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SUBMISSION

PUBLIC CONSULTATION ON REFORM ON HUMAN TRAFFICKING AND PROSTITUTION

SUBMISSION TO THE PARLIAMENTARY SECRETARIAT FOR REFORMS, CITIZENSHIP AND SIMPLIFICATION OF ADMINISTRATIVE PROCESSES IN MALTA
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The contributor to the public consultation, the International Committee on the Rights of Sex Workers in Europe (ICRSE) is a sex worker-led network representing more than 100 organisations led by or working with sex workers in 35 countries in Europe and Central Asia. ICRSE opposes the criminalisation of sex work and calls for the removal of all punitive laws and regulations regarding and related to sex work as a necessary step to ensure that governments uphold the human rights of sex workers. As long as sex work is criminalised – directly or indirectly through laws and practices targeting sex workers, clients, or third parties – sex workers will be at increased risk of violence (including police violence), arrests, blackmail, deportations and other human rights violations.

The submission has been endorsed by the following international human rights organisations:

- European region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe)
- Platform for International Cooperation on Undocumented Migrants (PICUM)
- La Strada International (LSI)

For more information, consult the ICRSE website: www.sexworkeurope.org

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SEX WORK AND ITS DECRIMINALISATION

Sex work is work, a form of livelihood and economic activity. Sex workers consensually exchange their own sexual labour or sexual performance for compensation. Workers in the sex industry constitute a heterogeneous group of individuals of all genders who decide to engage in sex work for many different reasons. Some might decide to work in the sex industry because it allows for more flexible working hours and gives them greater control over their working conditions than other jobs. Others choose sex work because they find it financially rewarding. For other sex workers again, it may be the most acceptable of very few options available to them which enables them to provide a living for themselves and their families.

Sex work is a typical informal economy job in that it does not benefit from legal protection through the state. It mainly employs women, often (undocumented) migrants; entry requirements are low in terms of capital and professional qualifications; and skills needed for the job are often acquired outside of formal education. Many sex workers enter the sex industry as they are excluded from the formal economy or state benefits to achieve a decent standard of living. Similarly to other sectors of the informal economy, most sex work is precarious employment, characterised by insecurity and exploitative conditions, and can include illegalised, seasonal and temporary employment as well as home work, temp-work, sub-contracting and self-employment.

In recent years, numerous organisations working in the fields of human rights, health, LGBTQ rights, women’s rights or migrants’ rights, as well as trade unionists and representatives of the workers’ movement have expressed their support for sex work decriminalisation and spoken out against the adverse effects of the criminalisation of sex workers, their clients and third parties. These include several UN agencies such as the World Health Organisation, UNAIDS and UNDP, Médecins du Monde (Doctors of the World), Amnesty International, Human Rights Watch, Transgender Europe (TGEU), the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILCA-Europe and ILCA-World), the Platform for International Cooperation on Undocumented Migrants (PICUM) and the European AIDS Treatment Group.

Decriminalisation, the removal of all laws that criminalise any aspect of sex work, is recognised as the best legal framework to advance sex workers’ labour rights by the global sex worker movement. Decriminalisation does not mean the removal of laws that target human trafficking, coercion and violence against sex workers. When sex work is governed through the same laws as other professions, workers are able to work as independent contractors or as employees, negotiate employment contracts, organise collectively and challenge exploitative labour practices. Furthermore, in the decriminalisation framework third parties must obey occupational health and safety regulations.
IMPACT OF DECRIMINALISATION

In New Zealand, where sex work was decriminalised in 2003, the following can be observed according to the government-commissioned evaluation undertaken by the Christchurch University (1):

- **0** no increase in the number of sex workers or persons trafficked in the sex industry
- **90%** of surveyed sex workers thought that the new model had improved their ability to enforce their labour rights and their access to health and safety
- **57%** of surveyed sex workers thought police attitudes had improved since decriminalisation
- **64%** of surveyed sex workers thought it had become simpler to refuse clients, this rate was 37% before decriminalisation

According to research (2), the criminalisation of clients, the so-called Swedish model, might pose an obstacle to reporting suspected crimes because clients risk of being charged themselves when reporting a suspicion of coercion. In Northern Ireland, which introduced the Swedish model, new research, commissioned by the Department of Justice, shows that sex trafficking has increased since the law changed in 2015 (3). Sex worker inclusive demand-side measures however can complement decriminalisation and increase the negotiating power of sex workers, such as in New Zealand, where laws explicitly prohibit pressuring a sex worker to provide services. Illicit behaviour of intermediaries can be sanctioned. The state also seeks to influence clients and intermediaries by ‘codes of conduct’ for operators within the sector.
Since its introduction, the Swedish model has been considered in legislative debates across Europe and internationally, and promoted by a diverse group of stakeholders, such as politicians, abolitionist feminists and religious groups as best practice to support gender equality and fight trafficking. However, no systemic evaluation by the Swedish government has ever been carried out of the law and its impact. This lack of evidence did not prevent other governments from importing the model, despite differences in income disparities, gender equality, levels of police corruption and transparency, social benefits amongst other factors between Sweden and the countries in question.

The Swedish model was introduced in Norway in 2009. In contrast with Sweden, there is significant evidence available from Norway on the detrimental effects of the law. According to the government commissioned evaluation from 2014 (4), sex workers are in a weaker bargaining position, face more safety concerns and rely more on aggressive and abusive clients and third parties than before the law was introduced. These findings echo the results of an Oslo survey from 2012 (5) that show that sex workers faced increased violence after the law was introduced, especially street-based and Nigerian sex workers.

In 2016, Amnesty International published its research on sex work in Norway (6), which provides a detailed account of the human rights abuses under the Swedish model. According to the Amnesty International research, based on 54 interviews with sex workers, representatives of state agencies and NGOs, sex workers in the country face high levels of policing leading to eviction, loss of livelihood and/or deportation, worsening attitudes towards sex workers by the public and increasing exposure to exploitation.

### NORWAY 2009:

<table>
<thead>
<tr>
<th>VIOLENCE AGAINST FEMALE SEX WORKERS</th>
<th>2007/2008</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Experience of violence - overall sample</td>
<td>52%</td>
<td>59%</td>
</tr>
<tr>
<td>Experience of violence - indoors sex workers</td>
<td>33%</td>
<td>43%</td>
</tr>
<tr>
<td>Experience of violence - street-based sex workers</td>
<td>58%</td>
<td>76%</td>
</tr>
<tr>
<td>Experience of violence among Nigerian sex workers</td>
<td>33%</td>
<td>83%</td>
</tr>
<tr>
<td>Experiences of violence among Thai sex workers</td>
<td>21%</td>
<td>40%</td>
</tr>
</tbody>
</table>
In **France**, sex workers report similar tendencies after the Swedish law was introduced in 2016. The results of a large-scale research led by Medicins du Monde (7) with the participation of 583 sex workers show that 63% of sex workers have experienced deterioration of their living conditions, more isolation and greater stress, 42% of sex workers are more exposed to violence and the majority of the community (78%) have experienced a loss of income due to decrease in number of clients and fall of rates. Even though the overruling of previous criminalisation of sex workers is claimed to be a success of the legislative change, the research states municipal by-laws restricting sex work at the local level and regular identity checks aimed at those selling sex result in sex workers still being more often criminalised than their clients. Sex workers often report intimidation by the police, including being pressured to report clients. If they’re undocumented, they are frequently threatened with deportation if they do not comply. A key element on the law was its ‘social component’: funding and services for those wishing to exit prostitution. In 3 years since the implementation of the law, however, only 86 people received support to exit sex work (8).

Increasing vulnerability to violence has also been reported in **Ireland**, where the Swedish model was introduced in 2017. UglyMugs, an app allowing for the safe reporting of violent incidents, the number of reports of abuse and crime has greatly increased. Comparing the two years before and the two years after the new law came in, crime has increased by 90% and violent crime specifically has increased by 92%, based on the statistics of the app (9).

Furthermore, the conceptual framing of ‘prostitution as violence against women’ is inherently problematic as:

- it denies the agency of women and men, cis and trans, selling sexual services,
- it renders invisible actual acts of violence and exploitation occurring in the sex industry,
- it uses criminal laws to address a social issue, therefore diverting police resources that should be used towards addressing actual crimes (including violence, exploitation and trafficking in the sex industry).
ICRSE is pleased to see that the government of Malta aims “to protect vulnerable people from being exploited as sex workers and at the same time further enhance the fight against trafficking of persons”. We believe that this human rights based approach of reducing the risks of exploitation of those who sell sex by decriminalising sex work and at the same time increasing the protection and support of trafficked persons in line with international obligations provides holistic solutions to sex workers and those who have been trafficked alike. Therefore, ICRSE applauds the government of Malta for proposed legal reform that is aimed to be built upon the expert and research-based advice and public consultation process.

Furthermore, this proposal that addresses sex work and anti-trafficking legislation and measures as inseparable issues also allows for counteracting the negative impacts of anti-trafficking policies and practices on the human and labour rights of sex workers (10). Punitive anti-trafficking measures that prioritise the enforcement of criminal law against perpetrators of trafficking-related crimes over the wellbeing of victims, such as raids, detention, forced rehabilitation, in many contexts play an important role in exacerbating the vulnerabilities of sex workers and trafficked persons. Major anti-trafficking (umbrella) organisations such as the Global Alliance Against Trafficking in Women (GAATW) and La Strada International (LSI) both joined the sex workers’ rights movement in calling for a labour-rights and victim-centred approach to anti-trafficking.

We note that another crucial legal and policy area to include in the assessment of present challenges and the development of anti-trafficking interventions and a sex work regulatory framework is migration policy, including the protection of undocumented migrants. In Malta - similarly to other countries of the Mediterranean region - sex workers are overwhelmingly of migrant background. Implementation of repressive immigration policies, manifesting in strict border controls and conditions of entry, expanding capacities for detention and deportation and criminal penalties used for migration offences, such as irregular entry and stay, all represent alarming trends in the treatment of irregular migrants, asylum seekers and refugees in all parts of Europe.

Consequences are severe for all of these groups. In many countries within the European Union, asylum seekers do not have access to a thorough and fair examination of their claims, are housed in abysmal reception conditions and are not allowed to access legal employment or engage in any economic activity for several months. Undocumented migrants often refrain from seeking help in various institutions, including social services or healthcare, and from reporting crimes committed against them or others to the police, due to risks that public authorities and service providers might report them to immigration law enforcement agencies. The use of criminal law to target employers and landlords restricts irregular migrants’ access to housing and employment, and leaves them vulnerable to exploitation. Furthermore, the criminalisation of migration brings
about abusive detection practices, such as racial and ethnic profiling of people of colour by the police, in turn leading to distrust towards law enforcement officers by ethnic minority and migrant communities.

As a result of exclusion, many refugees, asylum seekers and undocumented migrants might feel they have little choice but to sell sex due to repressive migration laws, lack of other employment opportunities and poverty. Their vulnerabilities to exploitation and violence thus are multi-dimensional, which policy-making needs to carefully consider.

We recommend the following to ensure that (undocumented) migrant sex workers can access justice and services:

- Establish a ‘firewall’ (11) that would legally, technically and organisationally separate immigration enforcement and service provision in the areas of health care, social services, education and access to justice, both in the criminal and civil, including labour, justice systems. This ‘firewall’ would ensure that people could access services, approach authorities to file complaints and seek assistance and justice without any risk of their personal data being passed on or accessed for immigration enforcement purposes.

- Promote the facilitation of residence permits for undocumented workers, including sex workers, and encourage ongoing regularisations.

- Reform laws and policies that limit access to health and other services on the basis of residence or employment status.
REFORMS TO LAW AND POLICIES RELATED TO ANTI-TRAFFICKING

ICRSE acknowledges the comprehensive analysis of the anti-trafficking policy landscape presented in the consultation document. We believe holistic anti-trafficking policies need to build on the ‘4Ps paradigm’ of Prevention, Protection, Prosecution and Partnerships and we are reassured that the governmental analysis pays attention to all of these fields with sufficient foreseen measures. Given our extensive experience in the anti-trafficking field and the expertise of key global anti-trafficking organisations, we recommend the following to make the proposed measures sex worker inclusive and mitigate potential harm:

**PREVENTION**

- Consult sex workers in the creation of awareness-raising campaigns in order to reduce the risk of causing harm to them (such as profiling of presumed victims, stereotyping female victims as inherently helpless, perpetuating the notion that migration is linked to criminality etc.), stimulate innovative and inclusive approaches, reduce stigma and recognise the complex realities of sex workers.
- Integrate the complex causes that contribute to trafficking in human beings into awareness-raising campaigns and narratives by for instance, pointing out global inequalities. Centre the rights of trafficked and exploited persons or people vulnerable to trafficking and exploitation in communications about exploitation and trafficking.
- Anti-trafficking initiatives must avoid simplifications that present a narrow view of trafficking in human beings and create ‘heroes, victims and villains’ stories, and this approach should be made explicit in the National Strategy Against Human Trafficking.

**PROTECTION**

- Authorities should consult sex workers on how to systematically mitigate negative effects of law enforcement operations, reduce harm and develop interventions that respect the fundamental rights of sex workers and trafficked persons. If sex workers were to be considered allies in anti-trafficking efforts, enjoyed police protection and saw their safety prioritised, sex workers themselves could detect sites and situations where exploitation, trafficking or commercial sexual exploitation of children occurs. This aim should be explicit in the National Strategy Against Human Trafficking.
- Anti-trafficking policies should acknowledge that many people who have not been formally identified as trafficked persons or have decided not to cooperate with law enforcement authorities and are thus not entitled to follow-up services and residence permits may still be in need of services beyond those that are provided within the anti-trafficking framework.
• Provide reasonable funding for sex workers’ rights organisations and collectives that respect and understand the complex realities of (migrant) sex workers, so that they could provide a social safety net for those who fall through the anti-trafficking support system. Funding of services provided by sex workers’ rights collectives and support NGOs and their inclusion into the National Referral Mechanism (NRM) could significantly contribute to prevent abuse, exploitation and trafficking of those left behind.

• Aside from ‘voluntary’ returns, alternative avenues should be offered to regularise residency of undocumented migrants who are presumed victims of trafficking, in order to enable them to make informed decisions to actually return voluntarily.

• People who consider returning voluntarily should be provided sufficient and adequate return counselling that will assess all individual risks and opportunities.

• Returns should be accompanied by meaningful monitoring and adequate reintegration support that takes into account individuals’ circumstances.

• Compensation plays a crucial role in the prevention of re-trafficking and as a means of reintegration of trafficked persons. Recognise sex work as labour in the sex work legal framework in order to provide all victims of crime equal rights to claim compensation for unpaid wages in the sex industry.

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PROSECUTION

• It must be acknowledged that it is not in the interest of all victims to cooperate with the authorities and that such cooperation can have serious consequences for their safety and wellbeing. A human rights-based approach should be the guiding principle for all anti-trafficking policies, not only in theory, but in practice. Such an approach would ensure that victims of trafficking are offered residence permits on the basis of their individual needs and risk assessments. The provision of residence permits must not be tied to victims’ willingness to cooperate with investigations or the usefulness of the information they can provide.

• Policies that prioritise sex workers safety can lead to improved relationship between sex workers and police officers, where sex workers enjoy police protection, will also consequently benefit police as it will help them, through mutual trust, to enforce the law, detect crime and identify victims of trafficking. Sex workers, as insiders, are uniquely placed to provide intelligence that can lead to the accurate detection of cases of human trafficking.

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PARTNERSHIP

• Include sex workers rights activists both from the local and international context in the development and implementation of anti-trafficking policies. Invest funds in community-building in line with the recommendations of the World Health Organization (12).
ICRSE reaffirms the position of the consultation document stating that criminalisation of sex work causes severe social and health-related harms for sex workers. According to new research led by the London School of Hygiene & Tropical Medicine (LSHTM), sex workers who had been exposed to repressive policing (such as recent arrest, prison, displacement from a workplace, extortion or violence by officers) had a three times higher chance of experiencing sexual or physical violence by anyone, for example, a client, a partner, or someone posing as a client. They were also twice as likely to have HIV and/or other sexually transmitted infections (STIs), compared with sex workers who had avoided repressive policing practices (13).

We also note the increasing push for the introduction of the so called “Swedish or Nordic model” on the international level. We urge the government of Malta to consider the overwhelming scientific evidence supporting decriminalisation of sex work and a call for the removal of all criminal and administrative prohibitions and penalties against sex workers, their clients and non-exploitative third parties, supported by anti-trafficking groups, academics, health and human rights organisations and trade unions worldwide.

In line with the position of international bodies and organisations, we recommend:

- Decriminalise all parties in the sex industry. Decriminalisation of selling sexual services should be a top priority by removing the “loitering for the purpose of prostitution” category from the White Slave Traffic (Suppression) Ordinance (Cap. 63) and expunging all related criminal records.
- Facilitate a comprehensive research project that assesses the living and working conditions and human rights of sex workers in Malta and consults sex workers on the desired legal framework around sex work, with attention to regulations set forth for third parties and sex work venues, with the active involvement of local sex workers, human rights organisations and international experts.
- Provide stable and sufficient funding to (evidence and rights-based) service providing agencies and NGOs that work with people who sell sex, prioritising and centring sex worker leadership in their operations.
- Include sex workers into designing, implementing and evaluating social inclusion and rehabilitation programmes for victims of trafficking and for sex workers who want to exit the sex industry.
- Implement the guidelines of comprehensive HIV/STI programmes with sex workers, issued by UN agencies and the World Health Organization, establishing community-led services, condom and lubricant programming, anti-violence measures and capacity-building for the sex worker community (14).
REFERENCES


8. https://www.fondationscelles.org/fr/actualites/283-rapport-d-evaluation/locale-de-la-mise-en-oeuvre-de-la-loi-2016-la-loi-fonctionne-la-et-ou-elle-est-integralement-appliquee?fbclid=IwAR3qfWAbc05RY5h3nPrkOXTs77YuILyLn86IUIzOJuISOi-4bQ1Z80lsjM


11. See more on the Firewall concept: https://picum.org/firewall-3/

