

*REFORM ON
HUMAN TRAFFICKING
AND PROSTITUTION*

October 2019



aditus foundation is an independent, voluntary and non-profit NGO established with a view to monitor, act and report on access to fundamental human rights. We believe in the universality, interdependence and indivisibility of all human rights.

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Integra foundation is a non-profit organisation based in Malta, operating independently of any political, economic or religious affiliation at a global level. The Foundation's vision is that of supporting inclusive, non-discriminating and non-disabling societies, where all individuals have the right to human dignity, freedom, respect and social justice.

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I N T R O D U C T I O N & B A C K G R O U N D

aditus foundation and Integra Foundation are submitting their input into the *Public Consultation on the Reform on Human Trafficking and Prostitution* launched by the Parliamentary Secretariat for Reforms, Citizenship and Simplification of Administrative Processes in September 2019.

Our submissions are being presented in response to the above call for feedback, with the understanding that our input is intentionally formulated in generic language as we are approaching this as a basis for discussion and not as an end in itself. We believe that a direct and sustainable dialogue should be in place to hear sex workers' voices and respond to their difficulties with greater appropriateness. A set of diverse and practical activities, such as workshops or national seminars, should be carried out to enable a broader consultation that would create a channel of communication between the various stakeholders whilst also raising awareness about the issues with the general public.

In addition, we have referenced a number of research reports, positions and guidelines drawn up by international bodies organisations that contain in-depth and specific recommendations and considerations. We recommend that these documents be read as integral components of our submissions.

Our joint submission contains observations relating only to the reform of laws and policies relating to prostitution.

M A I N O B S E R V A T I O N S

aditus foundation and Integra encourage efforts to reform the current legislation regulating sex work in order to combat the discrimination and marginalisation of sex workers, and to improve their access to health care, housing, social security and protection under the law.

This policy position acknowledges the high rates of human rights abuses experienced by people who engage in sex work.

Our position is also grounded in respect for the agency of sex workers. An approach that respects the agency and autonomy of sex workers also requires a clear conceptual distinction between trafficking and sex work, and also trafficking and migration. The aim of any reform should be geared towards a worker centred approach, that seeks to ensure that individuals who engage in sex work do so on a voluntary basis, on their own terms, and exit when they want to; They should feel and be safe, and free from exploitation.

The criminalisation of sex work (including the criminalisation of clients), embalmed in stigma and shame, forces sex workers to operate at the margins of society in dangerous conditions, and increases exposure to violence, discrimination and abuse. Multifaceted and intersecting forms of discrimination and structural inequalities (evident in the high representation of women, and people who face discrimination on the basis of their gender identity, sexual orientation, race/ethnicity, and migrant status) have an impact on the autonomy of sex workers and their quality of life.

Legislative and policy reform should seek to make the distinction between the sex work sector, and exploitative labour practices within it - with a commitment to eradicating the latter. Our position is that any legislative and policy reform should seek to ensure that no person is forced to engage in sex work as a means of survival. As such, the focus must be on the key structural barriers (including inter alia legal, administrative, economic, educational, social and cultural) to the realization of sex workers' human rights, whilst reminding the state of its obligations in this regard.

Sex work and Trafficking

It is important to note that to correlate human trafficking with sex work and vice versa creates numerous problems: it creates confusion amongst practitioners, media and the public and it can lead to practices and laws that are harmful to trafficked persons, migrants and sex workers alike¹. Any automatic assumptions that sex workers are victims of trafficking is detrimental for efforts to reduce trafficking and detrimental to the protection of the rights and safety for sex workers. A clear distinction must be made between exploitative situations and trafficking, and voluntary and consensual sex-work. This distinction should be reflected in the different legal frameworks that regulate the eradication of trafficking of persons on one hand and the regulation of consensual sex work.

The state needs to guarantee and enforce legal protections that will ensure that no person is compelled to sell sex against their will. Furthermore, the State must ensure that such legal protections do not conflate sex work with human trafficking and do not violate sex workers' human rights.

Sex worker rights

It is felt that criminalisation of sex work constitutes a breach of personal autonomy, privacy and liberty of the sex worker when it is a consensual, private and voluntary act. The culture of criminalisation creates an environment for harassment, extortion, law enforcement abuse and physical abuse². Research has shown that criminalisation makes sex workers vulnerable to violence and unsafe conditions³.

From a human rights based approach, sex work cannot be seen to be a form of sexual violence, but an expression of a person's free will and bodily autonomy, as protected by Article 12 of the Universal Declaration of Human Rights which holds that "*No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.*" Furthermore, the idea that not all instances of sex work are inherently exploitative or constitute a violation of

¹ For example raids can have the result of sex workers being driven away from their place of work and their social network, plus they may also impede trafficked persons from reach out for legal protection and support.

² The criminalisation approach has also been highly criticised by sex workers, anti-trafficking organisations and health organisations, some include the World Health Organisation, UNAIDS, the World AIDS Campaign, Médecins du monde – Doctors of the World, the Committee on the Elimination of Discrimination against Women (CEDAW), Global Network of Sex Work Projects (NSWP), International Committee for the Rights of Sex Workers in Europe (ICRSE), Amnesty International, Human Rights Watch, La Strada International, Global Alliance Against Traffic in Women, Transgender Europe (TGEU), ILGA Europe and the European AIDS Treatment Group.

³ **Human Rights Watch**, Why Sex Work Should Be Decriminalized, 2019 <https://www.hrw.org/news/2019/08/07/why-sex-work-should-be-decriminalized>

women's human rights seems to be reflected in Article 6 of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) which obliges States Parties to "take all appropriate measures, including legislation, to suppress all forms of traffic in women and **exploitation of prostitution of women.**"

In conclusion, **we support full decriminalisation of adult consensual sex work**, and a refocus from catch-all offences that criminalise most or all aspects of sex work and towards laws that protect sex worker's health and safety and that oppose all acts of exploitation and trafficking in commercial sex. Furthermore, in order to protect the rights of sex workers it is also necessary to repeal those which make the buying of sex from consenting adults or the organization of sex work (such as prohibitions on renting premises for sex work) a criminal offence.

We emphasise that the exercise of sex work as a consensual and voluntary exchange between adults should be reserved to adults and that children under the age of 18 should be excluded. It should be noted that when we refer to children and/or minors we are referring to children under the age of 18 as defined in Article 1 of the Convention on the Rights of the Child⁴ and not children under the age of consent as defined by Maltese law.

Any full decriminalisation needs to be supported by a number of other legal and policy initiatives such as:

- Access to legal protections pertaining to health (including sexual and reproductive health), employment and discrimination;
- Full and equal protection under the law as well as effective remedies, including for offences involving rape and sexual violence, abuse of authority, assault, extortion and all other crimes;
- Measures to ensure the effective investigation, prosecution and punishment of violence against sex workers without discrimination, such as standards of good practice which reflect policing that is consistent with human rights;
- Training and monitoring measures for law enforcement officials and health and social service providers to help protect the human rights of sex workers.
- The setting up of an effective and appropriate anti-trafficking framework, which includes robust legislation, streamlined referral mechanisms, vigorous protection instruments and prompt investigation and prosecution.

Nevertheless, we reiterate that a clear distinction must be made between forced commercial sex and consensual sex work. The fact that coercion and abuse can still occur should be recognised and all the legal protections should be in place in order to ensure the safety of the sex worker, effective access to justice and strong support systems to enable persons to exit from exploitative or abusive situations.

⁴ UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

Documents that should be considered in the formulation of the Reform on Human Trafficking and Prostitution

Amnesty International, Amnesty International Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers, POL 30/4062/2016, 2016

<https://www.amnesty.org/en/documents/pol30/4062/2016/en/>

Amnesty International, Explanatory Note on Amnesty International's Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers, POL 30/4063/2016, 2016

<https://www.amnesty.org/en/documents/pol30/4063/2016/en/>

Amnesty International, Sex Workers At Risk: A Research Summary on Human Rights Abuses against Sex Workers, POL 40/4061/2016, 2016

<https://www.amnesty.org/en/documents/pol40/4061/2016/en/>

Anti-Trafficking Review, Issue 12 Special Issue- Sex Work, Global Alliance Against Traffic in Women, April 2019

http://gaatw.org/ATR/AntiTraffickingReview_issue12.pdf

CEDAW, General Recommendation No. 33 on women's access to justice, UN Doc. CEDAW/C/GC/33, 2015, paras. 9, 51(I).

https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_33_7767_E.pdf

GAATW (Global Alliance Against Traffic in Women), Moving Beyond 'Supply and Demand' Catchphrases: Assessing the uses and limitations of demand-based approaches in anti-trafficking, 2011

https://www.gaatw.org/publications/MovingBeyond_SupplyandDemand_GAATW2011.pdf

Human Rights Watch, Why Sex Work Should Be Decriminalized, 2019

<https://www.hrw.org/news/2019/08/07/why-sex-work-should-be-decriminalized>

ILGA Europe, Empowering LGBTI sex workers towards the full respect of their human rights, June 2018

https://www.ilga-europe.org/sites/default/files/ilga-europe_policy_-_lgbti_sex_workers_spring_2018_final_0.pdf

International Union of Sex Workers, Sex Work and Human Rights, 2014

<https://www.iusw.org/wp-content/uploads/2014/04/SexWorkAndHumanRightsIUSWMar14.pdf>

PICUM (Platform for International Cooperation on Undocumented Migrants), Safeguarding the human rights and dignity of undocumented migrant sex workers, 2019 <https://picum.org/wp-content/uploads/2019/09/Safeguarding-the-human-rights-and-dignity-of-undocumented-migrant-sex-workers.pdf>

Transgender Europe (TGEU), Sex work policy, October 2016

https://tgeu.org/wp-content/uploads/2016/11/TGEU_SexWorkPolicy_en.pdf