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## **Swedish Gender Equality for Trafficked Women? Radical Official Remedies and Ethnic Otherness**

**Åsa Yttergren\***

### **Introduction**

Sweden is often described in terms of its high level of gender equality, which is associated with its institutionalized welfare. The quite radical official Swedish ambition regarding gender equality is laid down in many public documents. Within this context, prostitution is conceptualized as an extreme expression of gender inequality (see Gunnarsson and Svensson in this issue). The aim of this article is to provide an overview of the official Swedish attitude towards trafficking in persons for sexual purposes (hereafter referred to as trafficking), to place this view in an international context, and also to critically analyze problems that arise when the official Swedish objective of establishing gender equality is confronted with the issue of women who have been trafficked to Sweden.

What is the gender equality position in relation to women who are perceived as non-Swedes or ethnically “other”? In this article, I refer to “the official Swedish position” to mean the standpoint of the Swedish parliament as expressed in terms of legislation, the preparatory work for legislation, or in other parliamentary or official government documents.

The official Swedish position regarding trafficking is closely bound up with its understanding of prostitution. As I describe below in some detail, social measures, including certain measures involving the police, are considered of great importance in combatting prostitution. This had already been highlighted in the 1970s and such measures are still regarded as the foundation for any other action against prostitution. Thus, the Swedish position is that social measures rather than criminalization are the main means of controlling prostitution. Officially, the everyday occurrence of trading in sex and humans is regarded as an outcome of the imbalance of power between men and women, which represents a lack of gender

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\* Senior Lecturer in Law, Umea University, Sweden. [asa.yttergren@jus.umu.se](mailto:asa.yttergren@jus.umu.se)

equality (Government Bill Prop. 1997:55, Government Directive Dir. 2008:44, Government Committee SOU 2010:49). In Sweden, as in the European Union (EU), the majority of EU Member States and also the United Nations (UN), trafficking is condemned and legal proceedings are taken to eradicate the extensive trade in humans.<sup>1</sup> Procuring and trafficking are criminal offences. However, in contrast to the position in the majority of European states, Sweden stands out in that it regards trafficking and prostitution in the same light. Sweden was the first state in the world to criminalize the purchase, but not the sale, of sexual services: the demand for sex is regarded as the basis of both prostitution and trafficking. Connected measures are required if prostitution and trafficking are to be effectively counteracted (Government Communication skr. 2007/08:167).

According to the Swedish Government, combating trafficking and prostitution starts from a legal, social and gender-equality perspective (Government Communication skr. 2007/08:167). According to preparatory works and policies governing development assistance, the Swedish approach to gender equality with reference to trafficking and prostitution is directed not only towards the domestic arena but also to other states. The aspiration for gender equality seems first to include Swedes in the Swedish context and secondly other ethnicities within their own native countries. In contrast, women trafficked to Sweden are constructed as “others” who do not fit into either of these categories. The emphasis in the context of women trafficked to Sweden is on combating transnational, organized crime, and in consequence gender equality is no longer a priority: the situation of these women is therefore regarded as some other state’s problem.

This paper clarifies the official Swedish position towards trafficking by analysing legislation, preparatory works and policy documents. In order to place the Swedish official position in an international context I sketch the main international understandings of prostitution by referring to quite commonplace standpoints. However, the purpose is not to give an overview of the considerable body of literature that deals with the topic. I hope to move beyond the polarized positions of abolishing prostitution or normalizing it, which focus mainly on women in prostitution. Issues often discussed in these positions are, for instance, the need to

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<sup>1</sup> At the end of 2008 about 100 states had passed laws against trafficking which criminalize sexual exploitation and forced labor without restrictions regarding the age or gender of the victim. Another 25 states had passed anti-trafficking laws that cover certain elements of the Palermo Protocol, e.g. laws that are limited to sexual exploitation or apply only to females or children.

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strengthen the rights of migrant workers in the sex industry (Chapkis 2003), criticism of viewing women who migrate for work in the sex industry as victims with no agency (Doezema 2000), the lack of free choice for women in prostitution (McKinnon 1993) or the view that prostitution, with or without the woman's consent, always means sexual exploitation and oppression (Barry 1995).

I will analyze migration law and problems that arise when the Swedish objective of achieving gender equality is confronted with the issue of women who have been trafficked to Sweden. A point of departure is that gender ought to be taken into consideration at the moment legislation is framed. What is the outcome for women in terms of gender equality when they take up prostitution in Sweden? Addressing this issue does not mean playing down other problems. Such problems include, for instance, the attempts in the Palermo Protocol to distinguish trafficking from legally accepted migration or from smuggling, and definitions of uncertain concepts within the Protocol such as exploitation, deception, and consent. My interest however is in problematizing Sweden's self-image of having no or only a few gender inequality problems whilst other states are regarded as lagging behind. As I will argue, in the context of trafficking, Swedish legislation fails to take gender and ethnicity into account which suggests that more might be done to eliminate gender bias within the three main global fields; the normative, the procedural and the cultural (UNIFEM 2008/09).

In the discussion below, I prefer the term "women in prostitution" to "prostitutes" because of the risk of equating "prostitute" with identity. I also use the terms "men in prostitution" and "men demanding paid sex" in order to make visible the part men play in prostitution.

### **The international context of prostitution and trafficking**

The delineation of prostitution as either work or exploitation is a reflection of specific views, arguments, policies and legislation. Internationally there are at least two competing theoretical views regarding prostitution; sex-work feminism and radical feminism (Sullivan 2003). Each view is divided into several subgroups but the most significant difference is between these two broad approaches to prostitution. Within the so called "normalization" discourse prostitution is accepted while the "abolitionist" discourse opposes it (Westerstrand 2008). In the normalization discourse prostitution is "sex work" and is understood, like any

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other employment, to be freely chosen by women who are therefore entitled to labour rights. This approach tends to emphasize the need for regulation to ensure that prostitution is treated in the same way as other work. Normalization discourse makes a distinction between voluntary and forced prostitution – the latter is combatted, while prostitution as an institution is not questioned. Women are understood to enter prostitution or other sectors of the sex industry voluntarily meaning that their choice to do so ought to be respected. Thus, women's right to safety and protection when working for their subsistence is a focal point for subgroups such as liberal feminists and pro-sex feminists (Adams 2003, Sullivan 2003, Chapkis 2003).<sup>2</sup>

Within the abolitionist stream prostitution as an institution is opposed by radical feminists and also by those who are concerned primarily with the negative consequences of prostitution, termed by Westerstrand as the “contextualizing” branch (Westerstrand 2008). For those taking these positions the distinction between voluntary and forced prostitution is of no relevance. If the aim is to improve conditions for women and girls, the attempt to determine who is forced into sex work and who chooses it voluntarily is the wrong approach (Kelly 2003). Prostitution is regarded as degrading to women and as causing grave psychological damage. The question is not whether women “choose” prostitution, but why men have the right to “demand that women's bodies are sold as commodities in the capitalist market” (Pateman 1988). Radical feminists understand prostitution as a form of violence as it “constitutes a variety of male sexual violence towards women” (Jeffreys 2008) but the contextualizing branch, which is closest to the Swedish official view, is cautious about defining prostitution as violence (O'Connell Davidson 2006).

Trafficking and prostitution are part of a worldwide and constantly growing sex industry where trafficking is sometimes described as a more or less organised importation of women from poor regions to the rich western world. In the other direction, the rich areas of the world export those demanding paid sex to poor regions (Månsson 2005). The views regarding prostitution mentioned above are also present when trafficking for sexual purposes is debated in practical and activist contexts. For instance, the Global Alliance against Trafficking in Women (GAATW) campaigns for legal rights and better working conditions for sex workers

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<sup>2</sup> Adams argues for the right of migrant sex workers to escape poverty and make a living as sex workers. As such they should not be deported as a result of enforcement of anti-trafficking legislation.

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while the radical feminist approach corresponds to the views of the Coalition against Trafficking of Woman (CATW), (Westerstrand 2008, Anderson & O'Connell Davidson 2002). This division of views is illustrated by the fact that a new international agreement, the Convention Against Sexual Exploitation, was proposed in 1995 by US feminist Kathleen Barry. Barry's proposed Convention criminalizes "customers" while rejecting "any form of penalization of the prostitute". The proposal was supported by CATW but opposed by GAATW (Barry 1995: 329; see also Dworkin 1983).

Trafficking is sometimes described as the "slavery of our time" as it arguably has some features in common with the western world's slave-trading of Africans (Obokata 2006). However others are more cautious about such assertions (O'Connell Davidson 2008) and the rhetorical use of the term "sex slavery" in anti-trafficking discourses in order to restrict immigration or demand more rigorous policing of the borders, has also been criticized (Chapkis 2003). Whatever terminology is used, the annual revenue from human trafficking for various purposes has been estimated at ten billion US dollars (US Department of State 2005). Global trafficking for sexual purposes amounts to approximately 80 per cent of all human trade of which about 80 per cent of those trafficked are female (UNODC 2009). In these circumstances it is no exaggeration to say that trafficking for sexual purposes is a gendered issue worldwide. Roughly described, the traffic flows "from South to North, from poor to rich, from black and brown to white, and from female to male" (Scheper-Hughes 1998). This statement refers to trafficking in organs but also broadly covers the pattern of trafficking for sexual purposes. It is primarily women who are trafficked for sexual purposes while the great majority of those demanding and buying sex are men (US Department of State 2008). The EU has recognized the "gender-specific phenomenon of trafficking" and indicated "that women and men are often trafficked for different purposes. For this reason, assistance and support measures should also be gender-specific where appropriate" (Directive 2011/36/EU). The gendered nature of trafficking is also explicit in UN approaches to the problem: one purpose of the Palermo Protocol is to "prevent and combat trafficking in persons, paying particular attention to women and children" (Article 2 Palermo Protocol).

Sweden has its share of trafficking, primarily as a destination country for those trafficked (Holmström & Skilbrei 2008), and the gendered pattern also appears in the Swedish context (Swedish National Council for Crime Prevention 2011:19). Court judgments show that those

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trafficked are mainly female, most perpetrators are male and perpetrators' actions are usually directed against women. The number trafficked to Sweden is estimated at 400-600 persons per year (National Swedish Police Board 2004), though such statistics should be treated cautiously as they are dependent on the priorities of the government and police authorities (National Swedish Police Board 2010).<sup>3</sup>

To understand the contemporary, official, Swedish position towards trafficking it is essential to understand Sweden's view of prostitution since trafficking and prostitution are regarded as an inseparable entity.<sup>4</sup> Below I sketch out the official view concerning prostitution, where social welfare measures and police efforts are the absolute priority before criminalization.

### **The official Swedish view concerning prostitution - social welfare measures come first, criminalization second**

Measures to counteract prostitution and the trafficking of persons for sexual purposes on national, regional and local levels are a priority of Swedish gender equality politics (Government Communication skr. 2011/12:3). The official Swedish position towards trafficking is based on the official view concerning prostitution. Prostitution is primarily counteracted by social welfare measures, including certain police efforts as described below, and only secondly by criminalizing the purchase of sexual services. Nevertheless, it is the criminalization of demand that has attracted international attention; that social measures are considered of great importance when combating prostitution is noticed less frequently. Women in prostitution are explicitly encouraged and supported by the police as well as by visiting social workers within the Swedish welfare regime to abandon prostitution. Preparatory work for the relevant legislation points out that the criminalization of the purchasing of sexual services is complementary to social welfare measures (Government Bill Prop. 1997/98:55). The importance of such social measures was highlighted in the 1970s and forty years later the necessity for such measures is still emphasized and given priority (Government Committee SOU 2010:49 and SOU 1995:15). Thus, the Swedish position is

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<sup>3</sup> Because of the difficulties of determining the numbers of persons trafficked there are no official figures available after 2004. For instance, the number of traffickers sentenced in Swedish courts is a result of priorities made by the police and resources earmarked to combat trafficking, rather than an accurate measure of the numbers of victims of trafficking.

<sup>4</sup> According to the official Swedish view not only are brothels and street prostitution regarded as expressions of gender inequality but also escort service agencies, sex tourism, pornography in films, magazines or on the internet and also telephone sex and striptease.

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that social services rather than criminalization are the main means of checking prostitution. The aim is not only to reduce the damage done by prostitution but rather to extinguish prostitution itself. This approach differs from that in countries with a liberal view of prostitution, where prostitution is regarded as something that must be accepted and controlled in order to reduce the harm it does.

Several official actors provide social measures directed to women in prostitution and men demanding paid sex as well as to children and young people in prostitution. The overall purpose of social welfare measures is to support and help both men and women to escape prostitution, whether they are the exploiters or the exploited. The Swedish National Board of Health and Welfare has the overall responsibility for following the extent and progress of prostitution in Sweden (Government Bill Prop. 1997/98:55). The police authorities state that there are about 300 persons engaged in street prostitution in the three largest Swedish cities and at least that number who advertise through the internet. One Internet search, for instance, produced slightly more than 300 sellers of sexual services of whom 18 per cent were men. Ethnicity was found to be an important factor in Swedish prostitution when marketing sexual services (Swedish National Board of Health and Welfare 2007). For other parts of Sweden, proximity to the commercial sex markets of adjacent countries is important and migration interacts with prostitution in several regions. This is especially the case in the north of Sweden which is close to Russia, and in the south, because of its proximity to the rest of Europe.

Most of the precautionary and caring measures aimed at women and men in prostitution are provided by the Social Welfare Services of each municipality. The municipality has the responsibility to support and help people who are permanently, temporarily, legally or illegally in its area (Social Services Act 2001:453). In the 1970s specific prostitution groups were constituted in Stockholm, Gothenburg and Malmö in order to help both exploitative men and exploited women to leave prostitution. These groups have been active ever since and are engaged in outreach programmes on the streets but also on the Internet aiming to motivate and support those engaged in prostitution to stop. They provide therapeutic and psychosocial support, and have a policy of zero tolerance towards prostitution (Government Committee SOU 2010:49). For about the last ten years the Social Welfare Services in the three cities have directed their work particularly to demanders in order to change their behaviour.

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(Government Committee SOU 2010:49). The Swedish Government has instructed the Swedish National Board of Health and Welfare to evaluate and develop social measures directed to both potential and active buyers of sex and women in prostitution (Government Communication skr. 2007/08:167).

Since 1997 the national police have the comprehensive function of reporting nationally to the Government regarding trafficking in women (Government Bill Prop. 1997/98:55). The mandate was explicitly given in the Action Plan Against Prostitution and Trafficking in Persons for Sexual Purposes (Government Communication skr. 2007/08:167). In Stockholm, Gothenburg and Malmö most of the operational police work directed towards prostitution and criminality linked to prostitution is carried out by a number of specialized groups, while in other parts of Sweden combatting prostitution falls within the bounds of regular police activity. The police work is directed towards the perpetrators of trafficking, procuring and purchasing of sexual services. The police efforts target both outdoor and indoor prostitution and also marketing and sales on the Internet. When patrolling the streets the police have a preventive approach, informing both men and women in prostitution about police fieldwork. For many women in prostitution the very presence of the police on the streets means security. The police cooperate with both social workers in the field and the National Health Service (National Swedish Police Board 2010, Government Committee SOU 2010:49).

### **Criminalization of procuring, trafficking and purchasing of sexual services**

From 1812 until 1918 prostitution was controlled and sanctioned by the Swedish state. Once a week the identity and the bodies of women in prostitution were inspected as they were regarded as disease carriers (Swanström 2000, 2006). Prostitution per se has not been prohibited in Sweden since 1918 (Jareborg 1979). The issue of criminalizing prostitution was raised in the 1970s when the most extensive Government Committee Report ever on prostitution was presented. Prostitution was regarded as incompatible both with ideas about individual freedom and attempts to achieve gender equality. However, on this occasion no proposal to criminalize prostitution was actually made; instead other solutions were emphasized with the aim of reducing prostitution, in particular, both legally regulated and non-regulated social welfare measures (Government Committee SOU 1981:71). Contemporary legislation has its roots in this report which presented the experiences of

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women in prostitution, of those demanding and buying sex, and those of pimps also. The interviews created an understanding of prostitution in historical, economic, cultural and gendered terms (Ekis Ekman 2010).

In the official Swedish view trafficking and purchasing of sexual services are now seen as extreme expressions of gender inequality. Swedish gender equality politics is founded on a gender system analysis about unequal power relations between men and women on both individual and structural levels (see Gunnarsson and Svensson in this issue, Hirdman in Government Committee SOU 1990:44 and also Government Committee SOU 1995:60, Government Bill Prop. 1993/94:147). The structural understanding of gender equality is explicitly expressed in preparatory work regarding the Swedish criminalization of acts violating the individual's integrity in order to gain sexual, financial or other advantages or satisfaction. Combatting trafficking and prostitution is regarded as a way of targeting women's subordination. From this point of departure the social and human costs of prostitution outweigh any eventual individual voluntary participation in prostitution. It is not denied that women might sometimes choose prostitution as a source of income. However, it is not the women in prostitution who are the focus, but the men who demand sex from them. Whether women really choose or do not choose prostitution is regarded as an irrelevant or secondary issue and the distinction made between voluntary and forced prostitution has no relevance. From the official Swedish point of view the distinction appears quite eccentric as females are neither regarded as so-called sex workers nor saleable items available in a free market economy.

Being in prostitution is regarded as being subject to another person's power, lust and desire and not carrying on a legitimate profession. Sweden subscribes to a free market economy but opposes the idea of prostitution as one of its sectors because of the unequal positions of women in prostitution and men demanding paid sex. The Women's Peace reform in 1998 recognized the imbalance in power between the sexes. Prostitution is described as being closely related to men's violence against women and both are seen as expressions of gender inequality (Government Bill Prop. 1997/98:55). Both prostitution and men's violence against women are seen as serious structural hindrances to social equality, gender equality and the enjoyment of human rights by those subjected to trafficking or prostitution. The right to

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decide over one's own life and body is regarded as being seriously violated since human dignity is reduced to a market value (Government Communication skr. 2007/08:167).

The aims of the Penal Code in establishing liability for both the procuring and purchasing of sexual services are to combat prostitution and to assert its lack of social acceptance because of the serious harm it does to both individuals and society (Government Committee SOU 1995:15, Government Bill Prop. 1997/98:55). It is said that gender inequality will remain unattainable as long as men sell, buy and exploit women. Prostitution is regarded as incompatible with societal struggles for gender equality and men buying sex from women is a phenomenon unworthy of a gender-equality state (Government Bill Prop. 1997/98:55). In support of this view, Sweden has implemented the Palermo Protocol from 2000, which addresses trafficking and offers the first definition of trafficking in international law. It addresses "the exploitation of prostitution of others and other forms of sexual exploitation" but "only in the context of trafficking in persons" (General Assembly A/55/383/Add.1). These terms are not defined in the Protocol "which is therefore without prejudice to how States Parties address prostitution in their respective domestic laws" (General Assembly A/55/383/Add.1). Obviously the Protocol does not take a standpoint against prostitution as an institution. On the contrary, it is up to the each State Party how it will address prostitution nationally. In contrast to the ambiguity in the Protocol on the relation between prostitution and trafficking, the official Swedish view is that the very presence of prostitution motivates traffickers to trade in human beings.

The Swedish construction of any crime as an offence against either the public or the individual's interest is important since there are no individual victims of crime against the public (Heuman 1973). However, this distinction has a mainly procedural significance and there are, consequently, differences in a procedural sense between women exposed to trafficking and women exposed to procuring and purchasing of sexual services (Government Bill Prop. 2003/04:111).

### ***Procuring***

Criminalizing those utilizing another person's temporary sexual relations can be a way of combatting prostitution. Typically the perpetrator of procuring is a pimp. The wording of the

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Swedish Penal Code's liability for procuring is very similar to that in the regulations existing in other European states (Transcrime 2005). Unlike trafficking, there is no requirement in the construction of the crime stating that a person must use improper means to subject another person, such as violence and threats. Procuring is primarily constructed as an offence against public interests (Government Bill Prop. 2004/05:45). During the period 2008-2010 there were 103 reports on "trafficking-like crimes", that is, when a person in Sweden is assisted by a person abroad who organises the transfer of women to Sweden where they are then ruthlessly exploited in prostitution. The offenders in 25 cases were prosecuted; 19 perpetrators were subsequently convicted of procuring (Swedish National Council for Crime Prevention 2011:19, Government Bill Prop. 2004/05:45).

### ***Trafficking in persons for sexual purposes***

In 2002 the Swedish parliament passed the legislation which criminalized national trafficking in persons for sexual purposes; this was expanded in 2004 to cover several forms of human trafficking for other purposes whether committed nationally or across borders (Penal Code 2002:416, 2004:406 and Government Bill Prop. 2001/02:124, Prop. 2003/04:111). According to the Palermo Protocol a person's consent to sexual exploitation is of no relevance when improper means such as violence or coercion have been used. Thus, a trafficker does not escape criminal liability if a woman has consented to be trafficked. This is also reflected in Swedish law: it is impossible to consent to be sexually exploited if the perpetrator has acted improperly, as stated in the Penal Code (24:7). Thus trafficking is constructed as an offence against the individual's liberty and peace (Government Bill Prop. 2009/10:152, Prop. 2001/02:124). From 2008-2010 six persons were convicted of trafficking (Swedish National Council for Crime Prevention 2011:19). Because of the difficulty of proving the element of "improper means", perpetrators are often found guilty of procuring, rather than trafficking. (Government Bill Prop. 2004/05:45). This is obviously problematic, since procuring is a less serious violation (Penal Code 2010:371, Government Bill Prop. 2009/10:152, Government Committee SOU 2008:41).

### ***Prohibition of the purchasing of sexual services***

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Deterring men from buying sex is regarded as a way of reducing prostitution. Demand is addressed by the criminalization of the purchase of sexual services, but women in prostitution do not risk legal repercussions. When the legislation to criminalize purchase of sexual services was adopted in 1998 Sweden was the first country in the world to address the role of male demand for prostitution. In the Swedish context the term “demand” encompasses men’s demand for paid sex, not an employer’s demand for cheap and exploitable labour in the sex industry (Anderson & O’Connell Davidson 2002). The relation between the “seller” and the “buyer” is not regarded as in business but as a relationship where a stronger party sexually exploits a weaker party. The exchange of sex for money is mainly guided by the demanding party wanting to satisfy their sexual drive (Government Bill Prop. 1997/98:55, Ekberg 2004).

The Government Committee originally proposed criminalization of both selling and buying sex (Government Committee SOU 1995:15), However, this proposal was rejected. Only buying, not selling, sex was in the end criminalized since (it was argued) women would not be eager to leave prostitution if it would mean in practice that they would have to admit they were criminals when they sought help to leave. The committee argued that criminalization in Sweden provides encouragement to global groups which are attempting to counteract prostitution and, furthermore, that it will make Sweden a less attractive place for organized prostitution (Government Bill Prop. 1997/98:55). The principal rule is that acts committed abroad by a Swedish citizen or by an alien with right of residence in Sweden will be subject to Swedish law. Swedish courts therefore have the competence to pass sentence on such acts, on the condition that the act is also criminalized where it was committed (Penal Code 2:2). However, this aspect of the Swedish jurisdiction has been criticized, especially in relation to trafficking which is often transnational, but not always criminalized. The condition has recently been cancelled regarding all forms of trafficking (Penal Code 2010:399), but not regarding the purchasing of sexual services, meaning that Swedish men or those with a right of residence who engage in trafficking can be prosecuted in Sweden.<sup>5</sup> It has also been proposed that this condition, that the act be criminal where it was committed, ought to be abolished in the case of purchase of sexual services, an approach taken by Norway in their legislation. Such crimes are constructed as an offence against the public interest, wherever committed (Government Bill Prop. 2004/05:45).

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<sup>5</sup> However, there are comments in official reports that also open the way for cancelling the condition regarding the purchasing of sexual services, see the comments of the Department of Law, Umeå University (2010) and the Swedish Crime Victim Compensation and Support Authority (2010).

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Initially the penalties for purchasing sexual services ranged from a fine which is proportional to a person's income to imprisonment for up to six months. In most cases the perpetrator was sentenced to a fine (Government Committee SOU 2010:49). From 1 July, 2011 the maximum penalty was raised to imprisonment for one year in order to enable more nuanced assessments of the penal value considering the widely differing circumstances in cases of purchasing sexual services. For instance, buying sex from persons in exposed situations, such as victims of trafficking, should be judged more severely than some other offences (Penal Code 2011:217, Government Bill Prop. 2010/11:77).

### *The official Swedish view – short summary and examples of criticism*

The official Swedish policy on prostitution can be characterized as a contextualizing approach to the issue (Westerstrand 2008). It opposes prostitution as an institution and counteracts it, for instance by criminalizing the purchase of sexual services. There is, moreover, no differentiation between voluntary and forced prostitution. As I have explained, the position is based on a structural and ideological standpoint which recognizes the imbalance of power between the sexes (Government Bill Prop. 1997/98:55). The official approach differs from that which takes the existence of prostitution for granted and, from that standpoint, argues for better conditions for women in prostitution, for instance by contesting understandings of prostitution in which sex workers are pressured to embody negative discourses about their profession (Sullivan 2003: 79). Such a “sex worker” approach is rarely promoted in the Swedish parliament<sup>6</sup> but there are nonetheless networks which claim labour rights for sex workers.<sup>7</sup> Similar positions can also be found amongst a few Swedish academics who understand the official Swedish view as a radical or socialist feminist position. Petra Östergren, for instance, advocates a feminism that is positive towards sex and demands labour rights for sex workers (2009). However, the understanding of the official Swedish position as a radical feminist position has no rationale in legislation or preparatory works, which see the issue of prostitution in terms of its social cost and as related generally to violence against women. Another academic commentator, Susanne Dodillet, criticizes those Swedish politicians and social workers who describe prostitutes as victims with, according to

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<sup>6</sup> However see Motion 2009/10:JU276 with the proposal from a Centre Party Member of Parliament arguing that criminalization of the purchase of sexual services should be suspended because of its moral base, the lack of research, and that women in prostitution were not consulted.

<sup>7</sup> For instance the Rose Alliance, a national organization for sex and erotica workers <http://www.rosealliance.se/>

her, no will. She also criticizes the politicians for not having listened to the prostitutes' own voices. Given the history of the legislation that is quite an astonishing statement. As indicated above, the most extensive Government report on the issue which formed the basis for the current approach, included interviews of both women and men in prostitution. Dodillet also omits from her critique the impact of the gender system analysis on the official Swedish position as the basis for gender-equality politics in general, including various measures to reduce gender inequality, that is, the criminalization of the purchase of sexual services (Dodillet 2009).

From another point of view the commercial tone of the Penal Code, which uses terms like "buy" and "sexual services", has been questioned. Such language politically neutralizes the acts of both traffickers and buyers of sex and leads to obvious sexual exploitation remaining unrecognized (Niemi 2010). The terminology has been specifically considered in the legislative process. One Government Committee proposed that the crime of trafficking should be defined as being for the purposes of "sexual exploitation" since prostitution was regarded as the most typical example of sexual exploitation (Government Committee SOU 2001:14). However, the Government has dismissed the suggestion because of uncertainty about whether the law was really ready for such a term (Government Bill Prop. 2001/02:124).

The Government has recently formally evaluated the criminalization of the purchase of sexual services. According to police and social workers traffickers avoid Sweden because of this prohibition, because of its effect in reducing overall demand (National Swedish Police Board 2010). Criminalization is regarded as an important tool in preventing and combatting both prostitution and trafficking. The number of women involved in street prostitution has halved and the transfer of prostitution from the street to the Internet is no greater than in other countries. Criminalization has also had a normative effect. In 1996, before criminalization, 69 per cent of Swedish citizens were against it; today about 70 per cent (in three different studies) are pro-criminalization and it has a deterrent effect on potential purchasers of sex (Government Committee SOU 2010:49). Ten years after the Act was adopted in 1999 the number of purchasers of sex has decreased from 13.6 per cent to 8 per cent of the population (Kuosmanen 2008).

### **Gender equality for women trafficked to Sweden?**

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The discussion so far has illustrated the strength of gender-equality politics and law in Sweden, with the Penal Code being used as one tool for achieving gender equality. Sweden also aims to promote gender equality in other countries, for instance when participating in international development assistance (Government Communication skr. 2007/08:109) where amongst other things, human rights, gender equality and non-discrimination are highlighted. The Government has identified a handful of global challenges as being particularly important for achieving a just and lasting global development. These central challenges include counteracting all forms of oppression and combatting human trafficking (Government Bill Prop. 2002/03:122, Government Communication skr. 2007/08:89, the Swedish Cabinet Office and the Ministries 2010). The Swedish ambition regarding gender equality in other states is based on the outcomes of UN international conferences, especially Cairo 1994 and Beijing 1995.

Arising from gender analysis concerning unequal power relations between men and women on both individual and structural levels, the Swedish objective is to persuade other states to alter their power structures, and to question and change notions of both male and female sexual behavior. Some strategic areas have in particular been indicated, such as increased male responsibility for gender equality, strengthening the power of women, challenging gender-based violence, trafficking and prostitution. For instance, the Swedish International Policy for Sexual and Reproductive Health and Rights published by the Swedish Ministry for Foreign Affairs (2006), describes societal norms as male, manifested in domination, aggression, heterosexuality and an uncontrollable sexual drive. UN resolutions empowering women are emphasized in the Government's foreign policy and the fundamentals of human rights and personal and physical integrity are evoked (Commission on Human Rights, E/CN.4/RES/2005/84 and E/CN.4/RES/2005/41). The Swedish Government states that women's and girl's human rights are disregarded by many (other) states and promotes an extensive implementation of CEDAW (Swedish Cabinet Office and the Ministries 2009). Thus, Swedish efforts to achieve gender equality do not stop at the national borders. Against this backdrop one might assume that the gender equality ambition would be both relevant and present when women are trafficked to Sweden. So what is the Swedish response, in gender equality terms, to foreign women trafficked to Sweden for sexual purposes?

Since October 2004 a woman trafficked to Sweden might be granted a residence permit with a limited duration of six months if she meets certain criteria (Aliens Act 1989:529, 2005:716, 2004:206). Firstly, a residence permit must be regarded as essential for initiating any legal proceedings against the trafficker.<sup>8</sup> Secondly the “foreigner” must clearly show that she is willing to cooperate with the public authorities. Thirdly the “foreigner” must have severed every connection with the suspect and fourthly, issues of public order and security must be taken into consideration as there may be an obstacle to the granting of a residence permit for a limited duration to the trafficked woman (Aliens Act 2007:322). The application for a residence permit for the trafficked woman is not in her own hands but in those of the leader of the inquiry into the trafficker. An even more limited residence permit of thirty days is also available upon application by the inquiry leader, if it is necessary for the legal proceedings and if there is no risk to public order and security. The purpose of this permit is to give the “foreigner” time to recover and decide whether or not to cooperate with the authorities. In both cases the application is heard by the Migration Board, and the right to appeal its decision is reserved to the inquiry leader (Aliens Act 2007:322). According to preparatory work for this legislation, the qualification criteria are meant to ensure that no one misuses their presence on Swedish territory (Government Bills Prop. 2003/04:35 and Prop. 2006/07:53).

The complexity of trafficking is acknowledged in the preparatory work for the specific rules of the Aliens Act, and the relation between the trafficker and the trafficked woman is recognized as a power relation. However, it is open to question whether the qualification criteria fully reflect this complexity. For instance the requirement that all connection with the suspect be severed may ignore risky consequences of doing so in terms of the woman’s own or her relatives’ existence. The supposition seems to be that it will be possible for the (power) relation to be broken within a short time. On the other hand trafficked women are understood as being unable to make decisions about whether or not to cooperate with the Swedish public authorities, and are given time to think things over. None of these presumptions seem to accord with the official Swedish knowledge about power as explicitly expressed in several preparatory works, for instance regarding the criminalization of the purchasing of sexual services in order to combat prostitution and achieve gender equality. Instead, the qualification criteria for the specific rules of the Aliens Act seem to give the fullest priority to the state’s interest in preventing any misuse of Swedish territory.

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<sup>8</sup> A residence permit of limited duration can also be granted in connection with other serious crimes.

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In the context of women trafficked to Sweden the official Swedish understanding of prostitution and trafficking seems to fade away, to be replaced by a security context which discards such fundamentals as gender equality and anti-discrimination. What remains for trafficked women in Sweden? They are eligible for social welfare assistance for a period of thirty days, or maybe six months - but only if they cooperate with authorities investigating instances of trafficking. It seems that official efforts to achieve gender equality do not apply in the context of women trafficked into Swedish society. One might say that women trafficked to Sweden are present in Swedish society because Swedish men demand and consume them. They belong and should not be subjected to societal ejection and degradation or be tolerated only as long as the Swedish state tolerates their presence (Marmo 2008).<sup>9</sup>

Arguably then, the Swedish ambition of achieving gender equality includes women both within and far from its own territory but excludes those trafficked to Sweden. The specific rules of the Aliens Act mean that Sweden, as regards women trafficked to the country, abandons its contextual approach which focuses on men demanding paid sex. When women perceived as non-Swedes or ethnically “other” are trafficked to Sweden, and are actually present on its territory, the official Swedish response is much like the approaches of most EU Member States. The regulation of limited-duration residence permits is in accordance with the Swedish state’s interest. It is not an expression of Sweden’s goal of promoting gender equality which, in fact, seems to play a surprisingly insignificant role in this area. This position does not differ from those of most European states, on the contrary, it is a measure that meets the EC directive regarding residence permits issued to third-country nationals who are victims of trafficking, and who cooperate with the proper authorities (Council Directive 2004/81/EC).

### **Concluding Remarks**

The understanding of prostitution and trafficking as interconnected and extreme expressions of gender inequality determines the official Swedish view of these issues as expressed in legislation, and in particular by the criminalization of the purchase of sexual services. The criminalization of the purchase of sexual services is a rare approach, both within the region and globally. The vast majority of EU Member States prohibit neither indoor nor outdoor

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<sup>9</sup> Marmo’s conclusions regarding the Australian context are also applicable for the Swedish context.

prostitution and the purchase of sexual services is not criminalized. Some states intervene by prohibiting brothels while in others female prostitutes are registered and/or subject to recurrent health screenings. Apart from Sweden, EU Member States such as Ireland, Lithuania and Malta are classified as abolitionist states (Transcrime 2005). However, the classification of Sweden as an abolitionist state must be understood in light of the fact that it is only the acts of those demanding and buying sex which are criminalized, not the acts of women in prostitution.

The criminalization of men's demands for paid sex is not unique to Sweden, since both Norway and Iceland criminalized the purchasing of sexual services in 2009. The Norwegian legislation is also more far-reaching than the Swedish since it criminalizes Norwegians purchasing sexual services abroad. Finland has also taken steps in this direction by criminalizing the purchase of sexual services if this entails exploitation of a person subjected to trafficking or procuring. Sweden, Norway and Iceland seem to understand prostitution, trafficking in women, exploitation and vulnerability as four aspects of the same phenomenon. Denmark is the Nordic exception, as neither the buying nor the selling of sexual services is criminalized or prohibited in any way. Even if several Nordic countries have similar regimes the national policies are based on different ideological and empirical contexts combined with different social measures (Skilbrei and Holmström 2011).

The official Swedish policy regarding gender equality is far-reaching, and in many respects, a success. It has resulted, for instance, in a change of attitude among the population, towards a position approving the criminalization of purchasing sex. The numbers in prostitution in Sweden and also the numbers trafficked to Sweden indicate that the Swedish approach might be fruitful. But it is not a total success. In the light of its radical ambition concerning gender equality both in its own territory and in other states, one might assume that these efforts would also embrace women who are trafficked to Sweden. However, as we have seen, this is not the case. There is a gap between gender equality efforts on the one hand and criminal and alien law regarding women trafficked to Sweden on the other.

The official Swedish position regarding gender equality, which is carefully explained in preparatory work and other state documents, is not applicable when women perceived as non-Swedes or ethnically "other" are demanded, consumed and exploited in Sweden. When

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trafficked women enter Swedish territory it seems as though efforts for gender equality are sidelined and seem to become invalid. Simultaneously, the Swedish state's radical approach dissolves into the EU security approach. The multi-violated others become mere instruments in the state's prosecution of crime. They are desirable in the Swedish judicial system since they are witnesses to crime. When they have fulfilled their instrumental function, and the traffickers have eventually been sentenced, the women become undesirables in Swedish society.

Thus, the official Swedish position regarding trafficking in persons for sexual purposes, based on gender equality considerations, can be seen as successful but the Swedish response to women who are perceived as non-Swedes or ethnically "other" does not fit in with this approach. In this respect the official Swedish approach is inconsistent. Trafficked women seem to be regarded neither as victims subjected to criminal offences by the perpetrator nor as women covered by the Swedish "territorial" gender equality politics. Nor are they perceived as agents able to make their own decisions. Primarily, trafficked women are perceived as instruments to be used in the interest of the state, they are present on Swedish territory but are not the target of the ambition to achieve gender equality since they are perceived as non-Swedes or ethnically "other".

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