single males in society and it would cause serious social problems if they were not allowed go to sex workers.<sup>959</sup> Besides, they argued that going to sex workers is a personal behavior and an individual right that should not be punished.<sup>960</sup> Before the SOMA 1991 was passed in June, there were some legislators who criticized the “punishing sex workers only” law and asked the Congress to put the “punish clients” section back into the article.<sup>961</sup> However, the draft was not revised and passed in Legislative Yuan, and the Congress in the end passed a finalized version that punished sex workers but not their clients.<sup>962</sup> According to Article 80 of the SOMA 1991, sex workers would face up to three days of detention or a fine up to 30,000 Taiwan Dollars for

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<sup>956</sup> Acticle 64 of Wei Jing Fa Fa (違警罰法) [The Act Governing the Punishment of Police Offences] (1943), available at <http://www.6law.idv.tw/6law/law/%E9%81%95%E8%AD%A6%E7%BD%B0%E6%B3%95.htm>.

<sup>957</sup> Huang Qi-Bin ET AL. (黃啟賓等), *The Study of Pornography Industry and Sex Industry's Management and Ban* (論色情與性產業之管理與取締), 40 POLICE SCI. BIMONTHLY (中央警察大學警學叢刊), no.2, Sept. 2009, at 127, 142.

<sup>958</sup> *Id.* at 142-43.

<sup>959</sup> *Id.*

<sup>960</sup> *Id.*

<sup>961</sup> Chin, Chiu-Nua(金秋華), *Xingjiaoyizhuanqu Zhengce Yingxiang Pinggu Zhi Yanjiu- Yi Xinbeishi Jingcha Zhifa Guandian Fenxi*(性交易專區政策影響評估之研究—以新北市警察執法觀點分析) [Evaluation Of The Effect Of Designated Sex-Trade Zones--From The Law Enforcement Perspective Of New Taipei City Police] 30-31 (2012) (unpublished M.A. thesis, Chung Hua University) (on file with National Central Library).

<sup>962</sup> *Id.*

engaging in commercial sex. In addition, if a sex worker gets caught more than three times, she may be sent to a rehabilitation center to “learn professional skills” for at least six months.<sup>963</sup>

In 2009, two judges from Yilan County filed petitions to the Constitutional Court to request a judicial review on the disputed Article that they considered unjust to poor and elderly sex workers who were disproportionately exposed to law enforcement and lived in unfavorable conditions.<sup>964</sup> Later in the same year, the Constitutional Court used the principle of equality as the basis for judicial review and issued the J.Y. Interpretation No. 666 to declare the disputed Article unconstitutional.<sup>965</sup> In the Interpretation, the Court claimed that the disputed Article violated gender equality by punishing sex workers only because most of the sex workers are female and the clients are male.<sup>966</sup>

## 5.2.2. Sex Work under the Constitution, the Unconstitutionality of the SOMA 1991, and the SOMA 2011

### a. Sex Work under the Constitution:

#### i. The Right to Work

The right to sex work is not mentioned in the Constitution. There is no direct mention of sex work either in the texts or the Interpretations. Under the texts of Constitution, various related rights are assured, including the right to work in Article 15.<sup>967</sup>

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<sup>963</sup> Art. 80 of Social Order Maintenance Act (社會秩序維護法) (1991), available at <http://db.lawbank.com.tw/FLAW/FLAWDAT08.aspx?lsid=FL004501&ldate=19910629>.

<sup>964</sup> *Hong Deng Liang Bu Liang? Zhisiyifen De Xing Zhuanqu* (紅燈亮不亮? 治絲益禁的性專區) [*Red Light To Light Up Or Not? The Complexity Of The Red-Light District*] (Nov. 7, 2011), <http://paper.udn.com/udnpaper/PID0004/205300/web/#2L-3655236L>.

<sup>965</sup> J.Y. Interpretation No. 666 (釋字第 666 號), *supra* note 18.

<sup>966</sup> *Id.*

<sup>967</sup> Art. 15 of Constitution of the Republic of China (Taiwan) (中華民國憲法) (1947), available at <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=A0000001>.

The right to work is seen as the main basis for the pro-decriminalization groups to argue for decriminalizing sex work.<sup>968</sup> For example, in 1997 when the Taipei City government abolished licensed commercial sex, sex workers protested and stated that they enjoyed the right to work and the government unlawfully deprived them of such right.<sup>969</sup>

## ii. The Right to Sexual Autonomy

Article 22 and Article 23 in the Constitution can be used as the basis for scholars and practitioners to explain that the right to sexual autonomy.<sup>970</sup> According to Article 22, “All other freedoms and rights of the people that are not detrimental to social order or public welfare shall be guaranteed under the Constitution.”<sup>971</sup> Article 23 protects “[a]ll the freedoms and rights avert an imminent crisis, to maintain social order or to advance public welfare.”<sup>972</sup>

The right to sexual autonomy was first addressed by the Constitutional Court in the J.Y. Interpretation No. 554.<sup>973</sup> Similar to the common view, the Honorable Justices of the Constitutional Court used Article 22 and Article 23 to include the right to sexual autonomy in the Constitution.<sup>974</sup> The J.Y. Interpretation No. 554 was originally issued to examine whether

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<sup>968</sup> Gongchang Kangzheng Shiqi Dashiji, (公娼抗爭時期大事紀) [The History Of Licensed Sex Worker’S Protest], *supra* note 646.

<sup>969</sup> Xu, *supra* note 753.

<sup>970</sup> Chen, Yin-Hua (陳盈樺), Theory and Practice of Constitutional Right to Sex Autonomy-An Analysis on Code Revision of Related Laws (憲法性自主權之理論與實踐：我國相關法律修法論析) 29-31 (2009) (unpublished M.A. thesis, National Taiwan Normal University) (on file with National Central Library).

<sup>971</sup> Art. 22 of Constitution of the Republic of China (Taiwan) (中華民國憲法), *supra* note 978.

<sup>972</sup> Art. 23 of Constitution of the Republic of China (Taiwan) (中華民國憲法), *supra* note 978.

<sup>973</sup> J.Y Interpretations No. 554 (釋字第 554 號) (2002), available at [http://www.judicial.gov.tw/constitutionalcourt/en/p03\\_01.asp?expno=554](http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=554).

<sup>974</sup> *Id.*



punishing sex outside-of-marriage through the Criminal Code is constitutional.<sup>975</sup> According to the reasoning of this Interpretation, “every person is free to decide whether or not and with whom to have sexual affairs.”<sup>976</sup> However, sexual autonomy is “legally protected only if it is not detrimental to the social order or public interest as it is so provided in Article 22 of the Constitution,” and “the freedom of sexual behavior is subject to the restriction put on it by marriage and the family system.”<sup>977</sup>

#### b. The Analysis of the J.Y. Interpretation No. 666 and the Concurring Opinions:

In Taiwan, any law that is challenged as unconstitutional will be reviewed by the Constitutional Court and if it is announced to be unconstitutional, the Congress will be obliged to revise it to make it conform to Constitutional principles; therefore, this power vested in the Constitutional Court can potentially play a crucial role in curing the defective laws that violate Constitutional principles. The J.Y. Interpretation No. 666 examined Article 80 of the SOMA and declared it unconstitutional because it violated gender equality that is guaranteed by Article 7 of the Constitution.<sup>978</sup> The reasoning is that though the text of the SOMA is gender-neutral and does not restrict sex work to females; in practice the law mostly punishes female sex workers.<sup>979</sup>

#### i. Opinions from the Honorable Justices

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<sup>975</sup> *Id.*

<sup>976</sup> *Id.*

<sup>977</sup> *Id.*

<sup>978</sup> J.Y. Interpretation No. 666 (釋字第 666 號), *supra* note 18.

<sup>979</sup> *Id.*

The Constitutional Interpretations are made by a Constitutional Court Committee composed of Honorable Justices (15 in total).<sup>980</sup> To make interpretations of laws, more than half of the Honorable Justices must attend the committee and more than half of the attendees must agree with the interpretation.<sup>981</sup> An individual Honorable Justice can submit his/her opinion about the interpretation.<sup>982</sup> For the Interpretation No. 666, half of the Honorable Justices who participated in making J.Y. Interpretation No. 666 submitted their opinions to comment on the Interpretation.<sup>983</sup>

Generally, they argued that the reasoning of the Interpretation was insufficient and unpersuasive. They claimed the Interpretation's adoption of the principle of equality for examining the SOMA may mislead the Congress and result in unfavorable legislation that punishes both sex workers and their clients.<sup>984</sup> In addition, they argue that legislative purposes of

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<sup>980</sup> Justice, [http://www.judicial.gov.tw/constitutionalcourt/en/p01\\_03.asp](http://www.judicial.gov.tw/constitutionalcourt/en/p01_03.asp) (last visited Jan.21, 2015).

<sup>981</sup> Art. 14 of Constitutional Interpretation Procedure Act (司法院大法官審理案件法), available at [http://www.judicial.gov.tw/constitutionalcourt/en/p07\\_2.asp?lawno=73](http://www.judicial.gov.tw/constitutionalcourt/en/p07_2.asp?lawno=73).

<sup>982</sup> *Jieshi Anjian Zhi Shenli* (解釋案件之審理) [The Process Of Making The Interpretations] [http://www.judicial.gov.tw/constitutionalcourt/p02\\_01\\_01.asp](http://www.judicial.gov.tw/constitutionalcourt/p02_01_01.asp) (last visited Jan.10, 2015).

<sup>983</sup> See J.Y. Interpretation No. 666 (釋字第 666 號), *supra* note 18.

There were eight Grand Judges out of 13 filed their opinions, they were: Hsu Yu-shiow, Xiyao Lin, Min Chen, Chen Chun Sheng, Huang Mao-zong, Tzong-Li Hsu, Chen Xinmin, Yeh Pai-Hsiu.

<sup>984</sup> Chen Dafaguan Shin Min Tichu Zhi Xie Tong Yijianshu (陳大法官新民提出之協同意見書) [The Consent Opinion of the Chief Judge Chen Shin-Min] 7-9 (2009), available at <http://www.judicial.gov.tw/constitutionalcourt/uploadfile/C100/666%E5%8D%94%E5%90%8C%E6%84%8F%E8%A6%8B%E6%9B%B8%E9%99%B3%E5%A4%A7%E6%B3%95%E5%AE%98%E6%96%B0%E6%B0%91.pdf> .; Xu Dafaguan Yuxiu Tichu Zhi Bufen Xietong Yijianshu (許大法官玉秀提出之部分協同意見書) [The Partial Consent Opinion of the Chief Judge Xu Yu-Xiu] 3 (2009), available at <http://www.judicial.gov.tw/constitutionalcourt/uploadfile/C100/666%E9%83%A8%E5%88%86%E5%8D%94%E5%90%8C%E6%84%8F%E8%A6%8B%E6%9B%B8%E7%8E%89%E7%A7%80.pdf> .; Xu Dafaguan Zong Li Tichu Zhi Xie Tong Yijianshu (許大法官宗力提出之協同意見書) [The Consent Opinion of the Chief Judge Xu Zong-Li] 11 (2009), available at <http://www.judicial.gov.tw/constitutionalcourt/uploadfile/C100/666%E5%8D%94%E5%90%8C%E6%84%8F%E8%A6%8B%E6%9B%B8%E5%AE%97%E5%8A%9B.pdf> .; Lin Dafaguan XiYao, Chen Dafaguan Min, Chen Dafaguan Chunsheng Gongtong Tichu Zhi Xie Tong Yijianshu (林大法官錫堯、陳大法官敏、陳大法官春生共同提出之協同意見書) [The Consent Opinion of Honorable Justices Lin Xi-Yao, Chen Ming, and Chun-Sheng Chen] 1-4 (2009), available at

the SOMA's legislative purposes to maintain good morals and protect public health can't pass the judicial review.<sup>985</sup> On one hand, according to J.Y Interpretations No. 407, No. 617, No. 554, and No. 646, "good morals" is considered as a legitimate legislative purpose; however, this concept of "good morals" is an unclear concept that will change with time.<sup>986</sup> On the other hand, the Honorable Justices who submitted their opinions consider that the SOMA did not assure public health.<sup>987</sup> They concluded that neither maintaining good morals nor protecting public health could pass judicial review.<sup>988</sup>

#### i. The Sexual Autonomy Argument

Honorable Justices Xi-yao Lin (林錫堯), Ming Chen (陳敏), and Chun-Sheng Chen (陳春生), in their opinions to the J.Y. No. 666, they use the right to sexual autonomy to review the Article 80

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<http://www.judicial.gov.tw/constitutionalcourt/uploadfile/C100/666%E5%8D%94%E5%90%8C%E6%84%8F%E8%A6%8B%E6%9E%97%E9%8C%AB%E5%A0%AF%E9%99%B3%E6%95%8F.pdf>.

<sup>985</sup> Lin Dafaguan XiYao, Chen Dafaguan Min, Chen Dafaguan Chunsheng Gongtong Tichu Zhi Xie Tong Yijianshu (林大法官錫堯、陳大法官敏、陳大法官春生共同提出之協同意見書) [The Consent Opinion of Honorable Justices Lin Xi-Yao, Chen Ming, and Chun-Sheng Chen], *supra* note 995, at 9-10.; Xu Dafaguan Zong Li Tichu Zhi Xie Tong Yijianshu (許大法官宗力提出之協同意見書) [The Consent Opinion of the Chief Judge Xu Zong-Li], *supra* note 995, at 6-8.; p.6-7 Xu Dafaguan Yuxiu Tichu Zhi Bufen Xietong Yijianshu (許大法官玉秀提出之部分協同意見書) [The Partial Consent Opinion of the Chief Judge Xu Yu-Xiu], *supra* note 995, at 6-7.

<sup>986</sup> J.Y Interpretations No. 407 (釋字第 407 號) (1996), *available at* [http://www.judicial.gov.tw/constitutionalcourt/en/p03\\_01.asp?expno=407](http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=407).; J.Y Interpretations No. 617 (釋字第 617 號) (2006), *available at* [http://www.judicial.gov.tw/constitutionalcourt/en/p03\\_01.asp?expno=617](http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=617).; J.Y Interpretations No. 554 (釋字第 554 號), *supre* note 984.; J.Y Interpretations No. 646 (釋字第 646 號) (2008), *available at* [http://www.judicial.gov.tw/constitutionalcourt/en/p03\\_01.asp?expno=646](http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=646).; Xu Dafaguan Zong Li Tichu Zhi Xie Tong Yijianshu (許大法官宗力提出之協同意見書) [The Consent Opinion of the Chief Judge Xu Zong-Li], *supra* note 995, at 3.

<sup>987</sup> *Id.*

<sup>988</sup> *Id.*

of the SOMA and argue that public health and social morals concerns can't be the reasons to ban sexual transactions.<sup>989</sup>

## ii. The Right to Work Argument

Honorable Justice Yu-Xiu Xu (許玉秀) argued that sex can be seen as one kind of human resource with economic value to be traded.<sup>990</sup> In her view, sex work could be a means to earn one's living.<sup>991</sup> She claims sex work should be recognized as a legal profession and sex worker's working rights should be protected by the Constitution.<sup>992</sup>

Another Honorable Justice, Xu Zong-Li argues that the if the Constitutional Court adopted the "principle of freedom of profession" for reviewing Article 80 of the SOMA, then the dispute Article is unconstitutional because it completely deprives sex worker's right to work (sexual transactions are illegal and sex workers will be fined if they are caught).<sup>993</sup> In this case, according to the J.Y. Interpretation No. 649, "strict scrutiny" should be applied for the Constitutional review.<sup>994</sup> The disputed article cannot pass the strict scrutiny because: first, the legislative purpose of Article 80 of the SOMA is to maintain and protect public health and social morals, which is not a compelling governmental interest. Second, the disputed article is not

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<sup>989</sup> Lin Dafaguan XiYao, Chen Dafaguan Min, Chen Dafaguan Chunsheng Gongtong Tichu Zhi Xie Tong Yijianshu (林大法官錫堯、陳大法官敏、陳大法官春生共同提出之協同意見書) [The Consent Opinion of Honorable Justices Lin Xi-Yao, Chen Ming, and Chun-Sheng Chen], *supra* note 995, at 9-11.

<sup>990</sup> Xu Dafaguan Yuxiu Tichu Zhi Bufen Xietong Yijianshu (許大法官玉秀提出之部分協同意見書) [The Partial Consent Opinion of the Chief Judge Xu Yu-Xiu](2009), *supra* note 995, at 5.

<sup>991</sup> *Id.* at 6.

<sup>992</sup> *Id.* at 6-7.

<sup>993</sup> Xu Dafaguan Zong Li Tichu Zhi Xie Tong Yijianshu (許大法官宗力提出之協同意見書) [The Consent Opinion of the Chief Judge Xu Zong-Li] 9-10 (2009), *supra* note 995, at 9-10.

<sup>994</sup> J.Y Interpretations No. 646 (釋字第 649 號) (2008), *available at* [http://www.judicial.gov.tw/constitutionalcourt/en/p03\\_01.asp?expno=649](http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=649).

narrowly tailored to achieve the legislative purposes and it is not the least restrictive means for achieving the legislative purpose.<sup>995</sup>

In addition, Honorable Justice Xu Zong-Li states morality or ideology should not be taken into consideration in deciding whether sex work is a profession or not; as long as people make their living through it, sex work can be seen as a profession.<sup>996</sup> He states there is an argument that claims the “punishing sex workers only” policy is reasonable because sex workers spread sexual diseases more easily than their clients because of their frequent sexual contacts with strangers.<sup>997</sup> He argues this argument is unpersuasive. He states in order to continuously engage in the business, sex workers normally have a higher awareness of sexual diseases and therefore tend to conduct safe sex.<sup>998</sup>

### 5.2.3 Social Maintenance Act 2011

In 2010, before the revision of the SOMA, the Ministry of Interior conducted a survey called “People’s Attitude toward regulation of sexual transaction between adults”(民眾對於成人性交易管理模式態度), and the result showed that people’s opinions were divided.<sup>999</sup> Approximately 52% believed that voluntary sexual transactions between adults should not be

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<sup>995</sup> *Id.*

<sup>996</sup> Xu Dafaguan Zong Li Tichu Zhi Xie Tong Yijianshu (許大法官宗力提出之協同意見書) [The Consent Opinion of the Chief Judge Xu Zong-Li] 9-10 (2009), *supra* note 995, at 8.

<sup>997</sup> *Id.* at 7.

<sup>998</sup> *Id.*

<sup>999</sup> *Minzhong Dui Chengren Xingjiaoyi Chufa Kanfa Fenqi, Reng You Dai Ningju Shehui Gongshi*(民眾對成人性交易處罰看法分歧，仍有待凝聚社會共識)[*People Still Hold Different Views On Commercial Sex, The Policy Still Needs To Wait For Consensus*] (Feb.2, 2002), [http://www.moi.gov.tw/print.aspx?print=news&sn=3814&type\\_code=02](http://www.moi.gov.tw/print.aspx?print=news&sn=3814&type_code=02).

punished.<sup>1000</sup> Another 48% felt the sex workers' rights should be protected.<sup>1001</sup> A total of 83% considered it proper to regulate commercial sex through establishing red light districts by the government. Absent such a red light district, 91% considered it improper to let sex workers do their business in their homes without signage.<sup>1002</sup> The Ministry of Interior had asked each local government if they were willing to establish a red light district in their territory, and 8 of them said they would consider establishing such a district. However, after the revised SOMA came out, and through the present, no local government has taken action to establish such a district.<sup>1003</sup>

In November 2011, before the revision of the disputed article, the Legislation Yuan considered three actions. Option 1 was to completely decriminalize commercial sex, which was suggested by the legislator Li-Wen Zheng (鄭麗文) and other legislators.<sup>1004</sup> They claimed if the government decriminalized commercial sex and asked sex workers to pay taxes then the government would receive an extra 18 billion NTD dollars in tax revenue every year.<sup>1005</sup> In addition, they argued that there's no victim in voluntary commercial sex between adults.<sup>1006</sup> Option 2 was to punish only clients and the third parties, which was proposed by the legislator

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<sup>1000</sup> *Id.*

<sup>1001</sup> *Id.*

<sup>1002</sup> *Id.*

<sup>1003</sup> *She Xingzhanqu Chang Piao Bu Fa Xiufa San Du Guo Guan Bu Man Lan Lu Banben Ri Ri Chun Chang Wai Kang Yi (設性專區娼嫖不罰 修法三讀過關 不滿藍綠版本 日日春場外抗議) [The New Article 80 Of SOMA Passed, COSWAS Expressed Their Disagreements And Protested Outdised Of Parliament]* (Nov.4, 2011), [http://gsrat.net/news/newsclipDetail.php?ncdata\\_id=8680](http://gsrat.net/news/newsclipDetail.php?ncdata_id=8680).

<sup>1004</sup> *Shehuizhixuweihufa San Du Tongguo (社會秩序維護法三讀通過!) [The Passage of The New SOMA]*, the Legislative Yuan (Nov.4, 2011), [http://www.ly.gov.tw/03\\_leg/0301\\_main/leg\\_bill/billView.action?id=3563&lgno=00078&stage=7](http://www.ly.gov.tw/03_leg/0301_main/leg_bill/billView.action?id=3563&lgno=00078&stage=7).

<sup>1005</sup> *Lan Wei Ni Tian Jiang Xingchanye Chuzuihua (藍委擬提案 將性產業除罪化) [The Legislater From Pan-Blue Camp Made A Proposal To Decriminalize Commercial Sex]* (Apr. 13, 2009), <http://www.ccw.org.tw/p/1361>.

<sup>1006</sup> *Id.*

Shu-Ying Huang (黃淑英).<sup>1007</sup> Option 3 was to permit local governments to establish official red-light districts in their areas. The Executive Branch's bill suggested that outside of these districts both sex workers and their clients would face punishment.<sup>1008</sup> Ultimately, the legislators adopted the third option, which seemed like a compromise and could placate concerns.<sup>1009</sup>

So far, red-light districts have not been established by any of the local governments. Commercial sex, under the current legal framework and as a result of the unwillingness of the local governments to establish red-light districts, is forced to be conducted underground.

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<sup>1007</sup> Luo Wei-Zhi & Tang Zhen-Yu (羅暉智&唐鎮宇), *Xingjiaoyi She Zhuanqu San Banben Jing Fu Er Du (性交易設專區 三版本逕付二讀)* [To Establish Red-Light District, There're Three Versions For The Second Round Review] (Oct. 1, 2011), <http://www.appledaily.com.tw/appledaily/article/headline/20111001/33707893/>;  
Shi Qian-Ling (史倩玲), (社維法協商 日日春盼不罰娼嫖) [The Discussion On SOMA, COSWAS Wish It Decriminalize Commercial Sex] (Oct. 6, 2011), <http://www.lihpao.com/?action-viewnews-itemid-111484>.

<sup>1008</sup> *Id.*

<sup>1009</sup> Shehuizhixuweihufa San Du Tongguo (社會秩序維護法三讀通過!) [The Passage of The New SOMA], *supra* note 1015.

## CHAPTER 6: DECRIMINALIZATION OF COMMERCIAL SEX IN TAIWAN: AN APPROACH FOCUSING ON HUMAN RIGHTS OF SEX WORKERS

This chapter provides recommendations for the future legal reform of commercial sex in Taiwan. According to the previous chapters, it is obvious that sex workers under the current legal regime of Taiwan face the risks of violence and exploitation from clients, pimps, and gangs due to the largely underground nature of the industry. Sex workers have no legal ground to claim the rights because of their illegal status. Under the Civil Code, they do not have legal grounds to claim their fees in a legal proceeding because sex work is violating the “public order and good customs” and the contract made for sexual service is void. As described above, under the current SOMA, sex workers will face administrative fines if they are discovered doing sex work. In the underground industry, sex workers either have to work alone with great risks, such as on the street or soliciting via the Internet. Moreover they need to rely on third parties for safety and cover with the risk of being exploited by pimps and operators. Regarding health issues, safe sex cannot be practiced consistently because condoms will be seized as evidence for the prosecution and can lead to criminal convictions. The stigma toward sex workers is intense; people generally see the sex industry as a hotbed of crimes, and perceive sex workers as vectors of sexual diseases, lacking moral values, and with degenerated attitudes toward life. This social stigma can further deter sex workers from standing up to claim their rights. In the following sections, with the aim of improving the human rights of sex workers, I will provide suggestions for the future legal reform and the law framework regarding sex work in Taiwan.

### 6.1. General policy: Decriminalization

#### 6.1.1. Decriminalization beyond the Moralistic and Radical Feminist Views

One of the main factors that have shaped the current policy toward commercial sex in Taiwan is the debate between radical feminists and sex work advocates. The debates led to a



deadlock with no consensus, and the revised SOMA was criticized harshly by both parties. Sex work advocates criticized the current legal regime as a de facto form of criminalization that prohibits all commercial sex because there are no red-light districts to conduct legal sexual transactions. On the other hand, opponents criticized the legislation arguing it should not punish sex workers but their clients, like the Swedish model. It seems this debate will never end and new legislation cannot be expected because of this deadlock, leading sex workers to suffer the most. It is necessary to take a stride beyond the different ideologies and craft pragmatic legislation that reflects the true reality and that will ensure the human rights of sex workers. In addition, based on the arguments of the women's groups and the sex worker's group, at least sex work itself should be decriminalized. And the question here is which approach Taiwan should adopt? Should it be the Swedish model that some women's groups advocated, the Legalization approach that the Netherlands adopted, or the Decriminalization approach the sex worker's group advocated? Based on the arguments and analysis made in the previous chapters, Swedish model is by no means an option for improving sex worker's conditions. It didn't really deter and curb the customers but only made sex workers more vulnerable. Regarding the Legalization approach, though it decriminalizes commercial sex; however, sex work itself cannot be really normalized because of the specific laws that aimed to "regulate" commercial sex but not focus to improve sex worker's rights. The stigma toward sex workers in both approaches is strong. On the other hand, the Decriminalization approach provides the best protection to sex workers and sex work can be most possibly normalized as a common profession that people can choose to engage in. Therefore, I conclude the best approach thus far is the decriminalization approach which Taiwan should adopt. In the following sections, the discussions and suggestions will encompass the spirit and principles of decriminalization to address the problems and vulnerabilities Taiwanese sex

workers are facing today and how these issues can be resolved under a new decriminalization regime.

#### 6.1.2. The Constitutional Court Should Recognize Sex Work as One Type of Legitimate Profession through the J.Y. Interpretation

First, the Constitutional Court should take a pioneer role to recognize the legitimate status of sex work through Constitutional Interpretations. As discussed in the previous chapter, the old statute of SOMA was overturned and revised because the J.Y. No. 666 declared the statute unconstitutional for its violation of gender equality. However, the J.Y. No. 666 did not address whether sex work is permissible under the legal framework in Taiwan. The legislators then passed the revised statute of the SOMA that punishes both sex workers and clients, which further intensified the plight of the marginalized sex workers. To avoid this problem, and to recognize the legitimacy of sex work, the Constitutional Court should first address this issue by making another Constitutional Court Interpretation to declare the defects of the revised SOMA and then make the parliament revise the current law against sex workers. Regarding the concrete procedure, according to Article 5 of the Constitutional Interpretation Procedure Act, there are various ways to file a petition to ask the Constitutional Court to make an interpretation on the disputed law.<sup>1010</sup> The most likely way is for a judge to file a petition explaining his reasons about why the disputed law conflicts with the principles of the Constitution. My suggested reasons for why the revised SOMA are unconstitutional issue is that it does not reflect the essence of the gender equality that the J.Y. No. 666 revealed because gender equality does not mean to “punishing both equally” and according to the opinion toward the J.Y. No. 666 issued by Chief Judges, sex workers should be not punished by the law. Moreover, the SOMA’s punishment on

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<sup>1010</sup> Art. 5 of Constitutional Interpretation Procedure Act (司法院大法官審理案件法), *supra* note 992.

sex workers may conflict with the principles of the related International Conventions, such as International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Through the ICCPR, sex workers can claim the rights when they encounter exploitation, violence, an unsafe working environment, and other unfavorable conditions through the Articles 7, 9, 10, and 14. Under the ICESCR, states can observe how the social service system fails “in providing a safety net for sex workers,” such as “a standard of living that provides for food, housing, health, and education,” and whether sex workers can access services they need while in sex work.<sup>1011</sup> Regarding CEDAW, Article 6 of CEDAW and General Recommendation No. 19 notes that the exploitation of sex workers should be prevented and sex workers “need the equal protection of laws against rape and other forms of violence.”<sup>1012</sup> Since 1995, the Constitutional Court had begun used international conventions for making the Interpretation. However, the “Constitutional Court’s interpretations have generally been conservative on the question of human rights and international norms have rarely been used to interpret the Constitution.”<sup>1013</sup> I argue that the Constitutional Court should use these related principles and messages in the international conventions in the Interpretation to declare the current SOMA unconstitutional because it violates extensive rights of sex workers.

For the reasons above, the Constitutional Court should make an interpretation to declare the revised SOMA unconstitutional and recognize the legal status of sex work and order the new

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<sup>1011</sup> Kim Mosolf, *Intentional Human Rights Standard and the Rights of Sex Workers*, URBAN JUSTICE CENTER 3 (June 2005), <http://sexworkersproject.org/downloads/2005/20050601-human-rights-sex-workers-rights.pdf>.

<sup>1012</sup> United Nations, Committee on the Elimination of Discrimination against Women, General Recommendation No. 19, ¶ 1, U.N. Doc. A/47/38 (Jan. 29, 1992).

<sup>1013</sup> *Taiwan Association for Human Rights, The hidden face of Taiwan: lessons learnt from the ICCPR/ICESCR review process* 8 (Feb. 2013), <http://www.fidh.org/IMG/pdf/taiwan605u2013.pdf>.

legislation to be made within certain time and in the meantime the revised SOMA should cease to be valid.

### 6.1.3. Review of Laws against Sex Work and Related Activities

After the Constitutional Court's announcement recognizing the legitimate status of sex work, the subsequent step towards a decriminalization regime is to remove all laws that contains discriminatory and criminalizing content against commercial sex between voluntary adults.

Table 9

The Laws Against Sex Work And Related Activities	
<p>The Social Order Maintenance Act 2011 against commercial sex between consent adults (Administrative Sanctions)</p> <p>*This article 80 should cease to be valid and prosecutable immediately so that sex workers and their clients will not face fines before the new legislation is put into force. The Constitutional Court then should declare it unconstitutional and ask the Legislation Yuan to abolish Article 80.</p>	<p>Article 80</p> <p>Any of the following behaviors shall be punishable by a fine of not more than NTD 30,000:</p> <ol style="list-style-type: none"> <li>1. Being engaged in sexual transactions. The punishment does not apply to circumstances prescribed in paragraph 1 to 3 of Article 91-1 of local government regulations.</li> <li>2. Soliciting with the intent to commit prostitution in public places or publicly accessible places.</li> </ol>
<p>The Criminal Code against forced prostitution (Criminal Sanctions)</p> <p>*This Article is used for forced prostitution, and under this Article, an</p>	<p>Article 231</p> <p>A person who for purpose of making a male or female to have sexual intercourse or make an obscene act with a third person induces, accepts,</p>

<p>individual will be punished if he/she forces a person to conduct sexual business without her consent. Therefore, this Article should remain after the new legislation and it can be revised to further detail and define forced prostitution.</p>	<p>or arranges for them to gain shall be sentenced to imprisonment of not more than five years and, in addition thereto, a fine of not more than one hundred thousand yuan may be imposed. A person who commits the crime through fraud is subject to the same punishment.</p> <p>A public official who harbors a person who commits an offense specified in the preceding paragraph shall be subject to the punishment prescribed for the offense in the preceding paragraph by increasing the punishment up to one half.</p>
<p>Child and Youth Sexual Transaction Prevention Act against underage prostitution</p> <p>*This Article punishes underage prostitution and should remain after the new legislation.</p>	<p>Article 22</p> <p>If a person has a sexual transaction with a child or teenager under the age of 16, he shall be punished in accordance with the provisions of the Criminal Code.</p> <p>If a person over the age of 18 has a sexual transaction with a person who has reached the age of 16 but not the age of 18, he shall be sentenced to fixed-term imprisonment of less than one year or criminal detention or a fine not</p>

	<p>more than NT\$ 100,000.</p> <p>If a citizen of the Republic of China commits a crime prescribed in the preceding two paragraphs outside the territory and territorial waters and space of the Republic of China, he shall be punished in accordance with this Act no matter what provision is enacted or not in the laws of the place where it is committed.</p>
<p>Human Trafficking Prevention Act</p> <p>*This Act is to eradicate human trafficking and should remain and be expanded in a more detailed way to combat sex trafficking.</p>	<p>Article 32</p> <p>Anyone using such means as force, threat, intimidation, confinement, monitoring, drugs, fraud, hypnosis, or other means against another person's will to labor to which pay is not commensurate with the work duty for profit, shall be sentenced to imprisonment under seven years, and may also be fined up to NT\$5 million.</p> <p>Anyone using such means as debt bondage or the abuse of another person's inability, ignorance, or helplessness to subject him/her to labor to which pay is not commensurate with the work duty for profit, shall be sentenced to imprisonment under three years, and may also</p>

	<p>be fined up to NT\$1 million.</p> <p>Any attempt to commit either crime stated in the preceding two paragraphs is punishable.</p>
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## 6.2. New Legislation

### 6.2.1. Sex Workers and Advocates Should Have the Means to Participate the Legislative Process

After removing all laws against sex work, new legislation should be drafted. From New Zealand's experience, it is necessary to make laws with the participation of sex workers in order to know the true conditions they are facing and are problems they want to solve. Without sex workers' participation, the law may only reflect one-sided opinions that may originate from ideologies such as feminism or moralistic theories, and they may not reflect or represent the reality of the sex industry and the vulnerabilities of sex workers. The most active sex workers' group in Taiwan is Collective Of Sex Workers And Supporters (COSWAS). The organization has worked hard to lobby for laws favorable to sex workers, and if it can be funded like the NZPC in New Zealand and be invited to draft the new bill, then the new law can more surely reflect the will of sex workers and focus on protecting their rights. In the process of drafting the bill, there should be enough communication among interest groups, such as women's groups, residents, authorities, police departments, and others for reaching understandings and common views. This communication can be conducted through public hearings, meetings and seminars. The communication will focus on how to improve sex workers' human rights without harming interests of various groups, such as residential peace or crime and nuisance prevention.

### 6.2.2. The Features of the New Legislation

The new legislation should consider the following issues:

a. Should a Red-Light District be Established? Who Possesses the Power to Establish It?



Currently, even though Articles 80 and 90-1 of the SOMA allow the local governments to establish red light districts in their territories, none of them have promised to establish such districts so far. The reasons include the limited police and related resources of the local authorities to regulate the sex industry, opposition from the residents, location concerns, and ideological (moralistic and feminist) issues.<sup>1014</sup>

It appears that in reality the local authorities will never consider having the legal sex industry in their jurisdictions and the industry will hide in shadows forever. By contrast, in the Netherlands, a pragmatic approach toward commercial sex was adopted before lifting the ban on operating brothels. The Dutch government acknowledged that it is unlikely to eradicate all sexual businesses and did not force them underground.<sup>1015</sup> Sex businesses never disappeared in Taiwan and I suggest the government adopt a pragmatic approach toward commercial sex instead of forcing all sexual transactions to be conducted illegally and in dangerous conditions. In furtherance of a solution, I offer the following guidelines for the new legislation regarding this issue:

#### i. Local Licensing System for Brothel Operation

First of all, all local authorities should allow brothel keeping and independent sex workers to conduct sexual services in their territories unless there are exceptional reasons, for example,

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<sup>1014</sup> *Hongdeng Zhibu! Da Duo Shu Xianshi Fandui She Hongdengqu (紅燈止步！大多數縣市反對設紅燈區)* [Stop The Red-Light! Most Of The Cities Objected To Establish Red-Light District], *news.yahoo.com* (Nov. 4, 2011) <https://tw.news.yahoo.com/%E7%B4%85%E7%87%88%E6%AD%A2%E6%AD%A5-%E5%A4%A7%E5%A4%9A%E6%95%B8%E7%B8%A3%E5%B8%82%E5%8F%8D%E5%B0%8D%E8%A8%AD%E7%B4%85%E7%87%88%E5%8D%80-095159250.html>.

<sup>1015</sup> L.C Van de Pol, Amsterdam, in 1 *ENCYCLOPEDIA OF PROSTITUTION AND SEX WORK* 26-29 (Melissa Hope Ditmore ed. 2006).

zoning issues or limited resources to regulate brothels. The local authorities cannot pass the buck to the central government and refuse to allow sex businesses to operate in their territories.

The central government should first enact guidelines to extensively address issues such as the licensing system, working environment, health maintenance, safety, health education, employment relationship, and the right to refuse to provide sexual services. These guidelines will allow local government to develop their specific bylaws to regulate their sex industry.<sup>1016</sup> The local authority then can enact bylaws to further regulate the sex businesses in their territories.

From New Zealand's experience, adopting a licensing system on brothel keeping is a good way to monitor the brothels and to request that operators follow the requirements under the laws. Under the licensing system, operators should obtain a license issued from the local authority. For licensing brothels, the local authority can, because of zoning issues and community concern, decide which locations are not appropriate for keeping brothels (e.g. residential and school areas). However, there should be an independent third party to investigate if the local governments exert this power in such a manner to create a de facto ban the sex industry. In addition, local authorities can, based on their resources to regulate the brothels, set limits on the size of brothels (for example, there should no more than 10 people working in one brothel).

In addition, local authorities may seek resources from the central government if they need additional help to regulate and supervise the brothels; however, it is advised that the local government estimate their population and resources and decide the appropriate size of the sex industry. For this size assessment, there also should be an independent party either established by the central government or non-governmental organizations to advise the appropriate size in a

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<sup>1016</sup> In the SOMA 2011, Art. 91-1 is a guideline for the local authorities to regulate their sex industry. It provides there should be a licensing system, the location of brothels should be distant from school, temple, and churches. The criminals convicted sexual crimes cannot be the operators, sex workers should register with the authorities and get the license to work and get health checks periodically. However, this guidelines has been left aside because currently there's no local government considering establishing red-light district in their jurisdictions.

jurisdiction. The local authority cannot limit the size to an extremely small size that is tantamount to a ban on the whole industry. Finally, local authorities cannot ban the brothels simply because of moralistic or other ideological issues.

Brothels should obey all requirements under the legislation and the bylaws. They should ensure safe sex is implemented thoroughly, maintain equal employment relationships with sex workers, decent working environment, and obey the authorities' periodical inspections.

## ii. Sex Workers Working from Home

If a sex worker chooses to work alone (at home or at a client's resident), the picture is different from working in the brothel. She need not obtain a license from the authority to do sex work (like the situation in the New Zealand).<sup>1017</sup> From the experiences of the Netherlands, it also can be observed that it's not practical to ask every sex worker to register with the authorities. However, working alone may be dangerous for sex workers, especially streetwalkers who solicit in public and who are vulnerable to violence.<sup>1018</sup> For this issue, from New Zealand's experience, the Committee that reviewed the impact of the legal reform suggested street-based sector should be discouraged because of its inherent dangerous nature.<sup>1019</sup> For this issue, I suggest an NGO or official organization should be established for independent sex workers to attain consultation from experts of health and occupational fields and seek for assistance when they encounter any problems, such as violence from clients. Moreover, because independent workers may be more susceptible to clients' requests, safe sex education should be promoted by this organization so as

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<sup>1017</sup> Law, Nzpc.Org., <http://www.nzpc.org.nz/index.php?page=Law> (last visited Oct. 20, 2014).

<sup>1018</sup> R. BARRI FLOWERS, PROSTITUTION IN THE DIGITAL AGE: SELLING SEX FROM THE SUITE TO THE STREET 81 (2011).

<sup>1019</sup> Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003, *supra* note 390, at 133.

to reduce the possible harms if the sex workers prefer to work alone instead of being employed by brothels.

b. Health Issues and the Prevention of Sexual Diseases in the Sex Industry:

Under the decriminalization regime, condoms will no longer to be seen as evidence for criminal prosecutions. Therefore, the government can conduct an official program promoting safe sex in the sex industry. The laws or bylaws should require all sexual services to be conducted in a safe way in order to prevent sexual diseases. For brothels operators, the law should ask them to provide condoms and educational materials for their employees to use. For independent workers, as discussed previously, it is better to establish an organization to be in charge of this issue. The organization will provide health experts or medical doctors for sex workers to consult. The health checks will be provided in the organization for independent and employed sex workers to use free of charge. It is important to consider, however, whether health checks should be mandatory. From the Netherlands' experience, health checks are encouraged but not mandatory because the government considers mandatory checks will intensify the stigma attached to sex workers and people will assume sex work spreads sexual diseases.<sup>1020</sup> However, I have a different opinion on this issue. If sex workers are required to get health checks and maintain good health then the general public may gradually understand sexual disease are not spread by sex workers who conduct safe sex and then the stigma in this regard may be lessened.

Besides, education on safe sex should be given to sex workers and the general public.

This is because in practice, even though sex workers may want to conduct safe sex, their clients may still ask for unprotected sex, and those workers who need money desperately may agree to not use a condom. Therefore, it is necessary to educate both sides for conducting sexual service

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<sup>1020</sup> DUTCH MINISTRY OF FOREIGN AFFAIRS, *supra* note 306, at 10.

safely. To ensure this goal is successful, the law can be added to address this issue and if an individual violates the requirement, then she/he will face fines.

#### i. Stigma Attached to Sex Workers

Regarding the health condition of sex workers, in addition to their physical health, mental health is important, too. Stigma comes from the social discrimination and the hostile views toward sex workers in society.<sup>1021</sup> The stigma can deter sex workers to seek for help and prevent sex workers from “access[ing] to both informal and formal sources of support.”<sup>1022</sup> The stigma attached to sex workers has a long history. Sex workers in Taiwan, since the Japanese colonized period, have long been considered the origin of sexual diseases. From literature and mass media, sex workers are always linked to crimes, and characterized as lazy, promiscuous females who disrupt the marriage system. Stigma seems hard to remove completely in a short time. For example, from New Zealand’s experience, stigma still exists even after the commercial sex was decriminalized.

Even though it’s hard to deal with the stigma, there are some ways to reduce it. Education may be a good way to let people know sex workers are also citizens and enjoy the same rights as others; discrimination, along with verbal and physical abuse, are unacceptable. Furthermore, under the decriminalization regime, sex workers should pay taxes to enjoy the rights of citizens; by paying tax, the public’s negative views toward sex workers may reduce because sex workers also bear the responsibilities as the citizens and they make contribution to the society by paying tax and obeying the laws. Sex work may be still taboo and degenerate in the eyes of some people,

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<sup>1021</sup> TEELA SANDERS, *SEX WORK: A RISKY BUSINESS* 117 (2004).

<sup>1022</sup> Nicolé Fick, *Coping With Stigma, Discrimination And Violence: Sex Workers Talk About Their Experiences*, SEX WORKER EDUCATION & ADVOCACY TASKFORCE 1 (2005), [http://www.childtrafficking.com/Docs/sweat\\_05\\_stigma\\_violence\\_0109.pdf](http://www.childtrafficking.com/Docs/sweat_05_stigma_violence_0109.pdf).

as evidenced by the situation in New Zealand, where stigma still exists after the PRA.<sup>1023</sup> It may take time for people to accept sex work as a legal profession and shed their discrimination toward sex workers. As the committee for evaluating the PRA in New Zealand noted, “stigmatisation is still attached to the sex industry, and it will take time before it dissipates.”<sup>1024</sup>

In addition, law can also function as a tool to avoid discrimination. The law should address the issue of discrimination and if there is any verbal or physical abuse then it can constitute a crime under the criminal law.

### c. Migrant and Foreign Sex Workers:

In today’s Taiwan, there are quite a few immigrants from all over the world, especially those from Southeast Asia who work as laborers and domestic workers.<sup>1025</sup> Female immigrants usually come to Taiwan through marriage.<sup>1026</sup> There are no official statistics about how many of the immigrants work in the sex industry; however, according to the National Police Agency and the Immigration Agency, immigrant and foreign sex workers are frequently discovered during police raids.<sup>1027</sup> From New Zealand’s experience, it is prohibited to enter the country to do sex work or invest in the sex industry; otherwise, such individual will be deported. Similarly, in Netherlands, it is also prohibited for nationals of countries outside the European Union to do sex work. The prohibition is to prevent human trafficking across borders for the purpose of sexual

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<sup>1023</sup> Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003, *supra* note 390, at 58.

<sup>1024</sup> *Id.*

<sup>1025</sup> *Statistics for the May 2014*, NATIONAL IMMIGRATION AGENCY, <http://www.immigration.gov.tw/ct.asp?xItem=1268370&ctNode=29699&mp=1> (last visited Oct. 20, 2014).

<sup>1026</sup> *Id.*

<sup>1027</sup> *WangLuo Aka Waiji Nuzi Maiyin, Yiminshu Yu Jingzhengshu Po Huo Renkou Fanyun Jituan* (網羅A 咖外籍女子賣淫，移民署與警政署破獲人口販運集團) [*The Immigration Agency Found Human Trafficking Criminal Gang*], *supra* note 875.

transactions. In Taiwan, trafficking in persons for sexual purposes is still an ongoing issue;<sup>1028</sup> therefore, it is necessary to adopt a policy similar to New Zealand and the Netherlands, which forbids foreigners from engaging in the sex industry. That is, immigrants who completed the naturalization process and became citizens of Taiwan and those who have permanent residency are entitled to do sex work but those foreigners or migrant workers who entered Taiwan through working or visitor's visas don't have the right to do sex work. However, if the trafficking problem is effectively controlled, the policy may be adjusted to let foreigners with a valid visa status and healthy conditions to do sex work in Taiwan.

#### d. Crime Prevention:

The crimes surrounding the sex industry include human trafficking, underage and coerced prostitution, drug selling, offenses of causing injury, and other related crimes and they are all prohibited under the Criminal code and Human Trafficking Prevention Act.<sup>1029</sup> According to the 2014 Trafficking in Persons Report, "Taiwan is a destination territory for men, women, and children subjected to forced labor and sex trafficking and, to a much lesser extent, a source territory for women subjected to sex trafficking." And "women and girls from mainland China and southeast Asian countries are lured to Taiwan through fraudulent marriages and deceptive employment offers for purposes of sex trafficking." However, Taiwan's efforts toward combating human trafficking made it be listed in the Tier 1 ranking. The report stated "Taiwan authorities fully comply with the minimum standards for the elimination of trafficking." It proves the problem of trafficking in Taiwan has been getting attention from the authorities and the

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<sup>1028</sup> Cheng Shih-Kai (鄭旭凱), *Jia Jiehun Maiyin Renshe Jituan Gong Jiaozhan Shouze* (假結婚賣淫人蛇集團供教戰守則), LIBERTY TIMES NET (Apr. 17, 2014), <http://news.ltn.com.tw/news/local/paper/771384>.

<sup>1029</sup> Arts. 232-235 of The Criminal Code (中華民國刑法), *supra* note 10. ; Arts. 31-35 of Human Trafficking Prevention Act (人口販運防制法), *supra* note 702.

situation is under control. Preventing and cracking down on crimes surrounding the sex industry requires constant efforts and as long as the sex industry no longer hides in the shadows, this goal can be reached one day.

### 6.3. Conclusion

In Chapter 1, I gave the reader the overview of the main issue of commercial sex in Taiwan. I pointed out in the current legal regime, the non-existence of official red-light districts and the very few licensed brothels made commercial sex be conducted almost underground. The administrative fine under the SOMA has made sex workers vulnerable to violence, health risks, and exploitations. The legal reform is clearly needed.

In Chapter 2, I introduced and discuss the international approaches in today's world for regulating commercial sex: criminalization, legalization, and decriminalization. Through comparing the policies of the states California, Nevada of the United States, Sweden, the Netherlands, and New Zealand, I concluded the best approach for ensuring human rights of sex workers in the world is decriminalization. Under the decriminalization regime, there are no laws against sex workers or double standards between citizens and sex workers. Sex workers enjoy the same rights and bear the same responsibilities as other citizens. The empowerment by the law makes sex workers more willing to report violence and exploitation. Moreover, safe sex can be more possible to implement and sex workers can access to health services more easily. There are criticisms, and arguments that trafficking, underage prostitution, and organized crime still exist after decriminalizing commercial sex. From New Zealand's experience, however, the advantages of decriminalizing commercial sex are more prominent than the negative effects.

From Chapter 3 to Chapter 4, through the introduction of the history of commercial sex in Taiwan and the analysis of current Taiwanese policy toward the sex industry, it can be observed



that the industry has existed in Taiwan for hundreds of years and can never be eradicated by anti-prostitution policies. The sex industry can always find a way to survive as long as there is demand for sexual services. In the current legal regime, because there is no legal red-light district but only very few licensed brothels that can hardly meet the demand of sexual services, most sexual transactions are conducted underground and sex workers are vulnerable to exploitation and violence from pimps, brothel operators, and clients. They cannot seek help from the police or other authorities because of the fear of being arrested, convicted, and subjected to administrative fines under the SOMA. The inconsistent law enforcement and the corruption of police worsen the plight of sex workers and make them rely more heavily on third parties. The minority groups of sex workers, such as streetwalkers and elder workers, are the obvious targets in the police's and criminal's eyes and suffer the most compared to other high-end sex workers. The current regime is a failed one that does not reflect the reality of these long-existing businesses and ignores the human rights of sex workers. Reform is indeed needed.

In Chapter 6, I made recommendations for the future legal reform toward commercial sex in Taiwan. I suggest Taiwan should adopt a decriminalization approach towards sex work and other related activities to empower sex workers and end exploitation, violence, poor health conditions of sex workers. In the meantime, the government should take the active role to combat crimes including trafficking, coerced, and underage prostitution. Through the persistent efforts to improve sex workers' conditions and efficient regulation toward the sex industry, with hope, the Taiwanese model may become the next model approach for other countries to adopt.

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