

# Briefing:

## Tackling Trafficking under a Decriminalisation Model

The 2000 UN Protocol to Prevent, Suppress and Punish Trafficking in Persons requires states to prevent human trafficking, and encourages them to identify and provide assistance to victims of this harm (1). These principles have since been contained in an array of international and national measures, including the EU Anti-Trafficking Directive, the OSCE Declaration on Trafficking in Human Beings, the Council of Europe Convention on Action Against Trafficking in Human Beings and many country-level strategies (2).

This briefing explores the ways in which decriminalisation of commercial sex work can open new avenues for prevention of human trafficking, identification of victims and their support thereafter, in line with best practice on tackling trafficking. Those who advocate for the decriminalisation of commercial sex work do so on the basis that such a model will support sex workers to have better rights, protections and conditions, whilst harms such as rape, assault, trafficking and child sexual abuse remain criminalised in their sector, as in other legal labour sectors. However, to date there has been limited attention paid to the potential for a decriminalisation model to provide new and valuable tools for prevention of human trafficking into and within the commercial sex sector.

### What does decriminalisation of sex work mean?

There are three potential legislative and regulatory models for the commercial sexual services sector:

1. **Decriminalisation** - this means the removal of laws that criminalise commercial sex work, including laws pertaining to buying/selling such services, working together for safety and soliciting.
2. **Legalisation / regulationism** - this means introducing new laws/regulations specific to the sector that require workers to meet set requirements and only work under certain conditions
3. **Criminalisation** - this criminalises part or all of the sex work transaction. Criminalisation of the customers is known as the 'Nordic Model'.

Under all three models, other crimes such as human trafficking, rape, assault, child sexual abuse etc., remain criminalised.

### UNDER DECRIMINALISATION: PREVENTION

Prevention can take place at multiple points on the journey into trafficking victimisation. Sex worker-led organisations are already demonstrating valuable contributions to prevention. Whilst they are doing this in non-decriminalised settings, the scope for them to do more and to expand their services and therefore their preventative impact would be enhanced under decriminalisation.

### Providing support to address vulnerabilities

Tackling vulnerabilities before exploiters take advantage of them can be an effective intervention. Sex worker-led groups are currently undertaking such projects. For example, Sex Workers Alliance Ireland (SWAI) helped a migrant sex worker with no money or medical card to access free healthcare for both chronic and acute health conditions, and during COVID, supported migrant sex workers to access social welfare payments by creating a confidential referral route with the Department of Employment Affairs and Social Protection so that sex workers could apply for payments regardless of immigration status and without their sex worker identity being logged. In another case, SWAI helped a Chinese worker who had no English language knowledge to navigate the welfare system and referred her to a relevant organisation to help with her immigration issues.\*

\*Interventions marked with a \* were funded as part of the ICRSE Rights not Rescue programme  
<https://www.sexworkeurope.org/sites/default/files/userfiles/files/Exploitation%20paper%281%29.pdf>

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In the UK, SWARM provided advice on how to access Universal Credit and X:talk ran English classes for sex workers. All these examples tackled vulnerabilities, whether in individual cases or through educational classes, potentially preventing trafficking or 'modern slavery' occurring.

### ***Enhancing knowledge to protect against coercive techniques***

In the UK, Brexit exacerbated migrant workers' vulnerability to exploitation. This is because the threat of immigration irregularity as a result of the exit from the EU was used to worsen labour conditions (3). This aligns with the well-documented use by exploiters of migration threats to coerce victims: traffickers and exploitative employers threaten to denounce victims to the authorities, enhancing their control and making their victims afraid to seek help (4). Migrant sex workers in the English Collective of Prostitutes (ECP) spearheaded an initiative after the Brexit referendum to produce rights-based information which was distributed among informal networks and organisations. From this grew a self-help initiative where migrant women organised together to share their expertise. ECP also involved migrant sex workers throughout the planning and implementation of the resource 'Know Your Rights Against Deportation'. These activities improved migrant women's knowledge of their rights, strengthening their resilience against potential exploitation. Several other sex worker-led organisations, including UTSOPI (Belgium), SWAI and Lefo (Austria) have provided spaces for organising and knowledge-sharing.\*

### ***Intervening at departure and entry***

Whilst trafficking does not necessarily involve crossing international borders and can take place within a country, evidently much trafficking does involve international travel. Borders are therefore a crucial point for interventions. Under criminalising and regulationist models, those travelling with the intention of selling sexual services are deterred from disclosing this to border officials due to the potential for their entry to be refused. However, pre-departure (e.g. at the issuance of visas) and entry-point interventions are established anti-trafficking methods. This includes running information classes in advance of departure and disseminating leaflets on arrival, ensuring migrating workers have knowledge of their rights and options once in the country of choice. Decriminalisation models would open up this entirely untapped toolbox for creating resilience and safety in migrating sex workers. In addition, for those not choosing to migrate for consensual purposes, it would ensure they have the necessary information to seek support.

### ***Building confidence, rights knowledge and access to justice***

In mainstream labour sectors, unionisation is a long proven and recognised method of ensuring workers' rights are protected. Unionisation does this by providing a safe space for collective action to demand improved conditions and enabling peer to peer education about rights and conditions. Although unionisation of sex workers is largely impossible under models that do not provide decriminalisation, some projects have been creative in unionising those sex workers who do not sell direct sexual contact services, such as strippers. This is the case for X:Talk in the UK.\* In Austria, Red Edition, the migrant sex workers' collective, together with LEFÖ, a social services provider and sex worker rights advocacy organisation, developed an ongoing collaboration with the Austrian youth trade union ÖGJ to push forward lobbying activities for sex workers' labour rights.\*

## **UNDER DECRIMINALISATION: IDENTIFICATION**

Sex workers and organisations led by them are vital for identifying victims as they are the eyes and ears of their sector. In the same way that mainstream labour sectors, such as agriculture and construction, encourage their workforce to understand how exploitation operates and to report concerns, sex workers should be engaged with the topic and supported to improve identification rates.

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## **Enabling disclosure**

Disclosure of being a victim of trafficking and other such offences is a sensitive matter. Support from a peer educator was used by several sex worker-led projects to support people to share experiences of harm. This was the case for a Hands On workshop programme run by the X:Talk Project (UK)\*, workshops and discussions run by CDCP onlus (Italy)\*, the regular Listen to You meetings provided by UTSOPI (Belgium)\*, monthly peer-led online drop-ins held by SWAI (Ireland)\* and the work of SexWorkCall (Romania)\* which created a safe and trusted drop-in space in which workers felt confident asking for assistance.

Decriminalisation would enable the expansion of such projects, and it would also enable direct disclosures from victims to authorities which are currently discouraged under other models. For example, in New Zealand which has a decriminalisation model in place, Catherine Healy of the New Zealand Prostitutes' Collective has been clear that, since decriminalisation was introduced, "there's an expectation that things can be put right and that means that you tend to get people who blow the whistle. You know 'who can I tell?' is the first response instead of what we used to hear [before decriminalisation], like well, 'there's nothing we can do about it.'" (5)

Sex worker-led organisations are able to respond to the cultural needs of specific sex working communities and to build trust with them to facilitate disclosures of trafficking. UTSOPI (Belgium) introduced a bi-community approach in order to build trust by creating an outreach team composed of one sex worker and one member from the West African community.\* The team regularly attends the venues where Western African sex workers work and provides a safe space for migrant sex workers. UTSOPI is currently assisting around 50 migrant sex workers in the Northern District of Brussels. This trust has led to UTSOPI serving as a mediator between police and sex workers which is significant achievement in improving migrant sex workers' access to justice and support.

## **Outreach as a route to identification**

Sex worker-led organisations provide outreach projects that can reach the most vulnerable workers with respectful peer-to-peer approaches. Sisonke, a sex worker-led organisation in Durban, South Africa, provides a useful case study. In one incident, peer educators from Sisonke spotted a group of girls selling sex on the street who seemed shaky and scared to speak with them. The Sisonke peers were able to give the girls condoms in their role as peers, and in doing so, managed to tell them that they would write their number on their pamphlet and then leave it in the dustbin for the girls to access without fear of the people controlling them seeing them take it directly from the Sisonke workers. One girl retrieved the pamphlet and called the Sisonke helpline. This led to a police investigation and three convictions for trafficking for victimising 38 girls (6). In Belgium, UTSOPI was able to carry out outreach with migrant street sex workers in an area with a recognised prevalence of trafficking, reaching 137 women.\*

## **Removing the fear of criminalisation**

Decriminalisation can improve identification by removing fears of reporting, both by non-trafficked sex workers and by trafficking victims. Firstly, under decriminalisation, sex workers are safe to report concerns about co-workers, e.g. on the same street area or in their brothel, to the authorities if they suspect trafficking. Under criminalising models, this is not possible because they risk being criminalised themselves or their clients being criminalised which takes away their income.

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Secondly, although some people are trafficked into commercial sex work without prior intention of being in the industry, a portion of those trafficked knew they were going to sell sexual services but were deceived about the conditions under which they would work. This meets the internationally agreed definition of human trafficking in the UN Protocol 2000 as knowledge of the intended sector has no bearing on whether the crime has taken place, and the means of “threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability” are all recognised as constituting trafficking. However, without decriminalisation, people who are trafficked within the industry but knew they were entering a country in order to sell sexual services are prevented from seeking help and being identified due to fear of being criminalised for being in the industry in the first place. This creates confusion on the part of law enforcement, for example demonstrated by this Australian law enforcement officer:

*“Are they a victim or [not?] ... that’s where the water’s really muddy ... because they’re sort of in the middle of both worlds ... Most of them only really become a victim when things go wrong for them. You know there are very few people who ... go to Australia ... not knowing that they’re going to be involved in the sex trade [and] ... it’s only when that money is not forth- coming that they either decide to make a complaint or ... report it to the authorities.” (7)*

### **Building effective partnerships**

Partnerships are a recognised method by which to improve identification of victims (8). UTSOPI (Belgium) has created new strong partnerships with organisations fighting against human trafficking.\* This includes working with the police anti-trafficking units in order to communicate the realities on the ground and problems being identified. This helps the police to have a more accurate picture of the sector, which may contribute to more efficient use of resources as they are less likely to be misdirected. The information is communicated in ways that keep sex workers safe and their identities confidential. Relatedly, the police also provide the UTSOPI with information - for example, because of this partnership, UTSOPI was able to warn all sex workers in Belgium of increased police checks on internet advertising during one particular period. This enabled sex workers to be careful with their announcements and avoid criminalisation, and for police to focus on potential actual trafficking victims, instead of consensual sex workers.

### **UNDER DECRIMINALISATION: ASSISTANCE AND SUPPORT**

Sex worker-led organisations also have a role to play post-identification in assisting and supporting victims. They are best placed to understand the experiences of those who have experienced coercion within the sector and to provide restorative and empowering support spaces. In recognition of this, UN AIDS has stated that sex workers are not only “best placed to establish safe working norms” in their sector, but also, “well placed to provide assistance, support and appropriate referral” for those trafficked or otherwise exploited within the sector (9).

Comitato per i Diritti Civili delle Prostitute onlus (CDCP onlus), formed in 1983, is a sex worker-led organisation in Italy that runs a shelter for migrant women who have been identified as victims of trafficking and various forms of exploitation, including coerced sex work.

Other sex worker-led organisations also report that they support women out of trafficking situations. For example, SWAI helped an undocumented Malaysian sex worker navigate herself out of a trafficking situation by providing emergency cash and directing her towards an ally organisation in her area.\*

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## CONCLUSION

It is evident that sex workers and their organisations have a vital and untapped role to play in tackling human trafficking. Whilst laudable activities are underway despite hostile legal regimes, decriminalisation of the sector would enable far more strategic and expanded approaches to tackling trafficking in the commercial sex sector. As the examples showcased in this briefing show, supporting decriminalisation is an important and logical step towards enhanced prevention, identification and assistance of people experiencing trafficking in the sex sector.

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