Reform

on

Human Trafficking and Prostitution

Joint Submission to Government Public Consultation Process

October 2019

Trafficking and prostitution are forms of coercive violence.

Violence cannot be legalised or regulated, only outlawed.

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Faculty for Social Wellbeing
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Energized by the Spirit we risk together for mission...

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St Jeanne Antide Foundation

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EXECUTIVE SUMMARY

This Submission was drafted and endorsed by a multi-disciplinary collective of Malta's leading experts on prostitution and trafficking. In partnership with the Government, we are confident that the holistic policy and legislative reform we propose, will adequately address the insidious impacts of human trafficking and prostitution in Malta.

Our proposal is predicated on values that prioritise the promotion of human rights and gender equality, and embrace freedom and wellbeing. Our values also eschew the commercialisation of human beings for exploitation and profit.

Translating these values into policy and legislative reform, we strongly urge the Government to adopt the following proposals:

1. **Decriminalisation of those who are prostituted** - Persons caught up in prostitution should not be criminalised or victimised further for the abuse they endure.

2. **Buying sex becomes a criminal offence** - Buying human beings for sex is exploitative and harmful - and so it cannot be normalised or legitimised.

3. **Exit services** - Offer high quality services to support those in prostitution and help them build a new life outside it.

Giving effect to these changes requires a zero tolerance approach by the police, along with specialist investigatory capacity deployed in conjunction with trained psychologists.

Victims of both trafficking and prostitution must also be appropriately supported with a comprehensive suite of legal, health, financial, educational and social services enabling them to recover from their abuse.

We must do better to protect vulnerable people and prosecute offenders.

Trafficking and prostitution are forms of coercive violence.

Violence cannot be legalised or regulated, only outlawed.

INTRODUCTION

TRAFFICKING AND PROSTITUTION ARE HARMFUL

Prostitution is often trivialised and seen as harmless fun. It is assumed to be a purely commercial transaction between two consenting adults and that the power dynamic between the buyer and the seller are equal. The reality however, is that many prostituted people are trafficked, and are controlled by pimps and gangs.[1] The implications of trafficking and prostitution are significant; both on the agency and wellbeing of victims, and on society at large.

VULNERABILITIES

Prostitution is a deeply gendered and global phenomena, involving more than 40 million persons – primarily women and girls – being bought, primarily by men.

The overwhelming majority of prostitutes are younger than 18 when they enter prostitution. Some girls are groomed from a very early age, as young as 12.[2] Most children come from dysfunctional families and many have been sexually abused as children. Persons with drug addictions,[3] mental health problems, and the homeless, are regularly exploited by traffickers and pimps for sexual purpose.[4] Vulnerable people and children are more easily tricked, lured and forced into prostitution.[5] Unaccompanied migrant children are being increasingly trafficked for sexual exploitation.

The reality of prostitution is not 42 million 'happy hookers' making a free choice and earning good money. It is millions of psychologically unwell, physically trapped and injured women – nearly all of whom want to leave, but cannot find a way out.

IMPACT

Trafficking and prostitution exist because they are profitable and legislative regimes allow it. The global industry is worth US$3 billion, annually. This lucrative crime, which is driven by gangs, is growing globally. 99% of forced labour in the commercial sex industry comprises girls and women.[6]

Where prostitution is decriminalised, demand soars and trafficking increases.[7] Normalisation, leads to perverse outcomes including purchasers continuing to buy sex despite the prostituted persons being minors or have been trafficked.[8] And, stag parties being held in brothels, or renting out women for 18th birthday parties.[9]

Survivors often require mental health care for post-traumatic stress disorder, psychotic episodes and suicide attempts. The mortality rate of prostituted persons is much higher than that of the general population, and their physical health is also affected negatively. Syphilis, Hepatitis B+ C, Gonorrhoea, and HPV leading to cancer are amongst the major illnesses suffered.

[1] Foundation Scelles, cited by European Union, 2014.
[2] European Union, 2014.
[3] Hope Ditmore, 2013.
[4] Schulze, Novo Canto, Mason, & Skalin, 2014.
[5] O'Hara, 2018.
[6] ILO, 2017.
[7] Seo-Young eta al, 2013.
[8] European Union, 2014.
[9] Space International, 2018.

LEGALISATION / DECRIMINALISATION

Some suggest that if regulated, the sex trade will go 'underground' and the conditions for those involved in prostitution will improve.

Evidence from other countries that have decriminalised prostitution shows however, that when the sex trade becomes regulated and mainstream, the underground trade burgeons in parallel. This is because decriminalisation increases demand. When demand cannot be met locally – which has occurred in several countries including New Zealand[10], the Netherlands, Germany and Spain – traffickers 'procure' women and girls from other locations.

Regulation of the sex industry has also failed to provide its promised improvements neither to public health nor conditions for women. Evidence proves, conditions for women are far worse.[11]

In terms of public health, and on the premise of avoiding the spread of disease, compulsory medical testing of prostituted people is often required by law legalising / decriminalising prostitution. What this fails to realise is that diseases like HIV and STDs are overwhelmingly transmitted by men to women during intercourse. Yet, there are no requirements for male sex buyers to submit to disease control testing. Also, the incubation period of some diseases will give false negative results that present further health risks.

These are the impacts of legislation where the buying of sex has not been outlawed as exploitative or harmful.

Germany is considered the 'Bordello of Europe' with an estimated 400,000 prostituted women. Following legalisation in 2002, only 44 prostitutes registered with the social welfare agencies, the remainder exist without assistance. The law did not therefore make it safer for women, or reduce harm. Prosecutors have also noted that legalisation has made their work in prosecuting trafficking in human beings and pimping more difficult.

Since decriminalisation in 1995, **Spain** has become the third largest centre for prostitution in the world; behind Thailand and Puerto Rico. 90% of prostituted persons are migrants – the link between prostitution and trafficking is undeniable. The government has spent millions tackling the trafficking gangs. The Socialist government is now drafting a law to criminalise the buying of sex.

Decriminalisation in **New Zealand** legitimised pimps, escort agents and sex trade advertisers. 'Gangs' who prostitute women are legal as long as they pay tax.

Decriminalisation also increased demand and pitted private and street workers in competition. This lowered prices while increasing demand for more dangerous work, unwanted sexual practices and unprotected sex (despite it being illegal).

Prostituted women are forced into "human zoos of locked doors, long hours, painful shoes and near nudity on free display for any man with a wallet". The pimps "legally push boundaries and steal income while overfilling shifts and overworking girls, churning through them because there's an endless supply…They do this with full legitimacy and call themselves entrepreneurs" (Space International, 2018).

[10] Space International, 2018.
[11] Space International, 2018.

The Way Forward

Increasingly, governments are changing the way they consider prostitution. They see it as a form of slavery incompatible with human dignity and fundamental human rights. Sweden, Ireland, France, Norway, Iceland, Northern Ireland, Canada, and Israel have adopted a zero tolerance approach towards the buying of sex because they consider it exploitative and harmful. These countries have made the buying of sex as a criminal offence.

Sweden, which adopted this model 20 years ago, have seen substantial decreases in the number of women trafficked, experiencing sexual and physical violence, and since the introduction of this law no person in prostitution was murdered.

National Strategy Against Human Trafficking

Raising awareness and strengthening the prevention of human trafficking

We agree that raising awareness about human trafficking is critical to it being recognised as a crime against vulnerable people. While educating the public to understand, spot and report suspicious behaviour is a positive step, it cannot mitigate the Government's responsibility for doing so.

Emphasis should be placed on raising awareness across:

1. The sector of agencies that must cooperate to identify persons who have been trafficked, prosecute traffickers, and support survivors of trafficking;
2. Industries/businesses who might unwittingly employ persons who are trafficked; and
3. Males, and society in general who continue to be tainted by the archaic culture of female objectification, commodification, and discrimination.
4. The definition of trafficking in that it does NOT require cross-border movement. A person may be considered trafficked even if s/he never leaves their home/country.

Streamlining referral mechanisms

There are several documented cases in Malta where an investigating officer has asked a trafficked/prostituted person about whether they are trafficked, exploited and abused. Trafficked people are silent for many reasons, yet this is taken to mean they are complicit and should therefore be punished. They are rarely given the opportunity and support to speak about their experiences, and many are coerced into silence as a result of intimidation, terror, dissociation, and shame. Their silence, like the silence of battered women, should not be misinterpreted, ever, as their consent to prostitution or trafficking.

Streamlined and effective referral mechanism requires:

1. Cooperation and collaboration between agencies whose mandate includes supporting victims.
2. A policy shift away from prosecuting and deporting victims to appropriately skilled people conducting the identification process in an appropriate and victim-centred manner.

Updating protection mechanisms

We support a holistic approach to supporting human trafficking survivors to fulfil the state's obligation under the Palermo Protocol to the United Nations Convention on Transnational Organised Crime 2000. The Government must "ensure the practical and effective protection of the rights of victims or potential victims of trafficking." This must include "adequate measures regulating businesses often used as a cover for human trafficking."

In order to adequately update protection mechanisms:

1. A full complement of physical, psychological, financial, employment, compensatory and voluntary repatriation services must be available and accessible to any alleged/suspected victim of human trafficking.
2. These services must be fully and sustainably funded by the Government but can be run by civil society organisations.

STRENGTHENING THE INVESTIGATION ARM

Human trafficking-related investigations are currently hampered by a lack of understanding among investigating/prosecuting authorities about how human trafficking manifests itself. Victims are treated as criminals and the perpetrators are given extremely lenient sentences.

To strengthen the investigation arms:

1. The onus must shift to perpetrator accountability and appropriate victim protection.
2. There must be full cooperation among:
    a. those competent to identify victims of human trafficking; and
    b. relevant regional and international bodies to gather evidence from outside of Malta's jurisdictional boundaries.

UPDATING LAWS ON HUMAN TRAFFICKING

The trafficking in persons law is adequate and transposed into domestic law. However, policy, law, and regulation related to labour/employment conditions must be significantly strengthened to eliminate the channels available to traffickers to exploit people.

The current law-making provision about prostitution fails to acknowledge the harmful impact it has on those involved, as well as on society. It must receive wholesale reform and the police and judiciary must be trained in its provisions to ensure the fair and appropriate treatment of victims who are involved in any associated proceedings.

Any updated human trafficking law must include:

1. Adequate protection of victims from their traffickers and others of coercive influencers;
2. Provision of appropriately trained police and other experts to support people who may have been trafficked;
3. Stepwise penalties of increasing administrative fines for first and second offences, to custodial sentences and therapeutic programmes for repeat offenders; voluntary repatriation of victims - subject to appropriate checks ensuring the safety and wellbeing of the victim if they return to their home country; and
4. Residence permits for victims who do not wish, or for whom it is deemed unsafe to return home.

5. Adequate housing and support to allow the person to survive after they are freed from the human traffickers
6. Attention to the safety and wellbeing of the victim with particular consideration for vulnerabilities including age and disability; and
7. Assurance of procedural rights to access justice for victims, including rights within the criminal proceedings, access to civil claims and state-funded compensation.

FACILITATING ACCESS TO COMPENSATION AND LEGAL SUPPORT FOR VICTIMS

Free legal support and advice is pivotal as persons who have been trafficked are characterised by their lack of access to funds. Survivors should also be compensated for harm they have suffered and will suffer in the future. The funds to pay for legal aid and compensation can in part, come from fines meted out to perpetrators found guilty of human trafficking offences. Victims can presently apply for compensation through the Government's Criminal Injuries Compensation scheme. It is available to provide monetary compensation to people who have suffered violent intentional crimes. The legal reform must remedy current barriers to accessibility and the inappropriately low damages regime.

To provide effective access to legal support and compensation:

1. Adequate pro bono legal support/advice must be provided, funded by the Government in partnership with law firms, university, and civil society organisations;
2. The Criminal Injuries compensation scheme must be promoted with society, particularly people who have been trafficked, in a language that is accessible to them;
3. The costs of accessing legal support and court proceedings to sue traffickers must be dramatically reduced or waived in order to allow access by people who have been trafficked who often have no financial means; and
4. Damages must be raised from the current cap of €10,000 in damages, a figure that fails to recognise the long-term and irreparable harm of trafficking.

'GENTLEMEN'S CLUBS', MASSAGE PARLOURS AND TEMPORARY WORK AGENCIES

It is often assumed that prostitution does not occur in strip (gentlemen's) clubs and massage parlours. Yet the lines between prostitution and other sexually exploitive activities such as stripping and massaging have become increasingly blurred. The amount of physical contact between customers and women who strip has rapidly escalated in the last 20 years, as have documented instances of the verbal, physical, and sexual abuse experienced by women. The more private the 'performance', the more it costs, and the more likely that violent sexual harassment or rape will occur.

This culture is perpetuated by societal acceptance and legitimisation of the strip clubs, which is promoted by the mainstream of pornography. Young men are turning to pornography to experience sex that is in turn affecting negatively their perception of sexual relationships. This is in turn increasing violent and aggressive sexual behaviour against women and girls.

There are nine strip clubs in Paceville alone - a prominent location in close proximity to family entertainment venues (e.g. cinema, bowling alley, eateries) as well as ordinary bars and clubs. The

acceptance of such exploitative strip clubs concentrated in a place frequented by young and impressionable teenagers/young adults sends a diametrically opposed message to society about the Government's commitment to protecting vulnerable people and promoting gender equality.

Highly trained special police force capable of following this industry are essential to combat and outlaw the abusive selling of sex generally held in these and around these venues.

With respect to massage parlours, we propose:

1. A clear distinction between professional massage parlours and those offering sexual activities. The latter are to be considered as criminal; and hence should be closed.
2. Professional massage parlours are to be licensed by a competent authority whose duty would be to certify that the relevant qualifications are available and conduct routine checks on the premises for criminal activity.

With respect to strip clubs, in order to prevent these establishments in continuing to sell sex and trafficking women, we recommend that they be closed.

In lieu thereof, we urge the government to significantly strengthen the regulatory regime applicable to them by ensuring that:

1. Employees/dancers should not solicit entry, including through the distribution of cards and leaflets outside the clubs;
2. An additional tax should be imposed on the selling of all drinks consumed in these locations, with the intent of contributing to a fund to support exit programmes for prostituted persons and victims of trafficking;
3. Any advertising should follow strict limits;
4. Clubs should not be allowed to advertise in respected publications such as Air Malta magazines;
5. The legal entry age must be over 21, and identity documents must be checked at the door;
6. The clubs should close like other entertainment establishments within a stipulated time;
7. There should be no private rooms inside any such venue;
8. At no time can a woman be touched;
9. A specially trained unit of police and other professionals must also be given private access to the employees to check that they are safe and that no abuses are occurring;
10. Clubs must display signage highlighting the illegality of purchasing sex. There must also be signage for dancers including helpline and referral numbers to report abuses and/or seek support;
11. Police must regularly and visibly monitor adherence to these rules; and
12. Personnel working and running these clubs should receive mandatory training regarding trafficking and be held responsible for failure to report.

With respect to temporary work agencies we propose:

1. Work contracts are to be registered by the competent authority, certified to conform with national and EU legislation, and are monitored, particularly in strip clubs, massage parlours and other industries where victims of trafficking may be used - including factories, shops, offices and people's homes.
2. Workers must always be:
    a. in possession of their identity documents;
    b. free to leave their place of employment;
    c. not confined to specific accommodation; and
    d. perform functions and be paid in accordance with their contracts.

MANAGING A MULTI-AGENCY APPROACH

A multi-agency approach should:

1. Include the referral mechanism, investigation, prosecution, survivor support, immigration, and all non/government entities responsible for attendant issues.
2. Be coordinated by an Anti-Slavery Commissioner (or similar) with sufficient delegated powers to activate any of the aforementioned channels.

COLLABORATING WITH AND SHARING OF BEST PRACTICE WITH INTERNATIONAL PARTNERS

We support this objective given the increasing number of countries tackling human trafficking, and slavery more broadly with human rights based and victim-centric legislation, policy and support services. Malta will continue to benefit from close and ongoing collaboration with appropriate countries.

Malta's law should create specific expectations of bilateral, multilateral and regional collaboration to ensure ongoing best practice and to access intelligence that has to do with related crimes being committed in Malta.

REFORM TO LAW AND POLICIES RELATED TO PROSTITUTION

WHAT IS YOUR OPINION ABOUT THE KEY LEGAL AND POLICY AREAS TO BE ADDRESSED IN THIS REFORM?

Underpinning values that legalise prostitution are built around the outdated belief that it is inevitable and the push to open up the sex industry is advanced primarily by pimps and traffickers who stand to gain from such a move. This cannot be the principle upon which Malta's legal and policy reform is founded. Instead, it must be recognised that prostitution is a form of violence that largely affects women and girls. Violence can never be regulated or legalised - it can only be outlawed. Consent on the part of the seller is so often compromised by poverty, abuse, mental health, addiction problems, despair and slavery - it cannot be taken as consent given with full personal agency. The johns and pimps have significantly more power and must be prevented from violating the prostituted person. Prostitution has a devastating personal and financial impact on those who are prostituted that the Government is obliged to redress.

SAFEGUARDING THE HUMAN RIGHTS OF PERSONS INVOLVED IN PROSTITUTION

We endorse the removal of significant structural (legal, policy, cultural) and discriminatory barriers that prevent prostituted people from access to justice, protecting their rights, healthcare, safety and wellbeing.

Prostituted people must be assured equal and full access to all government and civil society services to safeguard their human rights.

DECRIMINALISATION OF SELLING AND CRIMINALISATION OF BUYING SEX

Chapter 9 of the Criminal Code contains specific provisions about trafficking in persons. We support the decriminalisation of prostituted persons who sell sex, and the criminalisation of the buyers who use prostituted persons, being codified in law. Prostituted people must be supported not prosecuted, but buyers must be penalised for abusing and violating vulnerable persons.

We propose that:

1. **Decriminalisation of those who are prostituted** - Persons caught up in prostitution should not be criminalised or victimised further for the abuse they endure.
2. **Buying sex becomes a criminal offence** - Buying human beings for sex is exploitative and harmful - and so it cannot be normalised or legitimised.

ENTRY INTO PROSTITUTION AND EXIT FROM PROSTITUTION

People mainly enter prostitution because they are coerced by financial, psychological or physical pressure. An increasingly portion of those people are migrants. The Government must support programmes that will enable prostituted people to exit prostitution, if they so wish. This support must extend special provisions for migrants who are currently further disadvantaged in terms of their access to employment, health, and housing services.

In the case of transgender people and/or others who may find it more difficult to secure alternative employment, while Malta has the most detailed LGBTIQ laws in Europe, the Government must

ensure its provisions prevent any discrimination against any people identifying as LGBTIQ to ensure all people have equal access to merit-based employment.

Appropriately resourced and holistic programmes must be available and accessible, enabling prostituted people to safely, effectively and sustainably exit the industry without discrimination, irrespective of their identity or status.

PAST CRIMINAL RECORDS

We agree that all past criminal records related to prostitution should be expunged when dealing with victims of trafficking and prostitution.

PUBLIC HEALTH AND ACCESS TO HEALTH SERVICES

The physical and psychological health care needs of prostituted people is well known.

Access to, and support for physical and psychological services must be both voluntary and increased in order for Malta's health professionals to provide appropriate care and assistance to survivors without discrimination, irrespective of their identity or status.

PROTECTION OF MINORS

Chapter 9 of the Criminal Code contains specific reference to trafficking, at Art 248A et seq. Punishment for related offences range between 6-12 years. The sentences are to increase in cases involving minors. Moreover, punishment for "aiding and abetting" where someone "engages or makes use of the service ... in the knowledge that the person providing the service has been trafficked," carries a custodial sentence range of 18 months to 5 years.

We strongly urge the Government to increase the penalties available for traffickers, especially those who aid and abet the trafficking of minors.

OUTREACH AND CIVIC PARTICIPATION

We consider the inclusion of prostituted people in the development of this reform as critically important. However, as prostituted people are often characterised by abject coercion and financial destitution, their input must be garnered in concert with professionals specially trained in understanding the impact of this coercion on their views. It is possible that initial responses to questions about criminalising the act of buying sex, for example, will be to disagree with it, as they will lose income. Pimps/controllers would also strongly coerce them to promote only the opening up of the sex industry.

ARE THERE ANY OTHER ASPECTS WHICH YOU THINK ARE CRUCIAL FOR THE GOVERNMENT TO WORK ON?

In addition to codifying the decriminalisation of persons who are prostituted, we strongly urge the Government to criminalise the buying of sex and related activities. Pimping, soliciting and living off the earnings of prostitution/brothels is already illegal and contained in Chapter 9 of the Criminal Code (Art 248A et seq). This should be extended to include the criminalisation of sex-buying in the legislation, as well as being included as an offence in a reform of the Criminal Code. This criminalisation must include strong deterrent penalties for those found guilty of associated offences.

With the purchase of sex becoming illegal, the modus operandi of the industry will change to find ways around it. The Regulation of business permits must therefore be considered to maximise prevention of illegal activities. In addition, as has occurred in other countries, we will likely see flats/other accommodation being used as brothels and more advertisements in news and online media for the selling of sex. The Rent Regulation will thus also need to be reviewed to prevent sham rental agreements that enable prostitution and illegal brothels.

Existing legislation supporting victims of human trafficking and prostitution, in search of social security, housing, health, education, employment, and other services, must be reviewed with urgency in order to ensure its provisions enable the level of holistic care required to safeguard survivors to become Independent without resorting to prostitution.

We propose that the penalties related to prostitution take the following step-wise approach:

1. First time offenders – administrative fine and obligation to attend an awareness/therapeutic course to prevent further criminality;
2. Second offence – significantly increased administrative fine;
3. Third offence – classified as a criminal offence with increased fine range and mandatory custodial sentence; and
4. That the penalty regime is reviewed in 3 and 5 years to ensure they are having an adequate deterrent effect on those buying sex.

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ENDORSEMENTS

This Submission and its attendant proposals are endorsed by leading figures and activists:

- President Emeritus Marie Louise Coleiro Preca – Former President of Malta
- Dr Anna Borg – Academic and Women's Rights Activist
- Ms Helen Burrows - International Human Rights Lawyer and Justice Reform Practitioner
- Dr Angele Deguara – Academic and Social Activist
- Dr Lara Dimitrijevic – Lawyer and Women`s Rights Activist
- Ms Francesca Fenech Conti - Women's rights activist and founder of the Women for Women Community
- Ms Marietherese Gatt – Researcher and Women's rights activist
- Ms Romina Gatt Lopez – Researcher - Dar Hosea
- Dr Anna Vella – Management - Dar Hosea

This Submission and its attendant proposals are endorsed by the following local organisations:

- Association for Equality (A4E)
- Attard Ladies Cultural Club (ALCC)
- Azzjoni Kattolika Maltija (AKM)
- Caritas
- Dar Hosea
- Dar Merhba Bik
- Department of Gender Studies (UOM)
- Department of Social Policy and Social Work (UOM)
- emPOWer Platform:
    - Business and Professional Women (Valletta) Malta (BPW)
    - Foundation for Women Entrepreneurs Malta (FWE)
    - Malta Association of Women in Business (MAWB)
    - Malta Foundation for the Wellbeing of Society (MFWS):
        - National Centre for Family Research
        - National Observatory for Living with Dignity
        - National Institute for Childhood
    - Malta Girl Guides (MGG)
    - Moviment Nisa' Partit Nazzjonalista (MNPN)
    - National Council of Women (NCW)
    - Soroptimists International Malta (SI)
    - Young Women's Christian Association (YWCA)
- Faculty of Theology (UOM)
- Ghaqda Studenti tat-Teologija
- Good Shepherd Sisters
- Justice and Peace Commission
- Local Councils' Association
- Malta Confederation of Women's Organisations (MCWO)
- Malta Medical Students Association (MMSA)
- Malta Midwives Association (MMA)
- Men Against Violence (MAV)

- Saint Jeanne Antide Foundation (SJAF)
- Solidarity Overseas Service (SOS) Malta
- University Chaplaincy
- Victim Support Malta (VSM)
- Women's Rights Foundation

This proposal is also endorsed by the following international organisations:

- Coalition Abolition Prostitution (CAP) International
- Coalition Against Trafficking in Women (CATW)
- European Network of Migrant Women (ENOMW)
- European Women's Lobby (EWL)
- Survivors of Prostitution Abuse Calling for Enlightenment (SPACE) International