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Lastly to my mother, Elina Mkansi who is always in my heart in everything I do, and my two boys, Christian Prince Jnr and Lunghani Curtis, as a father I shall always lead by example.
TITLE: THE POLICING OF SEX WORKERS IN SUNNYSIDE

By : Mackenzie Prince Mkansi
Promoter : Professor DT Masiloane
Department : Police Practice
Degree : Magister Technologiae in Policing
SUMMARY
In South African Law, sex work is currently mainly dealt with in terms of the Sexual Offences and Related Matters Act 32 of 2007, although other legislation, such as the Aliens Control Act 3 of 1993 also contains provisions that are peripherally relevant to sex work. In addition, municipal by-laws play an important role in the regulation of sex work, especially outdoor sex work. These by-laws are often aimed at addressing the more visible aspects of outdoor sex work. This dissertation aims to analyse the policing methods used by the police when policing sex work in Sunnyside, and whether the police have the ability and capacity to enforce current legislation in this regard. The enormous incidents of dehumanization and abuse of sex workers by the police who are supposed to enforce the Sexual Offences Act 32 of 2007 and the previous legislation on sex work questions whether the police should be given more or less powers in dealing with this crime.

This dissertation aims to conduct an in-depth analysis of relevant literature in order to provide a background for the discussion on the origins of sex work and the different legal models for dealing with sex work. The study also endeavours to establish a frame of reference for considering different legal models to deal with sex work and to identify different policies and legal approaches to sex work, and to consider the impact of the current laws regulating sex workers and the harm that result from this. The dissertation aims to explore and describe the challenges that the police in Sunnyside experience, and also to analyse the difficulties that sex workers often encounter. The knowledge generated in this study will enhance the existing knowledge in the policing of sex work, and will also serve to educate the police, criminal justice institutions, and the community about the nature and extent of the problems that policing agencies experience when policing sex workers in Sunnyside.

Key terms:
The policing of sex workers in Sunnyside; the policing of sex work in Pretoria; the prevention of sex work in Pretoria; police measures of dealing with sex work in Sunnyside; the strategy of the police to combat sex work in Sunnyside; dealing with the plight of sex workers in Sunnyside.
DECLARATION FORM

Student number: 0806 178-5

I, Mackenzie Prince Mkansi, declare that this dissertation: “THE POLICING OF SEX WORKERS IN SUNNYSIDE”, is my own work and that all the sources that I have used or quoted have been indicated and acknowledged by means of complete references. This study has not been submitted before for any degree or examination in any other university.

___________________________ DATE: 2012-09-27
(MKANSI MP)
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<tr>
<td>AI</td>
<td>Appreciative Inquiry</td>
</tr>
<tr>
<td>AIDS</td>
<td>Acquired Immune Deficiency Syndrome</td>
</tr>
<tr>
<td>BC</td>
<td>Before Christ</td>
</tr>
<tr>
<td>HIV</td>
<td>Human Immunodeficiency Virus</td>
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<tr>
<td>IOM</td>
<td>International Organization for Migration</td>
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<tr>
<td>ISS</td>
<td>Institute for Security Studies</td>
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<tr>
<td>ICRSE</td>
<td>International Committee on the Rights of Sex Workers</td>
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<tr>
<td>KAST</td>
<td>Kopare Av Sexuella Tjanster</td>
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<tr>
<td>NGOs</td>
<td>Nongovernment Organisations</td>
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<td>OC</td>
<td>Organization Committee</td>
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<td>PAR</td>
<td>Paradigm</td>
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<tr>
<td>SALRC</td>
<td>South African Law Reform Commission</td>
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<td>SAMWU</td>
<td>South African Municipal Workers Union</td>
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<td>SIGN</td>
<td>Sexwork Initiative Group Netherlands</td>
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<td>SWEAT</td>
<td>Sex Work Education Taskforce</td>
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<td>UNAIDS</td>
<td>United Nations Programme on HIV/AIDS</td>
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<td>USA</td>
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CHAPTER 1: GENERAL ORIENTATION

1.1 INTRODUCTION

Sex work has been the subject of considerable public debate in South Africa. The topic remains an emotive one, and opinions on sex work are generally polarised. Specifically the question of how the South African legal system should respond to sex work. The current legal approach to sex work is one of total criminalisation. However, this legal dispensation does not appear to have had an inhibiting effect on sex work. While it remains debatable whether criminal law is the most appropriate mechanism to curb sex work, the existing criminal law provisions can be strengthened by focussing on the conduct of both parties (the sex worker and the client), and by clear policy prescription for enforcing such laws (South African Law Commission 2010: 25)

The Sexual Offences and Related Matters Act 32 of 2007 make it illegal to exchange sex for a reward. The act criminalises all activities related to the sale of sex, including living off the earnings of prostitution, persuading someone to become a sex worker, or keeping a brothel. The difficulty of enforcing the Sexual Offences and Related Matters Act 32 of 2007 means that it is not often used to prosecute street-based sex workers, who are often arrested for contravening municipal by-laws related to loitering or soliciting. Sex workers have reported police harassment and brutality to researchers in Cape Town (Fick 2006). Historically, the police have held a deep-seated ambivalence towards sex workers and the policing of sex workers is generally seen as low-level police work. Police involvement in the regulation of sex work has rarely been driven by internal demands but mostly by public pressure and political directives. Consequently the police have shown reluctance in sharing responsibility for the regulation of sex work (Mathews 1992: 417).
The policing of sex workers is a difficult task and there seems to be no directive on how police officers should deal with this crime. For police interaction to be effective in this crime the arrest should not only be focused on sex workers but also on their clients. According to Brewer, Muths, Roberts, Dudeck & Woodhouse (2007: 543), the arrest of the client reduces the likelihood of the future arrest of sex workers by 70%. However, enforcement activity tends to be conducted by temporary sweeps on limited areas of street-based sex work. The arrest of these sex workers results in short-term, enforcement and temporal or geographical displacement, because sex workers seek alternative means to continue with this trade. Most recent research has centred on assessing the adequacy of the existing law, and the majority of analysts have concluded that most sexual offences ought to be decriminalised (Larsen 1996: 40).

1.2 BACKGROUND TO THE STUDY

In terms of section 11 of the Sexual Offences and Related Matters Act 32 of 2007, sex work is illegal in South Africa. In 1957, various laws regulating sexual acts or relations were repealed and later re-enacted and consolidated in the Immorality Act that was subsequently renamed the Sexual Offences Act 23 of 1957. This act is still in force and contains the current provisions regulating various aspects of sex work. The act penalizes the keeping of brothels, the procurement of women as sex workers, solicitation by sex workers, and living off the earnings of sex work.

The successful prosecution of sex workers, like any other crime, depends largely on the availability of witnesses who will testify in court. The difficulty of getting conviction for this crime lies in the fact that the potential witnesses tend to be sex workers themselves and their clients. For obvious reasons these potential witnesses could incriminate themselves when testifying or being stigmatised for being associated with this industry that is still viewed as immoral by many people. These potential witnesses therefore tend to be reluctant to assist in the
policing or prosecution of this crime. The police are left with limited options, namely observation and entrapment to arrest and prosecute offenders successfully in terms of the Sexual Offences and Related Matters Act 32 of 2007.

Both these methods – observation and entrapment – have their own limitations. The limitation of observation being that sex workers and their clients could move away from the sight of the police to a secluded place where the actual act of prostitution takes place. When using entrapment a police officer may pose as a potential client in order to trap the sex worker into committing an offence, or clearly intending to do so, but the successful prosecution with this method also poses a challenge because the counter argument that often gets presented is that the crime could not have been committed without enticement from the police official (Cape Town City Council v SAMWU1998: 5). Owing to the difficulty of striking a balance between entrapment and enticement, the South African Police Services began to rely on municipal by-laws to arrest sex workers. Most of these by-laws penalise actions such as loitering and creating a public nuisance (Davis & Snyman 2005: 260).

The difficulty of successful prosecution under the Sexual Offences and Related Matters Act 32 of 2007 is evident from the case of State v Jordaan and Others. In this case police officials entered the brothel in Jorissen Street in Pretoria under the guise of being clients and subsequently arrested a number of women employed at the brothel for contravening section 20(1) (AA) of the Sexual Offences and Related Matters Act 32 of 2007. In addition, the owner of the brothel, Ms Jordaan, was arrested and charged with contravention of section 2 of the above-mentioned Act. Although the three appellants pleaded not guilty in the court, they admitted the factual allegations against them but asserted that sections 2, 3(b) and (c) and 20(1) (AA) were unconstitutional. Their conviction was turned down by the Transvaal Provincial Division of the High Court, which ruled that section 20(1) (a) was inconsistent with the Constitution and therefore invalid. The Transvaal Provincial Division of the High Court reached this
conclusion through strong reliance on the *dictum* of the Constitutional Court in National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others.

According to the South African Law Commission (2009: 21), the climate of criminalisation means that sex workers are abused financially, sexually and physically by gangsters, clients, brothel owners and pimps, often with impunity. Research shows that irrespective of the legal option followed, women and girls in sex work have a mortality rate 40 times higher than the national average. There is evidence that the criminalised status of sex work is exploited by some authorities to harass and brutalise sex workers. The experience of the Sex Work and Education Advocacy Taskforce is that sex workers are often mistreated, assaulted or verbally abused by police officers when arrested. In addition, it is alleged that police officers abuse the current South African system by offering not to arrest sex workers if they provide sexual services to them for free.

### 1.2.1 Reasons for becoming a sex worker

The South African Law Commission (2009: 26) indicates that an important consideration in identifying the appropriate legal framework for sex work in South Africa is to understand what drives the supply of, and demand for, sex work. Studies by Herbst and the Institute for Security Studies/Sex Work and Education Advocacy Taskforce found that, in all cases, financial responsibilities or expectations from families or dependants led to early entry into sex work. The latter study also found that it is not a job that the sex workers like doing, or would choose to do should their range of options have been wider. For most the fact that no specific skills or qualifications were required was an important motivating factor. Some of the determinants for people to become sex workers are dealt with below.
1.2.1.1 Economic determinants

Economic factors constitute a significant force for women and girls with few skills to become involved in sex work; it serves as a means of economic survival and as a more lucrative form of employment than that available to them in the formal labour market (South African Law Commission 2002: 69). This warrants the fact that the sex work market should be examined against the broader background of the economic status of women. According to Pauw and Brener (1997: 3), South African women are usually poorer than men, often unemployed or only able to enter into formal trade. This escalating unemployment as well as poor levels of education and skills decreases women's employment opportunities and wages, thus creating an environment where the desire for the upward mobility and access to resources may lead to the exchange of sex for survival. According to the South African Law Commission (2002: 69), some of the reasons for entering into sex work are the following:

- Sex workers are not selling sex for pleasure, but for survival.
- Some of the sex workers sell sex to obtain money to pay rent, for food and school fees for their kids.
- Gays enter into sex work in order to take care of their loved ones.
- Younger women who come from different places to attend school become attracted to the lifestyle and want to follow it.
- Some sex workers are influenced by their friends’ suggestions to enter into sex work.

According to the South African Law Commission (2009: 28) the socio-economic challenges are the main reasons why sex workers enter into sex work. The South African Law Commission (2009: 28) further indicates that South Africa has two economies. The first economy boasts a highly skilled labour force, advanced technology and an elaborate infrastructure. The second economy presents a high unemployment rate in which an inordinate number of people without skills need
to participate. The latest available statistics of the Labour Force Survey recorded the unemployment rate of South Africa as in the fourth quarter of 2008 there were approximately 3.9 million unemployed people in South Africa. In the wake of the financial and economic crisis, the level of unemployment climbed rapidly, reaching a peak of 4.4 million in the first quarter of 2010, and remaining around this level for the next two quarters. Unemployment rose to 4.5 in the second quarter of 2011, but declined during the second half of 2011. In the first quarter of 2012, the number of unemployed persons rose by 282,000, reaching 4.5 million (Quarterly Labour Force Survey 2012: 14). According to the Year and Poverty headcount index, 43.2% of the South African population lives below the poverty line of R3000 per capita per annum, approximately R250 per month (South African Law Commission 2009: 29). Historically women have been more likely to be unemployed than men. Data since 2008 confirm this trend: In the first quarter of 2008, the unemployment rate for women was 27.1%, while the rate for men was 6.6 percentage points lower, and by the fourth quarter of 2011 this gap had narrowed to 4.7 percentage points. Unemployment rate for women remained higher than the national average between the first quarter of 2008 and the first quarter of 2012 (Quarterly Labour Force Survey 2012: 14).

Many poor South African women do not qualify for social grants and those who qualify are adversely affected by the decrease in the value of social grants due to the increasing cost of basic necessities and the overall cost of living as a result of inflation (South African Law Commission 2009: 29). Within these overall poverty statistics, women are usually poorer than men, often unemployed or only able to enter into informal trade. According to the South African Law Commission (2009: 29), while unemployment figures seemed to be improving in 2008 the global recession in 2009 has caused the economy to slow down considerably. Indicators point to employment rates that remain racially skewed in favour of whites. While data shows that women account for most of the net rise in jobs, black women, who due to South Africa’s discriminatory past had the least access to economic and educational resources and have the least skills to allow them
entry into broad economic participation, still fall into a group that has an unemployment rate eight times that of white women.

1.2.1.2 Socio-psychological determinants

Predominantly a woman's gender position in society structures her roles and opportunities, and influences the choices that she makes. According to the South African Law Commission (2009: 28), not all people who are poor and seek to increase their income make the decision to work as sex workers. This decision depend on the individual characteristics and personality of the person concerned, as well as their social circumstances, including the age of the person and the abuse or neglect the person has been subjected to as a child. South African Law Commission (2009: 28) indicates that the relationship between individual choice and socio-economic position is contested. That is why some organisations and feminists who defend sex workers’ rights argue that not all sex workers turn to or are coerced into sex work because they have limited options. Adopting a liberal position that valorises individual choice, they argue that women need to have the right and freedom to choose how to live their lives as sexual beings and some women make a liberating and empowered decision to become involved in sex work. On the other hand, a more critical approach suggests that the power relations in sex work are more complex, and should be understood within the context of social relations that produces a series of variable and interlocking constraints upon which actions are taken (South African Law Commission 2002: 47).

1.2.1.3 Migration

Urban and regional migration plays a role in sex work as it has been part of the historical landscape for hundreds of years (South African Law Commission 2009: 29). The patterns of migration under colonialism and apartheid which saw men leaving their families to work in the mines have changed. Nowadays women are
just as likely to migrate in search of employment opportunities and for a better life like men. In fact, a significant transformation in migration patterns is the increase in the number of women, especially young black women, moving independently from rural areas to urban areas. The South African Law Commission (2009: 29) states that a number of factors such as rural decay, the perceived economic opportunities, and the effects of the HIV/AIDS pandemic influence the migration process. When parents or guardians of the minors get sick or die as a result of the HIV/AIDS, it is often the young women who will drop out of school because of a lack of funds or the need to take care of the ill parents/guardians or siblings. These circumstances may cause them to end up depending on family members. As the cost of maintaining extended families becomes more and more expensive they may become an economic burden and find themselves vulnerable to abuse. These young women may then move to the cities looking for opportunities and according to the South African Law Commission (2009: 30), there are also instances where family members facilitate their entry into sex work.

United Nations studies on HIV/AIDS (2007: 4) indicate that without government intervention, illegal immigrants and refugees are excluded from the formal job market and are therefore particularly vulnerable to being trapped in sex work. Their illegal status makes them doubly vulnerable as not only are they illegal in the country but they are also engaging in an illegal activity. In a desperate attempt to make a living, many illegal migrants and refugees who turn to sex work are willing to charge less than local sex workers and to forego using condoms in order to access more clients. Consequently, the spread of disease and HIV/AIDS is disproportionately high among the illegal migrant and refugee populations.

1.2.1.4 Trafficking

Trafficking of human beings for purposes of sexual exploitation is a crime that involves the recruitment, transportation and exploitation of an individual which
can take the form of forced sex work, pornography or any other forced sexual practices. The International Organization of Migration (2008: 37) reports that people are trafficked within and across the borders of South Africa for purposes of subjecting them to sex work; some of this is coercive, occurring without the full consent of such persons. Young women in particular are enticed by offers but are unaware that they will be forced into sex work. Although deceit is often used to get a person to agree to move from one place to another, traffickers sometimes use force or other forms of coercion to do so. In its recently published report on internal trafficking of persons in South Africa, the International Organization of Migration (2008: 37) deals with what they term “transactional sex”. In these cases women leave home on their own accord to pursue work in a more promising location. When formal employment proves difficult to find, some women resort to sex work as a means of economic survival. Often this entry is facilitated by a pimp who may also swap or sell a woman who has outlived her usefulness in a certain area to someone in another location. The International Organization for Migration (2008: 9) identifies local newspaper advertisements for work in various industries with no experience required as a recruitment method that is usually used to lure unsuspecting persons to human trafficking for purposes of sexual exploitation. The International Organization for Migration (2008: 9) made the following key findings in respect of trafficking and commercial sexual exploitation:

- Adolescent girls and young women who leave exploitative situations as domestic servants are vulnerable and easily recruited for the sex industry.
- In respect of commercial sexual exploitation, women are just as likely as men to be recruiters.
- Methods employed to control victims include restricted movement, use of force, and/or threat of physical violence.
- Substances are provided as an additional means of control particularly in sexual exploitation.
• Nigerian organised crime syndicates operate heavily in Pretoria, Port Elizabeth, Johannesburg and Bloemfontein and traffic local black South African females into commercial sexual exploitation.
• Advertisements in local newspapers have been used as a recruitment technique to deceive young women to enter the sex industry.

1.3 PROBLEM STATEMENT

The South African Police is experiencing challenges when policing sex work and other related sexual offences such as rape and sexual assault, especially when it comes to enforcing the Sexual Offences and Related Matters Act 32 of 2007. Public nuisance resulting from sex work, notably street sex workers, is frequently cited as one of the reasons why sex work should remain being criminalised. These nuisance factors may include, *inter alia*, excessive noise coming from motor vehicles of sex workers' clients, traffic congestion as a result of vehicles of sex workers' clients stopping and disturbing smooth traffic flow, and condoms left on pavements.

The difficulty of achieving successful prosecution under the Sexual Offences and Related Matters Act, compel the police to resort to using municipal by-laws that deal with soliciting, advertising and trade in policing sex workers, particularly those who operate from streets. Police often cite complaints from residents as the main motivating factor for them to invoke municipal by-laws against street sex workers (South African Law Commission 2002: 88). Davis and Snyman (2005: 1) note that police and municipal authorities, reacting to pressure from citizen groups, typically resort to exerting pressure on higher levels of government to enact laws so that the police can have wider latitude in dealing with sex workers (Davis & Snyman 2005: 1). On the other hand, research conducted in Cape Town indicates that the police use a highhanded approach when dealing with sex workers (Fick 2006). According to Fick (2006), the police disregard sex workers’ rights, and because sex workers are reluctant to report the police, they often
become the victims of theft, assault and rape by the police. So criminalising sex work will not stop the operation of this industry but it might succeed in driving it underground, as sex workers could continue to generate income through this trade but protect their clients from arrest and the stigma that is associated with this trade.

South Africa is a typical example that this trade is not something that could be eradicated easily, because despite intensive periods of arrests and prosecution, sex workers are still visible in many cities. Being arrested and fined R300-00 to R450-00 seems not to deter sex workers at all. According to Wilson (1989: 5), magistrates appear to be in dilemma because the imposition of a fine could be a direct incentive for sex workers to go and get more clients so that they can raise the amount required. The South African Law Commission (2009: 62) indicates that arrests occur as a result of sporadic crime prevention initiatives and in response to complaints from members of residential or business communities. Most arrests and harassment of sex workers are largely directed at street-based sex workers because they are the most visible and vulnerable, as the community is more likely to complain about them compared to those who operate behind closed doors. The South African common law and statutory law are also seen not to be dealing adequately, effectively and in a non-discriminatory manner with many aspects relating to or associated with the commission of sexual offences. This lack of a coherent approach trickles down and becomes evident in the policing phase where these laws are enforced.

According to the South African Law Commission (2002: 53), there have been diverse opinions among those who were advising the Sexual Offences Review Committee as there have been in academia, the public and legal fraternity. Scholars who studied irregular sexual unions in non-Western cultures, African societies included, had difficulties in limiting the boundaries of sex work. That is largely because in the African context, exchange of sexual services for money is only one of many other actions that may lead to one being labelled a sex worker.
While the conventional understanding of sex works on the other hand entails the exchange of sexual acts for money or goods only. Conversely, exchange of sexual services for money is not always considered as acts of sex work (South African Law Commission 2002: 53).

Therefore, based on this broad understanding of what constitute sex work, the rationale of this study is to determine the effectiveness of the strategy that is used by the police in the policing of sex workers in the Sunnyside area.

1.4 RESEARCH QUESTIONS

In any research project a research question that clearly states what the research investigates or attempts to prove becomes the point of departure (Kosgei 2004). In line with this understanding, this research is designed to answer the following question:

- How effective is the policing of sex workers in Sunnyside?

1.5 RESEARCH OBJECTIVES

Developing research objectives is a significant step in any research project because research objectives guide the researcher’s focus to achieve the stated outcome. The purpose of the research is to explain, explore or discover certain phenomenon through the application of rigorous, systematic and scientific processes (Kothari 2004: 24). The main objective of this study is to determine the effectiveness of the strategy or method that is used by the police in policing sex workers in Sunnyside.

To streamline the process and to assist the researcher to achieve the above-stated objective, the following sub-objectives were developed:
To investigate and analyse policing methods used by the police in policing sex workers in Sunnyside

To explore and describe police experiences in the policing of sex workers in Sunnyside

To explore and describe the sex workers’ experiences with the police in Sunnyside

1.6 VALUE OF THE RESEARCH

The knowledge generated in this study will add to the existing knowledge about the policing of sex work and also serve to inform the police, criminal justice institutions, and the community about the nature and extent of the problems that policing agencies experience when policing sex workers in other areas. The South African Police are experiencing challenges when policing sex workers and other crimes that are associated with sexual offences, especially when it comes to the enforcing of the Sexual Offences and Related Matters Act 32 of 2007.

This research will greatly help members of the police to be aware of the negative effect that might emanate from not dealing with sex workers within their constitutional mandate. This research will serve as a guideline on how to handle sex workers, and will also assist other researchers in this field of research on the dilemmas experienced by the police when there is a lack of clear guidelines or policies. This information should help enhance the collaborative efforts of law enforcement and social services to develop better approaches for dealing with sex workers in Sunnyside and elsewhere in South Africa.
1.7 KEY THEORETICAL CONCEPTS

**Sex work**: In its documentation on HIV/AIDS the United Nations states that there is no single definition of sex work that could cover the wide range of activities that focus on sex and money or resources, it consciously defines sex work as the reception of money or goods by a male or female person in exchange for sexual services (United Nations on HIV/AIDS 2002: 3).

According to James (1980: 14), sex work has social, moral and legal implications and can be defined as any sexual exchange in which the reward is either sexual or involves affection. This encompasses the actions of the sex workers themselves when they use their bodies as a commodity in exchange for material gain, such as money, clothes, apartments, promotions, or entertainment. James (1980: 14) states that the legal definition of sex work is narrower because it only involves money, promiscuity, relationship with a sexual partner and subtlety.

In terms of section 55 of the Sexual Offences and Related Matters Act 32 of 2007, sex work could be defined as inciting or inducing another person to commit a sexual offence, linked to this is section 11 that criminalises actions by a person who engages sexual services of persons who are 18 years or older. Therefore sex work in this dissertation should be understood as engaging in a business of inciting or inducing people to commit a sexual offence.
**Sexual offence**: A sexual offence is defined broadly in chapter 2 of the Sexual Offences and Related Matters Act 32 of 2007 as any action such as rape and compelled rape, sexual assault, compelled sexual assault and compelled self-sexual assault, compelling or causing a person who is above the age of 18 to witness sexual offences, sexual acts or self-masturbation; exposure or display of or causing exposure or display of genital organs; engaging in sexual services of another person; incest; bestiality; and sexual acts with a corpse.

### 1.8 ORGANISATION OF THE DISSERTATION

This dissertation is organised into the following six chapters:

**Chapter 1: General orientation.** This chapter deals with the general orientation of this study, giving an overview and background that serve as a premise for this study. Here the problem statement, research question; research objectives, and the value of this study are covered. The chapter concludes by defining the key concepts that will be used throughout this study and in the conclusion.

**Chapter 2: Literature review.** This chapter deals with the origin of sex work, different types of sex work and how it has been policed. Comparative international perspectives on the policing of sex work will be dealt with in an attempt to determine whether there are some best practices that South Africa can learn from.

**Chapter 3: Literature review continuation.** This chapter further explores international perspectives on the policing of sex workers in an attempt to determine whether there are some best practices that the South African Police Service can follow.
Chapter 4: Research methodology. Chapter 4 deals with the research methods and identifies the methodology that this study used as well and the reasons for using the identified methodology. The population and the sample are presented as well as the rationale for the sample and the sampling technique used. Chapter 4 also deals with the third category that indicates the data collection and the data analysis methods used in this study. The chapter also discusses the ethical considerations and how they were observed in this study and conclude by indicating how the validity and reliability of the study were ensured.

Chapter 5: Research findings and recommendations. This is the last chapter of dissertation that makes recommendations based of the findings in chapter 4 above. These recommendations are followed by the conclusion that gives the conclusive view of the entire study.

1.9 CONCLUSION

Sex work is one of the trades that have been in operation for centuries all over the world. It survived different forms of regulation and deregulation, legalisation and criminalisation at various eras of its existence. Because sex work or prostitution involves morality its criminalisation and decriminalisation is mostly dependant on the morals and values of the society in question. That is why there is no uniform opinion on whether it should be criminalised or decriminalised.

Currently sex work is criminalised in South Africa, but the arrest and successful prosecution of sex workers seem to be the war that the Criminal Justice System is not winning. Sex workers are seen all around the country and one cannot stop to ponder why they are not arrested because they are visible in all cities in South Africa. It could be inferred from this that criminalisation, arrest and prosecution of
sex workers do not deter them, leading to many people questioning whether criminalisation of this trade is the appropriate way of dealing with it.

The second question that resonates closely with the criminalisation of this trade is whether the police have the ability and capability to enforce the laws in this regard. The enormous incidents of dehumanisation and abuse of sex workers by the police who are supposed to enforce the Sexual Offences and Related Matters Act 32 of 2007 and the previous legislations on sex work questions whether the police should be given more or less powers in dealing with this crime.
CHAPTER 2: THE ORIGIN AND LEGISLATION OF SEX WORK AND ITS POLICING IN SOUTH AFRICA

2.1 INTRODUCTION

The purpose of this chapter is to provide a background to the discussion of the origins of sex work and the different legal models to deal with sex work. This chapter also attempts to establish a frame of reference for the consideration of different legal models to address sex work and identifies different policy and legal approaches to sex work as well as looking at the impact of the current laws on sex workers and the harms that result from this. Burchell and Milton (1997: 7) note that the enforcement of (sexual) morality through the medium of criminal law has long been a contentious issue. These authors define the function of criminal law as the coercing of people to abstain from conduct that are harmful to various interests of society with the ultimate aim of promoting the welfare of the society by establishing and maintaining peace and order (Burchell & Milton 1997: 7).

According to the South African Law Commission (2001: 7), many forms of immorality are punished because they are considered to be harmful to other people. The challenge, however, comes when people assume that a particular activity is not inherently harmful, because this raises questions about whether the law should punish such acts merely because they are considered immoral? According to the South African Law Commission (2002: 62), the regulation of sexual morality by means of criminal sanction is not a new thing in South African criminal law. Conduct such as adultery, inter-racial sexual relations and sodomy were at one stage criminalised. The constitutional court was at one stage called upon to determine the constitutionality of sodomy. In evaluating the impact of this offence on gay men, judge Ackerman held that the nature and purpose of this common law offence is to criminalise private conduct of consenting adults which causes no harm to anyone else (South African Law Commission 2002: 62). The adjudication struck a balance between the interests of the individuals and that of
the community based on what the court regarded as what justice demanded (South African Law Commission 2002: 64).

2.2 THE EARLY ORIGIN OF SEX WORK

The South African Law Commission (2002: 42) indicates that sex work is the oldest profession in the world. The written records indicate that sex work existed in every society and the earliest reference to it relates to the institution of the sacred sex work dating back to 2000 BC. Sacred sex work is described as a religious practice related to fertility rites, where women were required to visit the temple and have sexual intercourse with any man who offered her money. Sanger (1913: 41) in the South African Law Commission (2002: 42) states that every Babylonian woman was required to do sex work once in her lifetime in the temple of the goddess Mylitta. Once inside the temple grounds, the woman was not allowed to leave until she has paid her debt, and had deposited on the altar of the goddess the fee received from her lover.

According to Pomeroy (1975: 89) in South African Law Commission (2010: 60), sex work flourished in Greece as early as the archaic period (800-500 BC). In the 6th century BC, the Athenian lawgiver, Solon formulated extensive legislation covering many aspects of daily life. His legislative programme included the establishment of state-owned brothels staffed by slaves. These state-owned brothels were called Dicteria, and the female slaves working there Dicteriades (South African Law Commission 2002: 43). All sex workers were required to pay a special tax to the state, this special tax was collected by subcontracted speculators and it contributed significant income to the fiscal of the state (South African Law Commission 2002: 43).

According to Sanger (1913: 350) in South African Law Commission (2002: 44), the specific sections of the Roman laws that specifically addressed sex work dates back to the reign of Emperor Augustus. Sanger estimates that sex work
could have been established in Rome round about the beginning of the 3rd century BC. Sanger (1989: 350) in South African Law Commission (2002: 44) states that according to the writings of Tacitus, sex workers had been required from the earliest times to register themselves in the office of the aedile (a junior magistrate) whose duties included supervision of the markets and trade. The aedile issued sex workers with licences and ascertained that the amount of money that they were to demand from their clients was recorded and they entered the sex workers names in his roll. Once registered as a sex worker, it was impossible for a woman to have her name removed from what could be called a sex register, even if she eventually got married and became the mother of legitimate children. One of the duties of the aedile was to arrest, punish and evict from the city all unregistered sex workers. The enforceability of this regulation had little impact because there was still a large and well-known group of unregistered sex workers who were still operating without licences. In contrast to the registered sex workers (meretrices), the unregistered sex workers or prostibulae did not pay any taxes (South African Law Commission 2002: 45).

2.3 CRIMINALISATION OF SEX WORK

Sex work and related offences are illegal and therefore criminalised in terms of the criminal code of a specific country. Legislation seeks to reduce or eliminate the sex industry and it tends to be supported by those who are opposed to sex work on moral, religious or feminist grounds (Mossman 2007: 11). According to Mossman (2007: 11), jurisdictions that have criminalised sex work are subdivided into two groups:

- Prohibitionist – where all forms of sex work are unacceptable and therefore illegal. This is the approach taken in most states in the United States of America and the countries in the Middle East.

- Abolitionist – a modified form of prohibition which allows the sale of sex, but bans all related activities (e.g. soliciting, living off the earnings of sex
work, brothel keeping and procurement). Making these related activities illegal effectively criminalises sex work as it is virtually impossible to carry out sex work without contravening one or other law. Mossman (2007:11) states that an abolitionist approach often focuses on eliminating or reducing the negative impact of sex work. This was the approach in New Zealand prior to the Prostitution Reform Act No 3 of 2003, and this approach is the one that is currently being used in countries such as England and Canada.

In jurisdictions where sex work is criminalised, confusion can still arise about its legal status because of the tolerant climate which might exist. Although enforcement agencies are aware that sex work exists, prosecutions rarely occur. This is most common in abolitionist regimes. Prior to the Prostitution Reform Act No 3 of 2003 in New Zealand, for instance, it was known that brothels operated under the guise of massage parlours. According to Mossman (2007: 11) Sweden has taken a different approach to the criminalisation of sex work by being the first country to criminalise the buyers of sex rather than sex workers themselves. Sex work is seen as sexual abuse and an act of violence against women. Proponents of the Swedish legal system hope that by targeting the demand side of the sex industry, they can reduce or eliminate it altogether. Countries such as Norway and Finland are also considering this approach.

2.4 LEGALISATION OF SEX WORK

Governments use legalisation to control sex work and to define within which parameters it is considered to be legal, and legalisation is at times referred to as regulation (Mossman 2007: 12). Where sex work is legalised the underlying premise is that sex work is necessary for stable social order. To protect public order and to maintain health requirements, sex work still needs to be operated within specified conditions, even though it is legalised (Mossman 2007: 12).
According to Mossman (2007: 12), some countries opt for legalisation as a means to reduce crimes associated with sex work such as organised crime, police corruption, child sex work and human trafficking. Key indicators of a legalised system are the existence of sex work that operates according to specific controls and conditions specified by the state. These conditions can include licensing, registration and mandatory health checks. Even in the legalised systems, the failure of the sex workers to operate without the necessary permits subject them to criminal prosecutions.

**2.5 DECRIMINALISATION OF SEX WORK**

According to Mossman (2007: 12) decriminalisation involves the repeal of all laws that criminalise sex work. In the decriminalised regime a distinction is made between voluntary and forced sex work. Voluntary sex work gets decriminalised, while forced sex work remains a criminal offence. The key difference between legalisation and decriminalisation is that with the latter there are no sex work-specific regulations imposed by the state. Proponents of decriminalisation argue that the cost of keeping sex work illegal largely outweighs the gains, and that sex work should essentially be seen as consenting behaviour between adults (Mossman 2007: 13). Proponents of decriminalisation argue that criminalisation results in double standards in the policing of sex work because in most instances the sex workers tend to be arrested and not their clients who in most instances get off scot-free (Mossman 2007: 13).

According to Mossman (2007: 13), the other challenge decriminalisation poses is its potential to violate individual's rights through controls such as registration and mandatory health checks. Decriminalisation shifts the power away from the state and clients to sex workers themselves. It is also regarded as a way of avoiding the two-tier reality of legal and illegal operations where the illegal will normally be operating underground to evade arrest and prosecution. Decriminalisation also aims to remove social exclusion that makes sex workers vulnerable to
exploitation because if sex work is criminalised they cannot report criminal acts committed against them during the course of sex work.

2.6 VARIATIONS IN SEX LEGISLATION

Legalisation and criminalisation of sex work vary greatly from country to country and according to Mossman (2007: 13), these variations could be categorised into the following groups: laws aimed at sex workers; laws aimed at third parties who are involved in the management and organisation of sex work; and laws aimed at those who purchase sex.

Laws aimed at sex workers: These are offences that penalise sex workers for actions such as selling sex and soliciting people to buy sex.

Laws aimed at third parties: These are offences that penalise third parties involved in the management and organisation of sex work. Some jurisdictions make it legal for a sex worker to exchange sex for money, but prohibit a third party from benefiting from it.

Laws aimed at those who purchase commercial sex: These are offences that penalise the ‘buyer’ such as kerb crawling, or buying commercial sex. Other laws relating to the acts of advertising sex work services or the premises used for sex work have also been made an offence in many jurisdictions.

2.7 HUMAN RIGHTS AND SEX WORK

According to Crawshaw (1998: 12), human rights are those rights that are enshrined in international declarations and covenants, such as the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. The rights of sex workers are also guaranteed by article 55(c) of the United Nations charter, which states that the United Nations
shall promote universally the respect for human rights and fundamental freedoms of all people irrespective of race, sex, language or religion. This entails that sex workers like any other person are entitled to human rights and freedoms under the international human rights law. Anderlini and Shoemaker (2005: 28) state that upholding human rights is a challenging task particularly in societies with a history of violence and oppression. Irrespective of these challenges, every state has the obligation to promote universal respect for all human rights without discrimination, regardless of cultural or other differences. Every person not only has rights, but also has the responsibility to respect the rights of others (Anderlini & Shoemaker 2005: 28).

The Declaration of the Rights of Sex Workers in Europe (2005: 15) indicates that attempts to eradicate sex work including policy on sex workers and the policing of sex workers often overlook or even violate the basic human rights of sex workers. This is because policies that either criminalise or decriminalise sex work tend to be discussed and drawn up without consulting sex workers. Secondly, the criminalisation of sex work is largely based on moral grounds ignoring the economic aspect of this industry. Legalisation on the other hand revolves around morality and the failure of law enforcement to ensure the criminalisation of this industry.

In an attempt to deal with sex work this Declaration of the Rights of Sex Workers in Europe (2005: 15), acknowledges that sex workers are individuals whose reasons for engaging or leaving sex work could vary from personal, economical and social. This acknowledges that the involvement of individuals could be very complex. Secondly, sex workers come from various backgrounds and life circumstances, thus, making it difficult to classify them in one group when dealing with their rehabilitation. This is also compounded by the impossibility of counting them, given the social stigma and criminal sanctions against sex work.
Thirdly, sex work becomes a source of income, so anything that seeks to do away with this source is likely to force sex workers to practise their profession underground. Fourthly, the stigma and invisibility of sex workers often lead to the violation of human rights. Worldwide, studies involving sex workers show they suffer high rates of violence, often at the hands of authorities, who not only fail to protect sex workers’ human rights but in many instances also are the abusers. Fifthly, the risk of contracting sexually transmitted infections and HIV/AIDS can be high in sex work, but it does not need to be. Sex workers who have the knowledge and necessary tools are able to protect themselves and their clients. When they have the power to negotiate, sex workers are leaders in practicing safer-sex methods. Lastly, in most countries, the majority of sex workers are female, and the majority of their clients are male. But people of all genders are involved in sex work and are vulnerable to police abuse (Declaration of the Rights of Sex Workers in Europe 2005: 15).

2.7.1 The declaration of the rights of sex workers in Europe

The process leading to the declaration of sex workers’ rights in Europe was initiated by the Sex work Initiative Group Netherlands (SIGN) that was established by a network of Dutch sex workers and sex worker rights activists (Declaration of the Rights of Sex Workers in Europe 2005:15). The establishment of SIGN was the first step towards creating a broader base of individuals from across Europe interested in organising a conference and advocating for the rights of sex workers. According to the Declaration of the Rights of Sex Workers in Europe (2005: 15), the active championing of the sex workers’ rights by the SIGN led to the establishment of the international Organisation Committee (OC) consisting of 15 members. Most members of the international OC were former sex workers, current sex workers and migrants, from several European countries. Although the international OC does not have representation in all countries or groups in Europe, it is supported by a large number of sex workers, sex workers rights activists and organisations working with sex workers across Europe and beyond (Declaration of the Rights of Sex Workers in Europe 2005: 15).
According to the Declaration of the Rights of Sex Workers in Europe (2005: 15), the international OC decided that the Declaration of the Rights of Sex Workers in Europe would provide a framework for organising the sex work conference through which they would highlight the plight and the challenges facing sex workers. The international OC later established a legal body called the International Committee on the rights of sex workers in Europe (ICRSE). Some of the activities that were to be undertaken by this body were to coordinate the conferences of sex work; produce the Declaration of the Rights of Sex Workers in Europe; and develop on-going strategies to gain public and political support for the plight of sex workers (Declaration of the Rights of Sex Workers in Europe 2005: 15).

2.8 APPROACHES TO THE POLICING OF SEX WORKERS IN SOUTH AFRICA

In South Africa, the Sexual Offences and Related Matters Act 32 of 2007 formerly the Immorality Act 23 of 1957 stipulates that the keeping of brothels, procurement of women as prostitutes, and living off the earnings of sex work are criminal offences. In 1988 a new section was added to the Act, this section criminalises engaging in sexual intercourse or performing indecent acts for a reward. Initially, in the post-1994 period, there was a climate of toleration of sex work, and minimal policing (South African Law Commission 2009: 14). The policing that was done was mainly in response to public complaints. On a government policy level, there was some attempts to review the legislation on sex work. In 1995, for example, the Department of Health commissioned a draft bill on sex work. In 1996 a task team appointed by the Gauteng Provincial Minister of Safety and Security produced a draft policy document on sex work that recommended decriminalisation. This received some support from the African National Congress in 1997, but lost momentum in 1998 (South African Law Commission 2010: 2). Most arrests of sex workers by the police were largely
directed at street-based sex workers, the most visible and vulnerable, and largely in response to community complaints. Much depended, however, on the outcome of the Constitution Court’s decision in the case of Jordan and Others v The State which was argued in the Constitutional court on 5 March 2002. The Constitutional court confirmed the decision of the court a quo and found section 20(1) (AA) of the Sexual Offences Act, 23 of 1957 which prohibits the performance of a sexual act for a reward inconsistent with the Constitution of Republic of South Africa Act 83 1996 and therefore invalid, the legislature will have to reconsider its position on sex work (South African Law Commission 2010: 17).

2.8.1 Challenges in policing sex workers in South Africa

The Sexual Offences Act 23 of 1957 which criminalised sex work has not resulted in effective policing. Escort agencies have successfully circumvented the law, while sex workers have used these agencies to build up their own clientele and to operate as call girls from their apartments, making policing almost impossible (South African Law Commission 2009: 14). Instead the police have become notorious harassers of street prostitutes, often demanding sex in exchange for indemnity. Once again it is the poorest of the sex workers who bear the brunt of such harassment (Posel 1993: 32). Most of the police do occasionally raid specific indoor agencies, but for the most part they focus their efforts on policing the more visible sector of the industry, namely sex workers who work from the street.

The majority of street-based sex workers are arrested or fined using local municipal by-laws, such as those against loitering, causing a public disturbance, or public indecency (including nudity in public). The police rarely use the Sexual Offences and Related Matters Act 32 of 2007 to arrest sex workers, as this act is difficult to enforce. The prosecution would have to prove beyond any reasonable doubt that sexual services had been exchanged for reward and generally the
only way to do this would be to make use of police entrapment which is labour intensive and raises evidentiary difficulties in court (Fick 2006).

2.9 EXPLORING THE MUNICIPAL BY-LAWS

Sunnyside is a neighbourhood situated in the South-Eastern part of the City of Tshwane central business district. It is mainly a residential and business area. It is within walking distance of the city centre and movement is characterised by private vehicles, metro buses and pedestrians. The City of Tshwane uses street trading by-laws to address street trading issues. Most street traders trade along the street because of safety reasons; not everyone can be officially allocated a trading stall. The Tshwane street trading by-laws forbid people from conducting business of a street trader at a place within five metres of any intersection as defined in Regulation 322 of the National Road Traffic Act 93 of 1996.

2.9.1 Municipal by-laws and sex workers

Municipal by-laws play an important role in the regulation of outdoor sex work. These by-laws are often aimed at addressing the more visible aspects of outdoor sex work than dealing with prostitution as a whole. Two categories of by-laws may be distinguished in this regard:

- **General by-laws**: These by-laws forbid certain characteristics that are usually characterising prostitution such as loitering, creating a public disturbance, and dressing indecently in public. It is significant to note that although these by-laws would potentially affect all persons, they are frequently enforced solely against sex workers.

- **Specific by-laws**: These are by-laws that are specifically aimed to deal with sex workers such as loitering for purposes of sex work.
There are also municipal by-laws affecting indoor sex work. If an escort agency or massage parlour endeavours to operate as a 'licensed' business, they have to comply with the municipal by-laws regulating business (prescribing, for example, zoning regulations, business hours, health requirements, etc) (South African Law Commission 2002: 87). Again these by-laws could apply to all businesses, and not only to those related to sex work. According to the South African Law Commission (2002: 87) it appears that indoor businesses are currently able to operate without accredited business licenses although they still remain liable for prosecution. Where businesses do operate outside the boundaries of licensing requirements, the management will be liable for prosecution under the relevant by-laws (South African Law Commission 2002: 87).

2.10 CATEGORIES OF SEX WORKERS IN SOUTH AFRICA

Similar to other trades, sex workers have also developed various methods of operations in this trade. From what has been written on the stigma and criminal implications of sex work in those countries where sex work is criminalised, it could be deduced that some of the methods used by sex workers is in an attempt to hide their operations. This section deals with some of the operational methods that are used in sex work. Posel (1993: 12) identifies five categories of urban sex workers in Durban:

- Indoor sector
- Outdoor sex work activity
- Sex workers working at the seamen’s and tourists’ clubs
- Escorts and masseuses; and
- ‘Call girls’

The researcher further notes that each sector has unique working conditions and shows its own demographic patterns. While Posel’s (1993: 12) study is specific to Durban, her analysis applies mutatis mutandis to sex work in other major urban
centres in South Africa. Two forms of sex work that can be clearly categorised are indoor and outdoor sex work.

2.10.1 Private workers and ‘call girls’

In addition to the more formal indoor businesses, there are also smaller informal agencies that run without clear management or ownership structures. These may, for example, consist of a group of sex workers who have come together as an informal collective to work from the same premises. They generally share rent and expenses, but do not have to give a cut of their earnings to any management structure. Sex workers working privately are therefore more able to set the conditions under which they work. For example, they place their own advertisements as workers who work in agencies with other people always on the premises (South African Law Commission 2009: 77).

2.10.2 Independent contractors

Some owners interviewed by Zettler (1999: 289) indicated that they do not in fact employ any sex workers working at their establishments. Rather, they are letting their premises to sex workers on an hourly basis, which means that these persons are operating as independent contractors. An arrangement of this nature would imply that even if the contractual relationship between management and sex workers were to be recognised as legal in the future, these sex workers may fall outside the ambit of labour legislation aimed at regulating the employment relationship and providing protection to employees.

2.10.3 Advertising and indoor sector

In South Africa, indoor businesses and ‘call girls’ advertise their services freely in daily newspapers and other publications, irrespective of the fact that the industry is strictly speaking criminalised (South African Law Commission 2002: 78).
South African Law Commission (2002: 87) indicates that in addition to the provisions of the Sexual Offences and Related Matters Act 32 of 2007 prohibiting sexual acts for reward, brothel-keeping and facilitating sex work, the indoor industry is as a rule subject to regulation by means of the municipal by-laws pertaining to, for example, the granting of business and liquor licenses. It appears that the indoor businesses are currently able to operate without accredited business licenses, although they still remain liable for precaution. Where businesses do operate outside the boundaries of licensing requirements, the management will be liable for prosecution under the relevant by-laws, usually enforced by municipal law enforcement agents (rather than the police). Significantly, these municipal by-laws are not enforceable against sex work only, but against any business not complying with licensing requirements.

Legget (2000: 164) maintains that because sex work is illegal, protective measures contained in labour legislation such as the Basic Conditions of Employment Act 75 of 1997 or the Occupational Health and Safety Act 85 of 1993 do not apply to sex workers. This means that even where sex workers are forced to work in agencies under circumstances resembling slavery, they would not have recourse to the remedies available to other workers. The South African Law Commission (2002: 81) indicates that one advantage of working in the indoor sector is that these sex workers can acquire regular premises and bank accounts, as they work for ‘ostensibly’ legitimate businesses. They also earn more than sex workers in the outdoor sector, although a substantial percentage of their earnings may have to be given to the management. In most cases, workers have no discretion in selecting clients. Because the ‘employment’ relationship between management and sex workers is not regulated by law, employers do not adhere to certain basic conditions of employment. For example, there is no payment for overtime structured into wages; sick leave is rarely granted; management generally does not expect sex workers to remain at a particular business for a long period of time; and there is also a general lack of
understanding for the benefits of taking leave or sufficient time off from work to relax (South African Law Commission 2002: 82).

2.10.4 Outdoor sex workers

The South African Law Commission (2002: 78) indicates that it is even more difficult to establish an accurate profile of the outdoor sector than of the indoor sector. This is due to a number of reasons, including variations between geographic areas and the transitory nature of outdoor sex work (which is more prone to random entrance into and exit from the industry than indoor sex work). Due to high levels of distrust of ‘strangers’ prevalent among outdoor sex workers, researchers often experience difficulties to obtain information (South African Law Commission 2002: 78). Based on research conducted with 349 outdoor sex workers in Durban, Cape Town, and the inner city of Johannesburg Leggett (2000: 26) distinguishes two groups of outdoor sex workers, which he terms ‘fast living’ and ‘subsistence’ sex workers respectively. He notes that ‘fast living’ sex workers are generally located in or near the central business districts of each city (Greenpoint in Cape Town, the Point / Beachfront area in Durban and near certain residential hotels in greater Hillbrow in Johannesburg). Leggett (2000: 27) indicates that this group was characterised by high client volumes, higher than average rates for sexual services, higher incomes and higher levels of drug abuse. These sex workers were more likely to be white, and older than the average. Virtually all the sex workers interviewed by Leggett (2000: 27) in the inner city of Johannesburg were housed in daily accommodation hotels in the greater Hillbrow area. Similarly, 75% of the sex workers in the Durban Central Business District resided in residential hotels. Cape Town showed a greater range of housing options, with women often living together with a large number of housemates in a free-standing home. ‘Subsistence’ sex workers, on the other hand, were found in more remote areas and isolated areas such as industrial zones, truck stops and townships. For this group, client volumes and incomes were low. Use of drugs other than alcohol and dagga was rarely reported. These sex workers were more likely to be black. Many were living in informal
settlements and supporting families with their earnings. Nearly 40% of all black sex workers interviewed by Leggett (2000: 27) had migrated to the major cities from the Eastern Cape.

### 2.10.5 The role of ‘pimps’ in the outdoor sector

According to the South African Law Commission (2002: 80) the term ‘pimp’ refers to the ‘manager’ of a sex worker who works on the streets. The notion of a ‘pimp’ typically evokes heated responses with sex workers being portrayed as helpless victims of exploitative practices. Pauw and Brener (1997: 80) report that the majority of sex workers in their research sample worked independently, however, a few worked with boyfriends or husbands. The relationship between sex workers and these ‘pimps’ were seldom abusive and exploitative. The primary function of the pimps was to offer assistance to sex workers by protecting them while they solicit clients, safeguarding their money and belongings and taking down car registration numbers of clients. The authors noted that in certain areas, groups of sex workers employed men as bodyguards.

### 2.10.6 Working conditions of sex workers in the outdoor sector

The study conducted by Legget (2000: 27) in Durban, Cape Town and the inner city of Johannesburg showed that almost half of the group typified as ‘fast living’ sex workers reported making more than R4 000 per month and 42% reported having more than 20 clients per week. Over 80% of the ‘subsistence’ sex workers saw fewer than 10 clients and earned less than R200 per week. The South African Law Commission (2002: 85) indicates that outdoor sex work poses many risks, since sex workers often work alone and usually late at night. Once the sex workers have reached an agreement with the client, they need to enter the client’s space (his car and or home) which puts them in a vulnerable position for abuse by clients. According to the studies conducted by Pauw and Brener (1997: 16) sex workers in Pietermaritzburg reported that clients beat them, raped them, abandoned them in isolated places, left them naked, and that they were thrown
off or forced to jump from moving vehicles. They also reported being robbed and raped by passing men.

Enforcement of the provisions of the Sexual Offences and Related Matters Act 32 of 2007 against outdoor sex workers are subject to the same resource considerations noted above in relation to the indoor sector. It is therefore hardly surprising that municipal by-laws, rather than the Sexual Offences and Related Matters Act 32 of 2007, are primarily employed by police and municipal law enforcement officials against sex workers. These by-laws penalise, for example, ‘loitering’ or ‘creating a public nuisance’. Arrests often occur in response to complaints received from members of residential or business communities where sex workers work. Proof exists that evidence against individual sex worker is frequently slim or non-existent, and it is not unknown for groups of sex workers to be ‘rounded up’ and arrested simply because they are standing on the street (South African Law Commission 2002: 89).

According to the South African Law Commission (2002: 89) the offences referred to above are relatively minor, and the police would be entitled to either issue a so-called ‘spot fine’ without arresting the sex workers, or where arrest does take place, to release them on warning or a minimal amount of bail. However, sex workers are often arrested and detained in custody for allegedly contravening these municipal by-laws. Upon expiry of the 48-hour period within which an arrested person has to be brought before court, the sex workers are then released without being charged of any offence. One tactic employed by the police officials is to arrest sex workers on a Friday evening, and to release them on the following Sunday, thus depriving them of the potentially most lucrative evenings of the week. Where sex workers are brought before court, the charges are often withdrawn at the first court appearance. Upon their release, sex workers either return to their previous workplaces or, less frequently, move on to the new areas, where resident complaints may eventually lead to a fresh round of arrests. In this way, a cycle of complaint and arrests is created, leading to the
violation of rights of sex workers without addressing the concerns of residents on a long-term basis (South African Law Commission 2002: 89). This is indicated on the diagram below:

Diagram 1

PRESSURE ON POLICE/RAIDS ON FLATS/
POLICE OPERATIONS

COMMUNITY COMPLAINTS
BUSINESS COMPLAINTS

MASS ARRESTS
OF STREET
SEX WORKERS/
ABUSE

SEX WORKERS REGROUP

CHARGES WITHDRAWN/ FINES PAID.
SEX WORKERS RETURN TO THE STREETS
2.11 CONCLUSION

Sex work is something that came to being since human existence and it is apparently something that will continue to be a challenge for mankind for some generations to come. This is the reason why various countries embark on various attempts to manage this phenomenon that revolves around the morality of the society.

There appears to be no single consistent national policing strategy to deal with sex workers in South Africa. The police in South Africa find it difficult to successfully enforce the provisions of the Sexual Offences and Related Matters Act 32 of 2007. Arrests often occur in response to complaints received from members of the residential or business communities where sex workers operate.
CHAPTER 3: AN INTERNATIONAL PERSPECTIVE ON SEX WORK

3.1 INTRODUCTION

The curbing of sex work has always been a challenge for the police. This challenge became prominent way back in the 1950s in Britain when the report of the Wolfenden Committee on Homosexual Offences and Sex Work was published (South African Law Commission 2002: 61). In this report, most members of this committee defined the function of criminal law as being to preserve order and decency by protecting citizens from what are offensive as well as providing sufficient safeguards against the exploitation of others, particularly those who are vulnerable. The committee further noted that it is not the function of the law to intervene in individuals’ private lives or to enforce any particular behavioural conducts beyond what is necessary. This report led to the debate on whether the preservation of immorality is essential to the welfare of society (South African Law Commission 2002: 61).

In an attempt to provide a proper perspective on sex workers and the policing approach that has or is still being used, the comparative analysis with few selected countries has been conducted. The imperative of this international perspective is to establish whether there are some best practices that could be useful for South Africa in dealing with this crime.

3.2 UNITED STATES OF AMERICA

The South African Law Commission (2002: 146) indicates that sex work in the United States of America (USA) is predominantly dealt with in legislation on state rather than federal level. At present, sex work is criminalised everywhere in the United States of America except in the state of Nevada. In spite of this prohibition, there is a proliferation of sex work and related businesses across the United States. Sex work statutes in United States can be categorised into the
following three groups illustrated by the relevant examples: Firstly, those found in Kentucky that punish sex workers but not their clients. Secondly, those found in Colorado that punishes both the sex workers and their clients. Lastly, those statues found in Nevada that do not criminalise sex work.

The South African Law Commission (2010: 623) further states that even though there are statutes that punish the action of the sex workers’ clients in the United States, enforcement of these laws frequently occurs on a selective basis. Sex workers continue to be arrested more often, and prosecuted and sentenced more harshly than their clients. Lefler (1999: 17) points out that most states traditionally incarcerate or fine sex workers, while merely issuing citations to the clients. Since 1973, local communities in Nevada were allowed to legalise sex work, this does not entirely mean that all acts of sexual offences are legal because there are some actions such as pandering and living off the earnings of a sex worker remain criminal offences. An exception is in respect of sex work and solicitation of prostitution if it occurs within a licensed house of sex work. The city of Las Vegas and Reno both prohibit sex work within the city limits and this has only succeeded by pushing sex work outside the parameters of these cities because the operation of brothels near these cities is very profitable.

According to the South African Law Commission (2002: 150), the San Francisco’s Task Force on sex workers was initially formed in March 1994 by a member of the San Francisco’s Board of Supervisors with the mandate to consider options for the legalisation of sex work. Their mandate was eventually widened to investigate the patterns and practices of sex work in the city including the current social as well as legal responses. The Task Force was further requested to recommend social and legal reforms that would best respond to the city’s needs while using city resources more efficiently. This Task Force was constituted by the representatives from health departments, legal advisors from the public defender and district attorney’s offices, state senator’s office, health
outreach rights group, neighbourhood, merchant groups as well as sex workers’ rights activists (South African Law Commission 2002: 150).

The South African Law Commission (2002: 151) states that the final report of this task force that was submitted to the board of Supervisors in 1996 made specific recommendations on laws and law enforcement, the cost of sex work, health, safety services, concerns about quality of life, labour policy issues, immigration and youth issues. While the recommendations made in these stated areas are important, recommendations relating to law and law enforcement are significant as they relate directly to the objectives of this study, namely to:

- Immediately stop enforcing and prosecuting misdemeanour and felony laws against sex workers and the dismissal of all pending prosecutions

- Respond directly to complaints of excessive noise, littering and trespassing by enforcing ordinances specific to those complaints (The police were forbidden from using any law to harass suspected sex workers.)

- Vigorously enforce laws against coercion, blackmailing, kidnapping, restraining individual’s freedom of movement, fraud, rape and violence regardless of the victim’s status of being a sex worker

- Redirect resources allocated to police investigation, incarceration, prosecution and defence of sex workers to other priority areas such as housing and outreach

- Curtail police expenditure in the investigation of sex work venues where no complaints are laid
- Remove the authority of licensing of massage parlours and escort services from the Vice Crime Division to agencies that were granting standard business licences

- Provide training and circulating directives to eliminate harassment and abuse of sex workers by the police

- Provide training to improve the ability of the prosecutors to successfully prosecute cases of rape and other assault where sex workers are victims

- Authorise city lobbyists to identify legislators who will commit themselves to carrying legislation towards decriminalisation of sex workers

### 3.2.1 The policing of sex workers in the United States of America

According to the Urban Justice Center (2003: 13) police and sex workers engage in a cat-and-mouse dynamic in which the police seek to control the activities of sex workers, and sex workers respond by trying to avoid them. The current police approach to policing sex workers include the arrest or issuing of summons or desk-appearance ticket, often called police sweeps (the practice of arresting all women or all people in a known sex work area, temporarily removing sex workers from the street). However, this police strategy often results in women being falsely arrested or being subjected to harassment. This gives sex workers the perception that the police are not affording them the safety and security that is afforded to other citizens. This perception is reinforced by the fact that police do not always respond to the complaints of sex workers, even in cases of violence (Urban Justice Center 2003: 13).

The Urban Justice Center (2003: 13) indicates that the current policing strategy does not provide a lasting, viable and humane solution to sex work. The reason is that their strategy does not deal with the fundamental causes of sex work,
namely poverty, substance abuse and marginal housing accommodation. Sex workers are routinely arrested and released resembling a revolving door syndrome where sex workers are arrested, held in jail for the night and then released. This is also costly to tax payers because serving a sentence at a city jail costs $64,000 per year which translates into $175 per day (Urban Justice Center 2003: 13). The Urban Justice Center (2003: 13) states that these monetary figures reflect only the costs of incarcerations and does not include the costs involved in law enforcement and the operation of the criminal court system.

According to the Urban Justice Center (2003: 13), although the sex industry is subject to great moral opprobrium, it does not seize to operate. The mayor of New York City embarked in January 2002 on Operation Clean Sweep using undercover officers, summonses and warrants to eradicate quality of life problems, including sex work. Although sex work was a major focus of this initiative, it appeared to be of lesser concern to New Yorkers in comparison with other quality of life problems such as homelessness, peddling, drug and alcohol abuse (Urban Justice Center 2003: 14).

The New York Police Department has a policy that prescribes arrest procedures and this policy serves as a patrol guide in the policing of sex workers. It specifies how arrests for offences involving sex work should be handled, the length of time taken by the police to observe activities, conversations with various men, women or known sex workers as well as the clothing and whether the arrested person is a known prostitute (Urban Justice Center 2003: 14). This intensified the efforts of the police in the crackdown operations on the illegal indoor sex work such as brothels as well as on the city streets. Street sex work is the subject of heated debates whereby residents become active in decrying what they consider as offensive noise and littering in some areas where sex workers are operating (Urban Justice Center 2003: 15).
The Hotline for Migrant Workers (2007: 31) indicates that Nevada is the only state in the USA that has not passed legislation prohibiting sex work. However, sex work is limited to authorised brothels, and the sex workers must be above the age of 21. Solicitation and pimping are also legal, provided they take place in accordance with the conditions established by law. Nevada comprises seventeen counties, each of which determines its own policy regarding sex work, subject to the state legislation and provided that the county has a population of less than 400,000. Counties are permitted to hold a referendum to decide whether to allow licensed brothels. The basic assumption of the legislation and the policy on sex work is that the existence of sex work in legalised brothels is a privilege that can be restricted by the community. Nevada is a classical example of capitalism at work because even the license to engage in sex work is granted to brothels and not to individual sex workers (Hotline for Migrant Workers 2007: 31). Nevada is the only state where casino-style gambling is legal state-wide. The brothels in Nevada operate in accordance with a complex system of provisions derived from federal and state law, local legislation, and the rules established by local sheriffs (Hotline for Migrant Workers 2007: 32).

According to the South African Law Commission (2002: 147), Nevada statutes and the administration code require that persons engaged in sex work should submit themselves to HIV testing. Anyone who is arrested by the police for violating the statutory codes (which prohibit engaging in sex work or solicitation except in a licensed house) is required to submit to the State Board of Health HIV test and receive the results. Another requirement is that a person who wants to work as a sex worker in a licensed house is required to undergo a series of tests for HIV, syphilis and gonorrhoea. Once employed, a sex worker must undergo monthly HIV and syphilis tests and weekly gonorrhoea and Chlamydia tests. The South African Law Commission (2002: 152) indicates that the arrest of people in the sex industry is directed to sex workers and prostitutes who engage in sex work in a licensed brothel while having tested positive for HIV. Such people get charged with a serious offence that is punishable by imprisonment that carries a
minimum sentence of two years and a maximum of 10 years imprisonment or a fine of $10,000 or both.

3.3 THAILAND

The South African Law Commission (2010: 719) indicates that Thailand's position on sex work can be described as contradictory. This is because even though sex work is technically criminalised in Thailand, sex work is widely accepted by the society. Most of the sex industry in Thailand consists of businesses such as brothels, hotels, massage parlours, restaurants and bars. These establishments are generally registered by the Sexually Transmitted Disease section of the Ministry of Health, which may attempt to provide health services to sex workers.

Bindman (1997: 3) in South African Law Commission (2002: 161) states that police officers in Thailand generally have a very good relationship with sex work establishments, from whom they receive regular remittances. The operation of the sex industry through businesses, shields sex workers from exposure to the police. In return, sex workers pay for this protection through deductions from their payments and part of this money is used to pay police bribes. Straightforward brothels that do not offer any other services except sex represent the lower end of the market. These brothels are common in Bangkok where they serve low-income Thai men, and are sustained by the high profits they make. Although many of these brothels employ only adult sex workers, who are not confined to the brothels and can choose which and how many shifts to work, this is the sector where labour and human rights violations are most common. The exploitation of illegal migrant workers from neighbouring countries, such as Burma, and the practice of debt-bondage in closed brothels are common (South African Law Commission 2002: 161).
The weaknesses of the Prevention and Suppression of Sex Work Act (B.E. 2539 of 1960) and the concern for more effective measures to eradicate child sex work in Thailand led to the introduction of the Sex Work Prevention and Suppression Act (B.E. 2539 of 1996). In terms of this new act, the selling of sexual services is illegal; however the convicted sex workers are subject to a smaller fine. The focus is on those people who are responsible for drawing women and children into sex work, rather than on the sex workers themselves. Procurement, trafficking, pimping and advertising are punishable by imprisonment and heavy fines, which are even more severe in cases where physical force or any form of threat is used to detain, confine or force a person to perform sex work activities. Where such offences are committed by an administrative, government or police official, the act provides for a heavy term of imprisonment, from 15 to 20 years and a fine of 300,000 to 400,000 baht. Owners or managers of brothels can also be convicted and fined. Even though soliciting sex is a punishable offence, its punishment carries a small fine (South African Law Commission 2002: 162).

The Sex Work Prevention and Suppression Act (B.E. 2539 of 1996) was intended to punish people who are involved in commercial sexual exploitation of minors, that is why it has severe penalties for owners of sex service establishments, recruitment agencies, clients and even parents who knowingly send their children into sex work (South African Law Commission 2002: 162). The Sex Work Prevention and Suppression Act (B.E. 2539 of 1996) prescribe special penalties for people who use coercion to put others into the sex industry, although it does not address the abuse of persons already in the industry. There are also provisions for the rehabilitation of sex workers via a primary admittance centre. The act gives the Director of the Welfare Department the discretion to send apprehended sex workers to a rehabilitation centre for medical treatment or skills training for one year. Such rehabilitation means hardship for the sex workers and their families because they lose their source of income so it becomes of little value where unemployment is rife. The rehabilitation centres are
regarded as little different from a prison (South African Law Commission 2002: 164).

3.3.1 The policing of sex workers in Thailand

Phongpaichit, Piriarangsan and Treerat (2003: 210) indicate that during the 1960s, the police in Thailand used to arrest sex workers and make them pay fines or face jail sentences without imposing any penalty on customers of sex workers. This situation continued until the 1990s when the Prostitution Prevention and Suppression Act (B.E 2536 of 1996) that empowered the police to arrest pimps, procures, brothel owners, and certain customers came into effect. The Thai law imposes harsher penalties on people who are caught violating girls who are under 18 years of age, the younger the girl the harsher the penalty. The Prostitution Prevention and Suppression Act (B.E 2536 of 1996) also punishes parents who sell their children into the sex trade. Bindman (1997: 3) states that the police in Thailand have a generally good relationship with sex work establishments from whom they receive regular remittances.

According to Bindman (1997: 3), the operation of the sex industry through formally established businesses shield sex workers from being exposed to the police who may demand sexual favours, money or detention in rehabilitation centres. This happens despite the fact that sex workers may pay for police bribes to secure their security via deductions from their pay. Bishop and Lilian (1998: 98) state that prostitution has been present in Thailand for centuries, but the current level of sex work is a new phenomenon that was spawned by the Vietnam War. Prostitution in Thailand has been illegal for over thirty years, but because the existing laws are poorly enforced by the police and public officials are often involved with the mafia who run drug and sex trafficking operations (US Human Rights Report 2003: 210), prostitution in Thailand continues to happen as if it were legal. Establishment owners pay regular protection fees to the police. The combination of the widespread corruption among public officials and the lax
enforcement of sexual offences expose sex workers to double exploitation that is conducted in the first instance by their employers and in the second instance by the police (Bindman 1997: 3).

According to Bindman (1997: 3), although there are sound legislative initiatives to deal with sex work, its enforcement still poses a challenge because many police officers are not aware of the revised laws, there are also budgetary constraints in the enforcement of these laws and the enforcement of these laws tend not to be prioritised by the police. The above challenges are further compounded by the fact that child sex work cases are typically complicated and require substantial human resources in terms of man-hours. Secondly, by the collusion between criminal networks and the police, this phenomenon is well-documented in Thailand. Bindman (1997: 3) states that these challenges could possibly be dealt with by the good transparent governance machinery and increased community participation. Furthermore, there is a need to have a behavioural change in the way the police perceive and deal with sex workers, especially at local policing level.

3.4 SWEDEN

The South African Law Commission (2002: 152) indicates that the number of persons involved in prostitutions in Sweden is relatively small. The figure is given as approximately 2,500 prostitutes in a population of 8,5 million (0.3 per 1,000). The prostitute trade is barely visible, with most prostitutes working in massage parlours, escort agencies and private apartments. Outdoor or street prostitution is restricted to a few small areas. The Swedish approach has been to condone prostitute-client transaction, but to impose harsh penalties on prostitution-related activities such as pimping. In addition, various government funded social service programmes are instituted for women who want to leave the industry. This policy has therefore concentrated on addressing prostitution as a social problem. In 1995 the Swedish Prostitution Commission proposed new legislation that was
passed in 1998, which targets male clients buying sexual service only. This is based on the argument that it is not reasonable to punish the person who sells the sexual service because in most cases the sellers are in a weaker position and they are most often exploited by the buyers (South African Law Commission 2002: 152).

The South African Law Commission (2002: 153) states that paying or offering to pay for sex in Sweden is illegal and punishable by a fine or 6 months imprisonment. Criminalisation of these acts (paying or offering to pay for sex) is part of the series of the legislative changes targeting reported increase in violence against women, particularly in the number of assaults and various forms of sexual offences. Criminalisation of paying or offering to pay for sex is viewed by the government as one of the other broad strategies of dealing with prostitution (South African Law Commission 2002: 153).

The South African Law Commission (2002: 153) indicates that while it may be somewhat premature to assess the full impact of the new legislation, early indications are that the new law has failed to keep prostitutes and their clients off the streets. Initially the law resulted in an immediate decline in the number of prostitutes working visibly on the streets. In cities such as Stockholm and Gothenburg, the numbers decreased from about 30 to 20 women per night. Kilvington, Day and Ward (2000: 12) caution that this reduction in numbers is unlikely to reflect a move away from prostitution altogether. The decrease of prostitution on the street led to the increase in prostitution in hotels and restaurants, meaning that prostitution did not subside but was merely transferred to other areas.

According to the South African Law Commission (2002: 154) the street prostitutes who are now potential criminal witnesses because of the new law complain that they now have to work later at night and more irregular hours in order to escape the attention of the police. It is instructive to note that the new
legislation brought an allocation of $1, 5 million to police for enforcement. However, no extra allocations were made to social services. In practice, the police and the prosecutors indicated that in spite of the large enforcement budget, they have difficulties in implementing the legislation because entrapment is illegal. In the first nine months of 1999 only three clients were found guilty and fined (South African Law Commission 2002: 154).

According to the South African Law Commission 2002: 154), the Swedish organisations stated that repressive prostitution legislation neither deters women from entering prostitution, nor protects the fundamental rights of prostitutes. On the contrary, it is claimed that the clandestine and illegal nature of prostitution denies women access to legal mechanisms to defend themselves against abuse and violence. They argue that the criminalisation of clients only add to the stigmatisation and marginalisation of prostitutes and will make their working conditions less safe (South African Law Commission 2002: 154).

Project workers in Sweden offering support, advice, information and counselling to prostitutes have found it increasingly difficult to contact prostitutes. Significantly, the numbers of male clients attending the KAST (Kopare Av Sexuella Tjanster/Purchasers of Sexual Services) project, a project that offers advice, support and counselling to the buyers of sexual services, have not changed since the commencement of the new legislation. The Swedish experiment has been widely discussed in other Nordic countries, and the Danish and Finnish governments recently decided not to adopt the new policy of criminalising clients (South African Law Commission 2002:154).

The South African Law Commission (2009: 123) indicates that several opinion polls, conducted in 2000, 2001 and 2002, show that the vast majority of Swedes continue to support the legal reform and the policies that flow from it. The majority of those who wanted to repeal it were men, with only seven per cent of women in support of its repeal. The police and prosecutors are also staunch
supporters of the legislation since it was found that the prostitution legislation benefits them in dealing with all sex crimes. The South African Law Commission (2009: 124) indicates that in July 2008, still emphasising the impact of sex work on social equality, gender equality and the enjoyment of human rights, the Swedish Government adopted a further action plan for combating sex work, and it covered the following priority areas:

- Greater protection and support for people at risk: the action plan aims to intensify outreach activities and give greater priority to sheltered housing, treatment centres and other forms of support and protection.

- More emphasis on preventive work: the action plan places a high premium on preventative work by heightening people’s awareness of those exposed to sex work and trafficking. Important preventive works include education and information among official bodies and voluntary organisations, ethical guidelines and codes of conduct and are vital ingredients of the plan. Measures to help victims find alternative means of support are also needed. Special priority is to be attached to information targeting children and young people.

- Higher standards and greater efficiency in the justice system: training and education focusing on sex work, with special focus on young victims, must be improved. There is a need for effective and appropriate legislation for combating sex work.

- Increased national and international cooperation: global and inter-regional cooperation, cross-sectoral approach uniting government agencies, NGOs, researchers and the general public are crucial elements of combating trafficking for sexual purposes. Therefore the structures for cooperation and coordination of efforts in this field need to be strengthened.
- Higher levels of knowledge and awareness: quantitative, qualitative and comparative studies are essential to ensure that official bodies and non-government organisations understand relevant issues

3.4.1 The policing of sex workers in Sweden

Bindel and Kelly (2004: 252) indicate that the gist of the Swedish police approach to sex work is to deal with the basic manifestation of sex work and its associated problems rather than relying on piecemeal initiatives. As such the Swedish approach to sex work is not simply a piece of ideological legislation, but a holistic approach that is regarded as a long-term project. The government regard the role and function of the police to be not only that of detection and enforcement, but also of education and prevention. Since the police measures its effectiveness not only by numbers of arrests and convictions, but also by the impact on the whole of society, they also invest in drug and alcohol rehabilitation programmes and other exit strategies to enable more sex workers to leave prostitution (Bindel & Kelly 2004: 252). The government places as much emphasis on raising awareness about the realities and consequences of sex work as on police enforcing criminal law. Proper police enforcement requires adequate resources to ensure effective implementation and the police and the prosecutors have been educated on all aspects of the law which is considered vital for achieving effective enforcement (Bindel & Kelly 2004: 252).

Bindel and Kelly (2003: 23) indicate that police in Sweden are in a position to work with ‘toothless’ legislation that discriminates against the women involved and does nothing about the demand. For police it is far more difficult to adopt a range of strategies in responding to public complaints about street prostitution if police are limited to arresting the women. Investigation into violent assaults and murders of women in sex work will be hindered by the ‘blind eye’ approach – especially towards customers. The approach taken by the police in Edinburgh,
for example, licensing certain brothels and ‘turning a blind eye’ to street prostitutes so long it takes place in a designated zone, has been used as a good example. Bindel and Kelly (2003: 23) indicate that tolerance zones were abandoned in late 2001 in Edinburgh. The minor change in the law clearly had a negative impact on women. Although the legal reforms were wider than simply allowing police to arrest women for solicitation, police tend to use it in a narrow way against the sex workers. Since January 1999 it has been a punishable offence in Sweden to buy or attempt to buy sexual services, if arrested by the police the penalty is a fine or imprisonment for up to six months. The offence covers all forms of sexual services, whether they are purchased on the street, in brothels, or in saunas/massage parlours (Bindel & Kelly 2003: 23).

Bindel and Kelly (2003: 23) indicate that police were initially concerned about the new legislation, but soon realised that it could help them gather evidence against traffickers. The new legislation enables the police to arrest and question the customers of trafficked women, and thus build a better picture of the crimes committed and obtain corroboration of the victim’s story. One important aspect of the new legislation, which is seldom recognised outside Sweden, is that the women and children in prostitution are not criminalised, but rather viewed as victims of crime. This does not only change their legal status, but how they are seen and treated by others (Bindel & Kelly 2003: 23). A crucial component of the Swedish model is the decriminalisation of those selling sex, who are usually women. Because these sex sellers are neither regulated nor criminalised, they remain free from police harassment and control from bosses and the state (Bindel & Kelly 2003: 29).

Bindel and Kelly (2003: 27) indicate that there has been a shift of policing the women and men in prostitution, to targeting demand. Many critics of the law have drawn on the early years of implementation where uncertainty and ambivalence was evident in police and prosecutors. Bindel and Kelly (2003: 27) indicate that the Swedish Model on sex work diverges from other contemporary approaches to
sex work in that it not only criminalises the purchasing of sex, but also provides for the implementation of strategies to empower victims of sex work and provide alternative opportunities for sex workers to exit sex work. The fundamental aspect of this approach is that the Swedish government has increased spending to educate women and men on the harmful aspects of sex work. Essentially, the belief is that it is necessary for prostituted women to exit prostitution without fear of punishment or stigmatisation (Bindel and Kelly 2003: 27).

3.5 THE NETHERLANDS

As in other countries social and political discussions on the way in which society should deal with the criminalisation and decriminalisation of sex work are also taking place in the Netherlands. According to Doezema (1998: 34) sex work in the Netherlands is legal, and it is estimated that there are approximately 25,000 persons working in prostitution. Meaning that 1.6 persons per 1,000 population are involved in sex work (Doezema 1998: 50). According to Doezema (1998: 50) prostitution is organised in various ways. Firstly, there is the well-known operational method of prostitution whereby sex workers sit behind a large window to be visible from the street. This is the method that is commonly used in Amsterdam and several other cities and is referred to as window prostitution. Doezema (1998: 50) states that window workers usually work independently and only pay a fixed amount of rent to the window owner.

Secondly, there are street sex workers who are found in some cities. According to Doezema (1998: 50) few cities have established zones that they call zones of tolerance, where streets prostitutions may be practised. Sex workers who operate outside these zones or in cities where these zones are not established are often harassed by the local residents and arrested by police. Doezema (1998: 50) notes that the tolerance zones are located in remote areas of the city, far from amenities such as shops, cafes and public toilets or telephones.
Thirdly, there are those prostitutes who work in brothels. According to the South African Law Commission (2002: 155) these brothels vary from simple private houses with just a few women working in them. These sex workers work as employees and are required to observe labour law and work ethics practices like any other worker in other industries. National legislation in the Netherlands has traditionally been abolitionist, given it has never been an offence ‘to make use of the services of a sex worker’ or ‘to offer services as a sex worker’ (Brents 2005: 625), though pimping, brothel keeping and trafficking has been criminalised. The most significant law providing the basis for this abolitionism was the 1911 law criminalising anyone who organised sex work for another person, pimped, or kept a brothel. Under the Brothel Prohibition Penal code 250ter of 1911, working as a prostitute was not punishable, but it was an offence to profit from the earnings of prostitutes (Brants 1998: 625). In practice, however, prostitution was widely tolerated and this led to the popular believe that prostitution is decriminalised in the Netherlands. Since 1981, there were repeated attempts to decriminalise prostitution but these attempts failed (Brants 1998: 625).

The new legislation that legalise brothels as long as they do not interfere with or disrupt public life, regulate the commercial operation of prostitution in the same way as businesses and it is hoped that the stigma of prostitution can also be addressed and gradually removed (South African Law Commission 2002: 155). According to the South African Law Commission (2002: 155) the key elements of the new legal approach are:

- The legalisation of organised voluntary prostitution.
- Making the distinction between forced and voluntary prostitution.
- Raising the penalty of people involved in the exploitation of children from one to six years imprisonment.
- Delegating the regulation of prostitution from state to the various regional and city governments. This means that regions and cities are given
powers to decide, for example, on the number of brothels that they would have through licensing.

In terms of the new legal position, brothels must meet health and safety standards and confirm that they do not hire illegal immigrants and underage people (South African Law Commission 2002: 156). Brothels are further required to have condoms available to protect prostitutes from being forced to provide service without condoms. All other rights as part of conditions of service, such as overtime, sick leave and unemployment insurance are also made available to sex workers (South African Law Commission 2002: 156).

**3.5.1 The policing of sex workers in the Netherlands**

According to the Hotline for Migrant Workers (2007: 55) prostitution in the Netherlands was legalised at the turn of the twentieth century. However, brothels and procurement were outlawed, in the hope that in their absence sex workers would disappear. Over the years the police implemented a policy based on ‘tolerance zones’ refraining from enforcing the prohibition against procurement and brothels. This approach explains the emergence of the red light areas in Amsterdam and other cities, which reduced the nuisance to the general public. The Hotline for Migrant Workers (2007: 55) indicates that during the 1970s, sex work expanded in the Netherlands, entering residential areas. Street sex work and the drug trade were also more evident than in the past.

The police were forced to undertake arrests and sex workers faced fines or prison sentences. Due to their fear of arrest the sex workers became more careful in choosing their clients, and therefore more likely to be subjected to assault by those who could not procure sex from them. This situation was criticized by many in the police force, particularly in the Vice Squad (Hotline for Migrant Workers 2007: 55). Hotline for Migrant Workers (2007: 55) indicates that in October 2000 a legal amendment was adopted in the Netherlands removing
the prohibition against the operation of brothels. This effectively marked the introduction of legalised sex work in the Netherlands in accordance with the “democratic” model, focusing on the rights of women. In addition to a total prohibition against coerced sex workers, the local authorities retained the legislative power to regulate the sex industry. Most authorities adopted a policy that determines the number and location of brothels and mandates licensing (Hotline for Migrant Workers 2007: 55).

According to the South African Law Commission (2002: 155) cities in the Netherlands have established ‘zones of tolerance’ where sex work may be practised. The role of the police is to ensure that sex work is only practised in those zones of tolerance. Outside these zones, or in cities where they have not been established, street sex workers are often arrested by police and/or harassed by local residents. Doezema (1998: 3) notes that the tolerance zones are located in remote areas of the city, far from amenities such as shops, cafes and public toilets or telephones. Street sex work is regulated by the police and local authorities by means of, among others, establishing official zones where they are allowed to work. Amsterdam has developed a ‘model’ zone: a street or area is assigned by the city where the nuisance for residential areas is minimised and a reasonable degree of safety for sex workers can be arranged. Business hours are during the evenings every night, a shelter is established with the same opening hours where sex workers can take a break, talk to staff and get free condoms. A medical doctor is often available and can be consulted about STIs and general health issues. Medical examinations are voluntary. The zone of tolerance is monitored and the police can ‘draw the line’ on what is accepted and what is not (South African Law Commission 2002: 158).

3.6 GERMANY

Currently adult sex work is not prohibited in Germany but is tolerated under certain narrowly delineated conditions (South African Law Commission 2002:
These conditions take into account the criminalisation and the exploitation of sex work and the trafficking of women. People who are found guilty of pimping are given heavy penalties of between six months to five years imprisonment (South African Law Commission 2002: 159). Local communities are authorised to completely prohibit sex work in districts that have less than 50,000 people. If, however, a district has more than 50,000 residents, sex work may only be prohibited in certain areas, for example residential areas, public parks, schools and some city centres (South African Law Commission 2002: 159).

Sex workers are taxed on their earnings and compelled to register with health agencies for monthly health checks (South African Law Commission 2002: 159). These health checks are governed by the law dealing with infectious diseases. According to Wijers and Lap-chew (1997: 116) Germany has approximately 200,000 registered sex workers who are regularly seen by public health services. However, there are often complaints about the impersonal attitude and approach of health care workers, which undermine confidence and good health care. The implementation of the provisions requiring mandatory testing also varies from city to city. In northern cities such as Hamburg, Bremen and Berlin for example, services are anonymous and voluntary, but elsewhere obligatory examination does not exist (South African Law Commission 2002: 159).

According to The South African Law Commission (2002: 159) non-national sex workers who comprise about half of the sex workers population experience major problems. Police often use repressive measures against them, such as raids, mandatory HIV testing, police interrogation without a translator and deportation of sex workers without work permits (South African Law Commission 2002: 159). The strong sex workers’ organisations in Germany such as Project Hydra have campaigned against the inconsistencies of sex regulations. Some of these inconsistencies being that although registered sex workers are taxed, they don’t receive the same benefits as other tax payers, such as social security payments or health insurance benefits (South African Law Commission 2002: 159). For
example, in December 2000, a Berlin court heard an application for closure of a bar that served as a meeting point for sex workers and their clients. The court held that sex work as a profession was now widely accepted, as long as it is freely entered into and involves no force. This ruling came at the time when the German government had started to debate whether to acknowledge sex work as a legitimate business with legally enforceable contracts between sex workers and their clients (South African Law Commission 2002: 159).

3.6.1 Forms of sex work and sex zones

Kavemann, Rabe, Leopold and Fischer (2007: 8) indicate that sex work in Germany takes on many forms and can be differentiated by a number of criteria. For example, women and men practice sex work either as a full-time job or sideline, which is significantly different, especially in terms of social insurance. Another important criterion is whether people are working voluntarily as sex workers or have been coerced into it. The reasons why people feel they have no choice but to be sex workers can vary greatly and can often be very complex. It is often difficult to make a clear distinction between coercion and voluntary choice of profession. Even people who have chosen to be sex workers may become caught up in situations of dependency due to a lack of support from their immediate environment, be it in social or material terms (Kavemann et al 2007: 8).

Kavemann et al (2007: 8) indicate that sex work is subject to geographic restrictions as a result of by-laws on exclusion zones. By-laws that stipulate exclusion zones are often ignored and are in practice not able to prevent sex work in the areas in which it was banned. They nevertheless have a negative effect on sex workers’ working conditions: with only a few exceptions, sex work is banned in city centres, which would be the most lucrative areas. The exceptions are usually typically red-light districts, in which there is a high concentration of sex work businesses and sex workers, competition among the sex workers is
tough and pimps have a great deal of influence. Tolerance zones in areas on the outskirts of town without any kind of infrastructure put sex workers at a higher risk of becoming victims of violence (Kavemann et al 2007: 8).

Kavemann et al (2007: 8) state that the most public form of sex work in Germany is street walking: sex workers stand at particular spots – either officially designated areas or areas that are unofficially known to those concerned – and offer their services to potential clients. Variations on this kind of sex work take place in hotel bars, motorway service stations or similar places. As a rule, the sexual service usually takes place in cars or hotels that rent out their rooms by the hour. Caravans are also used for sex work: this kind of business is more prevalent on major roads outside towns (Kavemann et al 2007: 8). Sex work takes place in a less visible form in special houses, for example brothels. In Germany there are a number of different kinds of brothels, including “sex malls”, massage salons, nudist clubs and sauna clubs, dominatrix studios, night clubs or “houses of boys”. Brothels often have a pick-up area, where the client can choose a sex worker and then go to a room with her or him for sexual services (Kavemann et al 2007: 8).

3.6.2 Legality, immorality and restrictions on sex work

Kavemann et al (2007: 4) indicate that before the Prostitution Act 177 of 2002 was implemented, prostitution and the running of brothels, or similar businesses were not prohibited. However, based on supreme-court precedent, these activities were considered immoral and anti-social and as a consequence prostitutes had virtually no rights. All contracts related to prostitution were null and void due to the assumed immorality. Prostitutes had no legal rights to the remuneration agreed with the client. Prostitution was not recognised as a profession, form of work, or service. It was not possible to draw up legally valid employment contracts with prostitutes. Accordingly, prostitutes had no access to social insurance through their work (statutory health insurance, security in the
event of unemployment). Private health insurance and pension funds also rejected prostitutes on the grounds of their work. They were thus able to obtain insurance only by illegal means, such as through a spouse or by citing a different occupation (Kavemann et al 2007: 4).

Kavemann et al (2007: 4) indicate that it was a criminal offence for third parties to arrange or organise prostitution services. Before the Prostitution Act 177 of 2002 came into force, the act of running a brothel was not in itself a criminal offence. Running a business in which prostitutes were kept for economic dependency was, however, a criminal offence. This was seen as an act of promoting prostitution. Promotion of prostitution was regarded as the creation of the elegant and discreet atmosphere or the provision of condoms. That meant that any acts involving investment in good working conditions and protection for prostitutes could be prosecuted. The intention of this legislation was to make working in prostitution as unbearable as possible in order to force prostitutes to leave the profession as quickly as possible (Kavemann et al 2007: 4).

Kavemann et al (2007: 4) state that it was also a criminal offence to act as an intermediary between prostitutes and clients. This was defined as a form of pimping. Before the Prostitution Act 177 of 2002 came into being, anyone who promoted prostitution on a commercial basis by finding clients for sexual services was committing a criminal offence. It meant that acting as an intermediary for prostitutes in employment relationships and aspects of organising the work for prostitutes were criminal offences. This applied both to brothel owners/managers and to prostitutes, who, for example, organised clients not only for themselves but also for other prostitutes. By doing this they were committing an offence (Kavemann et al 2007: 4).

Kavemann et al (2007: 5) indicate that Article 120 No. 2 of the Administrative Offences continued to impose an absolute ban on advertising for sex work. This regulation prohibited all kinds of advertising for prostitution, irrespective of
whether it is offensive, discreet, direct of disguised. The person who was liable to be fined under this clause was not only the person advertising, namely the prostitute or the brothel operator, but also the person responsible within the advertising medium, for example the publisher of a newspaper. In practice, adverts for prostitution appeared in local newspapers and on the internet (Kavemann et al 2007: 5). According to them (Kavemann et al 2007: 5), people contravening Article 120 No. 2 of the Administrative Offences are rarely prosecuted because to some extent police use these adverts to help their investigations in other crimes connected with sex work. The Prostitution Act 177 of 2002 changed the legal classification by stopping a total ban on the advertising of prostitution. This change makes the advertising of prostitution to be an administrative offence if it does not respect the appropriate discreet forms and also touches on youth protection issues (Kavemann et al 2007: 5).

Kavemann et al (2007: 5) state that by-laws that aim to ensure exclusion zones as instruments for regulating prostitution and making it a criminal offence in certain parts of towns and cities have been the subject of heated debate for many years. The legal basis for using by-laws in establishing areas where prostitution is not allowed is to protect public decency and young people. This in essence regulates the practicing of prostitution because it allows for the banning or limitation of prostitution for certain hours through the by-laws by municipalities that has more than 20,000 inhabitants (Kavemann et al 2007: 5).

The setting up of exclusion zones for prostitution varies greatly from region to region. For example, Berlin does not use this legal instrument at all. By contrast, Munich regulates the practice of prostitution with a far-reaching by-law on exclusion zones. Contravention of an exclusion-zone by-law can be prosecuted as an administrative criminal offence. Kavemann et al (2007: 5) state that reports pointed out the impact of exclusion zones on the life and work situation of prostitutes. Reducing the work opportunities makes competition among the prostitutes tougher and increases the influence of pimps. Tolerance zones in
industrial areas or on the outskirts of towns and cities without any kind of infrastructure increases the risk that prostitutes may become victims of violence. Furthermore, there are no sanitary facilities in those areas. Alternation between tolerating and prosecuting prostitution in exclusion zones increases legal uncertainty for prostitutes. In this respect the Prostitution Act 177 of 2002 has had no visible impact (Kavemann et al 2007: 5).

Kavemann et al (2007: 5) indicate that another area of the law that placed geographical restrictions on prostitution was planning law. German planning law ensures that an urban plan is developed and adhered to. Planning areas are subdivided into different zones, such as residential, mixed used, industrial or commercial and light industrial. Prostitution was generally classified as a disturbance to an area, with the consequences that all forms of prostitution from prostitution in private flats and houses through to large-scale brothels were officially allowed only in commercial and industrial zones (Kavemann et al 2007: 5). Unofficially, prostitution in private houses and flats and mini-brothels also exists in residential and mixed used areas. This practice was to some extent tolerated by the planning authorities, which on the one hand meant that prostitutes had no legally secure status in residential and mixed-use areas and were dependent on the attitude of individual civil servants within the planning authorities (Kavemann et al 2007: 5). On the other hand, planning law refused to allow a form of prostitution organised and determined by the women themselves at a venue that offered better working conditions and better protection than industrial areas, such as areas that are out of the way and unpopulated at night.

Kavemann et al (2007: 5) indicate that the restrictions resulting from classifying prostitution as immoral also applied to business in which sexual services are offered. Although their business was not illegal, brothels and brothel-like businesses could not be registered as businesses. The consequence of classifying both the work of prostitutes and the businesses as immoral was that prostitution was not seen as a trade as defined in the Trade Regulation Law and
therefore prostitution business could neither be registered nor granted a licence. Businesses were sometimes tolerated or included in the register of businesses in a different category such as commercial room rental. Applications for a permit under the Restaurant Licensing Law were refused if permits that had already been issued were revoked if a bar, restaurant, hotel or guest house showed any indication of being connected with prostitution. Businesses and pick-up bars could be either closed down or tolerated on the grounds that they were connected with prostitution, which means that their legal status was very uncertain (Kavemann et al 2007: 5).

3.6.3 Policing of sex workers in Germany

Kavemann et al (2007: 60) indicate that in Germany the police have powers to intervene if they suspect that sex work is being practised in a particular place. In these cases, the police have the right to enter and search a private home; check the identity of a person if that person is found to be in a place in which sex work is being practised; or to order searches of individuals or property. According to Kavemann et al (2007: 60) prostitution in Germany is tolerated under poor working conditions that are confined to certain areas which are subjected to police checks.

3.7 NEW ZEALAND

Currently sex work does not constitute an offence in New Zealand, but soliciting, brothel-keeping, living on the earnings of prostitution and procuring sexual intercourse are prohibited According to the South African Law Commission (2002: 163) the coalition of the groups that champion the rights of sex workers called the Law Reform Campaign identified the following as some of the key problems with the legislation that regulates sex work in New Zealand:

- The law makes provision for the arrest of sex workers and not their clients.
The law does not address the exploitation of sex workers because there are still unequal power relations between operators and workers. Practices such as unfair dismissals and withholding payment to sex workers are common, and sex workers fear arrest to report these unfair labour practices because they will be risking arrests.

The law creates a barrier to sexual health education because the police can use such literature and the presence of condoms as evidence to prosecute alleged sex workers for sex-related offences.

The law does promote the reporting of sexual offences such as when they are forced to provide services they do not wish to provide.

The launching of the Sex Work Reform Bill is designed to decriminalise sex work and create a framework which will safeguard the human rights of sex workers (South African Law Commission 2002: 163). This will protect them from exploitation and promote the welfare and occupational health of sex workers in this industry (South African Law Commission 2002: 163).

According to Jordan (1991: 85) the structure of the sex industry in New Zealand is essentially similar to that of Australia. Most of those who earn their living from sex work are women; their clients overwhelmingly men. The New Zealand Prostitutes Collective (2003: 2) estimates that approximately 8,000 women are currently working as prostitutes in New Zealand, with that number likely to rise in the light of increasing unemployment and recent benefit cuts. Jordan (1991: 85) indicates that the women make their services available in a wide range of contexts and can be found working on ships, on the street, from massage parlours, through escort agencies, from hotel bars and clubs, and from their own homes. Some are barely teenagers while others are approaching pensioner status, while the majority are probably aged between eighteen and thirty. They come from a variety of social backgrounds representing women who have grown up economically disadvantaged, as well as those from families of the wealthy and
privileged. Some may have been raised in strict Catholic schools while others have had little or no religious upbringing (Jordan 1991: 85).

Jordan (1991: 85) indicates that their personal lives reflect a wide range of disparate lifestyles, some fit sex work around work, study or parenting commitments while others may work full-time in the industry and see themselves as career prostitutes. The attitudes of women who are involved in sex work vary when it comes to personal relationships. Some assert that they are able to sustain involvement with male partners or husbands; some prefer lesbian partners; while others abstain from sex outside prostitution. Some use drugs and alcohol to cope with their clients’ sexual demands and others mention that sex work is too hard without the use of any addictive substance (Jordan 1991: 85).

Jordan (1991: 86) states that recently the number of Asian women working in the country has increased, with growing numbers of Thai and Filipino women working in Auckland. Whereas there are comparatively few pimps in the New Zealand sex industry overall, these Asian women are considerably more vulnerable to exploitation by men because they often depend on male sponsors to bring them into the country and frequently have an insecure immigration status. The aim in stressing these different factors is to emphasise the diversity of women who are involved in the sex industry. All too often we accept popular, stereotypical images of the prostitute. These images help those of us who do not work in the industry feel smug; firstly, in our ability to know ‘one of them’ at a glance and secondly, to feel reassuring that clearly, we are not one of them. Yet it is increasingly difficult to sustain such a reassuring division (Jordan 1991: 86).

According to Jordan (1991: 86), women have traditionally been divided into two groups by the patriarchal principle, namely those who could be respected and who could be married and those who could be used for sexual indulgence only. However, certain penalties are attached to those who avail themselves of sexual indulgence and these dissuade many women from choosing this option. Hence,
to be publicly identifiable as a prostitute becomes socially and legally dangerous. Such a tag could cost a woman not only her reputation, but could also be used to deprive her of her children and her freedom (Jordan 1991: 86).

Jordan (1991: 86) indicates that New Zealand’s laws on sex work essentially reflect the aims expressed in this traditional dichotomy that regarded sex work as an effective way of curbing men’s adulterous behaviour that assumed that men’s sexual appetites were inherently more voracious than women’s and thus required additional sources of satisfaction. This resulted in laws on sex work being not generally oriented towards the eradication of sex work but towards its regulation. Jordan (1991: 86) states that the existence of a pool of sex workers was not only a source of sexual pleasure and a means of assisting in the patriarchal control of all women, but it was also a source of valuable revenue for the state. During the days of the Roman Empire for example, commercial sexual activity was taxed by the emperor and the early Christian Church was initially reluctant to lose the income from such activities. It was increasingly felt that the acceptance of the revenue generated by sex work was effectively turning the state into a pimp that implicitly condones a trade that was leading to a growing ambivalence in society (Jordan 1991: 86).

According to Jordan (1991: 86), the current legal situation in New Zealand still reflects such ambivalence because to engage in sex work is not a criminal offence, but a person could be charged for a range of offences that are associated with sex work. Commonly people get charged with solicitation, keeping a brothel, pimping among others. Jordan (1991: 86) states that an additional piece of legislation was enacted in 1978 specifically to control the growth and operation of the massage parlour industry. The legislation provides for the licensing and regulation of all parlours and parlour operators. Included in its provisions are clauses prohibiting any woman who has had a conviction for drugs or prostitution in the previous ten years from being employed in a parlour
and parlours are required to keep a register of the names, ages and addresses of people who work for them.

Jordan (1991: 87) states that although there is considerable scope to control sex work through criminal law statutes and regulations, practically there is still a high degree of selective law enforcement that is being experienced. Solicitations and breaches of the Massage Parlour Act are common offences that people who are involved in sex work tend to be charged with, successful conviction on these offences is very low. Sex workers who are often prosecuted for these offences are mostly those who operate in publicly accessible settings. Those working privately have comparatively little chance of being detected (Robinson 1987: 183).

3.7.1 Policing of sex workers in New Zealand

Barnet, Casavant and Nicol (2011: 6) state that in New Zealand the enforcement of the sex work laws by the police has been highly selective and idiosyncratic. Because few police officers are charged with the policing of these laws they tend to use considerable discretion concerning where to focus their energy and how to enforce the law (Robinson 1987: 183).

According to Barnet, Casavant and Nicol (2011: 60), New Zealand’s Prostitution Reform Act 3 of 2003 was designed to ensure that the police are responsible to:

- safeguard the human rights of sex workers and to protect them from exploitation
- promote the welfare and occupational health and safety of sex workers
- to prohibit the use of persons who are younger than 18 years in sex work

Police in New Zealand have largely adopted a more tolerant approach to sex work, thus allowing independent sex workers to work in an unregulated
environment. Up to four independent individuals may operate indoors from the same location without a license, while more than four individuals as well as those people who are working for a third party are regulated and must have a license to operate. There are no restrictions on the number of people that can work for one operator. Operator certificates are granted and held by the registrar of the court, which ensures that the identity of operators remains confidential (Barnet, Casavant & Nicol 2011: 6).

According to Barnet, Casavant and Nicol (2011: 6) the regulation of brothels, zoning, licensing and advertising is placed in the hands of the local government law enforcement agencies. These agencies regulate advertising through by-laws, based on considerations such as whether signage advertising sex work is causing a nuisance or whether it is incompatible with the character of the area. Local governments also retain the power to pass by-laws to control offensive behaviour, provided that such by-laws do not prohibit sex work altogether (Barnet, Casavant & Nicol 2011: 70). The police combat exploitation and the trafficking of individuals by denying immigration permits to anyone who intends to work or operate a business of sex work in New Zealand.

The New Zealand Prostitution Law Committee (2003: 109) indicates that police officers may request the age identification documentation from a person they suspect to be under aged and who is providing commercial sexual services even though they are under no obligation to do so. According to the New Zealand Prostitution Law Committee (2003: 109), police officers find it difficult to effectively police sex work under the Prostitution Reform Act 3 of 2003 because according to this Act:

- police have no right to enter into brothels and other premises that might be dealing with sex work
brothel owners are no longer required to maintain a record of the age identification of sex workers

According to the New Zealand Prostitution Law Committee (2003: 109) police officers rely on information from informants or complaints in dealing with sex workers. Some of the difficulties that the police encounter are to successfully prosecute people who are using underage persons in sex work because underage persons may not wish to cooperate with a prosecution as they wish to continue providing commercial sexual services. They also may not see themselves as victims and will therefore not lay a complaint. Secondly, police officers have difficulty in determining when they should intervene if a potential underage person is seen to meet up with a potential client because premature intervention could lead to the parties denying intent while late intervention could fail to protect the under aged (New Zealand Prostitution Law Committee 2003: 109).

Police in New Zealand were in favour of making the involvement of under aged youth in sex work an offence because it would help them to deal with the challenges of policing sex work in New Zealand. They would then be entitled to obtain the age identification of suspected workers and prevent those under the age of 18 from performing sex work. They do realise the risk associated with criminalising young people and the fact that such a move would be against the intent of the Prostitution Reform Act 3 of 2003 of decriminalising prostitution and recognising underage sex workers as the victims of an offence (Prostitution Law Committee 2003: 110).

3.8 AUSTRALIA

In Australia, sex work laws differ from state to state. According to Pinto, Scandia and Wilson (1989: 1), despite the public and political interest in prostitution, there is concern about its potential to spread diseases. The conflict between the
residents and sex workers in other parts of Australia have raised issues on the rights of prostitutes to work in suburban areas and the rights of residents of these suburban areas. The law governing sex workers in brothels is complex because in Victoria sex workers in brothels may be charged with vagrancy while sex workers work in brothels which have town planning permits are exempt from prosecution.

Pinto, Scandia and Wilson (1990: 2) state that in New South Wales it is not an offence to work in a brothel unless that premise is also used for other purposes. In Queensland, Western Australia, Tasmania, the Northern Territory and Australian Capital Territory there are no specific measures to punish sex workers who work from brothels, however sex workers can be charged for assisting in the management of brothels. In Queensland, Western Australia, Tasmania and the Australian Capital Territory it is not an offence to work from your own home, while in South Australia the police can charge people who receive money that is paid in a brothel for sex work.

In 1992, the Australian Capital Territory effected major changes to its legal approach to sex work. It moved from a criminalised system to a regime of legalisation with minimal regulatory framework (South African Law Commission 2002: 165). This led to the introduction of the Sex Work Act 2000 of 1992, which allowed for the establishment of a Sex Industry Consultative Group that advised the government on the effective operation of the act and other matters pertaining to the sex industry. The major objective of the Sex Work Act 2000 of 1992 is among others to:

- promote the welfare and occupational health and safety of sex workers
- protect the social and physical environment of the community by controlling the location of brothels
- protect children from exploitation
In terms of the Sex Work Act 2000 of 1992, owners and managers of brothels and escort agencies are required to register their businesses with the registrar of brothels and escort agencies within seven days of commencing business. There are prescribed industrial areas that are designated for sex work and any sex work that is being carried outside these zones is illegal (South African Law Commission 2002: 165). Single sex workers are allowed to work from their own premises, but they are required to register with the registrar. Soliciting sex from the street is still illegal in terms of the Sex Work Act 2000 of 1992.

3.8.1 The policing of sex workers in Australia

According to Pinto, Scandia and Wilson (1990: 4), the policing of sex work in Australia differ from one jurisdiction to the next. In the Australian Capital Territory, the Northern Territory and Western Australia the policing approach is to contain and control sex work. Although most aspects of sex work are illegal in these jurisdictions, police turn a blind eye to some form of sex work. In Queensland the approach that the police follow is to eradicate sex work. There is a uniform police approach of prohibiting sex work that is illegal in all jurisdictions except in New South Wales. Street sex work is perceived as posing the major policing challenge and taking up most of their resources.

Pinto, Scandia and Wilson (1990: 5) state that arresting sex workers has not reduced the volume of residents’ complaints because even though some sex workers do relocate to other places to avoid arrests, many run the risk of prosecution and continue to work in residential areas. Police responses to brothels, massage parlours and escort agencies vary between jurisdictions. Although brothels and massage parlours offering sexual services are illegal in the Australian Capital Territory, Northern Territory and Western Australia police allow their existence within a contained and controlled environment. They do this by conducting surveillance to limit the number of operations in these places. The primarily concern of the police is to prevent the infiltration by organised crime and
the abuse of drugs, and to minimise public nuisance and to prevent the exploitation of juveniles (Pinto, Scandia & Nicol 1990: 5).

Pinto, Scandia and Nicol (1990: 5) state that because transactions between sex workers and their clients are made in private and under guises, it is difficult for the police to enforce sex work laws. In massage parlours that operate without permits potential clients are not usually told the cost of sexual services on entry but are quoted a price for massage only. Discussions of the price do not occur until the client and the sex worker enter the massage room and often not until after the client has undressed. Police seeking convictions for the use of premises for the purposes of sex work need to pose as clients and trick the sex worker into discussing a price for sexual services. A technique that is often used is to ask whether the use of a condom is necessary and whatever answer is provided by the sex worker serves as an admission that sexual service are provided (Pinto, Scandia & Nicol 1990: 5).

Pinto, Scandia and Nicol (1990: 5) indicate that it is difficult to enforce laws relating to living off the earnings of sex work or ownership and management of brothels due to the difficulty to obtaining evidence in this regard. For the police to obtain evidence that the premises are used as brothels they have to conduct surveillance on these premises and search newspapers for advertisements. This also does not provide enough proof because owners of these often assert that these places are not used for sex work but for massage and sauna only and that masseurs are instructed not to provide sexual services. Persons that are likely to be charged with managing premises for the purposes of sex work are more likely to be receptionists (Victoria 2002: 131).

3.9 CONCLUSION

Sex work is dealt with differently by different countries. In the United States of America there is a general criminalisation of sex work except in Nevada where
sex work is prohibited as a general rule with the provision that some counties may allow licensed brothels. Even in these counties a strict regulatory system is followed including mandatory health checks.

New Zealand follows an abolitionist approach, which in essence boils down to partial criminalisation because although sex work as such is not a criminal offence, all related activities are penalised. This is different from the Netherlands that shifted the legal status of sex work from \textit{de facto} decriminalisation to a system of legalisation. What is evident from these countries is the fact that whether sex work is decriminalised, regulated or criminalised, it has numerous challenges in terms of its policing.
CHAPTER 4: RESEARCH METHODOLOGY

4.1 INTRODUCTION

At present there are two well-known and recognized approaches to research, namely the qualitative and the quantitative paradigms. These two methodological paradigms differ incisively from each other (Bergman 2008: 1). According to Ivankova, Creswell and Clark (2007: 255) the goal of qualitative research is to describe the trends and explain the relationships between variables. In quantitative research the researcher asks specific, narrow research questions or formulates hypotheses about the variables that can be observed or measured. The sample size is large and is ideally randomly selected from the larger population in order to generalise the results to this population. Creswell (1994: 1) defines quantitative study as an inquiry into a social or human problem, based on testing a theory composed of variables, measured with numbers and analysed with statistical procedures in order to determine whether the predictive generalisations of the theory are true.

According to McRoy (1995: 2009), the qualitative paradigm stems from an antipositivistic, interpretative approach, is idiographic and thus holistic in nature, and aims mainly to understand social life and the meaning people attach to everyday life. The qualitative research paradigm in its broadest sense refers to research that elicits participant accounts of meaning, experience or perceptions. According to Babbie and Mouton (2001: 53) the qualitative researcher is concerned with describing and understanding rather than explaining or predicting human behaviour; naturalistic observation rather than controlled measurement; and the subjective exploration of reality from the perspective of an insider, as opposed to the outsider perspective that is predominant in the quantitative paradigm.
In planning the research for this study a qualitative design was found to be the appropriate methodological framework to follow. The main purpose of qualitative research is to make human actions and behaviour meaningful (Schrurink 1998: 240). This study comprised of a qualitative methodology as the purpose of this research was to use a multi-perspective approach utilising different qualitative techniques, strategies and data collection methods to describe, make sense of, and interpret information on the policing of sex work for it to be better understood.

The review of literature has produced recurring themes that require further investigation in order to provide answers to the research questions through the application of scientific procedures, known as research methodology. Research methodology justify the manner in which research is conducted, especially in terms of the epistemological stance considered; the research approach, strategies, and techniques subscribed to in the quest of achieving the set objectives. These methods provide a clear explanation that aid in gaining insight into the phenomena in order to provide solutions or answers to the research questions. Qualitative research is an interdisciplinary, transdisciplinary, and sometimes, counter disciplinary field, (De Vos, Strydom, Fouché & Delport 2011: 310).

Qualitative research simultaneously embraces two tensions. On the one hand, it is drawn to a broad, interpretive, post experimental, postmodern, feminist and critical sensibility. On the other hand, it is shaped to more narrowly defined positivist, post positivist, humanistic and naturalistic conceptions of human experience and its analysis (Denzin & Lincoln 2000: 1048). Diagram 2 below provides a distinction between the qualitative and quantitative approaches to research.

**Diagram 2: Distinction between qualitative and quantitative approaches**
<table>
<thead>
<tr>
<th>Epistemological roots in positivism</th>
<th>Epistemological roots in phenomenology</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purpose is testing predictive and cause-effect hypotheses about social reality</td>
<td>Purpose is constructing detailed descriptions of social reality</td>
</tr>
<tr>
<td>Methods utilize deductive logic</td>
<td>Methods utilize inductive logic</td>
</tr>
<tr>
<td>Suitable for a study of phenomena which are conceptually and theoretically well developed; seeks to control phenomena</td>
<td>Suitable for a study of a relatively unknown terrain; seeks to understand phenomena</td>
</tr>
<tr>
<td>Concepts are converted into operational definitions; results appear in numeric form and are eventually reported in statistical language</td>
<td>Participants' natural language is used in order to come to a genuine understanding of their world</td>
</tr>
<tr>
<td>The research design is standardized according to a fixed procedure and can be replicated</td>
<td>The research design is flexible and unique and evolves throughout the research process. There are no fixed steps that should be followed and design cannot be exactly replicated</td>
</tr>
<tr>
<td>Data are obtained systematically and in a standardized manner</td>
<td>Data sources are determined by information richness of settings; types of observation are modified to enrich understanding</td>
</tr>
<tr>
<td>The unit of analysis is variables which are atomistic (elements that form part of the whole)</td>
<td>The unit of analysis is holistic, concentrating on the relationships between elements, contexts, etc. The whole is always more than the sum</td>
</tr>
</tbody>
</table>

(De Vos, Strydom, Fousche and Delport 2011: 66)
4.2 RESEARCH PHILOSOPHIES

This section deals with various research philosophies in order to indicate the justification on which this study is premised.

4.2.1 Objectivism

Objectivism is based on the belief that there is an external reality that can be studied objectively. Objectivity in this sense refers to the ability to know things as they really are. This is possible if specific methods are followed because pursuing these methods will place the necessary check on subjectivity and restrain personal judgements and emotions. This method thus plays a key role in enabling the researcher to understand the meaning that people give to everyday life experience in an objective manner. This perspective is predominant in the quantitative paradigm. However, qualitative researchers (mostly realists), believing that the real world should be discovered by means of a systematic, interactive methodological approach and that knowledge arises from observation and interpretation, can also be regarded as objectivists (Schwandt 2007: 256).

4.2.2 Interpretivism

Interpretivists believe that the subject matter of the social sciences is fundamentally different from that of the natural sciences. Therefore, a different methodology is required to reach an interpretative understanding or an explanation that will enable the researcher to appreciate the subjective meaning of social action. The assumption is thus made that reality should be interpreted through the meaning that research participants give to their life world. This meaning can only be discovered through language (Schwandt 2007: 314).
4.2.3 Constructionism

De Vos et al (2011: 310) indicate that constructionists believe that there is no truth “out there”, only a narrative reality that changes continuously. Reality can therefore only be socially and personally constructed and the participant should be actively involved. Thus, reality is seen as the result of constructive processes. Associated paradigms include newer forms of ethnography, for example auto-ethnography, collaborative inquiry, appreciative inquiry (AI), personal-reflexive ethnography and narrative inquiry.

It is clear from the above that it is essential for a researcher to examine the foundations of his or her thinking. What is important to remember is that each foundational question could be answered differently depending on the person’s ontology (how one sees reality) and epistemology (how one thinks social phenomena should be studied). One’s answers to these foundational questions will influence the way one goes about doing one’s research. Therefore the same phenomenon could thus be investigated, analysed and interpreted differently depending on one’s beliefs of what social reality is (ontology) and how social phenomena can be known (epistemology). Recognising that there are different research perspectives, each with its own ontology, epistemology and methodology, enables researcher to begin to understand his or her own philosophy of social research (De Vos et al 2011: 310).

Researchers’ choices of a research perspective and the way they design their research should therefore truthfully reflect their own ontology, or belief of how social reality should be viewed, and their epistemology; that is, the rules by which they believe reality should be known (De Vos et al 2011: 310). An analysis of diagram 3 below shows that qualitative research is an umbrella term for different approaches or paradigms, each having its own theoretical background, methodological principles and aims (Flick 2006: 6).
Diagram 3: Different research paradigms

<table>
<thead>
<tr>
<th>Paradigm</th>
<th>Ontology</th>
<th>Epistemology</th>
<th>Methodology</th>
<th>Methods of data collection and analysis</th>
<th>Report/Writing style</th>
</tr>
</thead>
<tbody>
<tr>
<td>Objectivism</td>
<td>The life world of participants can be discovered in an objective manner</td>
<td>Interpretation arises from the observation of the researcher. With the right methods meaning can be discovered</td>
<td>For example, classic ethnography and phenomenology</td>
<td>For example participant observation and interviewing</td>
<td>Description of day-to-day events experienced in the field, realistic tales in an authorial, supreme voice to represent and interpret the other’s story</td>
</tr>
<tr>
<td>Interpretivism</td>
<td>The real world can be discovered by means of a systematic, interactive methodological</td>
<td>Knowledge arises from the understanding of symbols and meaning</td>
<td>Grounded theory</td>
<td>Data are gathered by means of participant observation, documents and interviewing, and are analysed</td>
<td>The researcher provides insights into the behaviour displayed and the meanings and</td>
</tr>
<tr>
<td>Modernism</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Realism</td>
<td></td>
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</tr>
</tbody>
</table>
A research design is a logical task undertaken to ensure that the evidence collected enables the researcher to answer questions or to test theories as unambiguously as possible. This makes it important to identify as clearly as possible the type of evidence that will be required for the study. The way in which the researcher develops a research design is fundamentally affected by whether the research question is descriptive or explanatory. That is, does it attempt to find out what is going on (descriptive research)? Or does it attempt to get the

| Constructivism | There is no real world or truth out there, only a narrative truth. Reality can thus only be known by those who experience it personally |
| Postmodernism | Those who are personally experiencing it construct knowledge through a process of self-conscious action |
| Impressionism | Newer forms of ethnography; auto-ethnography, collaborative inquiry (PAR), appreciative inquiry, personal-reflexive ethnography, narrative inquiry |

Interviewing, participant observation, human documents, personal narratives, lived experiences, poetic representations and fictional texts

The story must be lifelike, evocative, believable and possible to enable readers to put themselves in the place of others and have empathy

(Source: Flick 2006: 6)

4.3 Research designs

A research design is a logical task undertaken to ensure that the evidence collected enables the researcher to answer questions or to test theories as unambiguously as possible. This makes it important to identify as clearly as possible the type of evidence that will be required for the study. The way in which the researcher develops a research design is fundamentally affected by whether the research question is descriptive or explanatory. That is, does it attempt to find out what is going on (descriptive research)? Or does it attempt to get the
explanation of why is it going on (explanatory research)? This is the important determination because it affects the type of the information that has to be collected.

4.3.1 Narrative biography

Schwandt (2007: 22) cites that narrative-biographical designs refer to both product and process. This approach is based on the assumption that the life world of a person can best be understood from his or her account and perspective, and ‘thus the focus is on individual subjective definition and experience of life’ (Schwandt 2007: 22). Creswell (2007: 55) uses the term biography to indicate the broad genre of biographical writings. These forms of research vary from life stories, life histories, narratives, autobiographies and auto-ethnographies. However, all these forms have something in common, namely to construct the history of a life. Scholars increasingly believe that data should not be interpreted or analysed (Denzin & Lincoln 2005), but the researcher should gather and present data in a way that the participants speak for themselves.

Creswell (2007: 55) outlines the procedures for conducting narrative research as follows:

- Select one or more individuals who have stories of life experiences to tell and spend considerable time with them gathering their stories through multiple types of information source.
- Collect information about the context of these stories so as to situate them in a clear personal, cultural or historical context.
- Analyse the stories with the aim to “restore” (the process of reorganising the story into a new framework). The researcher needs a keen eye for determining the particular content or angles that “work” in writing such a narrative biography.
• Negotiate and incorporate the relationship between the researcher and the researched so as to capture the story of “individuals unfolding”.

4.3.2 Ethnography

Creswell (2007: 242) defines ethnography as the study of an intact cultural or social group (or an individual or individuals within that group) based primarily on observations over a prolonged period of time spent by the researcher in the field. After the researcher has located a culture-sharing group, cultural themes or issues to be studied about the group will be selected (Creswell 2007: 73). The ethnographer listens and records the voices of informants where the interaction happens, with the intention of studying the cultural concepts and generating a cultural portrait. From the analysis of this data, a descriptive and interpretive, holistic cultural portrait of the group emerges as the final product of the study.

Rubin and Babbie (2001: 391) state that a good ethnographic study will give one an intimate feel for the way of life observed by the ethnographer. However, Flick (2006: 230) warns that the interpretation of data and questions of authority and authorship in the presentation of results must receive attention, as this approach may be interpreted (in a positive way). The aspirant researcher should be acutely aware of the fact that ethnographic fieldwork is not a straightforward, unproblematic procedure whereby the researcher enters the field, collects the data and leaves it unscathed. In fact, this type of fieldwork should rather be compared to a journey into a minefield riddled with potential moral and ethical pitfalls (De Vos, Strydom, Fousche and Delport 2011: 315) that are justifiable.

4.3.3 Phenomenology

Phenomenology originated from the work of Alfred Schutz who aimed to explain how participants experience and develop their life world (Schwandt, in De Vos, Strydom, Fousche and Delport 2011: 316). De Vos, Strydom, Fousche and
Delport (2011: 316) cite that life world refers to a person’s conscious experience of everyday life and social action. This approach aims to describe what the life world consists of, or more specifically, what concepts and structures of experience give form and meaning to it. According to Thomas in De Vos et al (2011: 316) the researcher strives to describe the phenomenon as accurately as possible, refraining from any pre-given framework, but remaining true to the facts. As opposed to a narrative biography that reports the life story of an individual, Creswell (2007: 57) regards a phenomenological study as a study that describes the meaning of the lived experiences of a phenomenon or concept for several individuals. At the root of phenomenology is the intent to understand the phenomena under study on their own terms and therefore to provide a description of human experience as it is experienced by the participants (Bentz & Shapiro 1998: 96). The product of the research is a careful description of the conscious everyday experiences and social action of subjects. In order to accomplish this, researchers should be able to turn from things to their meanings.

4.3.4 Grounded theory

Grounded theory was developed by Glaser and Strauss and is based on two concepts, namely constant comparison and theoretical sampling (Suddaby in De Vos et al 2011: 318). Schwandt (2007: 131) emphasises the fact that grounded theory is “a specific, highly developed, rigorous set of procedures for providing formal substantive theory of social phenomena”. The aim of grounded theory is, simply put, to develop a substantive theory that is grounded in data.

4.4 POPULATION AND SAMPLING

Mouton (2001: 134) defines population as a group of individuals having some characteristics that the researcher is interested in studying, while De Vos (2002: 198) defines it as individuals in the universe who possess specific characteristics.
The individual units of analysis that are chosen therefore represent the total study population that generates the research problem. The population chosen for this study is therefore general detectives from Sunnyside police station, members of crime prevention (visible policing), and sex workers themselves.

De Vaus (2002: 240) indicates that sampling is also utilised in qualitative research, though it is less structured, less quantitative and less strictly applied than in the case of quantitative research. The reason for this can be linked to a considerable degree to the methods of qualitative data collection; that is, observation and interviewing. Observation, for instance, is applied as widely as possible in order to collect the richest possible data, but this in fact often implies an unstructured element. As Rubin and Babbie (2001: 399) rightly state: “Field researchers attempt to observe everything within their field of study; thus in sense they do not sample at all.” In interviewing, where the emphasis is placed on collecting individual, detailed, in-depth information, the qualitative rather than the quantitative element is important. It can thus be inferred that in qualitative investigations non-probability sampling is used almost without exception.

4.4.1 Sampling methods

There are various sampling methods or types that the researcher can use. These methods serve different purposes and the research design could indicate the probable method that will be suitable for a particular study.

4.4.1.1 Types of non-probability sampling

Gravetter and Forzano (2003: 118) indicate that in non-probability sampling the odds of selecting a particular individual are not known because the researcher does not know the population size or the members of the population. Unrau, Gabor and Grinnell (2007: 280) add that in the non-probability paradigm each unit in a sampling frame does not have an equal chance of being selected for a
particular study. Denzin and Lincoln (2000: 370) indicate that qualitative researchers seek out individuals, groups and settings where the specific processes being studied are most likely to occur. A process of constant comparison between the individuals and groups being studied is essential, since the researcher is in pursuit of understanding all aspects of his or her research. The following types of non-probability sampling were used in this research:

4.4.1.2 Purposive sampling

Silverman (2000: 104) indicates that in purposive sampling a particular case is chosen because it illustrates some feature or process that is of interest for a particular study. Marlow (2005: 144) refers to this kind of sampling as a typical case of sampling in qualitative research where typical cases are sought and selected for the study. Purposive sampling is also seen by some as judgemental sampling (Rubin & Babbie 2005: 247). This type of sample is based entirely on the judgement of the researcher, in that a sample is composed of elements that contain the most characteristic, representative or typical attributes of the population that serve the purpose of the study best (Grinnell & Unrau 2008: 153). Maree (2007: 79) indicates that in purposive sampling the researcher must first think critically about the parameters of the population and then choose the sample case accordingly. Clear identification and formulation of pre-selected criteria for the selection of the respondents is therefore of cardinal importance. Creswell (2007: 125) add that this form of sampling is used in qualitative research and that participants and sites are selected that can purposefully inform an understanding of the research problem of the study.

Purposive sampling was used to obtain information from operational police officers that are involved in the policing of sex work in Sunnyside. This excluded police officers who are involved in the support functions at Sunnyside police station because they seldom embark on operational duties so they will not be able to provide current first hand information about the policing of sex work in
Sunnyside. According to McMillan and Schumacher (1993: 401), purposive sampling is done to increase the utility of information obtained from small samples. The researcher looks for information-rich informants, groups or places to study on the research topic. Purposive sampling includes the following sampling methods: site selection, comprehensive sampling, maxim variation sampling, sampling by case type and network or snowball sampling.

4.4.1.3 Snowball sampling

Alston and Bowles (2003: 90) indicate that snowball sampling is normally used when there is no knowledge of the sampling frame and limited access to appropriate participants for the intended study. Snowball sampling has a particular application value in qualitative research, since it is directed at the identification of hard-to-reach individuals. Snowballing involves approaching a single case that is involved in the phenomenon to be investigated. Information is then sought from this person that enables him or her to locate other members of that population (Babbie 2007: 184). Snowballing was used in indentifying and interviewing police officers (detectives and those in uniform), as well as sex workers. This method was used because it was going to be difficult for the researcher to identify the appropriate police officers and sex workers to interview. Even if the researcher had overcome this difficulty and indentified the appropriate police officers and sex workers, it could still have been difficult for the researcher to gain the confidence of the responded and some respondents could not have been as open as they were to the stranger.

According to Snell (1991: 35), snowballing entails asking each respondent who was interviewed to suggest another person who might agree to be interviewed. This technique is also referred to as the chain referral method of obtaining information from informants (Waldorf & Murphy 1990: 113). Because it can easily happen that the chain becomes broken, the researcher should preferably ask each respondent to give, for instance, five names instead of only one. De Vos,
Strydom, Fouche and Delport (2011: 394) state that snowballing technique is excellent in those cases where the researcher is investigating a relatively unknown phenomenon.

4.4.2 Sampling size

Hagan (1982: 146) cites that there is no simple answer regarding an appropriate sample size. De Vos (2002: 334) states that sufficient data are often derived from one or two cases when these cases are not selected randomly. This is also emphasised by Patton (2002: 244) who is of the view that there are no rules for sample size in qualitative inquiry. Sample size depends on what the researcher wants to know, the purpose of the inquiry, what is at stake, what will be useful, what will have credibility, and what can be done within the available time and resources.

In this study data was collected until saturation point. According to Sarantakos (2000: 244), sampling in qualitative research is relatively limited, based on saturation not the size of the sample because the results are not statistically determined and the process should involve low cost and less time.

4.5 METHOD OF DATA COLLECTION FOR THIS STUDY

Data collection was done by means of semi-structured in-depth interviews with informants. This approach is one of discovery and description, and emphasizes meaning and understanding in the study of the lived experience of individuals. According to Babbie (2001: 129), qualitative semi-structured interviewing is continuous, interactive and flexible, rather than prepared in advance and “engraved in stone”. This means that the interviewer should have predetermined questions and an interview schedule, but not a specific set of questions that must be asked with particular words and in a particular order. In qualitative research, data is evidence collected by empirical means using systematic research
methods, such as in-depth-interviews, informal conversation, field observation and artefact collection.

A narrative approach was followed. This entailed allowing and encouraging the informants to tell their stories in their own words (Hollway & Jefferson 2000: 31). Accurate field notes were kept of all data gathered during phenomenological semi-structured in-depth interviews with informants. However, when an informant made a statement that the researcher interprets as crucial, the researcher accurately recorded such a statement verbatim. The verbatim message would then be reflected to the informant to ensure that it was recorded accurately. The interviews did not last more than an hour in line with the suggestions of Field and Morse (1995: 67) who asserts that interviews should be conducted in such a manner that they will not extend beyond an hour. They contend that several short interviews are far more effective than one or two long ones.

DePoy and Gilson (2008: 108) indicate that interviewing is the predominant mode of data or information collection in qualitative research. Researchers collect information through direct interchange with an individual or a group that is known or expected to possess the knowledge they seek. The interview is a social relationship designed to exchange information between the participant and the researcher. The quantity and quality of information exchanged depend on how astute and creative the interviewer is at understanding and managing the relationship (Monette, Sullivan & De Jong 2005: 178).

The questionnaires were divided into two categories: a questionnaire for police officials and a questionnaire for sex workers as per Appendices 2 and 3. The researcher made use of a combination of open-ended and closed-ended questions to collect data. Therefore the researcher attempted to keep questions brief, simple to understand and to the point. A total number of 53 people were interviewed as per the schedule of the interviews that is attached as Appendix 1. Eighteen (18) detectives were interviewed and saturation was reached at number
12 and after number 18 the interviewing of the detectives was stopped. Fifteen (15) uniform members were interviewed and saturation was reached at number 9, after number 15 the interviewing of the uniform members was stopped. Twenty (20) sex workers were interviewed and saturation was reached at number 11, after number 20 the interviewing of the sex workers was stopped.

4.6 METHOD USED TO ENSURE VALIDITY AND RELIABILITY

McMillan and Schumacher (2001: 407) view validity as a degree to which explanations of phenomena match the realities of the world. In qualitative research validity rests on the data collection and analysis techniques of the researcher. A general question often levelled at qualitative research involves adequacy and generalisability which contribute to trustworthiness. According to Chenitz and Swanson (1986: 10), internal validity is always threatened by events which occurred before the data collection took place, such as subject maturation, subject bias and subject mortality.

According to Lincoln and Guba (1985: 316), Guba’s model of ensuring validity and reliability in qualitative research also includes the element of credibility. In qualitative research, credibility or truth value is usually obtained through the discovery of human experiences as they are lived and perceived by informants (Poggenpoel 1998: 349). The researcher tested the questions that were posed to respondents in a pilot study to check whether they were understandable and testing that the study would test what it set out to test.

Qualitative research can only be seen as reliable once the researcher has a total understanding of the phenomenon (Krefting 1990: 217). To this end the researcher’s effort was enhanced by the fact that snowball sampling was used and the respondents knew the people who referred the researcher to them and the researcher spent time with them engaging in casual communication to establish rapport.
4.7 ETHICAL CONSIDERATIONS

Dane (1990: 44) states that ethical obligations rest with the researcher to protect subjects, within reasonable limits from any form of physical discomfort that may emerge from the research project. Respondents were properly informed about the research and their permission granted before the researcher imposed questions. Such information offered respondents the opportunity to withdraw from the interview if they so wished, but none withdrew from this study. To ensure the voluntary participation, De Vos, Strydom, Fousche and Delport (2005: 58) state that researchers should identify vulnerable respondents and eliminate them beforehand and nobody should be coerced to participate in a research project.

Participation was completely voluntary and based on informed consent. According to Patton (2002: 407) informed consent includes the following:

- Participants should be given an explanation of the purpose of the research.
- Participants must be legally and psychologically competent to give consent.
- Participants must be aware that they are at liberty to withdraw from the investigation at any time.
- The prospective participant must have the opportunity to ask any questions regarding the research, and given a statement stating that these questions have been satisfactory answered.
- The participant must be informed that he or she is free to withdraw at any time or may refuse to answer any questions without penalty.

4.8 DATA ANALYSIS

Schwandt (2007: 7) states that qualitative data analysis is, first and foremost, a process of inductive reasoning, thinking and theorising which certainly is far
removed from structured, mechanical and technical procedures to make inferences from empirical data of social life. When the emphasis is on science the analysis should be rigorous, disciplined, systematic and methodically documented as in the case of grounded theory, typological analysis and analytic induction. Data analysis in qualitative inquiry necessitates a twofold approach. The first involves data analysis in the field during data collection while the second involves data analysis away from the field following a period of data collection. This second part, known as the office approach, may be conducted between visits to the field, prior to, as well as after, completion of data collection. Generally, the office approach focuses more on pragmatics: the sorting, retrieving, indexing and handling of qualitative data (Gibbs 2007: 1).

Patton (2002: 434) points out that qualitative researcher have an obligation to monitor and report the analytic procedures they use in their work. This means that they must observe their own processes and analyse and report on the analytical process. The extent of such reporting will depend on the purpose of the study, whether its purpose is to conduct basic or applied research, to do a summative or formative evaluation, or to undertake action research. Creswell (2007: 150) believes that the process of data analysis and interpretation can best be presented by a spiral image – a data analysis spiral. The researcher moves in analytical circles rather than using a fixed linear approach. One enters with data made up of text or images (photographs and videotapes) and exits with an account or a narrative. In between, the researcher touches on several facets of analysis, circling around and “upwards” towards completion of the process.

In this study, the researcher made use of a combination of tape recordings and note-taking to record the data. Prior to and during the data collection phases, the researcher concentrated on the interview technique and created a prompt sheet, to which he referred to before meeting the participant. During the interviews the researcher used a tape recorder and took descriptive notes. The information that
was collected were later categorised into themes to obtain the findings and to make recommendations.

4.9 CONCLUSION

In this chapter the research design and methodological approach were discussed, the population and sample, the data collection and data analysis were also described. This chapter also described validity and reliability, ethical considerations were also discussed. The methodological approach was discussed in terms of questionnaires which were designed, formulated and distributed. The researcher also discussed how many respondents took part in the research and by which means.

By following the research methodology and procedures that were discussed in this chapter it was possible for the researcher to formulate the findings and recommendations that could assist the police in Sunnyside to police sex work. Qualitative methods of data collection and analysis allowed the researcher to reach an in-depth understanding of the experiences that the police in Sunnyside encounter, as well as the ill-treatment of sex workers at the hands of the police.
CHAPTER 5: RESEARCH FINDINGS AND RECOMMENDATIONS

5.1 INTRODUCTION

This chapter is composed of the findings and recommendations of this study. It firstly presents the findings of both the empirical and literature research on the policing of sex workers in Sunnyside. These findings are analysed and presented on the identified themes that relate to the research question and research objectives of this study. The chapter clearly identifies the challenges of policing sex work in Sunnyside and taking the findings of the literature research in South Africa at large and some selected countries that were studied in this research, the police and sex workers seem to be experiencing the same challenges from two diametrically opposed spectra.

The difficulty for police organisations is that they and their officers have traditionally held the view that they bear sole responsibility for effecting a regulatory or enforcement response to various social issues. In the contemporary environment, achieving a successful crime prevention platform with substantive results requires the development and maintenance of networks involving diverse stakeholders from within and without the policing organisations that have the capacity to contribute in a valuable way to a particular issue.

The last section of this chapter makes the recommendations that are designed to address the shortfalls that are highlighted by the findings. The fundamental basis of these findings is to address the high risk and the abuse of sex workers as well as the systems that could enhance the better policing of the sex work in Sunnyside and South Africa in general.
5.2 RESEARCH FINDINGS

The findings of the research that relates to the research questions and research objectives are presented in this section. The findings indicate the challenges that are faced by the police in arresting and successfully prosecuting sex workers. Secondly, the findings indicate the vulnerability of sex workers in the hands of the police who are supposed to enforce and uphold the rule of law.

5.2.1 Presentation and Analyses of Responses from the Police

The interviewed police officers indicated the difficulty of arresting and charging sex workers in terms of the Sexual Offences and Related Matters Act 32 of 2007 mainly because the successful prosecution of sex workers demand that there should be evidence of such act and due to the nature of sex work where there are two consenting people it becomes difficult and even impossible to adduce such evidence.

The respondents stated there is no specific policing approach that deals with sex workers in Sunnyside but they tend to be policed by normal conventional police approach that is governed by response to complaints and special operations that the police embark upon from time to time. This lack of the focused approach could also be one factor that contributes to the ad hoc abuse of sex workers by police officers who pretend to be under certain operations when they ransack and abuse sex workers because they at times arrest ladies who are wearing skimpy dress standing at or walking around the streets that are known to be used by sex workers.

The interviewed police officers agree that the policing of sex workers at Sunnyside is neither effective nor efficient because they neither have a particular strategy nor approach of policing sex work. They do acknowledge that the general manner in which the sex work is policed will neither remove the sex workers from the street nor deter people from engaging in sex work due to the complexity of successfully prosecuting sex workers. They also stated that they do
not use observation as one of the method to secure the successful prosecution because this will drain their already depleted resources that should be focussed on ensuring the safety and security of the inhabitants of their policing precinct. This indicate that sex work is not one of the priorities on the police in Sunnyside but it is something that they do at certain times to appease people who are against sex work and most of the time the policing of sex work is done as a guise by some individual police officers with the ulterior motive of getting money or sexual favours from sex workers.

The respondents also indicated that they do not use entrapment to arrest sex workers due to the difficulty of proving that the crime could still have been committed without entrapment. The defence argument in these cases tends to rely heavily on the assumption that such entrapment enticed the women to commit a crime that could not have been committed without such enticement. Balancing the amount of time and resources that the police could be using for this crime and other competing priorities it becomes logical that the scant resources that the police use should rather be used for crime that will enhance the safety and security of the public.

5.2.2 Presentation and Analyses of Responses from Sex Workers

Sex workers stated that they are subjected to various inhumane and dehumanising treatments from the police. The three most abuse from the police are the following:

- The police arrest sex workers and demand either money or sex for their release. Police brutality that accompany this results in some of them being injured and one lady who was brutally assaulted by the police officer who used to have sex with her stated that “ek het amper dood gegaan” meaning she nearly died and her friends called the ambulance that took her to Steve Biko Hospital where she received treatment.
The police enter and ransack their premises and tear their mattresses saying they are looking for drugs. This assertion concurs with some of the responses from the police that some sex workers also sell drugs so they have from time to time to raid them. From the responses of both the police and sex workers, drugs are seldom found in the premises of sex workers.

The police arrest them on Fridays and release them without being charged on Mondays and according to sex workers the police do this so that they can lose money on these days that are busy days in this industry. When they are arrested they are even denied the right to call their families, friends or make arrangements for some people to take care of their children. The other strategy that they say is used by the police is to pick them up on Fridays drop them at unknown places far from the city. They indicated this as the most risky venture because they could be killed in these isolated area on their way to the city.

On the question on how do they want to be treated when caught in this business they stated that they want the police to treat them with the same respect that they treat the people who are arrested for any crime. They are well aware that the police are failing to have them successfully prosecuted because when they are taken to court most of the time they tend to be released with warning or R250 fine. They are of the view that this frustrates the police and this frustration made the police to adopt the strategy of arresting and releasing them just before the lapse of 48 hours. They know and understand that most of the actions that the police take against them are unlawful but they are not reporting this because their trade is illegal.

Although there are various reasons that sex workers are stating to be what propelled them to be involved in this trade, they all boils down to obtaining money for livelihood. What reveals that they are not proud of what they are doing is the
fact they their families do not know of the type of work that they are doing, they stated that they only inform their families that they are working in Pretoria but they do not disclose the real type of work that they are doing.

5.3 RECOMMENDATIONS

The literature and the empirical findings above indicated that there are no easy solutions of dealing with sex work in South Africa and many other countries. It is also clear that the police alone will not be able to deal with these challenges which are primarily rooted in the quest to find basic livelihood. South Africa should rather decriminalise and regulate sex work. This could address the concerns of the people who are offended by sex work in public places as it could be confined to certain secluded places.

This could also lead to the control of this industry in terms of health compliance to minimise the spread of sexual diseases and protect the safety and security of sex workers primarily from the abuse by the police that is indicated as rampant currently. This is based on the fact that the resources of the South African Police Service as it is the case in many other countries will never be able to deal with this trade due to the high demands of dealing with crime that threatens the safety and security of all the inhabitants and people who are visiting South Africa.

Decriminalising and regulating sex work will benefit both the police and sex workers because sex workers who are abused by the police will be able to report these abuses of erratic police behaviour that dent the image of the South African Police Service. This will also remove the burden of policing sex work because no matter how ineffective is the policing of this industry the police do at times attempt to minimise sex work in the country.
5.4 CONCLUSION

From the literature and the empirical research it is evident that the policing of sex work is the challenge all over the world. In this chapter the researcher provide the major findings of the study. This study is based on data collected from respondents during the semi-structured in-depth interviews which were conducted with them. The study found that workers in the sex industry are vulnerable to many risks – particularly the street sex workers. This group of sex workers is most likely to encounter both police and potentially unsavoury clients due to working in an unmonitored, unstructured, and exposed environment. Street based sex workers are the most vulnerable to repeat victimisation; aggravated and brutal sexual assaults; kidnapping and unlawful imprisonment; multiple forms of interpersonal violence and other crimes such as robbery and non-payment. These incidents have been attributed to geographical isolation, misunderstanding about what payment entitles clients to.

Policing the sex industry creates special opportunities for police officers to engage in unethical conduct, such as taking payments in exchange for non-enforcement, or abuse their position of power. Risks are further enhanced because sex workers and their clients are in weak positions to complain about police misconduct.

This chapter concludes by making recommendations that could prevent Sunnyside police from contravening the very laws that they are responsible for upholding. These recommendations could first and foremost enhance the safety and security of sex workers and enable the police to deal with corrupt police officers who solicit sexual favour or money from sexual workers.
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APPENDIX 1: A SCHEDULE FOR INTERVIEWS

INTERVIEW SCHEDULE FOR MACKENZIE PRINCE MKANSI
STUDENT FOR THE MASTERS DEGREE – UNISA

<table>
<thead>
<tr>
<th>Thursday 2011-05-05</th>
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<tbody>
<tr>
<td>17:00 – 18:30</td>
<td>Sex workers – outdoor sector</td>
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<tr>
<td></td>
<td>Venue: Elloffskaya building</td>
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<td></td>
<td>Schoeman Street – Sunnyside</td>
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<td></td>
<td>Self administered questionnaires</td>
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<td>Interviews and observations</td>
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<tr>
<th>Friday 2011-05-06</th>
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<tbody>
<tr>
<td>17:00 - 1830</td>
<td>Indoor sector sex workers</td>
</tr>
<tr>
<td></td>
<td>Venue: Capital Inn Hotel</td>
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<td></td>
<td>Church Street – Sunnyside</td>
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<td>Self administered questionnaires</td>
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<td>Interviews and observations</td>
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<tr>
<th>Saturday 2011-05-07</th>
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<tbody>
<tr>
<td>17:00 - 18:30</td>
<td>Outdoor sex workers</td>
</tr>
<tr>
<td></td>
<td>Venue: Marlet building</td>
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<tr>
<td></td>
<td>Johann and Schoeman Streets</td>
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<td></td>
<td>Self administered questionnaires</td>
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<td>Interviews and observations</td>
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<tr>
<th>Friday 2011-05-13</th>
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<tbody>
<tr>
<td>17:00 – 18:30</td>
<td>Outdoor sex workers</td>
</tr>
<tr>
<td></td>
<td>Venue: Jaspit building</td>
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<tr>
<td></td>
<td>Schoeman street – Sunnyside</td>
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<tr>
<td></td>
<td>Interviews and observations</td>
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<tr>
<td>Time</td>
<td>Event Details</td>
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</tr>
<tr>
<td>Wednesday, 2011-05-25, 14:00 - 15:00</td>
<td>Police officials both uniform and detectives</td>
</tr>
<tr>
<td></td>
<td>Venue: Sunnyside SAPS</td>
</tr>
<tr>
<td></td>
<td>Interviews and observations</td>
</tr>
<tr>
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<td>Questionnaires</td>
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APPENDIX 2: INTERVIEW SCHEDULE FOR POLICE OFFICIALS

INTERVIEW QUESTIONNAIRE – POLICE OFFICIALS

Name: __________________________
Email: __________________________
Phone no: _________________________
Contact address: ____________________

Q1. What are the main challenges that you are encountering in the policing of sex workers in Sunnyside?

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Q2. What approach or methods that you are using to police sex work in Sunnyside?

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Q2.1 How effective is the adopted approach or methods?

Q3. Why is it difficult to secure conviction when sex workers are arrested?

Q4. Do you ever conduct observations on sex workers?

A  Yes
B  No

Q4.1 If the answer is yes, then how effective are these observations?

Q4.2 If the answer is no, why not?
Q5. Do you ever use entrapment on sex workers?

A. Yes
B. No

Q5.1 If the answer to question 5 is yes, then how effective is this entrapment.

Q5.2 If the answer is no, then why not

Q6. Is there any other thing that you would like to tell me on the policing of sex workers in Sunnyside?
APPENDIX 3: INTERVIEW SCHEDULE FOR SEX WORKERS

INTERVIEW QUESTIONNAIRE – SEX WORKERS

Name: ____________________________________________

Email: __________________________________________

Phone no: ________________________________________

Contact address: _________________________________

Q1. What form or type of ill-treatment do you experience when arrested by the police? 

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Q2. How do you think the police should treat you when arrested for sex work?

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Q3. Why did you decide to be a sex worker?

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Q4. Is there anything that you would like to tell me on how the police are dealing with sex workers?

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APPENDIX 4:  PERMISSION TO CONDUCT THE STUDY

RESEARCH: APPLICATION FOR AN EXTENSION TO CONDUCT RESEARCH ON POLICING SEXUAL CRIMES: GAUTENG.

1. Your letter dated 11/1/3/1 (2559) dated 2011-07-11 refers:

   1. Your request for extension is approved until 30 March 2012 for completion of the research.

Sincerely,

[Signature]

MAJOR GENERAL
DEPUTY PROVINCIAL COMMISSIONER: OPERATION OFFICER: GAUTENG
NP MASIE
APPENDIX 5: CERTIFICATION OF EDITION

To whom it may concern

This is to certify that I, IC Holtzhausen de Beer edited the dissertation “The policing of sex workers in Sunnyside” by Mackenzie Prince Mkansi, submitted in fulfilment of the requirements for the degree of Magister Technologiae, in the subject Policing. The onus is, however, on the author to make the changes suggested and to attend to the queries.

September 2012