



Sex Workers Organising for Change

Self-representation, community mobilisation,
and working conditions



Global Alliance Against Traffic in Women

Sex Workers Organising for Change:

Self-representation, community mobilisation, and working conditions

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Cover Photo: Sex workers protest in front of the Western Cape High Court during the trial of Zwelethu Mthethwa case for the murder of sex worker Nokuphila Kumalo. Date: 16 March 2017.

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FOREWORD

About GAATW and our Approach to Human Trafficking

The Global Alliance Against Traffic in Women (GAATW) is an alliance of over 80 non-government organisations from all regions of the world that promote and defend the human rights of all migrants and their families against the threat of an increasingly globalised labour market. Alliance members include service providers, advocacy organisations, and self-organised groups who share a deep concern for the women, children, and men whose human rights have been violated by the criminal practice of human trafficking.

The Alliance was formed in 1994 to counter the dominant discourse on human trafficking, led primarily by the global North. We have challenged the perception of women from the global South as inherently vulnerable and perpetual victims. During the negotiations of the UN Trafficking Protocol, GAATW, together with other organisations focusing on women's rights, human rights, human trafficking, and sex workers' rights, lobbied for a delinking of trafficking from sex work and for consulting organised sex workers, as well as other migrant women organisations, in the development of anti-trafficking legislation. Although Alliance members work with women, men, and children, the main target group of the GAATW International Secretariat has always been adult women.

For the past decade, GAATW has employed a two-pronged approach to human trafficking: critiquing the anti-trafficking framework from within, and looking at trafficking as an issue of migration for labour. The former stems from a (perhaps naïve) hope that the anti-trafficking framework and anti-trafficking responses can be improved, if we and our allies keep presenting solid evidence and proposing solutions. The latter stems from the many conversations we've had with trafficked and migrant women over the years and from analysing their stories of courage and struggles in an unequal and unjust world. These stories have taught us that there is no easy, one-size-fits-all solution to trafficking and exploitation, and that trafficking is not an aberration but is embedded in the global economy, where large numbers of people, especially women, are left behind by their governments to fend for themselves, and exploited by corporations and individuals for private profit. Although we can't change the global economy, we have tried to explore the creative

ways in which women resist oppressive structures and how civil society is supporting them in their resistance. GAATW considers all women as workers, whether their work is valued and remunerated fairly or not. Adopting a worker-centred approach to trafficking, looking at different sectors in which women work, and the strategies that can support them to fulfil their ambitions, is our way forward.

The present report is an example of this approach. It documents, through research in seven countries, the negative impact that the anti-trafficking framework has had on the lives of sex workers and on the working conditions in the industry. It also looks at the sex industry as one sector where women, often migrant and of low socio-economic status, work and the strategies that they, and the organisations that support them, employ to improve working conditions and address violence, exploitation, and trafficking in the industry. We hope that it will ultimately lead to a new approach to addressing human trafficking and other rights violations in the sex industry—one that is based on meaningful engagement with those in the industry themselves and responds to their needs, as they articulate them.



Sex workers and allies at 'Feminist Conference: Alliances and Sex Work', organised by Genera. 17 December 2015, Barcelona, Spain. Photo credit: MónAra

INTRODUCTION

Maria Stacey and Borislav Gerasimov

Background

The relationship between human trafficking and sex work remains one of the most contentious issues in the anti-trafficking field. There are those who view all sex work as exploitative, and therefore a root cause of trafficking, and those who view it as a livelihood strategy that, like other informal work, is sometimes performed under exploitative conditions. The former propose criminalisation and the ultimate eradication of the industry, while the latter propose decriminalisation and increased attention to labour rights and working conditions. The debate goes on and on and no resolution seems possible.

The United Nations Trafficking in Persons Protocol, adopted in 2000, makes it clear that trafficking and sex work are distinct phenomena,¹ and that trafficking and forced labour occur in a range of economic sectors. However, in practice, trafficking into sex work has received disproportionate attention from media, NGOs, and policymakers. Despite this attention, the ways in which anti-trafficking policy has been enforced has not always been helpful: many anti-trafficking interventions, encouraged by prostitution prohibitionists based in the West,² focus primarily on raiding sex industry sites and forcibly removing women from them. The harmful effects and human rights violations that occur during and after raids have been well documented by both academics and activists in all regions of the world.³ Actual trafficked persons in these sites are rarely identified and offered any assistance following these operations, while sex workers

¹ Human trafficking is defined as a crime that involves the transportation or harbouring of a person, through deception, coercion, force, fraud, etc., for the purpose of exploitation, see UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, (Trafficking Protocol), Art. 3.

² J Chuang, 'Exploitation Creep and the Unmaking of Human Trafficking Law', *American Journal of International Law*, vol. 108, issue 4, 2014, pp. 609–649.

³ See, for example: Empower Foundation, *Hit and Run: The impact of anti-trafficking policy and practice on sex worker's human rights in Thailand*, Chiang Mai, 2012, available at http://www.empowerfoundation.org/sexy_file/Hit%20and%20Run%20RATSW%20Eng%20online.pdf; A

are dislocated to other sites, where they may be at higher risk of exploitation and violence, and migrants are detained and deported. Some of the aftercare, or so-called rehabilitation programmes offered to those rescued, have received similar criticisms, because they function as sites of extra-judicial detention, with women being held against their will and sometimes risking their lives while trying to escape.⁴

In 2007 GAATW documented the negative impacts of these and other anti-trafficking measures in *Collateral Damage*.⁵ That research showed that anti-trafficking policy and practice has enabled a great deal of human rights violations against migrants and sex workers, without actually protecting them from exploitation. Ten years later, we engaged in the present research to see if these harmful impacts have remained, but also to document a different approach to trafficking in the sex industry—one that treats sex workers not as victims but as partners in efforts to combat exploitative practices in the industry.

Women Organising

Organising has long been a strategy for individual and collective empowerment and social change among women's and human rights movements globally. Women around the world have used self-organising in conjunction with feminist principles in their efforts to link personal experiences to political issues. For marginalised groups in particular, self-organising is a strategy which enables them to speak for themselves, influence discourse, resources and policies, and advocate for improved living and working conditions. In this context, self-organising provides a space for women marginalised by existing movements such as mainstream women's and labour movements, to craft interventions that will make their working lives more equitable.

Ahmed and M Seshu, 'We have the right not to be "rescued"...: When Anti-Trafficking Programmes Undermine the Health and Well-Being of Sex Workers', *Anti-Trafficking Review*, issue 1, 2012; M Ditmore and J Thukral, 'Accountability and the Use of Raids to Fight Trafficking', *Anti-Trafficking Review*, issue 1, 2012; A Hill, 'How to Stage a Raid: Police, media and the master narrative of trafficking', *Anti-Trafficking Review*, issue 7, 2016; K Walters, 'Beyond "Raid and Rescue": Time to acknowledge the damage being done', *openDemocracy*, 25 November 2017, <https://www.opendemocracy.net/beyondslavery/kimberly-walters/beyond-raid-and-rescue-time-to-acknowledge-damage-being-done>.

⁴ G Soderlund, 'Running from the Rescuers: New U.S. Crusades against Sex Trafficking and the Rhetoric of Abolition', *NWSA Journal*, vol. 17, no. 3, 2005, pp. 64–87; K Walters, 'Rescued from Rights: The misogyny of anti-trafficking', *openDemocracy*, 25 November 2017, <https://www.opendemocracy.net/kimberly-walters/rescued-from-rights-misogyny-of-anti-trafficking>.

⁵ GAATW, *Collateral Damage: The impact of anti-trafficking measures on human rights around the world*, GAATW, Bangkok, 2007, available at http://www.gaatw.org/Collateral%20Damage_Final/singlefile_CollateralDamagefinal.pdf.

As a feminist alliance, GAATW has placed high value on supporting women's (self)-organising. This stems from the profound belief that women are the ultimate experts in their own lives and that the path to meaningful, inclusive, and sustainable social change is enabled by creating a space for women to voice their concerns, take collective action against injustice, and participate in political and social life. GAATW has several self-organised groups among its membership and in some cases has helped establish or formalise self-organised groups. Although self-organised groups represent a relatively small cluster within our membership, they have been some of the most active members in the Alliance and include organisations that are respected for their knowledge, innovation and commitment. They include trafficking survivors, migrant workers, domestic workers, and sex workers working in many areas of anti-trafficking work, such as prevention, identification, direct assistance, policy development, and re-integration.

In 2007, GAATW organised a convening of its self-organised members, in order to explore the benefits of self-organising. We found that self-organising provides a space in which: (1) lived experiences of oppression and social exclusion can be used as a valuable resource to assist other women in need; (2) meaningful social roles can be created for women and negative social identities can be challenged; (3) women can gain self-confidence; (4) women can access and create new analyses, new skills, and new ways of perceiving the world; (5) women can create supportive and strong communities; (6) women can assert their right to participate and to influence their environment; (7) living and working conditions can be improved; (9) a power base can be built; and (10) a sense of collective responsibility can be fostered.⁶ With this research we wanted to document how (self-)organising benefits sex workers specifically and if and how organised sex workers address rights violations that their peers experience, including situations that may fit the narrow definition of trafficking.

⁶ See the full report of the convening: GAATW, *Respect and Relevance: Supporting self-organising as a strategy for empowerment and social change*, Bangkok, 2007, available at, http://www.gaatw.org/publications/Respect_and_Relevance_RRReport_final07.pdf. For more about GAATW's work with self-organised groups, see also: GAATW, *Partners in Change: Stories of women's collectives*, Bangkok, 2002, <http://www.gaatw.org/resources/publications/905-partners-in-change-stories-of-women-s-collectives>.

Workers organising

Workers' associations and trade unions have been increasingly recognised as anti-trafficking stakeholders in the past decade.⁷ It is now common for activists and policy makers to consult workers from different sectors, or associations representing them, when discussing human trafficking in those sectors.⁸ Similarly, the role of organising to advance women's economic empowerment and to reduce the risks of exploitation and trafficking have been recognised at the global political level for women workers in different sectors of the formal and informal economy. However, sex workers are usually absent from such discussions. For example, several background papers and expert papers prepared for the 2017 session of the Commission on the Status of Women themed 'Women's economic empowerment in the changing world of work',⁹ focus on women's organising and trade union participation among domestic workers, waste pickers, garment workers, home-based workers, and street vendors. Sex workers did not receive such attention. The only positive outcome for them was that the Report of the Expert Group Meeting for CSW calls for the decriminalisation of sex work, and the recognition of sex work as work and of organisations of sex workers as trade unions.¹⁰

However, in the anti-trafficking discourse, prostitution prohibitionists have skilfully managed to present 'sex trafficking' as completely different from 'labour trafficking', requiring a completely different approach.¹¹ Although there have been sporadic calls

⁷ See, for example: ILO, *The Roles of Employers' Organizations, Businesses and Trade Unions in Combating Trafficking for Labour Exploitation*, background paper presented at the Vienna Forum to Fight Human Trafficking, 13–15 February 2008, Austria Center Vienna, available at <https://www.unodc.org/documents/human-trafficking/2008/BP019TheRolesofEmployersOrganizationsILO.pdf>; International Trade Union Confederation, *Towards a Global Trade Union Alliance against Forced Labour and Trafficking*, 15 January 2008, available at http://www.ituc-csi.org/IMG/pdf/No_03_-_Forced_Labour_and_Trafficking.pdf.

⁸ See, for example: T Williams, *Beyond Survival: Organizing to end human trafficking of domestic workers*, National Domestic Workers Alliance, 2015, available at <http://www.idwfed.org/en/resources/beyond-survival-organizing-to-end-human-trafficking-of-domestic-workers>; C Bonner, *Domestic Workers around the World: Organising for empowerment*, WIEGO, 2010, available at <http://www.wiego.org/sites/default/files/publications/files/Bonner-Organising-for-empowerment-2010.pdf>; M Brennan, *Out of Sight, Out of Mind: Human trafficking and exploitation of migrant fishing boat workers in Thailand*, Solidarity Center, 2009, available at https://www.solidaritycenter.org/wp-content/uploads/2015/01/thailand_Out_of_Sight_Eng.pdf.

⁹ Available at <http://www.unwomen.org/en/csw/csw61-2017/preparations/expert-group-meeting>.

¹⁰ See: *Report of the Expert Group Meeting on the CSW 61 Priority Theme: Women's Economic Empowerment in the Changing World of Work*, UN Women, Geneva, 2016.

¹¹ A W Peters, "'Things that Involve Sex are Just Different": US anti-trafficking law and policy on the books, in their minds, and in action', *Anthropological Quarterly*, vol. 86, no. 1, 2013, pp. 221–255.

for applying a labour rights framework to trafficking¹² and even to ‘sex trafficking’,¹³ well-renowned and respected labour rights organisations are either ambivalent or apprehensive about including sex workers and the sex sector in their advocacy efforts. This has deprived the sex worker rights movement of a crucial ally in its struggle for recognition of sex work as work.

Where support is voiced from the labour movement, it is more incidental than systematic and usually based on personal convictions rather than an organisation-wide policy. Because of strong moral judgments, sex workers and the organisations representing them are generally not viewed through a labour lens. Trade unionists and prostitution abolitionists have accused sex worker rights groups of being unrepresentative, or worse, of being the mouthpiece of brothel owners and ‘the pimp lobby’. Despite being exceptionally well positioned to detect and respond to cases of human trafficking within the industry, sex worker organisations are deliberately excluded from anti-trafficking responses, with three main negative impacts as a result: the diversion of funds away from rights-based approaches that can both reduce vulnerability of sex workers to human rights violations and strengthen their ability to address the issue of persons who have been transported through deception or coercion to work in the sex industry; the time and effort spent by sex worker rights organisations refuting prohibitionist arguments; and the exclusion of the important insights and knowledge they have about the sex work sector from consultations on developing anti-trafficking policies.

This divisiveness within the field has deprived global anti-trafficking efforts of a crucial ally, who could dramatically improve the outcomes of the anti-trafficking response through its valuable insider knowledge of the industry, the people involved in it, and the conditions of work. The aim of this research, therefore, was to treat sex worker organisations as workers’ organisations and partners in efforts to combat trafficking, by documenting the strategies they already employ to protect the rights of workers who experience exploitation, coercion, and abuses within the industry, including those associated with human trafficking.

¹² H Shamir, ‘A Labour Paradigm for Human Trafficking’, *UCLA Law Review*, vol. 76, 2012.

¹³ F Simmons and F David, ‘The Road to Effective Remedies: Pragmatic reasons for treating cases of “sex trafficking” in the Australian sex industry as a form of “labour trafficking”’, *Anti-Trafficking Review*, issue 1, 2012.

Sex workers organising

Sex worker organising and social engagement of prominent sex workers have a long history dating back at least to the beginning of the twentieth century.¹⁴ More recently, in the 1970s, the sex workers' rights movement began to organise and demand that sex workers be recognised as workers wholly entitled to human, civil, and labour rights.

In France, sex workers occupied the St Nizier church in Lyon for 10 days in 1975, demanding an end to fines and police harassment, and sparking occupations in other French cities.¹⁵ In the UK, the English Collective of Prostitutes was formed the same year, while in Sweden and Italy, sex workers formed (unfortunately short-lived) unions.¹⁶ In Brazil, sex worker, feminist, and LGBT activist Gabrielle Leite led a new radical movement of 'puta politics'.¹⁷ Sex worker rights organisation COYOTE (Call Off Your Tired Old Ethics) was established in the USA in 1973, the New Zealand Prostitutes Collective in 1987, and Durbar Mahila Samanwaya Committee (DMSC) in Calcutta, India, in 1992.

Within this emerging political movement, sex workers challenged and resisted stereotypes of sex workers as deviant, diseased, and immoral by advocating for themselves as workers and activists, as public and community educators, and experts in peer education to other sex workers. Sex workers began repositioning ideas about sex work in the public sphere from solely negative to also including celebratory, positive, and 'real world' perspectives on selling sex.¹⁸

The 1980s also saw the emergence of an international sex worker rights movement, beginning with the International Committee for Prostitutes' Rights. In the 1990's, the AIDS crisis led to the further consolidation of the movement. The Global Network of Sex Work Projects (NSWP), founded in 1990, united sex worker organisations from all over the world around a rights-based agenda. NSWP has been instrumental in ensuring that sex workers' views are represented in HIV policy. The collective strength of sex worker organisations has also drawn attention to the human rights abuses faced by sex

¹⁴ G Gall, *Sex Worker Union Organising: An international study*, Palgrave MacMillan, New York, 2006; NSWP, *History*, <http://www.nswp.org/history>.

¹⁵ NSWP, 'Occupation of St Nizier Church', available at <http://www.nswp.org/timeline/event/occupation-st-nizier-church>.

¹⁶ NSWP, 'History of the Sex Worker Rights Movement', available at <http://www.nswp.org/timeline-categories/history-the-sex-worker-rights-movement>.

¹⁷ K Kempadoo, 'The Migrant Tightrope: Experiences from the Caribbean', in K Kempadoo and J Doezema (eds.), *Global Sex Workers: Rights, resistance and redefinition*, Routledge, New York, 1998.

¹⁸ E Jeffreys, 'Sex Worker Politics and the Term "Sex Work"', *Research for Sex Work 14*, NSWP, 2015.

workers and has resulted in global organisations such as the World Health Organisation, UNAIDS, Human Rights Watch, and Amnesty International recommending that sex work be decriminalised.¹⁹

Self-organising has been identified as a foundational intervention in any programme which provides services to sex workers. This evidence is most advanced in the field of HIV, where community mobilisation interventions, such as sex work collectivisation, peer leadership, and sex worker advocacy have either been effective in reducing HIV infection, or in increasing condom use, or both.²⁰

Less is known about the ways in which (self-)organising has enabled sex workers to address human trafficking in the industry, or elements thereof, such as exploitation, coercion, deception or debt bondage. The experience of DMSC in India and the impact of their Self-Regulatory Boards (SRB) in reporting minors and unwilling women in the sex industry have been relatively well documented.²¹ In 2016, research commissioned by the Red Umbrella Fund expanded on this topic, focusing on thirteen sex worker rights organisations in nine countries and two regional networks.²² It documented the challenges that sex workers and their organisations face in their interaction with the anti-trafficking framework, and their response to human trafficking in the industry. Our present research aimed to expand on this knowledge through in-depth face-to-face interviews with sex workers and representatives of sex worker rights organisations.

With the issues outlined above in mind, the primary aims of this research were to document how organising has enabled sex workers to: 1) deal with the stigma, exclusion, and discrimination they face from society and the authorities, and 2) prevent and address abuses in the sex industry, such as violence, coercion and exploitation, some of which may legally be defined as trafficking.

¹⁹ WHO recommendations, *WHO Guidelines on Prevention and Treatment of HIV and other Sexually Transmitted Infections for Sex Workers in low- and middle-income countries – Recommendations for a public health approach*, 2012; UNAIDS, *Guidance Note on HIV and Sex Work*, 2012; Amnesty International, *Amnesty International Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers*, 2016.

²⁰ K Shannon *et al.*, 'Global epidemiology of HIV among female sex workers: Influence of structural determinants', *Lancet*, vol. 385, no. 9962, 2015, pp. 55–71.

²¹ See, for example: S Jana *et al.*, 'Combating Human Trafficking in the Sex Trade: Can sex workers do it better?', *Journal of Public Health*, vol. 36, issue 4, 2014, pp. 622–628; S Gayen, 'Innovative Approaches to Combat Trafficking of Women in the Sex Trade', *Inter-Asia Cultural Studies*, vol. 7, issue 2, 2006, pp. 331–337.

²² W Vollbehr, *Sex Workers against Human Trafficking: Strategies and challenges of sex worker-led organizations in the fight against human trafficking*, Master Thesis, Vrije Universiteit Amsterdam, 2016.

Methodology

Guiding Principles

This research was based on the principles of Feminist Participatory Action Research (FPAR), which GAATW has prioritised since its inception. FPAR combines principles of feminism with those of participatory action research. It privileges the lived experiences of people, tries to understand a situation from their perspectives, and strives to bring about positive changes in their lives. FPAR does not just record or interpret reality; it seeks to change it through collective action. The link between research and action is the most important aspect in FPAR: when people are directly involved in an analysis of their situation, they are often stimulated to find answers to problems. In the action process new insights and new solutions may emerge. Not only the participants, but also the researcher can change their ideas about the social reality.

Although this research does not fall under classical FPAR, where typically the problems are defined and explored by the groups who experience them, it was committed to FPAR's core principles. It was feminist in that it was centred on women's lived experiences, while mindful of power relations; it was participatory in that the interviewees were not simply respondents but active participants; and it will be used by both GAATW and the partner organisations to advocate for the recognition of the immense contribution of sex worker groups to protecting the rights of sex workers and those trafficked into sex work.

These principles guided the project team in the selection of organisations and researchers. Sex workers are an over-researched population and are understandably wary of outsiders who too often judge or misrepresent them but rarely bring any benefit to them. Thus, care had to be taken that this research is not yet another attempt to extract information from and exploit the knowledge of sex worker rights organisations and sex workers.

Project team

The project team consisted of: two team members from the GAATW International Secretariat: Bandana Pattanaik, International Coordinator, and Borislav Gerasimov, Communications and Advocacy Officer; an externally contracted lead researcher: Maria Stacey, Independent Consultant based in Cape Town, South Africa; and three advisors: Svati Shah from the University of Massachusetts, Amherst, USA, Annalee Lepp from the University of Victoria, Canada, and Savi Bisnath from Rutgers University, USA.

Process

The project team met in August 2016 to refine the project objectives, select countries to conduct the research, and develop an outline of the research methodology. Following this meeting, organisations in the selected countries were contacted and researchers for the respective countries were recruited.

In December 2016 the national researchers attended a workshop, at which the project team presented the research aims, provided a training in the principles of FPAR, and finalised the research methodology and research timeline together with them.

Most of the field work took place between January and March 2017.

In April 2017 members of the research team and all national researchers came together at a workshop to present, discuss, and jointly analyse the research data. This meeting was also attended by a representative of the American Jewish World Service.

The country chapters were prepared between May and October 2017, and the Introduction – between October and December 2017.

Selection of countries and organisations

Several considerations informed the selection of the countries and organisations, in order to sample organisations in a range of social, economic, political, legal, and cultural contexts. Thus, the research spans seven countries in both the global North and the global South with a variety of legal models pertaining to sex work, including decriminalisation, full criminalisation, and partial criminalisation, that are countries characterised as both origin and destinations for victims of human trafficking.

The organisations selected for the study represent some of the most respected sex worker rights organisations in their countries. Given the experience that these organisations hold collectively, it was critical to try to describe the perspective that they have on the trafficking discourse, and especially their perspectives on the impacts that the enforcement of anti-trafficking policies have on the ground, and on the everyday lives of people who are using sex work as a livelihood option.

For practical reasons, it was also important for GAATW to select organisations with which we have had some working relations in the past, so that we could build on existing mutual trust and respect. Two of the organisations (in Mexico and Spain) were chosen because they are active GAATW members and two (in India and Thailand)—because of their long-term cooperation with us. The organisations in Canada and South Africa

were chosen because of their relationship with, respectively, a GAATW Board Member and the lead researcher of the project. Finally, New Zealand was chosen because of its unique legal model in order to document and compare how decriminalisation has influenced sex workers' ability to organise.

GAATW approached the organisations, presented the project goals and enquired about their interest. All organisations acknowledged that the research can be useful to them in advocating for the benefits of sex worker organising, and agreed to participate.

Selection of researchers

The project team also debated whether the country-specific research should be conducted by the organisations themselves or an external researcher. After all, the organisations could document their own work perfectly well. However, we decided that a degree of external objectivity would be beneficial. An outsider would ask different questions and bring a new perspective that an insider can easily miss. So we decided to hire researchers who are outsiders but known to the organisation. Once the organisations had been engaged, country researchers were proposed and selected in consultation with them. The seven researchers are a diverse mix with different levels of research experience, and include academics, community-based practitioners, and NGO employees. All of them have backgrounds in human rights and feminist activism, and had been involved in, or at least exposed to, sex worker rights activism. The experience and affiliations of the researchers are described in the country chapters.

Field work

The research project was field-based, and used qualitative methodologies. Data collection methods consisted of semi-structured, open-ended individual interviews, focus group discussions, and in some countries—field notes. Between nine and thirty-two people were interviewed in each country and in some countries, additional information was provided to the researchers by email. Both individual interviews and focus group discussions took place, depending on context. The number of focus group participants was generally 5-10, which was determined to be large enough to stimulate group discussion but small enough that all group members feel safe to speak and have an opportunity to do so.

All interviews were conducted in person, except for Canada, where the interviews were conducted via Skype. All participants gave signed, informed consent to be interviewed. Care was given to preserve the anonymity of respondents, unless they opted to be identified. Sex worker participants were not remunerated for interviews, but were reimbursed for their travel expenses (if any) and provided with lunch, coffee or snacks during the focus group discussions. In some of the countries, sex workers received gift vouchers or small honorariums for an amount that was commensurate with a token gesture. Organisational representatives were interviewed at their work place and were neither remunerated, nor reimbursed for costs.

Questionnaire

The project team developed three separate questionnaires, with some overlapping questions, for organisational representatives, individual interviews and focus group discussions with sex workers, and for allied organisations, which provided a general structure for the interviews and discussions, covering key areas of enquiry. Given the definitional ambiguities associated with the term 'trafficking', it was necessary for the questions to refer to the *constitutive* elements of trafficking, such as exploitation, coercion, deception, force, and debt bondage during the interviews. It was also important for the interviews to document sex workers' subjective experience and understanding of the spectrum of exploitative working conditions which they face, and to explore how and to what extent these conditions are addressed by the organisations. In addition, the interviews also aimed to document the hurdles or facilitating factors faced by sex worker groups while trying to address those abuses.

Consultation with sex worker organisations

In keeping with the principles of FPAR, the organisations were consulted throughout the process, and indeed, helped to shape it. Some of them provided specific suggestions on the feasibility of the enquiry framework. For example, although it was recommended that researchers conduct both individual interviews and focus group discussions, in New Zealand and Canada, the researchers were advised that this was not appropriate (for reasons which are elaborated upon in those chapters). In other countries, such as Thailand and India, focus groups were preferred to individual interviews. The organisations assisted in the field work by facilitating interviews and focus groups either at their offices or at places where sex workers lived or worked to increase the comfort of participants. Finally, the draft chapters were shared with the organisations to ensure that interviewees' views were correctly represented.

Participants

The participants to interview for the research were chosen in consultation with the partner organisations who engage with them, either as employees, beneficiaries or community members.

Participants in the study can be divided into three categories:

Organisational representatives

Staff members of the organisations were interviewed both individually and in groups. These included staff in leadership positions, those involved in policy and advocacy, or direct service provision, outreach and support (although in smaller organisations, all of these functions may be served by the same person). All the organisations support sex worker inclusion, but the degree to which sex workers are employed by, and lead the organisations, varies.

Organisational respondents were asked to relate the history of their organisation, describe the nature and organisation of the sex industry, and the legal model pertaining to sex work in their country, as well as the community of sex workers they work with, such as size and composition in terms of gender and migrant status, and the issues they address.

As one key focus of this study was on the values of sex workers organising as a way of addressing working conditions, they were asked to describe how they facilitate organising among sex workers and to reflect on its benefits. They were also asked how they understand the term 'human trafficking', and how prevalent it is in the community they serve, and what other issues they address that affect sex workers in their localities. They were also asked how they respond to sex workers' various needs and challenges, especially if any of these included the constitutive elements of trafficking, such as coercion, exploitation, deception, and abuse. Finally, they were asked to describe the discourses and debates around human trafficking and sex work in their country, and how they impact on both the organisation, and the sex worker community more broadly.

Sex worker community members

Researchers interviewed sex workers who had various kinds of relationships with the organisation, including as beneficiaries of services, or as formal or informal 'members'. In designing the research, we wanted to ensure the representation of sex workers of different genders, sexualities, and migration statuses. While the study did achieve a measure of diversity in these areas, all sex worker respondents were female, both cis and trans, and consisted of migrants and nationals. This in

part reflects the organisations' emphasis in working almost exclusively with female sex workers. In addition to sex workers, other community members included children of sex workers (in India) and a waitress and a bar owner in bars where sex work occurs (in Mexico).

The main aim of interviewing sex worker community members was to document the main challenges they face in the industry, as they articulate them. The interviews also explored their understanding of human trafficking versus the common myths about it. If relevant, the interviews also explored sex workers' experiences of having been helped or hindered by organisations (government or NGOs). Finally, researchers asked respondents for recommendations for a more effective response to human trafficking and/or its constitutive elements.

Representatives of allied organisations

The organisations were also asked to recommend respondents from at least one other agency, government or civil society, involved in combatting trafficking, with which the local sex worker organisation had established cooperation. The main aim in interviewing an allied organisation was to obtain an outsider's perspectives on the role of sex worker rights organisations within alliances to address trafficking and exploitation or, more broadly, to support sex workers' rights. In the end, most but not all of the country researches include such a perspective.

Data analysis

The data from the interviews was analysed by the researchers by identifying common themes, patterns, and relationships within the responses. These were presented in a synthesised format at a joint meeting of all the researchers and the project team to allow for some common analysis and conclusions across countries, which were mainly used in the present Introduction.

Limitations

In planning the project, certain strategic decisions were taken around the research methods, which resulted in inevitable limitations.

While based on interviews and literature review, this could be described as more of a documentation project which aimed to feature sex worker organising and organisations within specific national or regional contexts and to explore attitudes toward and, if at all, strategies to address working conditions associated with human trafficking.

Suggestions for sampling of sex workers originated from the organisations themselves, which means that there is a bias towards engaged sex workers. In general, sex workers who are involved with organisations are likely to be more political than those who are not, so these factors have affected the results.

Thus this report does not claim to be representative of the diversity of sex worker communities within each national context or region. Like other qualitative research, it reflects accurately the reality of the participants, as experienced and told by them. From a feminist perspective, no person is unrepresentative and every experience counts. Still, we welcome the opportunity to expand on and test this study in other contexts in the future.

Format of the country chapters

All the country chapters follow the same basic structure: they start with an introduction that describes the country's socio-economic and political context, continue with the methodology employed in the specific country, then move on to discuss the research findings, and end with a conclusion and recommendations.

The introductory section situates sex work, and human trafficking, within the broader socio-economic and political contexts of the countries as norms, policies and institutions, are shaped by economic, political, social, and cultural forces, which drive migration and livelihood strategies. This section also briefly summarises the legislation and debates around sex work and human trafficking in the country.

The methodology section describes the research process followed in the particular country, including contact with the organisation, number and type of research participants, duration of the field work, and any follow-up.

The findings section presents and analyses the results of the field work. Although all chapters follow certain general structural guidelines, in the end, the issues that were important to sex workers and organisations in each country were somewhat different, and this is reflected in the country reports. All the chapters highlight the power of collectivisation by describing a moment in the organisational history where sex workers (and allies) mobilised around a certain issue, such as harmful and wrongly-targeted anti-trafficking raids, police abuses or new legislation.

Finally, the chapters conclude with a number of recommendations made by the organisations to their national government, anti-trafficking organisations, and human rights funders.

The reader may notice, and we hope will enjoy, the diverse tones and styles of the country chapters: some are clearly academic, others are community-based, and others are written from an activist perspective. This reflects the diversity of our researchers, as well as of sex workers and their communities.

Findings

The seven chapters that follow capture the views and stories of sex workers and sex worker activists from very different contexts. Although some attempt will be made to draw out common themes, it is important to note that each person interviewed has their own history, motivations, and desires. The research revealed sex workers' range of attitudes towards sex work—negative, positive and neutral—and different ways of understanding and analysing their life journeys and the problems and solutions they encountered along the way. Due to the atmosphere of rapport, familiarity and trust between the researchers and participants, interviewees were encouraged to articulate honestly what is good and what is bad about their work. Thus while there are many common experiences, there is no single story²³ that can be told about them.

False Dichotomies and Names that do not Fit

In the highly polarised debates on whether sex work is inherently harmful to the people who sell sexual services, activists often fall into the trap of presenting two opposing, oversimplified stereotypes: the prostituted woman (an exploited victim without any agency) or the sex worker (an empowered, independent woman who made a free choice). This is a false dichotomy which obscures the spectrum of circumstances that people selling sex must navigate. For example, a woman who was already working as a sex worker can become a victim of trafficking, and a woman whose entry into the industry was marked by coercion or deception, can continue working independently for herself, once she leaves the exploitative situation.²⁴ In

²³ In her 2009 TED talk, Nigerian writer Chimamanda Adichie says 'You can't tell a single story of any place, person or people. There are many stories that create us. The single story creates stereotypes. There are other stories that are just as important to tell. The problem with stereotypes is not that they are untrue, but that they are incomplete. The consequence of the single story is that it robs people of dignity – it emphasizes how we are different, rather than how we are the same.', see C Adichie, *The Danger of the Single Story*, *TED Talk*, retrieved 11 November 2017, https://www.ted.com/talks/chimamanda_adichie_the_danger_of_a_single_story/.

²⁴ J Busza, 'Sex Work and Migration: The dangers of oversimplification – A case study of Vietnamese women in Cambodia', *Health and Human Rights*, vol. 7, no. 2, Sexuality, Human Rights, and Health, 2004, p.231–249.

the rush to do something for women who are selling sex, many well-meaning advocates make the situation for these women worse by refusing to acknowledge that if sex workers are facing violence or exploitation, the source of these may not be from selling sex *per se*, but from the poor labour conditions or fraught legal context in which sex is sold.

Perhaps the most notable example of this can be seen in the South African chapter. During a focus group discussion, the researcher explained the definition of trafficking and several of the women realised that they had been trafficked into sex work—someone had promised them a different job, helped them come from Zimbabwe to South Africa, and made them have sex for money as a way to repay their travel debt. They told the researcher that the experience had been painful but added that once they were working independently and earning enough to provide for their children and families they opted to continue with selling sex. One of them, Chidhawazo, describes herself now as a ‘proud migrant sex worker’.

‘I finally felt more confident about myself and I have been a sex worker since then. Now I do not pay any money to anyone for doing my work.’

Estela, sex worker, Mexico

In another example, from Mexico, Estela shared how she was violently forced to have sex at the age of 13. After more than two years, she managed to escape. Then, in her own words, ‘a gay guy hired me to do sex work in his brothel, in Zamora, in good conditions, with a real income, and freedom to do what I want. I finally felt more confident about myself and I have been a sex worker since then. Now I do not pay any money to anyone for doing my work’. She is now 60 years old.

In India, VAMP related the case of Shilpi, a young Bangladeshi woman who was brought to India by a friend who had promised her a job in a garment factory but sold her to a madam in a brothel. She was initially shocked that she was expected to sell sex, but later decided that it was the only way she could make a decent living and send money back home. In due course, she also got married to a man and they moved in together, but she continued selling sex.

The organisations that participated in the study understand very well that labels like ‘victim’ versus ‘agent’ are not helpful, that people in sex work have diverse experiences, and what they ultimately need is some support to address their current situation and future aspirations. For example, in Spain, Hetaira deliberately uses the terms ‘prostitution’ and ‘prostitute’, in addition to ‘sex work/er.’ This is because not all women in the sex industry call themselves ‘sex workers,’ and Hetaira wishes to

communicate that the organisation is there to support anyone selling sex when they need help. In Canada, Butterfly and Stella avoid labels, such as '(victim of) trafficking'—they simply look at the concrete circumstances that an individual may be facing so that they can help in addressing them. These circumstances may involve movement, through deception and coercion, for the purposes of exploitation—as per the international definition of trafficking—or only some of these elements. Regardless, Butterfly and Stella aim to place the person's own needs at the centre of any interventions or support measures. They did point out that some women, whether their circumstances conformed to the official definition of trafficking or not, declared themselves to be victims of trafficking in order to access the protections available to victims in Canada (for example, to avoid immediate deportation). In India, VAMP was addressing situations of *injustice* in the sex industry long before 'trafficking' became the buzz word to describe them.

Sex Work as a Livelihood Strategy

One of the conceptual fault lines in debates about sex work and trafficking is around choice and agency. Prohibitionists, at their most extreme, argue that choice within sex work is impossible and thus irrelevant, as, in their view, sex work is inherently violent. If sex workers assert that they have chosen their work, they are accused of suffering from 'false consciousness' or viewed as victims of patriarchal oppression, to which they actively contribute. This circular argument is baffling and infuriating for sex workers, as they are rendered unable to speak for themselves, and their opinions are invalidated by people who claim to have their best interests in mind.

For the purposes of this research, we find the distinction between choice and agency made by sex work activist Ava Caradonna to be useful. She writes, 'the former insinuates a fictional context in which we all have "equal" options in life and unlimited access to resources. The latter recognises our capability to make plans, to have strategies, and to act within a limiting structure'.²⁵

Sex work is first and foremost a livelihood strategy and sex workers want the same thing—to be able to earn a living without interference, discrimination, harassment or judgement. Like everyone else, sex workers choose the best option from the limited options they have, as some of the examples described above illustrate. In addition,

²⁵ A Caradonna & X:Talk project. We speak but you don't listen. Beyond Trafficking and Slavery, 1 March 2016, <https://www.opendemocracy.net/beyondslavery/sws/ava-caradonna-x-talk-project/we-speak-but-you-don-t-listen-migrant-sex-worker-organisi>.

for many, sex work is not the only, or primary, work they do. For instance, one of the women interviewed for the Mexican research is a waitress in a bar who, after her shift ends, sometimes has sex with clients of the bar, because in this way ‘you can increase your income even four times’. In India, it was reported that a street vendor may search for customers while selling vegetables, and a dancer at marriages may also take clients. In Spain, one of the research participants works as a freelance shipping courier but earns extra money during the weekends as a sex worker. While she is able to pay her social security and taxes as a courier, she cannot do that as sex worker.

‘When you say that you’re a sex worker, people have to find a reason, an excuse.

“Because she is trans, she was sexually abused as a child, is a single mother...”

When I was working in [name of a supermarket chain] as a single mother, nobody said, “poor girl, she is being exploited here because she is a single mother”. However, when you are a sex worker people wonder, why is she a sex worker? it sucks to have to explain my life. Nobody questions why I have worked in other fields...’

Viko, sex worker, Spain

single mother, nobody said, “Poor girl, she is being exploited here because she is a single mother.” However, when you are a sex worker, people wonder, “Why is she a sex worker?” it sucks to have to explain my life. Nobody questions why I have worked in other fields.’ In South Africa, sex workers earn an average of six times more than domestic workers, which is often the default occupation for poor black women without a formal education.²⁷ Many of the sex workers interviewed for our

For others, sex work is preferable to the generally lower-paid jobs available to them, such as domestic work, factory work or farming. In Thailand, sex workers’ incomes range between two and ten times more than the national minimum wage and it is no surprise that some women choose sex work over other jobs.²⁶ In Spain, one sex worker was outraged at people questioning her choices: ‘When you say that you are a sex worker, people have to find a reason, an excuse: “Because she is trans, she was sexually abused as a child, is a single mother.” When I was working in [name of a supermarket chain] as a

²⁶ This point is perfectly exemplified by Burmese sex worker in Thailand and Empower member Malee, quoted in another study: ‘For years I had been exploited and abused [in other jobs]. All that time I had avoided “selling my body” because I understood it to mean cutting off bits and literally selling my flesh. [Then] I discovered it simply meant sleeping with a man and getting paid for it! I had wasted a lot of time’, see: E Bernstein and E Shih, ‘The Erotics of Authenticity: Sex trafficking and “Reality Tourism” in Thailand’, *Social Politics*, vol. 21, issue 3, 2014, pp. 430–460, p. 447.

²⁷ C Gould and N Fick, *Selling sex in Cape Town: Sex work and human trafficking in a South African city*, Institute for Security Studies, 2008, <https://issafrica.org/research/books/selling-sex-in-cape-town-sex-work-and-human-trafficking-in-a-south-african-city>.

study support children and/or other dependents, often as the sole income earners. In India, VAMP members place great importance on their children's education. As one child of a sex worker said, 'I am so happy that our younger children are getting educated and have alternative ways by which they can earn their livelihood without necessarily coming into sex work... When a woman wants to give up sex work after her children are working is that not *punarvasthi* [rehabilitation]?' Like every other person, sex workers balance the imperative to earn an income, and the options available to them, with the degree of dissatisfaction with working conditions which they are prepared to tolerate.

The organisations interviewed for this research all strive to make sure that sex workers can do their jobs in the best and safest possible way. All of them provide advice to sex workers about, for example, advertising, negotiating, safe places to work, professional services, language classes, healthcare, and so on. At the same time, it needs to be stressed that, contrary to the assertions of prostitution prohibitionists, sex worker organisations neither desire to keep women in sex work, nor do they profit in any way from women staying in the industry. These organisations advocate for the women who wish to continue earning from sex work, but also actively support those who decide it is time to leave for a variety of reasons, including trafficking. In New Zealand, the government employment programme comes to NZPC's office to advise sex workers about different economic and social problems they may have and NZPC refers sex workers to them for assistance with finding alternative employment. Similarly, in Canada, Stella and Butterfly help sex workers navigate different state employment and social programmes when they want to leave the industry. Butterfly also offers English language and massage therapy classes to migrant sex workers. In Thailand, Empower too offers English language classes to sex workers, which is extremely helpful both for working in the industry, and for finding a different job, such as masseuse or tour guide. In India, VAMP is organising the children of sex workers and, as described above, sex workers invest in their children's education, so that when they grow older, their children can support them, as is the norm throughout India, and they can retire from doing sex work. In many of the countries, the sex workers' rights organisations also assist migrant sex workers to obtain documentation which will enable them to seek formal employment if they so wish.

Challenges and Solutions

Although one of the primary aims of the research was to document how sex worker rights organisations address exploitation, coercion, and violence in the industry, including instances of human trafficking, we also wanted to explore the issues that sex workers, and the organisations working with them, found most important and

pressing. So we asked an open question about the main challenges that sex workers face in each country and the responses were mainly related to a number of everyday experiences that sex workers have to deal with. Therefore this next section focuses on these challenges in the way that sex workers articulated them.

Stigma and Criminalisation

In the course of asking questions about the main issues that sex workers face, stigma and criminalisation were evoked much more often than any other issue and certainly much more than trafficking. Stigma and criminalisation were even seen as contributing to the conditions that are conducive to trafficking.

'The real problem is that our work is illegal, so it makes people pity us... People look down on us and think we must be trafficked.'

Neena, sex worker, Thailand

Stigma is the single biggest challenge affecting all sex workers in the study countries, a finding that is resonant globally. While we are highlighting it here as a separate challenge, it is the root cause of all problems that sex workers face, and in many cases cannot be separated from these other problems. Sex work evokes a range of negative responses, including disapproval, disgust, prurience, and pity. The stigma on (especially female) sex workers stems from patriarchal and heteronormative notions of a woman's place in society, whereby women are cast into one of two roles: the good 'Madonna' wife whose place is at home, and the loose, immoral 'whore' who is on the street and needs to be outcast, condemned, and controlled. Stigma leads to criminalisation, which in turn perpetuates further stigma. As one of the interviewees in Thailand said 'The real problem is that our work is illegal, so it makes people pity us... People look down on us and think we must be trafficked'.

Sex workers clearly see the links between stigma and criminalisation and a range of problems they experience, including harassment and abuse from police, clients, intimate partners, acquaintances and community members; exclusion from health and other services; social marginalisation and stress, and psychological pressure. Stigma also extends to sex workers' children, leading to low self-esteem, poor academic performance and fewer life opportunities, as documented in the Indian chapter of this research. In Mexico, the research documented how sex workers' family members extort them for money by keeping their children away from them. In Spain, sex workers are threatened by family or acquaintances with outing and similarly extorted for money. In Canada, one respondent noted that 'when you work in such a stigmatised way, you can't have a

resume, you can't necessarily have access to banking, you can't have access to housing because you can get turned away.'

Stigma, while not non-existent, was the lowest in New Zealand, where, as already documented in other studies, participants noted that decriminalisation had improved the attitudes of police, health and social services, as well as the community.

Tackling stigma is a common activity of all the organisations. For example, in South Africa, Sisonke and SWEAT were acknowledged to have played a role in decreasing stigma:

It helps in that the stigma we have as sex workers is no longer the same as it was in the beginning. [...] With Sisonke we now go to different places [outreach] and the women would say that the brothel-owner used to be rude, but now it's not the same as before, because Sisonke had gone to talk to the brothel-owner face-to-face. [...] Even the community now respects sex workers.

Similarly, increased respect towards sex workers was reported in India, where VAMP/SANGRAM has been organising sex workers since the early 1990s when the HIV crisis broke out. Enabling women to directly engage with the government and wider society contributed fundamentally to breaking the isolation, challenging the social stigma attached to sex work, and making them visible not as criminal vectors of HIV, but as those battling the pandemic from the frontlines.

Challenging stigma is one of the primary activities of all the organisations we interviewed. All of them reported organising public events, publishing research, and organising sex workers to increase their confidence, self-esteem and power to deal with the stigma. Ultimately, stigma will decrease when sex work is no longer criminalised and when people actually get to know, talk to and listen to sex workers. As one of the participants in the Spain focus group discussion said, 'Break the stereotypes: get a sex worker friend!'

Migrant Sex Workers

In the past several decades, globalisation, unequal development between and within countries, conflict, and environmental degradation have prompted unprecedented levels of international migration. In more developed countries, demographic changes, such as aging societies and more gender equality at the workplace, and labour market shortages prompted by a move towards service-oriented economies, have created a demand for (low-wage) female workers, especially in domestic and care work, the services, and entertainment sectors. In less developed countries, economic restructuring and

industrialisation have led to loss of traditional livelihoods, with a disproportionate effect on women, pushing them to seek work outside their communities. At the same time, labour rights and human rights protections of workers have been increasingly undermined by capitalist and neoliberal policies. This has led to increasingly precarious migration and work for many women, especially those with lower education and social status. For sex workers, the criminalised status of their work has further exacerbated this precarity.

'Asian and migrant sex workers are vulnerable and their human rights are denied because of their race, language, social, immigration and legal status. Stigma and marginalisation increase their exposure to violence and exploitation and hinder their access to basic health services, protection and justice.'

Elene, Butterfly, Canada

immigration and legal status. Stigma and marginalisation increase their exposure to violence and exploitation and hinder their access to basic health services, protection and justice.' In Mexico, migrant sex workers experience denial of health services, because they lack the mandatory health control cards. Similarly in Spain, migrants continue to be excluded from universal healthcare either because of chaos and disinformation due to frequent law changes, or because they cannot meet the administrative requirements for accessing a health card. In South Africa, migrants are vilified as bringing corruption and crime to the country and this rhetoric is adopted by some sex workers too, as documented during one of the focus group discussions.

In New Zealand, despite the decriminalisation of sex work, migrants (who can work in all other sectors) are not allowed to work in the sex industry. Our research participants described how migrant sex workers experience many of the harms, including stigma, that are experienced by sex workers in criminalised environments elsewhere. Thus, instead of protecting against trafficking, the prohibition of migrant sex work has created conditions that foster and enable exploitation.

Migrant sex workers are more likely to accept exploitative conditions, or agree to risky sexual practices, due to the threat of being exposed and deported. They are also less likely to access health care, which leads to occupational health problems, including HIV and STI's.²⁸ In Canada, a member of Butterfly, a migrant sex workers' support organisation explained: 'Asian and migrant sex workers are vulnerable and their human rights are denied because of their race, language, social,

²⁸ See, for example: L Brussa and V Munk, 'Vulnerabilities and Rights of Migrant Sex Workers in Europe', *HIV AIDS Policy and Law Review*, vol. 15, issue 1, 2010, pp. 61–62; L Renshaw, J Kim, J Fawkes and E Jeffreys, 'Migrant sex workers in Australia', *Research and Public Policy Series no.131*, Australian Institute of Criminology, Canberra, 2015.

All the organisations we interviewed offer services to migrant sex workers to address these issues. In South Africa, SWEAT and Sisonke are promoting solidarity among migrant and local sex workers by involving migrants in their activities, including as staff. In New Zealand, NZPC develops resources for migrant sex workers and interviewed sex workers said that they would turn to NZPC if they know a migrant who is being exploited, because exposing a migrant sex worker to the police is not always in her interest. In Canada, Butterfly offers a number of services to migrant sex workers, ranging from a 24/7 hotline, to outreach, to help with immigration documents, to how to advertise. In Spain too, Hetaira offers advice to migrant sex workers about their immigration status and the services they are entitled to as migrants. And in Mexico, Brigada Callejera assists migrant sex workers to become documented so that they can obtain the health card which is necessary to access health services.

A Range of Exploitative Conditions: ‘At least I’m not in Taken’

Exploitative, unsafe, and unhealthy working conditions exist in sex work, as they do in other, especially labour-intensive sectors with little or no regulations and oversight. Indeed, criminalisation, by perpetuating stigma, discrimination, and social marginalisation of sex workers, has created the conditions in which violations of sex workers’ rights, including exploitation and trafficking, can continue with impunity. The participants in this study identified a range of exploitative conditions imposed by managers and brothel owners, such as long working hours, wage deductions or fines for not adhering to rules, being cheated out of the earnings due to them, high rents and insufficient physical protection. They attributed them to the criminalised and stigmatised nature of the industry which allows the managers and brothel owners to threaten sex workers with exposure, and reduces sex workers’ opportunities to seek legal recourse for them. While such exploitative practices were described as relatively common, many of our participants pointed out that the government and media’s obsession with human trafficking and ‘sexual slavery’ obscure these more mundane forms of exploitation.

‘...the kind of exploitation that most of us are facing is the exploitation of working long hours, the uncertain pay, of management trying every trick they can to scam every dollar out of you that they can...it’s not the exploitation of being chained to a bed and raped for twelve hours straight... And in saying that that’s what we’re experiencing just invalidates when something bad does happen to you.’

**Danielle, sex worker,
New Zealand**

Danielle from New Zealand put it marvellously when she said:

It means you ignore the ways in which you are being exploited, which are the same boring ways that anyone's exploited under capitalism... The kind of exploitation that most of us are facing is the exploitation of working long hours, the uncertain pay, of management trying every trick they can to scam every dollar out of you that they can... It's not the exploitation of being chained to a bed and raped for twelve hours straight... And in saying that that's what we're experiencing just invalidates when something bad does happen to you. And it makes it hard to recognise when bad things are happening when you're always thinking, "Well at least I'm not, you know, at least I'm not in 'Taken.'"²⁹

The organisations we interviewed mediate with managers, brothel owners and madams to alleviate these conditions. NZPC has made significant efforts to reach out to and educate brothel operators about legal and acceptable working conditions. They have developed a code of conduct, available on their website, and assist operators in implementing it. Operators also come to their office to take information materials and ask for advice. In India, VAMP has set up special community committees which intervene when madams, their husbands or 'rowdies' cause any problems for sex workers, mistreat them, want free sex, or try to cheat them out of their pay.

Ideological Silencing, Marginalisation, and Exclusion:

'Talking about us without us'

Many of our respondents expressed frustration with their exclusion from political participation and representation, especially when it comes to policies that concern them. Some prostitution prohibitionists claim that sex workers can't or don't speak on their own behalf. Sex workers who have become involved in the business side of the industry, including the management of safer and less exploitative working conditions for sex workers, are treated with derision. The constant struggle to be recognised and accepted as a sane person with dignity and reason who can speak for herself and knows what's best for her is exhausting.

This quote from Kerry from Canada captures some of these frustrations:

²⁹ Taken is a 2008 fictional movie which depicts the kidnapping of two young women by human traffickers for the purposes of sexual slavery.

...certain feminists and anti-sex work campaigners have done a really, really good job of discrediting sex work organising—they call us ‘the pimp lobby’ ... [claim] that sex work organisations exist to keep women in the sex trade. I mean sex work support organisations have been supporting women to exit sex work forever and we generally do that off the side of our desk and without there being any specific funding for it.

Nevertheless, our research participants have continued to advocate for sex workers’ voices to be heard, often in the face of hostility from anti-trafficking organisations, including some who profess to be feminist, and have endured for many years. Through their research and public events, sex workers can voice their concerns and share their

problems in their own words and propose policy solutions. The struggle for recognition is ongoing and has yielded slow but steady results. The most notable achievement is the decriminalisation of sex work in New Zealand, which happened after many years of campaigning by sex workers organised by NZPC. In South Africa, a Sisonke member co-chaired the working group that developed the South African National HIV Plan 2016-2019. In Mexico, Brigada Callejera organised sex workers and succeeded in making the Mexico City government recognise sex workers as non-salaried workers, which guarantees them important rights available to other workers. In Thailand, the government was forced to speak with sex workers, organised by Empower, following their submission for the 2017 CEDAW review of the country. These successes need to be celebrated, as they develop in sex workers a sense of community, self-esteem, and political participation in a largely hostile and silencing environment.

All the organisations involved in this study have become the ‘go-to’ organisations for sex workers in their locations. And in some cases, this perseverance is paying off, with sex worker organisations’ critical role being increasingly—albeit sometimes begrudgingly—acknowledged by other stakeholders, including police, social services and other NGOs. The best example of such cooperation is New Zealand, where the role of NZPC is well understood and respected by government agencies and other NGOs. In India, the relationship between VAMP and the police has over time steadily improved, to the extent that the local police Deputy-Superintendent acknowledges that the police relies on sex worker networks for accurate intelligence, saying ‘Yes, it is important we work with sex worker collectives to prevent trafficking.’

‘...when we are simply asked to contest or justify our existence, it’s fucking tiring.’

Ava, sex worker, Canada

Sex Work, Trafficking, and Anti-Trafficking

A Vague and Ill-defined Term

The sex workers interviewed in most countries reported that situations which meet the definitional criteria for human trafficking are not common in their experience. A notable exception was Mexico, where some harrowing cases of trafficking were documented, and where these cases must be understood in the context of the high rates of violence, much of it related to gangs and drug cartels, high levels of impunity, and reportedly endemic police and judicial corruption that have plagued Mexico in recent years.

The majority of sex workers interviewed had at least a basic understanding of what trafficking is, and could explain that it entails movement, through deception, coercion, and control, for exploitation. However, while acknowledging that these situations exist, most had not had personal experience and did not know others whose situation could meet these definitional criteria.

'I think it's a really vague and ill-defined term. To be honest, my emotional reaction when I hear it, is just my hackles come up, I'm ready for anti sex worker sentiment... and I have seen arguments about human trafficking being used so many times to argue for things that would reduce my rights as a sex worker.'

Michelle, sex worker, New Zealand

In several of the countries, trafficking was perceived as an issue that was introduced from outside the industry itself, propelled by a moralistic agenda, that the organisations have felt obliged to understand, in order to counter the harmful effects of conceptually conflating trafficking and sex work. For example, understanding 'trafficking' and 'sex work' to be describing the same thing has led to seeing brothel raids as the only rational response to sex work, a

policy that has led to a 'revolving door' of raids, rescue, extra-judicial detention, and more raids.

In New Zealand, the momentum of the adoption of the UN Trafficking Protocol led to the inclusion of the provision in the Prostitution Reform Act that prohibits migrants from engaging in sex work, although trafficking was not initially a concern in the debate around decriminalisation. However, rather than a genuine concern with the wellbeing of women in sex work, the provision was meant more as an anti-immigrant measure. In Spain too, the concept of trafficking re-emerged in the 1990s after the fall of the Berlin wall and the noticeable increase of migrants from Eastern Europe, rather than as a concern of those involved in the industry itself.

In Thailand, words and situations like ‘taking advantage of someone,’ ‘tricking’ or ‘cheating’ them, or ‘debt’ are easily understood by sex workers; but ‘trade in humans’ (the Thai translation of human trafficking) was brought to the industry and imposed from the outside. Similarly, in India, VAMP was dealing internally and collectively with perceived injustices, informed by a shared sense of ethics. With the onset of foreign-initiated anti-trafficking interventions, the community has had to engage with what is for them a different, a legal paradigm, and has had to make a concerted effort to understand the law. Interestingly, in India, sex workers did observe that the industry had changed over the past couple of decades, that the presence of pimps had increased, and that some of these pimps were thought to be involved in trafficking. On the other hand, in Thailand, it was noted that human trafficking used to be much more prevalent in the sex industry, but that it had declined steadily over the past 15 years due to internal changes in the industry itself, and was now rare.

‘It’s just an excuse to arrest us’

In the experience of the sex workers and sex worker organisations surveyed in this study, the anti-trafficking machinery has not been helpful to them. Indeed, as documented extensively in *Collateral Damage*, and supported by interviews for this study, many anti-trafficking interventions are stigmatising and harmful to them. Sex workers are therefore suspicious of the real motives of anti-trafficking campaigns, which, from bitter experience, they see as an excuse for attempts to eradicate

prostitution. In particular, anti-trafficking policy is seen as an elaborate front for targeting migrants, and especially undocumented migrants. Thus, in Thailand, Empower founder P’Noi said: ‘The new law is not only [about] Thailand; it’s [to protect] big countries like the US...’, whereas in Spain, Hetaira activist Silvia said, ‘Anti-trafficking policies have negatively impacted sex workers; they have been used to detect undocumented immigrants and to deport women. Migrant sex workers are counted in statistics as women at risk but all that is done with these women is to deport them. In the end, these policies are a strategy to control female migration.’

‘Anti-trafficking policies have negatively impacted sex workers; they have been used to detect undocumented immigrants and to deport women. Migrant sex workers are counted in statistics as women at risk but all that is done with these women is to deport them.’

Silvia, Hetaira, Spain

Even if the aims of the global anti-trafficking apparatus are to protect potential and actual victims of trafficking, the ways in which governments apply laws and policies to combat trafficking is far from benign. For example, in Mexico, a migrant from Honduras

described how she worked in a bar that was raided by the police. There were only two women there, so the police decided to brand one the victim of trafficking and the other the perpetrator, despite the fact that neither had been involved in trafficking. The police ordered one woman to give money to the other, took photos, confiscated the money, and strip-searched the women. The so-called perpetrator was ordered to sign a confession. The so-called victim was committed to a shelter, and ordered to testify against her friend. The wrongly accused 'perpetrator' was sentenced to three years in prison. Now released, she is unable to find work because of her criminal record.

In two further examples, in Spain, a sex worker who earned extra money by driving sex workers to work was prosecuted for human trafficking (although she was later acquitted because of lack of evidence); and in a second case, a former client who sold snacks to street-based sex workers was questioned by the police, and dubbed an exploiter by the media.

In addition to these misapplications of anti-trafficking laws, sex workers also routinely experience harassment by the police, which often crosses the line of legality and can extend to extortion, assault, and even rape. It is understandable, therefore, that in most contexts, the police are viewed with distrust. In the words of Alice from Canada:

There's no way I would go to the police ... if I were assaulted or robbed I know that Stella offers the services to help people through the justice system but I was like, even with their help, it's not something I want to go through..... And then I was assaulted and I was like, nope. I'm going to deal with this in another way which was just to deal with myself and to blacklist the client. I didn't have a violent assault but it was definitely non-consensual and I was like, nope.

Only in New Zealand has decriminalisation shifted the relationship between the sex worker community and the police from one of harassment and mistrust to one of collaboration, so that sex workers now feel that they can rely on the police for protection. However, the role of police with regard to migrant sex workers is a bone of contention, and is seen as increasing the vulnerability and marginalisation of migrant sex workers.

Raid and Rescue

One of the most common manifestations of misguided anti-trafficking fervour is the high-profile raid and rescue interventions. The chapters on Thailand and India document two such interventions. In both cases, Western anti-trafficking NGO's collaborated with local law enforcement agencies to raid brothels under the pretext of rescuing victims of human trafficking. In both cases, the raiders were accompanied by the media, who published sensationalist articles along with dramatic pictures of sex workers, thus exposing their identities

publicly. The fact that in both cases representatives from the foreign NGOs posed as clients adds another layer of prurience to the cases. In both cases, only a few underage women were found (who are technically classified as victims of trafficking under national law, even if they were not coerced), and attempts were made after the fact to ‘manufacture victims’ to justify the raid, by forcing women to say they were trafficked. In both cases, the raids were stressful and traumatising to the ‘rescued’ women: the cases involved the absurdity of the so-called victims of trafficking being detained like criminals

and placed in government facilities without the ability to even contact their families. In both cases, it was the sex worker organisations who stepped in to provide support for the women—to inform their families, to bring them a change of clothes, to provide translation, and to keep them informed about their case. In India, some of the women from VAMP were yelled at and accused of being ‘slave holders’ by the foreign NGOs, which caused them so much stress that one had to be hospitalised.

‘The raid affected the two younger girls badly since it was widely reported in the newspapers and on TV, and they were upset that they would not be able to go back to school because their names were tarnished and their future was spoilt. Finally, one of the girls came into the dhandha [sex work] because she felt that her name had anyway been spoilt and the other one got married to someone from Karnataka. One of them even attempted suicide.’

Focus group discussant, India

Realising Rights

Sex Worker Organising: By, with and for sex workers

While sex worker organisations in the seven countries operate in different contexts, they fundamentally have the same approach to supporting sex workers. All of them respond to sex workers’ needs by providing person-centred, holistic, and non-judgemental support. They meet sex workers where they are. They don’t impose ideology or morality on them.

Although the majority of the organisations operate with limited budgets, they offer a range of services in response to sex workers’ needs. All provide a space which serves as a low-threshold, drop-in centre, a safe and discreet free space where community members can hang out, eat, drink, establish friendships, and access a range of services, from language classes to support groups, to counselling, legal advice, and health services. In addition, all the organisations conduct outreach to where sex workers work, during which they listen, advise, intervene and refer, as dictated by the individual’s needs.

Importantly, the sex workers interviewed indicated that they would approach the sex worker organisations for assistance with a range of concerns, including exploitative or coercive working conditions, and problems with brothel-owners, managers or pimps. There was also a strong sense of sex workers' experiencing that being connected to each other, even in an informal way, was protective and supportive. Stories emerged of how sex workers look out for each other in their workplaces, be it the parks of Madrid, the brothels of Sangli or the bars of Chiang Mai. While policy-makers may feel that brothel raids and other anti-trafficking interventions are positive because they put an end to exploitative living and working conditions, this study shows that these kinds of interventions actually disrupt the ability of sex worker organisations to provide consistent services to sex workers, including services for their children and support for exiting sex work, if they choose to do so. Instead, community-based interventions, as the ones described in this report, should be prioritised, as they offer more meaningful and respectful solutions.

'She [a migrant sex worker who was sexually assaulted] was worried about immigration and went to NZPC and they helped her. They helped her, like, they talked to the police and then they got the police to talk with her without putting her at risk... like, she didn't end up getting deported or anything... so I think that NZPC are really good at managing that stuff.'

Lydia, sex worker, New Zealand

Sex Workers' Contributions to Anti-Trafficking: Smart solutions

Sex worker organisations have a very important role to play in combatting exploitation and abuse in the industry, including human trafficking. In fact, sex worker organisations are best placed to interrupt such situations in the industry and need to be recognised and appreciated for this work by the anti-trafficking movement.

This study shows that when sex workers have heard of cases of injustice experienced by their peers, their responses were of shock and concern, and they used their resources to offer assistance. The study also shows that, although trafficking was reported to be relatively rare in the spaces where our partner organisations operate, when situations of trafficking or severe exploitation do take place, sex worker rights organisations address these in ways that are smart, creative and appropriate for the context, and do not cause further harm to the victim. A number of stories presented in this report illustrate this point.

In Thailand, Empower members related the story of a migrant sex worker from Myanmar who started attending their English classes. In time, they found that, while she was

willingly involved in sex work, her employer was holding her passport, restricting her movement, and making unreasonable deductions of her earnings until she had paid off her debt. Her peers outlined the options available to her, and discussed the consequences of each. The obvious option—identifying herself to the authorities as a victim of trafficking—was not viable for her, because she did not want to be sent to a shelter or back to Myanmar; she wanted to carry on earning money as a sex worker, but under better conditions. The group problem-solved collectively, and eventually came up with a solution to make this happens.

In Durban, South Africa, Sisonke peer educators on outreach encountered young women and adolescent girls who they could tell were being controlled by a pimp who was nearby, monitoring them. Under the guise of distributing condoms, they managed to get the number of the SWEAT/Sisonke helpline to the girls, who later called, and thus enabled the matter to be reported to the organised crime unit, which led to the uncovering, and eventual successful prosecution of one of South Africa's largest cases of child trafficking for sexual exploitation. In another example from South Africa, SWEAT peer educators learnt that a local gangster had abducted the teenage daughters of two sex workers and drugged them, with the intention of exploiting them. After the police refused to take the case, the peer educators sought help from another local gangster who strong-armed the first one to release the two girls.

In India, the VAMP conflict redress committee (TMS) was approached by the madam of a brothel, who suspected that a girl brought to her by a pimp was a minor. When TMS members came to the brothel to investigate, the pimp took the girl and ran away to another brothel area. They alerted the TMS in that area, who made the taxi driver tell them where the pimp took the girl. TMS members found the girl, verified that she was indeed a minor, contacted her parents, provided counselling to them and the girl, and referred them to the police. Although the pimp had escaped again, the strong action that TMS women took had such an impact, that he never returned to that community again.

'... the girl—because she really wanted to be helped—whilst her pimps were not looking, she ... took out the pamphlet with the numbers and then she actually called Cape Town. And then when she called Cape Town, the Sisonke helpline, that's when the case was actually brought forward to us. Then after that we took up the case, called the police and the police actually did the investigation; where they actually went to the place where the pimps were keeping the young women.'

Khoza, Sisonke, South Africa

What these cases, and others documented in the country chapters, have in common, is that the solutions are not always obvious or conventional; in some cases sex workers have to get creative in order to find the best, 'first, do no harm' solution to the concrete situation.

The Power of Many: Organising for change

All the organisations have built up referral networks with other agencies, both government and NGOs, which support sex workers. In many cases, the sex worker organisation is the first port of call for the sex worker: after listening to what she needs, and if she so wishes, the organisation refers her to an appropriate organisation or government department. This works best in New Zealand, where sex work is decriminalised, and NZPC is recognised and respected for its role in the community.

In some contexts, sex worker organisations have formed pragmatic, if sometimes uneasy, cooperation with government departments/units and NGOs to address situations of suspected human trafficking or crimes against sex workers. SWEAT and Sisonke's collaboration with A21's National Human Trafficking Resource Line on a suspected human trafficking case illustrates how, even though in the public domain there has been a conflation of trafficking and sex work, when it comes to their daily operations these organisations have a shared commitment to rooting out trafficking, and have been able to work together to deal with such cases.

Beyond support for individual cases, this research also aimed to highlight how sex worker rights organisations mobilise sex workers and allies to resist stigma, discrimination, and oppression and to collectively voice their concerns and claim their rights. Most of the studied organisations have formed alliances with healthcare providers, as well as the LGBTI, and to a lesser extent, the feminist movements, to protest the treatment of sex workers and counter the negative stereotypes about them.

For example, in Spain, Hetaira, together with Médicos del Mundo and other NGOs, organised meetings with the local government, sent letters and filed complaints against the harassment and abuses of sex workers in the Villaverde Park in Madrid. The results of these actions are yet to be seen but the mobilisation led to the formal registration of a sex worker-led organisation. In Canada, the Canadian Alliance for Sex Work Law Reform was formed in 2012 by a small group of activists following the legal challenge against several Criminal Code provisions regarding sex work. After the Supreme Court decision to strike down these provisions, and the conservative government's proposal for a bill to criminalise clients, the Alliance organised a number of protests, published information sheets for policy makers, and three guides for sex workers to help them understand the

legislative process and take an active part in it. Although the conservatives managed to push their agenda, the Alliance continues its active work with the new liberal government and, in the meantime, has grown to 28 organisations and continues to grow. In Mexico, Brigada Callejera and the Mexican Network of Sex Work organised protests to demand the recognition of sex workers as non-salaried workers, which was finally achieved in 2014.

Conclusion

Perhaps one of the most harmful aspects of popular anti-trafficking discourse is the persistent conflation of sex work and trafficking, for ideological and political ends. Some states have criminalised (or further criminalised aspects of) sex work as an instrument against trafficking. Many anti-trafficking organisations claim that to eradicate human trafficking in the sex industry, the industry itself must be eradicated. As has been shown in *Collateral Damage*, and as this research further illustrates, sex workers are extensively harassed, arrested and incarcerated, including in 'rehabilitation centres', in the name of combatting trafficking.

The anti-trafficking framework, with its complex legal definitions, focus on extreme forms of exploitation, and a law-and-order criminal justice approach, has not been helpful for addressing the actual exploitative and abusive working conditions that sex workers experience. Sex workers are completely opposed to human trafficking, as they are to other injustices in the industry, but they resist attempts to interfere with and destroy their means of earning a livelihood. While they appreciate genuine concern for their wellbeing, they reject being labelled as victims in need of rescue. In societies which stigmatise and oppress sex workers, sex workers are understandably mistrustful of authorities, reluctant to report crimes or cooperate with investigations. Thus, a population of potential key allies in the campaign against exploitation and trafficking has been alienated.

Sex worker rights organisations in the seven countries involved in this study and beyond are united in their desire to rid the sex industry of all forms of violence, coercion, and exploitation. They have a vested interest in advocating for greater safety, improved working conditions, and respect for human and labour rights for all sex workers. The contribution of sex worker organisations has the potential to improve anti-trafficking efforts in several key ways. Firstly, sex worker organisations provide services to sex workers in a person-centred way which supports and respects the individual's self-determination, without the imposition of moral judgements, and in such a way that minimises harm.

Secondly, sex worker organisations can improve evidence. Several researchers have observed that morality and ideology-driven anti-trafficking measures have a problematic relationship with evidence. For example, Australian academic Sallie Yea notes that the field is rife with ‘manipulation, misuse and, at worse, neglect of existing evidence altogether’.³⁰ The evidence is there, if one cares to look for it, and yet evidence is ignored if it presents inconvenient truths. For anti-trafficking efforts to be more effective, they need to be based more on evidence and less on ideology. As insiders, sex workers are also uniquely placed to provide intelligence that can lead to the accurate detection of cases of human trafficking.

Thirdly, sex worker rights organisations can contribute to the elements of the global anti-trafficking response which have so far been the weakest—the prevention and protection aspects. By creating supportive social networks, sex worker organisations can educate sex workers about their rights, reduce stigma, isolation and marginalisation, and improve sex workers’ access to legal advice, as well as health and social services. All of these roles, which sex worker organisations are best placed to provide, make them essential allies in fighting exploitation and human trafficking, which means they have to be given a far greater role, as well as provided with funding to support that role.

Ultimately, sex worker rights organisations are worker rights organisations whose primary mandate is to ensure that the human, economic, social, political, and labour rights of their constituents are recognised and respected by state and non-state actors. At some level their work is very similar to the work of GAATW members and partners, who provide person-centred, human rights, and empowerment-based services to survivors of trafficking. For example, like many anti-trafficking organisations within GAATW’s membership, sex worker organisations provide information about rights and working conditions, and where to seek help in cases of rights violations. In anti-trafficking lingo this is commonly referred to as prevention of trafficking, awareness-raising, or empowerment. In cases of rights violations, like anti-trafficking organisations, sex worker organisations offer assistance with filing complaints and dealing with the police, courts, and immigration authorities, meeting basic needs, psychosocial counselling, family mediation and return to the community, and help with finding employment. In anti-trafficking programming all these are broadly referred to as reintegration or social inclusion services.

However, while highlighting the similarities, it must be noted that the anti-trafficking organisations mentioned here may be atypical and a minority. Still we must underscore that the agendas of sex worker rights organisations and anti-trafficking organisations

³⁰ S Yea, ‘Editorial: The politics of evidence, data and research in anti-trafficking work’, *Anti-Trafficking Review*, issue 8, 2017, pp. 1–13.

are not contradictory if one takes care not to conflate sex work with trafficking. The conceptual conflation of sex work with trafficking prevents many anti-trafficking organisations from noticing the similarities between their work and that of the sex worker rights organisation. Similarly, non-recognition of sex work as work stops many labour rights groups and unions from extending solidarity to sex worker rights organisations.

In the beginning of this section we highlighted that labels and categories are often inadequate and unhelpful. At the very best, labels describe an aspect of a person's identity at a particular time. Rather than labelling a person 'victim of trafficking' or 'sex worker' it is important to understand their particular situation at the given time and respond to their needs, as they articulate them. As the work of many of our Alliance members and partners shows, anti-trafficking organisations and sex worker rights organisations are not incompatible with each other: sex worker rights organisations can address situations of trafficking, and anti-trafficking organisations can respect the rights of sex workers. We hope that this report illustrates these points clearly and reinforces the need to avoid the dangers of a single story.

Recommendations

Based on the findings highlighted in this report, we make the following recommendations for improved, inclusive and respectful anti-trafficking policies that will reduce, or altogether eliminate, all collateral damage of current anti-trafficking interventions.

Change the approach to human trafficking

In a 2014 address to the UN General Assembly, the Special Rapporteur on Trafficking in Persons, especially Women and Children, advocated for 'a cultural and political switch', noting that 'trafficking in persons is not only, and not primarily a law enforcement issue, but rather a social and economic issue, requiring a consistent and long-term commitment, sustained by a persistent political will'.³¹

This conceptual switch requires a deepening of the approach to understanding human trafficking as a phenomenon that is influenced by a complex set of historical, social, political, and economic conditions. Anti-trafficking measures need to take into account

³¹ See: Statement by Maria Grazia Giammarinaro, Special Rapporteur on trafficking in persons, especially women and children at the 70th session of the General Assembly Third Committee Item 68 (b & c), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16659&LangID=E>.

the structural conditions which produce, and reproduce exploitation, and the particular contexts in which incidents of trafficking occur.

Listen to sex workers

The people who are affected by trafficking, and the organisations that represent them, should participate in policy-making, programme planning, implementation, and evaluation. This is accepted in other sectors where trafficking occurs, such as domestic work, fisheries or agriculture.

Sex worker organisations provide a platform for sex workers' voices to be heard. As insiders, they know best what the problems in the industry are and, as documented in this research, how to address them. Anti-trafficking stakeholders need to recognise sex workers as partners, not adversaries, in anti-trafficking work.

Decriminalise sex work

Complete decriminalisation of sex work is not a panacea, but it is the first step to better protect sex workers' rights. The decriminalisation argument is based on an understanding that sex work is work, and is a precondition for establishing safer, healthier workplaces in an industry in which sex workers' rights are protected by labour laws, and in which sex workers are afforded the same labour protections which other workers enjoy. As in other sectors, this would lead to fewer opportunities for exploitative working conditions, including human trafficking.

Reduce stigma against sex workers

Similarly to decriminalisation, a reduction in stigma towards sex work would improve the recognition of sex workers as workers and citizens with the same rights as anyone. A reduction in stigma would decrease the marginalisation of the industry which is conducive to trafficking, and would improve the ability of sex workers to access services and seek justice in cases of exploitation.

End the conflation of sex work and trafficking

The conflation of sex work and trafficking in persons leads to inadequate counter-trafficking policies and to counter-productive prostitution policies. It leads to inappropriate responses that fail to assist sex workers and trafficked women in realising their rights. The two issues are both complex and need their own individual approach and policy, while taking into account the economic, political, and social root causes of each.

Invest in sex worker organising

Sex worker organisations are first and foremost human rights organisations. They offer support to those who experience rights violations and advocate for human rights. Donors need to recognise their role in this and support them in order to transform the sex industry into one in which human trafficking cannot thrive.

Conduct further research

Organising works differently in different contexts and the strategies that sex worker organisations employ in one country would not necessarily work in another. It is important to continue documenting best practices in different contexts, so that organisations can learn from each other, and human rights activists in different contexts can recognise their immense contributions to the wellbeing of sex workers.

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Sex workers of Empower gather to propose solution to State violence and exploitation of sex workers: Decriminalise Now!

International Day to End Violence against Sex Workers Day, 17 December 2016

Photo credit: Empower

THAILAND

Julia Davis

“Empower is Us”

Started in 1985, Empower Foundation is a community organisation owned and managed by sex workers. Empower uses a human rights framework to meet the needs of the sex worker community today and to move toward a future in which sex work is accepted as work and sex workers can work safely, free from stigma and criminalisation. Empower’s activities include educational programmes, outreach, and counselling as well as individual and country-wide legal advocacy to improve the working conditions and lives of sex workers.

While working conditions in the sex industry have improved significantly in the past few decades to the point that force, coercion, and deception as seen in the early 1990s are nearly unheard of, sex work remains criminalised and sex workers continue to confront an array of challenges including near universal labour rights violations and the often more acute threats posed by raid and rescue operations executed under authority of anti-trafficking law. These operations, aimed at rescuing victims of trafficking, have been linked to frequent human rights violations including entrapment operations which manipulate sexual consent, the publication of photographs of raids in national news outlets, and forced detention in government facilities with restricted access to education and work and no access to labour or criminal compensation. The disruption and stress caused by raid and rescue practices ends days, months, or years after a workplace raid, upon women’s release from jail, government care, or immigration detention when they are allowed to go home, often rushing back to work to make up for lost income.

In the aftermath of these raids, as in the days, months, and years leading up to them, it is Empower that centres the needs and interests of sex workers, amplifying their voices as they advocate for themselves and each another. In 2015, Empower counted 53 entertainment place raids in Thailand resulting in the arrest, fining, detention, and/or deportation of sex workers. Although the sex workers involved in this research had no experience with forced labour, debt bondage, or trafficking in the sex industry, their understanding of the risks they face *as a result of efforts to combat trafficking* was universal.

This chapter seeks to highlight the voices and experiences of women working in the sex industry in Thailand by focussing on their relationship to the trafficking discourse, the impact that corresponding anti-trafficking policies and practices have on them, as well as the work that they are doing to address exploitation in the industry and to contribute to the empowerment of their community. The women whose insights make up this chapter are members of Empower, which, in its thirty-two years of existence, has become the foremost representative of sex workers' voices across the country.

Introduction

A Brief Political History

The only country in Southeast Asia to avoid colonisation, Thailand is often cited as a development success story, its economy surging in World Bank categorisation from ‘low-income’ to ‘upper middle income’ in less than a generation, with poverty rates plunging from 67% in 1986 to 7.2% in 2015,¹ 6.3% lower than the US poverty rate the same year.² Thailand is granted ‘high human development’ status by the United Nations Development Programme with respect to general human development as well as gender development, health outcomes, and education achievements.³ Still, a statement given by a coalition of women representing Thai civil society organisations at the 67th session of CEDAW in 2017 observed the slow pace of progress toward ending discrimination against women, citing significant obstacles to women’s equality and increased difficulty under the current regime due to restrictions of freedoms.⁴

In 1932, a revolution led to the establishment of Thailand’s first constitution and the first constraints on the absolute power of the monarchy. Since then, Thailand has seen a near continuous power struggle between civilian and military factions, with twelve political interventions by the military in less than a century. Repression by the ruling military reached a breaking point in 1973 when pro-democracy student demonstrations, met with deadly military force, ultimately succeeded in toppling the dictatorship. The following years saw a brief period of democratic rule before the military took power again in 1976. The government has since changed hands over a dozen times, most recently in 2014 when the National Council for Peace and Order (NCPO)⁵ took power. The NCPO’s human rights track record has drawn strong criticism from international human rights organisations⁶ and local human rights defenders alike,⁷ who cite arbitrary

¹ The World Bank, *The World Bank in Thailand*, 2017, <http://www.worldbank.org/en/country/thailand/overview>.

² B D Proctor, J L Semega and M A Kollar, *Income and Poverty in the United States: 2015: Current Population Reports*, US Department of Commerce United States Census Bureau, Issue September 2016, p. 12.

³ United Nations Development Programme, *Human Development Report 2016*, New York, 2016, pp. 199, 211, 227, 231.

⁴ Women of Thailand Coalition, *Statement by Women of Thailand Coalition for 67th CEDAW Session*, Geneva, 2017, <http://protectioninternational.org/2017/07/04/statement-women-thailand-coalition-67th-cedaw-session/>.

⁵ BBC News, *Thailand Country Profile*, 2017, <http://www.bbc.com/news/world-asia-5581957>.

⁶ Amnesty International, *Thailand*, 2017, <https://www.amnesty.org/en/countries/asia-and-the-pacific/thailand/report-thailand/>.

⁷ Human Rights Watch, ‘Thailand: Activist Unjustly Jailed for “Insulting Monarchy”’, 22 January 2017, <https://www.hrw.org/news/2017/01/22/thailand-activist-unjustly-jailed-insulting-monarchy>.

restrictions on the exercise of human rights, including the criminalisation of peaceful political dissent, which has been widely implemented and is prosecuted in military court. Human Rights Watch describes the current situation as a 'deepening rights crisis', noting bans on political activity, enforced censorship, and arbitrary arrest of activists and dissidents.⁸ The years since the NCPO came to power have seen an economic faltering as well as an increase in moral policing, with a spike in the passage and enforcement of laws around alcohol and entertainment.⁹ In August 2016 a constitutional referendum was criticised by international onlookers for the repressive climate in which it took place, in which opposition campaigning was banned and independent observer groups were denied requests to monitor the vote.¹⁰

'Amazing Thailand': Sex work and globalisation

Thailand's sex industry has a long history of attracting an international clientele, beginning with the arrival of foreign dignitaries and Chinese traders in the seventeenth century. The establishment of Japanese military bases in Thailand during World War II marked the beginning of the ever-deepening imprint of modern globalisation. The sex industry saw a huge expansion during the US war in Vietnam when US troops converged on Thailand's entertainment places for rest and recreation breaks from combat in neighbouring Vietnam, Lao PDR, and Cambodia.¹¹ During this period, Thailand's first bars, cafes, and soapy massage parlours¹² opened and between 1966 and 1968, American GIs spent between USD 6.8 and USD 10.8 million in Thailand annually.¹³ Tourism and the sex industry continued to grow in the following years, with advertising programmes like 'Amazing Thailand' and tours bringing busloads of visitors directly to entertainment districts like Patpong in Bangkok. In 1998, the International Labour Organization (ILO) reported that sex workers transferred nearly USD 300 million in remittances to families in rural areas annually, 'a sum that in many cases exceed[ed] the budgets of government-funded development programmes'.¹⁴ In 2016, travel and

⁸ Human Rights Watch, *Thailand*, 2017, <https://www.hrw.org/asia/thailand>.

⁹ A Macleod, 'Is Thailand's economy undergoing "juntification"?', *Global Risk Insights*, 20 May 2017, <http://globalriskinsights.com/2017/05/juntification-in-thailand/>.

¹⁰ BBC News, 'Thai referendum: Military-written constitution approved', 7 August 2016, <http://www.bbc.com/news/world-asia-36972396>.

¹¹ J Pollock, 'Thailand' in GAATW, *Collateral Damage: The impact of anti-trafficking measures on human rights around the world*, GAATW, Bangkok, 2007, p. 174.

¹² Businesses where customers can pay for bathing, massage, and sex.

¹³ P Ouyyanont, 'The Vietnam War and Tourism in Bangkok's Development, 1960-70', *Southeast Asian Studies*, vol. 39, no. 2, 2001, pp. 164–165.

¹⁴ LL Lim, *The Sex Sector: The economic and social bases of prostitution in Southeast Asia*, International Labour Organization, Geneva, 1998, p. 21.

tourism as a whole contributed nearly 10% of Thailand's GDP¹⁵ and Thailand's Ministry of Tourism reported a record 32.6 million foreign visitors, bringing in USD 45.9 billion.¹⁶ A 1998 examination of the Thai sex industry suggested that between 65% and 85% of foreign tourists were men traveling alone.¹⁷ Thailand Law Forum cites an estimated USD 4.3 billion per year in earnings in the sex industry.¹⁸

Prosecution or Protection: Sex work and the law

Like many sex workers around the world, sex workers in Thailand work in a legal environment which views their workplaces and day-to-day activities as criminal. The history of sex work in Thailand, however, is a long one, the vast majority of which transpired without the enactment of legislation criminalising it. The earliest records of sex work in Thailand date back to the seventeenth century when a civil servant of the Kingdom helped to manage an elite brothel in Ayutthaya housing around 600 women. The industry continued without legal oversight until the mid-twentieth century.

Thailand's first law criminalising sex work was passed in 1960 during a government campaign for social purification which made sex workers scapegoats for the 'erosion of social orderliness'. Following Field Marshal Sarit Thanarat's order, sex workers were arrested, fined, and detained in newly opened facilities intended for their 'moral rehabilitation'.¹⁹ *Ban Kret Trakan* remains open today and functions as a mandatory care centre, with a majority of its residents girls and women identified as victims of trafficking. In 1996, the law was amended to shift the primary focus onto child prostitution, but,

While laws targeting sex workers for prosecution abound, legal protections often remain inaccessible because of the criminalised status of sex work and sex workers are therefore left unprotected by the usual mechanisms for labour oversight.

¹⁵ R Turner and E Freiermuth, 'Travel and Tourism Economic Impact 2017 Thailand', *World Travel and Tourism Council*, London, 2017, p. 3.

¹⁶ P Temphairojana, 'Thailand tourist numbers rise nearly nine percent in 2016', *Reuters*, 5 January 2017.

¹⁷ R Bishop and L S Robinson, *Night Market: Sexual cultures and the Thai economic miracle*, Routledge, London, 1998, p. 67.

¹⁸ J Fox, 'Sex Laws in Thailand Part 2: Laws regulating commercial sex and entertainment places', *Thailand Law Forum*, 30 June 2009, <http://www.thailawforum.com/sex-crimes-in-thailand-part2-2.html>.

¹⁹ M C Nussbaum, *Sex and Social Justice*, Oxford University Press, Oxford, 1999, p. 381.

influenced by the moral lobby, maintained penalties for adult sex workers.²⁰ The Prostitution Act of 1996 criminalises solicitation for the purpose of prostitution if it is done in ‘an open and shameless manner or causes nuisance to the public’, as well as the advertising of prostitution, recruitment for the purpose of prostitution, involvement of minors in prostitution, and association in a ‘prostitution establishment’. Importantly, the term ‘prostitution establishment’ is left undefined, effectively creating a blanket criminalisation of the gathering of sex workers in any place where sex is or could be sold.²¹ In addition to the Prostitution Act of 1996, the Immigration Act of 1979, the Alien Working Act of 2008, the Entertainment Place Act of 1966, and the Anti-Trafficking in Persons Act of 2008 are all used to fine, detain, prosecute, and deport sex workers in Thailand for crimes ranging from temporarily holding a friend’s earnings to working in a place where sex is sold. While laws targeting sex workers for prosecution abound, legal protections often remain inaccessible because of the criminalised status of sex work and sex workers are therefore left unprotected by the usual mechanisms for labour oversight. Workers who experience unfair treatment or exploitation and wish to access labour protection risk arrest, humiliation, and, in the case of migrants, deportation. In cases of violence committed by customers, even the Thai penal code can remain out of reach as sex workers must gauge the risks associated with being identified by the police as a sex worker.

A Region on the Move

Starting in the 1970s, Thailand saw a surge in internal and cross-border migration, with hundreds of thousands of workers moving from rural areas to rapidly developing urban centres for better wages, greater chances of upward mobility for themselves and their families, and in some cases, for safety or survival. As Thailand’s entertainment and export industries expanded, so did opportunities for work in places like bars, hotels, and factories. Ethnic minority groups from Myanmar/Burma fleeing violence joined troves of workers from Lao PDR, Cambodia, Vietnam, and China as well as workers from Thailand’s more remote provinces.

Migrants found jobs in construction, domestic work, garment factories, agriculture, the seafood industry, and entertainment. Today, many women have spent time in several of these sectors before choosing to do sex work. For a vast number of migrants without ready access to legal documentation, this journey means relying on local services and

²⁰ Pollock, p. 179.

²¹ Kingdom of Thailand, *Prevention and Suppression of Prostitution Act, B.E. 2539 (1996), Translation*, Section 6, <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/46403/65063/E96THA01.htm>.

expertise, crossing unmarked borders, and arriving to work in Thailand without passports, work permits, or access to labour protection mechanisms.

Development of infrastructure in Myanmar/Burma over the past 15 or so years has meant greater ease in crossing the border and less need of

exploitative agents. Still, estimates place the number of workers without documentation in Thailand somewhere between half and equal to the number of those working legally.²²

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Sex Work Today

Estimates of the number of sex workers in Thailand vary widely and actual figures likely change from day to day. Thailand's National AIDS committee estimated that there were over 140,000 sex workers in Thailand in 2014.²³ The Thai government estimates approximately double that figure, at 300,000.²⁴ The majority of sex workers in Thailand work in bars, karaokes, massage shops, a-go-go venues and soapy massage businesses. A small number of sex workers work in brothels or in public spaces like parks, beaches, and on the street. The vast majority of sex workers in Thailand are women. About 80% are cisgender women, a majority of whom are mothers,²⁵ and the remainder are trans women, identifying varyingly as 'another kind of woman' or 'katuey', with a relatively small number of cisgender men. Sex workers come from all parts of Thailand, as well as Myanmar/Burma, China, Lao PDR, Vietnam, and Cambodia, among other countries, and represent a variety of ethnic groups. Sex workers' incomes tend to range between double and ten times the national minimum wage, which is currently THB 310 (approximately USD 8.50) per day, depending on the venue in which they are working; most receive the majority of their incomes from customers directly, rather than through intermediaries.²⁶

²² International Organization for Migration, *Thailand Migration Profile*, Bangkok, 2016, <http://thailand.iom.int/sites/default/files/Infosheets/IOM%20Infosheet%20-%20Labour%20Migration%20Trends%20in%20Thailand.pdf>.

²³ *Thailand Ending AIDS: Thailand AIDS response progress report*, National AIDS Committee, Thailand, 2015, p. 46, http://www.unaids.org/sites/default/files/country/documents/THA_narrative_report_2015.pdf.

²⁴ Empower Foundation, *Moving Toward Decent Sex Work: Sex worker community research decent work and exploitation in Thailand*, Empower University Press, Nonthaburi, 2016, p. 86.

²⁵ Interview, Liz, Chiang Mai, 1 February 2017.

²⁶ *Ibid.*

Anti-Trafficking Model

Despite years of criticism by sex workers representing the full spectrum of working conditions, including those identified as having experienced trafficking, 'raid and rescue' continues to be the primary model of anti-trafficking work used to target women in the sex industry in Thailand. This model often involves

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entrapment operations in which Thai police or representatives of anti-trafficking NGOs pose as customers, requesting and, in some cases obtaining, sexual services from teenagers and women who are suspected of being trafficked or violating prostitution law. When evidence is deemed sufficient, parties including representatives from an array of government branches, police, heavily armed members of the military, and NGO workers, accompanied by members of the press raid the venue, 'rescuing' workers who are determined to be under 18, who are then identified as trafficking victims on the basis of their age, and workers over 18 who identify themselves as having experienced trafficking. Those identified as victims of trafficking are forcibly placed in government care for a period of up to two years before being sent home. Workers who are over 18 or who do not identify as having been trafficked experience a range of outcomes depending on citizenship and documentation, including arrest, detention, fines, deportation, and in some cases government blacklisting, their passports stamped to identify them as having violated prostitution law.²⁷ In July 2017, at the 67th session of CEDAW, a representative of the Office of Police Strategy acknowledged that the Royal Thai Police have no policy sanctioning the entrapment of sex workers, but on the ground in Thailand, the practice continues.²⁸

The aim of the present study was to explore these and other rights violations that sex workers in Thailand experience, their interaction with the anti-trafficking framework and the ways in which Empower supports them in claiming their rights and resisting abuse and exploitation by various actors.

²⁷ Empower Foundation, *Hit and Run: Sex worker's research on anti-trafficking in Thailand*, Chiang Mai, 2012.

²⁸ Empower Foundation, *Sex workers remind the Thai government to abide by the CEDAW Convention*, Chiang Mai, 22 August 2017.

Methodology

Design

In keeping with the spirit of the project and the core values of Empower, this research was undertaken using a methodology that was both participatory and feminist in nature, in which the research 'subjects' were active leaders from design to implementation. Empower cites a long and frustrating relationship with researchers and journalists, where community members have often felt misrepresented, insulted, and exploited for their time, experience, and expertise in service of the advancement of careers and agendas that have no bearing on the community.²⁹ It was, therefore, important to Empower that this project not be another such instance of exploitation, a clinical extraction of information without regard for the real value of sex worker contributions or respect for their guidance and leadership. For this reason, the organisation recommended a volunteer English teacher with Empower rather than an outside researcher because of her role as a trusted friend of the community with a basic understanding of the interests, concerns, and goals of sex workers organising in Thailand.

Fieldwork

The fieldwork plan was designed consultatively, largely led by representatives of Empower, with the aim of centring the interests of sex workers in the community throughout. In addition to three traditional interviews with members of Empower, fieldwork included four community-centred, participatory focus group discussions structured around sex workers' experiences and interests. The first two of these took place in Empower's community centre in the northern city of Chiang Mai where the organisation currently has the most active community. These discussions were conducted in Empower's newly opened Legal Club where sex workers come together to share knowledge from their lives, work, experiences with the police, and understanding of the law. Because of the principal concerns of sex workers in the community around police and arrest, these focus groups integrated the research questions into a format that provided participants an opportunity to learn about the law as it applies to the entertainment industry with and from one another. The first Legal Club meeting included thirteen sex workers representing a variety of ethnic groups including Thai, Shan, Lisu, and Akka and ranging in age from their early 20s to mid-30s. The second Legal Club meeting included ten women, four of whom were participating for the first time, representing the same ethnic groups and age range. The format for

²⁹ Empower Foundation, *Bad Girls Dictionary*, Second Edition, Empower University Press, Nonthaburi, 2017, p. 22, pp. 114–117.

the meetings was discussion, exchange, and participatory activity around the law, support mechanisms, and exploitation in the workplace.

The second two focus groups took place in the central city of Mahachai, a seaside suburb of Bangkok and one of the many locations across the country where Empower maintains a long-standing connection with members of the community. These sessions included three and five women, respectively, all of whom were ethnic Thai and ranged in age from mid-20s to mid-30s. The discussions took place at their respective workplaces—open air bars in the entertainment district. Of the twenty-five women who participated in focus groups, all had a prior relationship with Empower and/or with other participants; most were also familiar with the research consultant. Empower members were present and active in making introductions and facilitating discussions. Fieldwork also included an interview with Ben Svasti of *Focus*, a local anti-trafficking organisation chosen on the basis of its roots in Thailand as well as its unique role as an anti-trafficking organisation, as it has reached out to Empower and publicly acknowledged the failure of raid and rescue policies and their harmful impact on sex workers.

Strengths, Limitations and ‘Objectivity’

The interviews and focus groups that comprised this fieldwork were possible because of the strength of the community that Empower has created and the trust and respect attached to that name. Participants in focus groups were not strangers who agreed to be research subjects, but rather ‘sisters’ who make up the Empower community. The majority of participants were women who have known the organisation for months or years and have made it their classroom, kitchen, and home; they are women who identify as family. Without these relationships, fieldwork of this depth would not have been possible, and perhaps more importantly, would not have been the positive experience that it was for those who participated. Women were willing to participate in this project because they felt confident that their trust would not be betrayed, that they would not be compelled to give personal information to strangers, stereotyped, or reduced to their job or the worst parts of it, as so many sex workers at Empower have been in their experiences with journalists and researchers. That trust and respect were held as sacrosanct and protected to the greatest degree possible throughout the research process. For this reason, the research approach consisted of semi-formal interviews in which not all predefined questions were asked of all participants. Questions, for example, regarding experiences of force were not posited to women who had a shorter history with Empower.

The issue of trafficking is a delicate subject, in part because of the frequency with which it is assumed by outsiders to be relevant, compared to the distinct rarity of actual occurrences. In addition to being perceived as imposing a narrative that research subjects interpret as irrelevant,³⁰ the use of the language and framework of ‘trafficking’ in research conducted with sex workers can serve to undermine and attack their agency and character, reiterating a popular discriminatory view of sex workers, particularly Southeast Asian women sex workers, and their work as ‘sad’ or ‘bad’, rather than being worthy of respect. The impact of this approach is to perpetuate the harmful narrative that ‘no one would *choose* to do sex work’ or that someone who does has made a questionable decision, therefore reproducing discrimination and reinforcing the stigmatised status of sex work even in the fieldwork process. In order to be respectful of participants and to reduce the harms inflicted, questions were framed in a manner that encouraged participants to bring to the table the issues that were of concern to *them*, using language that was *theirs*, with the understanding that women would share what they felt comfortable sharing and what they found to be relevant. This approach is in following with contemporary intersectional feminist research methods which interrogate the notion of objectivity and reject the notion of neutrality, seeking instead to employ a reflexive approach which acknowledges the self and prioritises the upholding of the dignity of research participants.³¹ This project recognises as a strength a process which centres the perspectives, frameworks, and languages put forward by sex workers.

To that end, members of Empower expressed regret that time and resources did not allow for a research project which they themselves could oversee without the hiring of a consultant. The arrangement chosen thus represents somewhat of a compromise, with the selection of a consultant who volunteered in the community, but did not come from it, who could work in English in the allotted timeline, but also facilitate a project that prioritised respect for the integrity of the Empower community. As a consultant/English teacher, there could be no discreet allocation of roles; Empower English students were among those interviewed, which no doubt impacted the way in which information was shared, if not the content itself. The advantages of engaging in research within a framework of trusting, close, and mutual relationships were apparent in the openness with which participants shared and the underlying tone of playfulness, humour, and comfort throughout the process. The limitations of working within already established relationships, while inevitable, cannot be known in their specificity.

³⁰ ‘Trafficking has nothing to do with our work. We choose to do this job.’ – Nam, interview, Chiang Mai, 3 March 2017.

³¹ S Harding, ‘“Strong Objectivity”: A response to the new objectivity question’, *Synthese*, vol. 104, no. 3, 1995, pp. 331–349; S Kreiger, *Social Science and the Self: Personal essays on an art form*, Rutgers University Press, New Brunswick, 1991.

Interviews took place in English and Thai, sometimes alternating between the two, according to what was possible given levels of ability in any given setting.

Findings

On Empower

Empower was founded in 1985 by Thai activist Chantawipa Apisuk, better known as P' Noi, and a group of sex workers and activists in the Patpong bar district of Bangkok. The organisation began without any pre-determined agenda, but rather developed from the premise that sex workers were entitled to the same human rights as women everywhere. As of 2012, over 50,000 sex workers had joined Empower as students and volunteers and Empower estimates that it reaches approximately 20,000 sex workers annually. Members of Empower represent a range of ethnic groups, coming from all parts of Thailand as well as neighbouring countries in the Mekong region. Empower's work is primarily with cisgender women who are the majority of sex workers in Thailand, but have historically been the recipients of a small proportion of funding and advocacy efforts.³²

When people start to say “yes” and “no” they can minimise exploitation. [...] A woman who can communicate “I like”; “I don’t like”; “I go”; “I don’t go”; and “I use condom” with her customer is better placed to work safely.

Empower is a community space for sex workers to come together to assert their rights to education, health, access to justice, and political participation. Members use Empower as a gathering place for language classes, a degree programme, legal education and advocacy, counselling, theatre, cooking, eating, drinking, and hanging out.

At the time of Empower's founding, its focus was largely on English proficiency—a tool which allowed sex workers in Patpong to communicate with customers in an increasingly international and English-reliant climate. At that time and to this day, Empower's English classroom aims to cultivate agency and empowerment by building students' confidence in expressing themselves in English. Founder P' Noi reflected, 'I myself have learnt that when people start to say “yes” and “no” they can minimise exploitation.' She elaborated, a woman who can communicate 'I like'; 'I don't like'; 'I go'; 'I don't go'; and 'I use

³² Interview, Liz, Chiang Mai, 1 February 2017.

condom' with her customer is better placed to work safely. Empower member and English student Tangmo explained that the knowledge and community she has found at Empower has allowed her to feel safer and more confident at work. Another student, Soda, laughed and joked, 'A few weeks ago, I was so shy I couldn't talk!' At Empower, sex workers create a space centred around their interests, experiences, and lives, without the discrimination they can expect to experience elsewhere because of the work they do. 'At other language schools, they look down on us', Aea shared. Indeed, one Empower member was told that she was not allowed to use the bathroom at another language school because she was a sex worker.³³

Central to the work Empower does are weekly outreach visits to Chiang Mai's bars, karaokes, massage shops, a-go-gos, brothels, and women working on the street, during which current Empower members get up-to-date on the situation at Chiang Mai's hundreds of entertainment places, maintain long-standing relationships, and build new ones. Women who are a part of the Empower 'family' introduce fellow sex workers to the community and the activities available within it, as well as distribute condoms and resources like a newly developed High Heeled Lawyer legal handbook, outlining sex workers' rights and offering guidance on what to expect in the event of a workplace raid. Empower's outreach is designed to include time for current Empower members and women who are unfamiliar with Empower to sit, talk, and drink together, allowing for the opportunity to ask questions and share experiences.

The majority of Empower members are introduced to the organisation either through outreach or word of mouth, and start as language students, studying Thai literacy, English, Chinese, or Japanese. From there, women often go on to join other activities, including Empower's high school diploma programme, its newly developed theatre programme, its Legal Club, or the Can Do Bar—a collective bar opened by members of Empower in 2006 as an example of the safe and fair working conditions sex workers would like to see in all workplaces. Through these programmes, women begin to take leadership roles in the community, planning activities, contributing to ongoing projects, and acting as mentors for newer members. For Tangmo, language classes were an introduction to the larger community. They led her to participate in Empower's annual 'camp'—an opportunity for women to spend a few days together in order to get to know each other and discuss in greater depth their shared experiences, concerns, and hopes for the future of sex work as well as strategies for advocacy. It was at the camp that Tangmo had her first opportunity to spend time with Empower friends outside of the English classroom. On her return, her relationship to the community deepened as she employed Empower's legal counselling in preparing to apply for her first passport, joined the Legal Club, and began working toward her high school diploma. She later

³³ Interview, Liz, Chiang Mai, 1 February 2017.

referred a younger friend from work to Empower’s English classes. Women like Tangmo often give as much as or more than they gain as they become leaders and sources of support for other members of the community.

On Trafficking: ‘It’s just an excuse to arrest us’

Perhaps not dissimilarly to some of their fellow sex workers around the world, the sex workers who participated in this research were much more familiar with the story of trafficking than the reality. In each of the interviews, the mention of the term ‘trafficking’ elicited reflections on a narrative coming from outside of the sex industry—from the government, the police, or the news; all of the women who talked about trafficking spoke to a sense that in Thailand today, trafficking is primarily an issue projected upon the sex industry from outside of it. ‘I think there used to be trafficking [in the industry] before, but there isn’t anymore. People don’t accept us [sex workers], so they see it as trafficking’, said Tangmo. When asked where she first heard about trafficking, Nam explained that she saw something about it on the news. ‘It’s just an excuse for the police use to arrest us’, she said. Discussing a video promoted by an anti-trafficking organisation in Thailand which portrays teenage girls from the countryside being tricked into working in the bars, Mai noted, ‘I’ve seen so many videos like this, but I have yet to see it in real life’. She ventured, ‘I think they just make it from their own ideas of what they imagine sex work must be like’. Oa explained that in her seven years with Empower, ‘I have never seen the kind of trafficking that [the government, journalists, and anti-trafficking organisations] see... People who don’t know sex workers show up [to workplaces] and they’re surprised at what they see. They see the man selling alcohol outside or the tuk-tuk driver and assume he’s exploiting the women inside’. Even the terminology of trafficking is externally imposed, as Liz explained: ‘In Thai, there is “took advantage of”, “tricked”, “cheated”, and “in debt”; there is “trade in drugs” and “trade in things” but “trade in humans” [the Thai

‘I think there used to be trafficking [in the industry] before, but there isn’t anymore. People don’t accept us [sex workers], so they see it as trafficking’.

translation of trafficking] is a term that never existed before’. Empower founder P’ Noi equated the terminology with the legal approach propagated by the US, speaking to the relative newness of the notion of trafficking and its foreign origins, ‘Trafficking only came from the Taksin government in 2006... The new law is not only [about] Thailand; it’s [to protect] big countries like the US...’ She emphasised, ‘I never met anyone who [came] to Empower and [told] me, “Please help me, I am trafficked”.’

Interviews confirmed what Empower has long asserted: while human trafficking does exist in Thailand, the sex industry is not a primary site for trafficking and has not been for many years. While trafficking terminology had not yet arrived on the scene, until 1997-98, experiences that fit the UN Trafficking Protocol's definition of human trafficking³⁴—women doing sex work under threat or use of force, coercion, or deception—were commonplace in Thailand. The term 'modern slavery' first cropped up in descriptions of the working conditions of Burmese women in Thai brothels in the early 1990's.³⁵ A range of factors, however, including the proliferation of entertainment places with improved working conditions, led to formerly locked brothels opening their doors and women gaining access to a greater variety of workplaces and conditions within the sex industry. In Empower's 2012 report *Hit and Run*, the organisation stressed that 'Human trafficking has been steadily disappearing from the sex industry in Thailand over the last 15 years...' The same report detailed, 'Our research found that women apprehended in raids since 2008 have overwhelmingly stated they came independently to Thailand and are working voluntarily in work they have chosen to do. They do not experience their work as exploitation'.³⁶

A Continuum of Working Conditions

While working conditions have improved drastically over the past few decades, like all industries, Empower asserts, the sex industry has its share of poor working conditions. The criminalisation of sex work, however, restricts sex workers' ability to access the legal oversight available to workers in other sectors to address these conditions. Empower and its members recognise a spectrum of working conditions that range from decent work, as defined by the ILO,³⁷ to substandard, unacceptable forms of work, including indications of forced labour and indications of debt bondage, and finally human trafficking, a category which, according to law, includes workers under 18 years of age.³⁸ **Empower argues that because of the criminalisation of sex work, no sex workers in Thailand are currently employed in decent work conditions.** According to Empower, the vast majority of sex workers in Thailand, 87.2% or an

³⁴ UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, 15 November 2000, Article 3(a).

³⁵ Asia Watch, *A Modern Form of Slavery: Trafficking of Burmese women and girls into brothels in Thailand*, Asia Watch, 1993.

³⁶ Empower Foundation, *Hit and Run*, pp. vi, xi.

³⁷ International Labour Organization, *ILO Thesaurus*, 2017.

³⁸ Empower Foundation, *Moving Toward Decent Sex Work*, p. 87.

estimated 261,600 workers, work in a second category they refer to as substandard working conditions, meaning they face decent work deficits, working in conditions which are below labour law standards, but do not display indications of forced labour, debt bondage, or trafficking.³⁹

Because their work is criminalised, these workers are unable to access protections available through the Office of Labour Protection and Welfare, the Department of Employment, the Department of Social Security, and the Ombudsman; they therefore have no legal recourse for violations of dignity and physical integrity, meaning employers are free to impose exploitative policies with impunity. The result is a climate in which entertainment places almost universally impose ‘bar rules’ which violate Thai labour law and present obstacles to decent work principles of freedom, equity, security, and dignity.⁴⁰ Rules establishing alcohol and customer quotas are commonplace, as well as policies penalising employees for being late, wearing the wrong colour uniform, being over a maximum allowed weight, failing to show proof of regular STI testing (in some cases as frequently as three times a month), or meeting with a customer outside of working hours, all enforced through salary cuts.

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While none of the women interviewed found themselves in situations of forced labour, debt bondage, or trafficking, all described working conditions which violated labour law standards. At all of the workplaces discussed in focus groups, the standard allotted time off was two days per month—half the number of days required by Thai labour law, with any extra days missed punished with salary cuts of THB 700 to 1000 (approximately USD 20-30) per day. At one entertainment place, salary cuts were so excessive that out of four women interviewed, one of whom had been a regular employee for seven years, none had ever received her full salary. Women described a climate in which, in order to avoid salary cuts, it is not uncommon for workers to use dangerous weight-loss drugs and to drink more than they feel is healthy or safe. One woman had lost her job due to being over the allowed weight. Another was in a motorbike accident resulting from enforced drink quotas. Several women stressed

³⁹ *Ibid.*

⁴⁰ International Labour Organization, *The ILO at a Glance*, International Labour Office, Geneva, 2007, p. 1.

that of all the bar rules, the policy requiring them to pay employers when they met with customers outside of working hours was the most exploitative. This rule, they emphasised, interfered unfairly with their individual autonomy, giving entertainment place owners undue control over their leisure time and personal interactions as well as a disproportionate share of earnings. Participants also highlighted the negative impact on their health of rules which punish them for not drinking enough, with one woman noting that she finds herself sick much more frequently since starting work at the a-go-go.

Empower estimates that 9% of workers nationally work in conditions which ‘threaten a wider scope of human rights’, referred to by the ILO as ‘unacceptable forms of work’—work which exhibits indicators which have been correlated to the presence of forced labour or debt bondage, including restrictions on movement, withholding of salary or travel documents, or services as security for debts to employers.⁴¹ Empower emphasises that ‘These conditions do not in themselves meet the definition of forced labour or debt bondage; rather the conditions exist that could allow forced labour or debt bondage to occur.’⁴² In this research, no participant identified as working in situations of forced labour or debt bondage.

There was unanimous recognition that, although a small minority, there are minors working in the industry and that entertainment places are not appropriate workplaces for them.

Finally, Empower members cited a United Nations Inter-Agency Program (UNIAP) estimate of 3.8% of sex workers or 11,400 sex workers nationally who work in situations meeting criteria for human trafficking and/or child labour, including those who choose to work in the entertainment industry, but are under 18 years of age.⁴³ The experiences of members of Empower indicate that the vast majority of those considered by law to be ‘trafficked’ are, in fact, classified as such solely on the basis that they are teenagers. Within focus groups, there was unanimous recognition that, although a small minority, there are minors working in the industry and that entertainment places are not appropriate workplaces for them. Women did,

⁴¹ International Labour Office, *Unacceptable Forms of Work*, International Labour Organization, Geneva, 2015, retrieved 25 August 2017, http://www.ilo.org/global/publications/WCMS_436165/lang-en/index.htm.

⁴² Empower Foundation, *Moving Toward Decent Sex Work*, p. 8.

⁴³ *Ibid.*

however, bring an empathetic perspective to the discussion of minors, given a near universal experience of having contributed to their families' income from a very early age (typically from the age of 8-11), working in agriculture, factories, and as domestic workers, in many cases travelling for work, living independently, and supporting themselves and other family members before they were of age to work legally at a bar.

During a discussion on minors doing sex work, participants recognised the multiplicity of factors leading minors to seek out work in the entertainment industry, as well as the underlying social inequality which compels them to do so. The women interviewed identified entertainment place owners as the primary persons responsible for hiring minors, and expressed regret that employers do not adhere to the legal standard in hiring practices. Empower members suggested that the removal of criminal law might allow the same legal oversight that keeps minors out of other age-inappropriate workplaces to be enforced in the entertainment industry. They posited that, in a decriminalised environment, not only would entertainment places be subject to the same labour inspections as other workplaces, but that decriminalised workers would have the freedom to file labour complaints as well as organise in order to proactively petition for safe and healthy work environments.⁴⁴

'Those "victims" we get are so-called "victims" just because of their age. They're not slaves in any sense of the word. I think we're wasting our time looking for human trafficking in bars. That's not to say it could never happen [but]... I think there are other priorities.'

Participants' lack of exposure to force or coercion in sex work should not, in fact, come as a surprise to those who work in or around the entertainment, or anti-trafficking industries in Thailand. The near absence of instances of trafficking, outside of minors working in the industry, has been acknowledged for years by a variety of parties involved in anti-trafficking work. Empower quotes a statement from a police officer in an Anti-Human Trafficking Unit: 'Women being tricked and locked up in brothels is very old-fashioned thinking. All we have nowadays are a few teenagers where they shouldn't be'.⁴⁵ In an interview, Ben Svasti of the anti-trafficking organisation Focus reiterated that trafficking in the sex industry has become 'less and less severe' since the early 2000s to the point that, 'those "victims" we get are

⁴⁴ Interview, Liz, Chiang Mai, 1 February 2017; Interview, Oa, Chiang Mai, 14 February 2017.

⁴⁵ Empower Foundation, *Hit and Run*, p. 29.

so-called “victims” just because of their age. They’re not slaves in any sense of the word.’ He went on to say, ‘I think we’re wasting our time looking for human trafficking in bars. That’s not to say it could never happen [but]... I think there are other priorities.’

Challenges in the Industry: Police, discrimination, and stigma

While the women interviewed expressed frustration with near universal violations of labour law in the industry, the focus consistently returned to even greater obstacles related to the criminalisation of their work. Liz observed, ‘The key issues for sex workers in Thailand are abuses by police, discrimination under the law, and social stigma.’ These challenges combine to rank workplace raids highest as a source of anxiety and fear for the sex workers who participated in this research. Speaking to the stigmatised status of sex work, Neena observed, ‘The real problem is that our work is illegal, so it makes people pity us... People look down on us and think we must be trafficked.’ Evidence of trafficking is often the rationalisation for entertainment place raids, which, one woman observed, are executed under the authority of the trafficking law, but frequently end up using the prostitution law to make arrests.⁴⁶

Raids, ‘Rescue’, and ‘Rehabilitation’: The impact of anti-trafficking policies

Despite the relative absence of what Svasti referred to as ‘true victims’ of trafficking in the entertainment industry—especially as compared to other sectors like the fisheries⁴⁷—police, NGOs, and government departments continue to garner media attention and international recognition for entertainment place ‘raid and rescue’ operations. Accompanying images of women struggling to cover their faces and bodies, headlines congratulate NGOs and government bureaus, declaring, ‘Underage sex workers

‘If two sixteen-year-olds are rescued—one from a hell factory and one from a brothel—the help they receive is not the same. The kid from the factory is treated with respect and given compensation. The girl rescued from the brothel may receive the same services, but she is discriminated against and nobody calls for her labour compensation.’

⁴⁶ Focus Group, Empower Legal Club, Chiang Mai, 17 February 2017.

⁴⁷ K Hodal, ‘Slavery and trafficking continue in Thai fishing industry, claim activists’, *The Guardian*, 25 February 2016, retrieved 1 August 2017, <https://www.theguardian.com/global-development/2016/feb/25/slavery-trafficking-thai-fishing-industry-environmental-justice-foundation>.

freed’;⁴⁸ but stories told by members of Empower indicate a wholly different experience. They explain that even for the individuals these operations purport to help, the consequences are dire. In addition to having their images published in national media, teenagers working at entertainment places are subjected to mandatory medical testing and forcible detention in government care facilities like Ban Kret Trakan, the rehabilitation centre opened in the social purification campaign of the 1950s. Detention can last for months or years, during which detainees have severely restricted access to their families and work; at the end of their detention, they are given no labour or criminal compensation before being sent home or deported.

Empower member of over ten years Ping Pong illustrated, ‘If two sixteen-year-olds are rescued—one from a hell factory⁴⁹ and one from a brothel—the help they receive is not the same. The kid from the factory is treated with respect and given compensation. The girl rescued from the brothel may receive the same services, but she is discriminated against and nobody calls for her labour compensation.’ Empower members know of no cases in which sex workers detained in Ban Kret Trakan were granted any financial compensation. Empower cites a report by the National Human Rights Commission (NHRC) of Thailand asserting, ‘These girls are deprived of opportunities to voluntary education and of their right to work, despite the government’s permission in principle.’⁵⁰ ‘They’re not allowed to use their phones to contact family’, noted Mori; ‘And when they do talk on the phone they have someone sitting next to them listening to everything they say’, Neena added. According to Empower member Oa, women placed in government care seldom have legal processes explained to them by authorities and often perceive that they are being punished for their work. Historically, Empower members note, those identified as ‘sex trafficking victims’ detained at Ban Kret Trakan were made to wear different coloured uniforms so that they could be distinguished from the mainstream population.

For women who are not identified as victims of trafficking—typically a large majority of those detained in any given workplace raid—the consequences vary from arrest, fine, and release to prolonged detention, deportation, and government blacklisting. Some are compelled to act as witnesses in trafficking cases, without adequate protection or compensation. Empower asserts, ‘The more there are rescues, the worse our lives become...’⁵¹ ‘Despite 16 years and millions of dollars in trafficking prevention and

⁴⁸ P Thepgumpanat, ‘Fifteen underage sex workers freed in Bangkok brothel raid’, *Thomson Reuters Foundation*, 10 June 2016.

⁴⁹ Common term for exploitative factories in Thailand.

⁵⁰ National Human Rights Commission of Thailand, *Alternative Report on Thailand’s Implementation in Compliance with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, 2017, p. 7, http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/THA/INT_CEDAW_IFN_THA_27198_E.pdf.

⁵¹ Empower Foundation website, <http://www.empowerfoundation.org/>.

advocacy’, Liz said, ‘sex workers in Thailand do not know of the Palermo Protocol; they only know that the final result is detention and deportation.’ When women were asked whom they would contact for support in the event of their arrest in an entertainment place raid, establishment owners—the very individuals commonly portrayed as their abusers and traffickers—emerged among the first answers, followed closely by Empower. One woman joked, ‘Who can we call? We’re all there together!’ In a discussion in Mahachai, long-time Empower member Wan nodded toward the road as a police motorcycle made its fifth lap in under two hours, observing, ‘It’s like this every night.’ Another woman, hesitant to accept the condoms Empower provided explained, ‘We’re not allowed to keep condoms in our purses because if the police come they’ll use them as a reason to arrest us.’ Several of the women who participated in focus groups experienced workplace raids while this research was ongoing; one woman was arrested. In contact with members of Empower throughout her detention, she was fortunate to be subjected only to two nights in jail for violating immigration law before paying a fine and returning to work the next week.

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The most egregious offense, according to Empower, is the entrapment of sex workers by representatives of NGOs and police in order to gain evidence of prostitution and/or trafficking related crimes. These operations are a violation of the human rights of impacted workers, as well as ineffective in gathering sound evidence. In addition to the manipulation of sexual consent, which violates women’s physical integrity and human dignity, Empower members point to two instances where women who had never before engaged in sex work decided to do so for the first time as a result of urging by ‘customers’ who later detained and deported them for their crime. ‘It’s not uncommon for us to see police officers as customers’, Pueng explained. Another woman put her hands on her chest as she emphasised, ‘It’s our bodies they’re using as evidence.’ The use of entrapment in the sex industry was first criticised by the NHRC in 2003, which noted a link to frequent human rights violations.⁵² Women agreed that a better approach would be for minors to be removed from workplaces and other workers allowed to continue with their lives.

⁵² Empower Foundation, *Hit and Run*, p. viii.

Nataree Massage

While the women who participated in this research managed to walk away from police raids with relatively minimal harm, for the women affected by the raid of Nataree, a soapy massage business in Bangkok, the consequences were further reaching. On 7 June 2016, after a three-month-long entrapment operation conducted by a foreign NGO, Nataree, a 40-year-old business which employed approximately 400 women and was commonly believed to offer sexual services in addition to bathing and massage, was the target of a raid and rescue operation which resulted in the detention of 121 women. The raid, conducted by over 100 police, military, and government officials and accompanied by representatives of the media, identified 15 workers under 18 years of age who were therefore classified as victims of trafficking and forcibly placed in the care of the Department of Social Welfare at Ban Kret Trakan. The last of these minors was released after 281 days and given compensation of THB 3000 (approximately USD 88), almost all of which was used for her transportation to her home province in Thailand. Women identified as victims of trafficking who were migrants were deported. Women who were not identified as victims of trafficking were fined for violations of prostitution and/or immigration law, detained, and, in the cases of the 73 migrant women, deported. A local news source reported that ‘justice was served’ when seven low-level staff members, including a bartender, doorman, and floor manager, were convicted of trafficking related crimes and sentenced to between eight and twelve years imprisonment.⁵³ Nataree’s owner and manager were never located.

Of note in this raid was the unlawful detention of some twenty-one women as witnesses to trafficking related crimes and Empower’s role in successfully advocating for their transfer to appropriate accommodation. On 1 July 2016, after following the case closely for three weeks, visiting women in detention, and acting as liaisons to families across the country and internationally, a role which none of the parties to the raid had apparently planned for or filled, Empower submitted an open letter to the Prime Minister of Thailand urging the government to comply with the Witness Protection Act protocol. Empower also helped the women to procure a lawyer, at their own expense, to facilitate their timely release and make a formal request for the investigation of their case by the NHRC. Three days later, National Human Rights Commissioner Ankana Neelapaijit visited the women, who were being held at an immigration detention centre, and made a public statement that the women were being detained without legal authority.⁵⁴

⁵³ Coconuts Bangkok, ‘Seven sentences in Nataree Massage human trafficking and child prostitution case’, *Coconuts*, 20 April 2017.

⁵⁴ As quoted in ‘Sex Workers and the Thai Entertainment Industry’, submission by Empower Foundation to the Committee on the Elimination of Discrimination against Women, Sixty-seventh Session, 3-21 July 2017, retrieved 3 October 2017, http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/THA/INT_CEDAW_NGO_THA_27511_E.pdf.

After 34 days in unlawful detention, the women were moved to a hotel before being brought to court, whereupon only three of them were asked to testify. After answering questions about how they came to Thailand and whether they had been forced to work, the women were asked to identify the defendants, explain their roles at Nataree, and answer whether they had ever been told to give any of the defendants any money. According to members of Empower who attended the court hearing, the three women answered similarly: they had come to Thailand and worked at Nataree of their own volition, they knew the defendants from their time working together (one of them was known to the women as ‘Uncle’), and had never been compelled to give them money.

It was Empower that served as the link between the affected women and their families, keeping track of where each woman was detained, when she was moved from one place to another, and making sure that no one would slip through the cracks of a process that, despite taking three months to start, had not included arrangements for the detention of over one hundred people.

Following the court proceedings, women who were migrants were transferred to immigration detention before being deported. Throughout this time and afterward, it was Empower that served as the link between the affected women and their families, keeping track of where each woman was detained, when she was moved from one place to another, and making sure that no one would slip through the cracks of a process that, despite taking three months to start, had not included arrangements for the detention of over one hundred people. Empower has continued to advocate for the affected women in hearings with the NHRC and members of the government. In February 2017 Empower member Oa estimated that to date Empower had spent from two to two and a half months of full time work cumulatively responding to the incident. Empower spent over THB 100,000 Baht (approximately USD 3000) which had not been budgeted, but had to be found.⁵⁵

According to Empower’s documentation, dozens of raids and rescues take place every year, peaking at 53 in 2015, the year after the National Council for Peace and Order took control of the government and Thailand was downgraded to Tier 3 in the US State Department’s annual *Trafficking in Persons* Report. The resulting prosecutions for violations of prostitution and immigration law, as well as the Anti-Trafficking in Persons Act, are then cited in reports about government efforts to combat trafficking in Thailand and recognised as successes internationally, including in the *TIP Report*, which granted Thailand an upgrade in 2016, citing increased prosecutions of trafficking related crimes.⁵⁶

⁵⁵ Follow-up Interview, Liz, Chiang Mai, 12 August 2017.

⁵⁶ US Department of State, *Trafficking in Persons Report*, 2016, pp. 363–365.

On Collaboration with the Anti-Trafficking Network

Despite a fundamental disagreement on the practice of raid and rescue, Empower has taken strides to work together with anti-trafficking organisations. Liz remembers, 'When funding available for anti-trafficking work exploded around 2001 [the number of anti-trafficking organisations working in Thailand] expanded to include many newcomers'. At that time, Empower joined an MOU with a regional anti-trafficking network in hopes of minimising harms inflicted by high budget international organisations like International Justice Mission which, operating on an annual budget of USD 22 million, was 'a force to be reckoned with.' But key clauses of the MOU were broken during a raid in 2003 when members of Empower were 'rescued' without any consultation with Empower or the Shan Women's Action Network (SWAN). Both organisations were asked to provide translation services in the aftermath; the raid also resulted in one woman's identity being publicly exposed. Liz explains, 'It was the first raid where we had strong prior relationships with the women so we knew exactly what they wanted and what the conditions were. We've got a picture of them upstairs at the swimming pool with us the day before.' As a result of the MOU violations, Empower and SWAN both withdrew from the anti-trafficking network in protest. They have continued to work together since.

Working Together for Empowered Solutions

While Empower has seen little in the way of trafficking in the past fifteen years, one woman's experience is indicative of the organisation's unique role in addressing sex workers' needs consultatively, holistically, and in a way that serves to empower. Around 2012, Som⁵⁷ found herself in a situation of trafficking as defined by the UN Trafficking Protocol. She had severely restricted movement, prohibited from travelling independently until she was able to pay off a debt to her employer, incurred for travel expenses from Myanmar/Burma. While she had no issue with the work, i.e. sex work, or in dealing with her customers, she knew the amount customers were paying her employer and felt that she was not receiving a fair share for her labour. Allowed to leave work only for two hours Monday to Friday to attend Thai literacy classes at Empower, Som felt confident enough in the organisation after a few weeks to share her dilemma and seek support. Thai literacy classes quickly switched to brainstorming sessions about how to move forward. Som discussed the possibility

⁵⁷ Name changed to protect privacy.

of disguising herself and running away to another town or workplace. The agent, however, knew where her family lived and had threatened their safety if she ever ran away. Empower explained her options available under Thai law. One was to identify herself to the police as a trafficking victim, whereupon she would be placed in mandatory government care until the court case finished, then deported; another was to identify herself to immigration police as having violated immigration law and face detention in an immigration facility before being deported. Neither of these options would allow her to continue working in Thailand or protect her family in Myanmar/Burma in the event that the agent or business owner sought retaliation. Confident that she was not in immediate danger, Som and Empower continued discussion. One of the women at Empower who had previously worked in the same place suggested another option: the women went together to the entertainment place owner to negotiate a new arrangement—Som would continue to make regular payments until her debt was cleared, but she would work at a different establishment with better working conditions, free to move as she liked, with the understanding that she could be contacted by her old employer at her new place of work. This was the only option available to her that ensured her safety and the safety of her family and which allowed her to continue working to repay her debt and provide income for herself and her family. With Empower's community-based support, Som reached an outcome that addressed her basic needs and left her in a situation that was better than the one she was in when she arrived. Som's relationship with Empower continues to this day.⁵⁸

With Empower's community-based support, Som reached an outcome that addressed her basic needs and left her in a situation that was better than the one she was in when she arrived. Som's relationship with Empower continues to this day.

⁵⁸ Follow-up Interview, Liz, Chiang Mai, 31 March 2017.

Conclusions and Recommendations

While working conditions which meet the criteria for human trafficking have all but vanished, sex workers in Thailand continue to face rights violations due to the criminalisation of their work, not least of which are anti-trafficking initiatives which target the sex industry with raid and rescue practices. Empower's experiences indicate that even for the people these raids purport to serve, they consistently lead only to detention and deportation.

'Empower is Us'

In a climate that criminalises sex workers' everyday activities, poses a constant threat of arrest, detention, and deportation, and imposes legal penalties at every turn without corresponding protections, an organisation like Empower becomes a critical support and sanctuary of belonging. In addition to the emergency response work conducted in situations like the Nataree raid, where Empower provided necessary amenities to women in detention like sanitary napkins, a nominal sum of money for making calls to family, and spare clothing,⁵⁹ Empower is unique in its role as both a community and a space that belongs entirely to sex workers. When members of Empower are asked to reflect on the organisation as distinct from themselves and the other people who make it up, they emphasise, again and again, the opportunities Empower has opened up for them to study, to work more safely, and to connect with the community. Graduate of Empower's high school diploma programme and long-time community member Nutjang explained, 'It's like in school when you fail an exam. Most teachers don't let you take it again. Empower is like the teacher that does.' Inevitably, though, members of Empower return to discussing Empower as the women who make it up, and the women who make it up as Empower. On each occasion when a group of Empower community members was asked 'What is Empower?', someone in the group inevitably answered, 'Empower is us'. In response to the follow-up question, 'Who are we?' the answer emerged, 'We are Empower!' Nutjang emphasised, 'Empower doesn't *help* us... Empower *is* us.'

'It's like in school when you fail an exam. Most teachers don't let you take it again. Empower is like the teacher that does.'

⁵⁹ Entertainment workers who are detained are often forced to spend the duration of jail time in the clothing they were wearing when arrested.

When members of Empower were asked about their hopes for the future of sex work, they were quick to answer, ‘to work safely’ and ‘to work legally’, with an older ‘sister’ Pueng, clarifying, ‘We don’t want legalisation. That will just add more things we’re forced to do. We want decriminalisation—to get rid of the prostitution law so our work is safe.’

When asked how the response to trafficking needed to improve in Thailand, Empower founder P’ Noi answered immediately, ‘Don’t give funding [to groups engaged in anti-trafficking work in the sex industry.]’ She elaborated, ‘I don’t feel happy with their activities that [bring] more stigma on top of [sex workers].’ Despite massive budgets and decades of work, P’ Noi explained, ‘They only catch victims and... [don’t] show that the money they use... they use for [a] better life’ for the people they claim to serve. In an analysis of the legal climate, Empower member Liz offered the analogy, ‘When the only tool is a hammer, everything is dealt with like a nail.’ The employment of criminal law as a tool to combat exploitation of women in sex work, she argues, has ‘spectacularly failed’. What is more useful to sex workers, the findings of this research indicate, is the day-to-day work that Empower does in providing opportunities, responding to articulated needs, and empowering women in the sex industry to advocate for themselves and one another.

What is more useful to sex workers is the day-to-day work that Empower does in providing opportunities, responding to articulated needs, and empowering women in the sex industry to advocate for themselves and one another.

An Alternative Model

In contrast to an anti-trafficking model which denies sex workers agency over their lives and violates their human dignity, the work that Empower does expands opportunities, cultivates empowerment and moves sex workers closer to the actualisation of human rights. From a bad hangover to a bad boss, from Nataree to the forthcoming amendment of Thailand’s Prostitution Act, Empower is unique in centring sex workers in the conversation about their jobs, their hurdles, and their dreams. While a far-away trafficking discourse carries on with little space for the voices of those it most deeply affects, one community of sex workers has created an alternative model. Rather than assuming that sex workers of Thailand need Empower, Empower functions on the appreciation that it is dependent on the community of sex workers. Articulating what so many community members know to be true, ‘big sister’ Ping Pong highlights where the organisation’s work diverges farthest from anti-trafficking efforts: ‘If Empower didn’t have us, Empower couldn’t exist... Good or bad, I don’t know, but I know we fight together.’

Recommendations

With respect to anti-trafficking initiatives in the sex industry, Empower makes the following recommendations:

To the Thai government:

1. Abandon the practice of entrapment and raid in accordance with CEDAW concluding observation 27d from the combined sixth and seventh periodic reports of Thailand;⁶⁰
2. Comply with its legal obligations under the UN Convention on the Rights of the Child and all other national laws in its treatment of victims and witnesses;
3. Investigate and act on human rights abuses against women and girls working in the sex industry by anti-trafficking organisations, both state and non-state;
4. Convene an *ad hoc* committee to review the legal and policy environment in the entertainment industry that includes at least one-third sex worker representatives.

To anti-trafficking organisations:

1. End all involvement in law enforcement work;
2. Allocate funding and resources to services for youth and women, particularly mothers;
3. Provide financial assistance, resources, and other support to girls and women regardless of their work or immigration status;
4. Cease the current practice of proselytising to women and girls as part of their recovery.

To donors:

1. Make long-term investments in sex worker led and managed organisations that work to address the issue of trafficking as part of a wider aim to improve the lives of women whether or not they remain in the sex industry;
2. Take measures to demand evidence of claims made about anti-trafficking and anti-trafficking practices;

⁶⁰ Committee on the Elimination of Discrimination against Women (CEDAW), *Concluding observations on the combined sixth and seventh periodic reports of Thailand*, CEDAW 21 July 2017, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FCO%2FTHA%2FCO%2F6-7&Lang=en.

3. Be rigorous in investigating potential grantees and local context before determining where and how much to invest;
4. Avoid supporting any practices that increase stigma or result in human rights violations;
5. Ensure that all potential grantees demonstrate plans and progress toward having formerly trafficked or migrant women in key positions of leadership and management.

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NZPC direct peer to peer work with migrant sex workers and refugees.
Photo credit: NZPC

NEW ZEALAND

Lynzi Armstrong

New Zealand is a particularly unique context to explore sex worker organising, how sex worker-led organisations interact with the anti-trafficking framework, and respond to instances of coercion and exploitation in sex work. The uniqueness of the New Zealand context is underpinned by the legal framework in place. Sex work was decriminalised in 2003 with the passing of the Prostitution Reform Act (PRA)—a policy for which sex worker-led organisations in all four corners of the world have campaigned for decades. New Zealand is also distinct in that sex workers were directly involved in the process of law reform—the New Zealand Prostitutes Collective (NZPC) spearheaded the campaign for decriminalisation and was recognised as a key stakeholder in the policy process. However, whilst this legal framework is considered best practice from a rights-based perspective, it is not a perfect law and one of its limitations is that temporary migrants are prohibited from engaging in sex work and can face deportation if they violate this rule. This chapter documents the unique story of NZPC’s organising and explores the influence of anti-trafficking discourse in New Zealand from the perspective of sex workers and NZPC representatives. It also highlights the role played by NZPC in responding to the diverse forms of exploitation and coercion that sex workers can encounter, and how the legal framework in place influences their efforts to defend sex worker’s rights.

This research drew on a feminist, participatory approach and as such NZPC was involved throughout the research process. The researcher has a strong relationship with the organisation, having first become involved with it as a PhD student in late 2007, and worked as a volunteer and staff member between 2008 and 2011, while maintaining a relationship in a research capacity after that point. The research was qualitative and involved nine in-depth interviews with NZPC representatives, current sex workers, and an external key informant. While this is a small case study, the researcher has interacted with a very large number of sex workers formally and informally in New Zealand over the past 10 years and has detailed and nuanced insights into sex work in that context, including the challenges faced by temporary migrants and debates relating to trafficking at a local and global level.

The interviews revealed a contradictory picture regarding the legal framework in New Zealand. The situation is very much illustrative of a sex worker-led organising success story, given that the NZPC grew from an informal group of sex workers in 1987 to a well-respected, government-funded organisation that led a successful campaign for decriminalisation. However, while interviews with NZPC informants highlighted the powerful impact of decriminalisation in minimising risks of exploitation and strengthening the capacity of sex workers to respond to it, significant concerns were raised regarding the fact that migrant sex workers have essentially been left behind. All participants in this research considered this to be highly problematic in that it renders migrant sex workers more vulnerable to experiencing exploitation and violence. Participants overwhelmingly felt that the law needs to change to ensure that *all* sex workers in New Zealand can fully benefit from a context that is explicitly intended to foreground their occupational health and safety.

This chapter begins by briefly outlining the broader socio-economic and political context in which sex work occurs in New Zealand before providing some background into the legal framework surrounding sex work, the composition of the sex industry and the legal response to risks of trafficking and exploitation. It then moves to briefly outline NZPC's organisational story and perceptions and impacts of anti-trafficking discourse and of trafficking as an issue facing sex workers. Key challenges for sex workers in the current context are then explored, focusing on the impacts of prohibiting migrants from engaging in sex work, which is the dominant issue that emerged from interviews with sex workers and other key informants. The chapter ends by discussing the role played by NZPC in responding to these challenges outlining the contradictory nature of the existing legal framework, and ends with providing recommendations which emerged from the research.

Introduction

Socio-economic and Political Context

New Zealand is a high-income country, and ranks highly in several areas internationally, including human development, quality of life, and civil liberties. In 2016, it was 13th in the UN Human Development Index, which ranks countries by living standards, gross income per capita, life expectancy and education.¹ However, contradicting this is a relatively high level of income inequality. The most recent estimates from 2012 gave New Zealand a Gini coefficient score of 33, indicating that it has higher levels of income inequality than the average of 31 for countries in the Organisation for Economic Cooperation and Development (OECD).²

New Zealand occupies a relatively isolated geographic position, located approximately 1600 kilometres from Australia and the nearest Pacific Islands. However, it is a frequently visited country. In the year ending February 2017, 3.54 million visitor arrivals were recorded—the highest number ever.³ To further contextualise this, at the last census, the total population was 4.4 million. Thus, while the country is geographically isolated, it attracts large numbers of international visitors. Furthermore, it is also a popular destination for migrants. The 2013 census revealed that 25% of the population was born overseas.⁴ Thus, while it has been argued that its geographic isolation may mitigate risks of trafficking, it is clear that there is a consistent flow of people crossing New Zealand's borders.

Māori are the indigenous people of the country. New Zealand became a British colony in 1840 and the scars of settlement and colonisation continue in the contemporary context. Māori are more likely than non-Māori to live in poverty, more likely to be victims of family violence, and more likely to be imprisoned. Māori are also the group of sex workers most likely to be arrested on prostitution-related charges when sex work was criminalised.⁵

¹ United Nations Development Programme, *Human Development Reports – New Zealand*, 2016, retrieved 13 June 2017, <http://hdr.undp.org/en/countries/profiles/NZL>.

² Ministry of Social Development, *The Social Report 2016*, 2016, retrieved 20 June 2017, <http://socialreport.msdd.govt.nz/economic-standard-of-living/income-inequality.html>.

³ Statistics New Zealand, *International travel and migration*, retrieved 23 June 2017, http://www.stats.govt.nz/browse_for_stats/population/Migration/IntTravelAndMigration_HOTPFeb17.aspx.

⁴ Statistics New Zealand, *2013 Census QuickStats about culture and identity*, retrieved 14 April 2017, <http://m.stats.govt.nz/Census/2013-census/profile-and-summary-reports/quickstats-culture-identity/birthplace>.

⁵ NZPC, *Decriminalisation of Sex Work in New Zealand – Impact on Māori*, 2013, retrieved 10 May 2017, http://www.sexworklaw.co.nz/pdfs/Decriminalisation_of_Sex_Work_in_New_Zealand_-_Impact_on_Maori.pdf.

In the first quarter of 2017, the unemployment rate was 4.9%.⁶ All residents and citizens who become unemployed and are actively seeking work are eligible for a weekly payment via jobseeker support. For individuals who have voluntarily left a job there is a stand down period of 13 weeks before they can receive jobseeker support. However, it is important to note that sex workers are exempt from this, and can receive jobseeker support as soon as they stop working.⁷ There is therefore a financial safety net in place for sex workers who wish to leave sex work, or take a break from working in that area.

Sex Work in Context

Sex work in New Zealand was decriminalised with the passing of the Prostitution Reform Act (PRA) in 2003.⁸ This means that it is not illegal to sell sex or to pay for sex, nor is it illegal to facilitate the sale and purchase of sexual services. Under sections 20-23 of the Act, it is illegal to pay anyone under the age of 18

for sexual services, or to facilitate their involvement in sex work. However, importantly, young people who become involved in sex work are not criminalised. It is also an offence under section 16 to induce or compel any person, regardless of age, to provide or continue to provide sexual services.

The PRA was a contentious piece of legislation that only passed by one vote, following years of steadfast work by NZPC. Opposition to the PRA was largely based on what has been termed ‘morality politics’,⁹ and was led mainly by fundamentalist faith-based groups and a minority of feminists.¹⁰ There is however a strong feminist,

Sex work in New Zealand was decriminalised in 2003. The purpose of the law reform was to repeal legislation which criminalised sex work, and prioritise the health, safety and human rights of sex workers.

⁶ Statistics New Zealand, *Labour Market Statistics: March 2017 quarter media release*, 2017, retrieved 20 June 2017, http://www.stats.govt.nz/browse_for_stats/income-and-work/employment_and_unemployment/LabourMarketStatistics_MRMar17qtr.aspx.

⁷ NZPC, *Law*, retrieved 23 June 2017, <http://www.nzpc.org.nz/Law>.

⁸ Parliamentary Council Office, *Prostitution Reform Act, 2003*, retrieved 12 March 2017, <http://www.legislation.govt.nz/act/public/2003/0028/latest/DLM197815.html>.

⁹ H Wagenaar and S Altink, ‘Prostitution as Morality Politics or Why it is Exceedingly Difficult to Design and Sustain Effective Prostitution Policy’, *Sexuality Research and Social Policy*, vol. 9, issue 3, 2012, pp. 1–14.

¹⁰ T Barnett, C Healy, A Reed and C Bennachie, ‘Lobbying for decriminalisation’ in G Abel *et al.* (ed.), *Taking the Crime out of Sex Work: New Zealand sex workers fight for decriminalisation*, Policy Press, Bristol, 2010, pp. 57–73.

sex worker rights discourse in New Zealand, which to some extent, sets this context apart from other parts of the world.¹¹

Legal context

The overall rationale for the law change was to realise sex workers' rights, address the harms of criminalisation and prioritise the health, safety and human rights of sex workers. New Zealand's law reform process was unique in a number of ways: one being that it focused on improving the lives of sex workers; and another that NZPC played a central role in shaping the law and influencing the policy process.¹² Thus New Zealand became the first country in the world to fully decriminalise brothel-keeping, soliciting, procuring, and living off the earnings of prostitution.

A requirement of the law change was that its impacts would be rigorously evaluated three years following its enactment. The change also required the establishment of a Prostitution Law Review Committee (PLRC) to review the Act and provide a report the Ministry of Justice. Research conducted to

Later research conducted with street-based sex workers indicated that decriminalisation better supports safety strategies, and improved relationships between sex workers and police.

evaluate the impacts of the PRA highlighted numerous benefits. For example, 95% of sex worker respondents felt that they had rights in the decriminalised context.¹³ The research also found that 60% of participants felt more able to refuse to see clients since the law had changed.¹⁴ The PLRC's report concluded that overall the decriminalisation of sex work was achieving what it set out to do, and that sex workers were in a better position than they were prior to the law change.¹⁵ Later research conducted with street-based sex workers indicated that decriminalisation

¹¹ G Abel, 'In Search of a Free and Fair Society: The regulation of sex work in New Zealand' in E Ward and G Wylie (eds.), *Feminism, Prostitution and the State: The politics of neo-abolitionism*, Routledge, Oxon, 2017, pp. 140–154.

¹² C Healy, C Bennachie and A Reed, 'History of the New Zealand Prostitutes' Collective' in G Abel *et al.*, 2010, pp. 45–55.

¹³ G Abel, L Fitzgerald and C Brunton, *The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers*, Department of Public Health and General Practice, University of Otago, Christchurch, 2007.

¹⁴ *Ibid.*

¹⁵ Prostitution Law Review Committee, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*, 2008, retrieved 7 May 2017, <http://prostitutescollective.net/wp-content/uploads/2016/10/report-of-the-nz-prostitution-law-committee-2008.pdf>.

better supports safety strategies,¹⁶ and improved relationships between sex workers and police.¹⁷

Patterns of Sex work in New Zealand

Sex workers work throughout New Zealand, primarily in urban areas in the three most populated cities of Auckland, Wellington and Christchurch. Wellington is the capital city and the political centre; Auckland is New Zealand's commercial hub and is where the main international airport is located, and Christchurch is the major city of the South Island. Estimating the true population of sex workers is a challenging task, partly due to a high level of turnover, with people frequently moving in and out of sex work.¹⁸ However, the available data suggests that New Zealand is home to a relatively small population of sex workers. Data collected in 2006 estimated the total population of sex workers at a single point in time in the three major cities, in addition to the provincial areas of Nelson and the Hawke's Bay, at 2,396,¹⁹ which equates to 0.057% per cent of the total population at that time of 4.185 million. Contrary to a frequently circulated myth, the current evidence also suggests that there was no significant increase in the sex worker population after decriminalisation.²⁰

Contrary to a frequently circulated myth, the current evidence also suggests that there was no significant increase in the sex worker population after decriminalisation.

Sex workers in New Zealand primarily work indoors—only around a tenth work from the street.²¹ Indoor sex workers work either as 'managed' workers in brothels or as private sex workers in their homes or other locations,

¹⁶ L Armstrong, 'Screening Clients in a Decriminalised Street-based Sex Industry: Insights into the experiences of New Zealand sex workers', *Australian and New Zealand Journal of Criminology*, vol. 47, issue 2, 2014, pp. 207–222.

¹⁷ L Armstrong, 'From Law Enforcement to Protection? Interactions between sex workers and police in a decriminalised street-based sex industry', *British Journal of Criminology*, vol. 57, issue 3, 2016, pp. 570–588.

¹⁸ L Plumridge and G Abel, 'A "Segmented" Sex Industry in New Zealand: Sexual and personal safety of female sex workers', *Australian and New Zealand Journal of Public Health*, vol. 25, issue 1, 2001, pp. 78–83.

¹⁹ P Bellamy, 'Prostitution law reform in New Zealand', Parliamentary Library Research Paper, 2012, retrieved 14 May 2017, <https://www.parliament.nz/en/pb/research-papers/document/00PLSocRP12051/prostitution-law-reform-in-new-zealand>.

²⁰ G Abel, L Fitzgerald and C Brunton, 'The impact of decriminalisation on the numbers of sex workers in New Zealand', *Journal of Social Policy*, vol. 38, 2009, pp. 515–31.

²¹ Abel, Fitzgerald and Brunton, 2007.

which they can share with up to four other sex workers without requiring an operator's certificate. Under the PRA, operators of brothels, where there is someone in charge of the premises, must apply for a certificate from the Ministry of Justice, which involves a simple application process and payment of a NZD 250 (approximately USD 180) fee.²²

Most sex workers in New Zealand are cisgender women; however, there are also male, transgender and gender diverse people engaged in sex work. The largest study conducted with sex workers in the country, involving 777 participants, indicated that sex workers are diverse in terms of their age, ethnicity and social backgrounds. Over 50% of participants in this study were New Zealand European,²³ approximately one third were Māori, 5% Pacific, and 12% identified as 'other' ethnicity. Most participants had entered sex work when they were over the age of 18 (81.7% of participants), while fewer than 10% reported that they had begun sex work under the age of 16. Of the 777 participants, approximately one third were educated to tertiary level and a majority of participants reported being involved in other activities in addition to sex work, such as caregiving, volunteer work and/or other part-time or full-time paid work outside of the sex industry.²⁴

Sex Work, Migration and Human Trafficking

The majority of sex workers live in New Zealand on a permanent basis, but New Zealand is also a destination country for migrant sex workers who visit temporarily from a number of regions, including various parts of Asia, Europe, the United States and Latin America.²⁵ Only one research project to date has been completed which has focused exclusively on migrant sex work.²⁶ The research involved a survey of 124 migrant sex workers, a review of anonymised migrant sex worker sexual and reproductive health records, and in-depth interviews with 12 key informants. The

²² See: New Zealand Ministry of Justice, 'Brothel Operator Certification', available at <https://www.justice.govt.nz/licences-certificates/brothel-operator-certification/apply-for-a-brothel-operator-certificate/#people-who-need>.

²³ New Zealand European is an official category of ethnicity which describes people who were born in New Zealand and are of European descent.

²⁴ Abel, Fitzgerald and Brunton, 2007.

²⁵ M Roguski, *Occupational health and safety of migrant sex workers in New Zealand*, New Zealand Prostitutes Collective, 2013, retrieved 22 May 2017, <http://www.communityresearch.org.nz/research/occupational-safety-and-health-of-migrant-sex-workers-in-new-zealand/>.

²⁶ *Ibid.*

findings of this research indicated that migrant sex workers surveyed had entered sex work of their own volition and were, overall, satisfied with their working conditions. There was no indication of unsafe sex practices, which challenges depictions of migrant sex workers as devoid of agency and being forced to engage in such practices.

New Zealand has comprehensive laws to respond to human trafficking, contained under the Crimes Act 1961. This legislation was amended in 2015 with the Crimes Amendment Act,²⁷ following the passing of the Organised Crime and Anti-Corruption Legislation Bill. This change essentially expanded the definition of human trafficking to include 'domestic' trafficking, meaning that individuals within New Zealand who are moved, harboured, recruited, or received for the purpose of exploitation can be identified as a victim of human trafficking. Prior to this change, human trafficking was defined as an entirely transnational crime. This change was enacted to strengthen compliance with international commitments, including the UN Trafficking Protocol.

²⁷ Parliamentary Counsel Office, *Crimes Amendment Act 2015*, retrieved 20 June 2017, <http://www.legislation.govt.nz/act/public/2015/0095/latest/DLM6150617.html>.

Methodology

The research involved a qualitative approach to elicit in-depth and nuanced insights which would help to inform the overall objectives of the project, which were: 1) to document the history of NZPC organising, 2) to examine their experience of interacting with the anti-trafficking framework and whether and how it had impacted on their work, 3) to explore the strategies used by the organisation to respond to exploitation, and 4) to consider what factors impact NZPC's ability, and the capacity of sex workers more broadly, to respond to situations of exploitation and coercion. A feminist, participatory approach was utilised, and thus representatives of the NZPC were involved throughout the research—from the initial planning stages to finalising the report.

Methods

Due to the sensitive nature of the research, in-depth interviews were considered the most appropriate method to reach the research objectives. A purposive sampling strategy was utilised to ensure that those interviewed had the expertise needed to answer the research questions.

Nine in-depth, semi-structured interviews were conducted in Wellington and Auckland. Interviews lasted between 30 minutes and one and a half hours. Four of the participants were staff of NZPC and were selected on the basis of their knowledge and experience in the organisation. Participants included the National Coordinator who helped found the organisation in 1987, a long-term staff member in the National office who had worked across policy, research and operational roles, the regional coordinator of the Auckland branch, and the migrant community liaison based in Auckland. The purpose of these interviews was to gain insights into the organisational history, perceptions of human trafficking, how the organisation had interacted with the anti-trafficking framework, and strategies used to respond to sex workers who have experienced exploitation. Four sex workers were interviewed—one migrant sex worker from China, one Māori sex worker, and two New Zealand European sex workers—one with extensive experience of travelling for sex work, and another who had worked with migrant sex workers in brothel environments. The purpose of these interviews was to explore perceptions of key issues for sex workers in the New Zealand context, perceptions of trafficking into sex work as an issue, and identify how organisations should respond to sex workers who experience exploitation. One key informant interview was conducted with an external representative of a faith-based organisation who has several years of experience connecting with the NZPC on the issue of human trafficking, and an ongoing interest in anti-trafficking strategies in New Zealand. The purpose of this interview was to elicit an external perspective on the NZPC's role in responding to exploitation that sex workers experience, including human trafficking.

Ethical Considerations

All participants were provided with an information sheet to read, had the opportunity to ask questions prior to their participation, and were required to sign a consent form before the interview. All sex worker participants chose a pseudonym to use in the research. Three of the NZPC key informants wished to be identified by their full name in the research, while one participant (the migrant sex worker liaison) chose to be identified by her role, rather than her name. The external key informant also requested that a description of their role be used, rather than their name or the name of their organisation. All interviews were recorded, transcribed verbatim and reviewed to remove any potentially identifying information, in cases where participants had asked to not be identifiable in the research. Ethical approval to conduct the fieldwork was granted by the Victoria University of Wellington Human Ethics Committee.

Data Analysis

Following transcription of the interviews the data was analysed to identify key themes. Once a draft report had been completed participants were invited to comment on the draft report, and had the opportunity to do so either over email or at a group meeting at NZPC. This process, known as 'member checking', was undertaken to ensure participants felt that the interpretation of the data accurately represented their views and experiences. On completion of the draft, a meeting was held at the NZPC with five reviewers comprised of NZPC staff and volunteers to discuss the findings and final recommendations before finalising the report.

Findings

The NZPC Story

NZPC was established in 1987 by a small group of indoor sex workers who met to discuss forming an organisation to represent sex workers, and were soon joined by street-based sex workers.²⁸ The laws at that time, which criminalised sex work, along with stigma and sexual health were key issues that motivated the establishment of the organisation. Catherine Healy, the National Coordinator and one of the founding members of the NZPC explained:

We wanted to form an organisation and we wanted to stop the police arresting us as well as do something in relation to HIV and the perception that people had about sex workers being... the vectors for disease, but also the perception that people had about sex workers as being lesser... We ... wanted to bring ... different sex workers together as well as have the community centres where we could meet and talk about things that were of importance to us... Sex work related activities were illegal so we wanted to create safe spaces where we could share information and ideas to support our sex work.

NZPC is a unique sex worker organisation for several reasons: one being that it secured government funding from 1988—one year after its formal inception, and the other that they were instrumental in influencing and informing policy relating to sex work, while also delivering vital frontline services to sex workers and supporting sex workers who encounter problems in their work. The organisation has succeeded in working with successive governments without being controlled by them. As Catherine explained:

We have a contract with government, we have relationships with government but we've maintained our own sense of self and our direction, we haven't felt directed or controlled or manipulated or manoeuvred by government.

The NZPC is not a union—sex workers can be involved to any extent they wish and in ways that suit their own interests and schedules.²⁹ It is overseen by a seven-member board, comprised entirely of current or former sex workers. NZPC in the present day fulfils several functions—providing frontline health and advocacy services to sex workers, advising on sex work laws and policies nationally and internationally, informing research, and providing a safe space for sex workers to meet, strategise and share ideas and experiences.

²⁸ C Healy, C Bennachie and A Reed, 2010.

²⁹ Radačić, 'New Zealand Prostitutes' Collective – An example of a successful policy actor', *Social Sciences*, vol. 6, issue 2, 2017.

The Benefits of Organising

Interviews with NZPC staff revealed several important benefits of organising, which would not have been realised had the organisation not been established. The most significant benefit was the passing of

the PRA in 2003—a change that NZPC had worked towards since inception. It is reasonable to conclude that the decriminalisation of sex work would not have occurred had sex workers not begun organising and agitating for change. Organising has also meant that sex workers have built strong connections with other agencies, and have been able to utilise these agencies in a way that works to the benefit of sex workers. NZPC in Auckland, for instance, host a weekly clinic of Work and Income advisors who can assist sex workers who are managing difficult circumstances or wish to stop doing sex work. NZPC also host sexual health services and counselling services in several community bases. Catherine Healy explained:

The decriminalisation of sex work would not have occurred had sex workers not begun organising and agitating for change.

I think when we first began we didn't think we'd last at all or that we would get off the ground. We thought we'd probably distribute a newsletter that was written by sex workers and then it would probably, you know, collapse but the organisation in fact has developed. You know [we opened] community centres [and we've] taken in other providers such as counselling entities [that] have come in to provide complementary services for us but under our framework, in our place, as well as sexual health providers, family planning providers. We've managed to be effective in challenging law and policy, we've been significant in that regard in terms of leading if you like the push to overturn negative law and policy, we've been very much a party to policy consultations and have had a big influence in determining a lot of policy around sex work.

The organisational story of NZPC is therefore a unique story that reflects a long-term commitment to sex workers' rights, health and safety, that has resulted in a well-respected, strong and stable organisation as an authority on sex work issues.

The Anti-Trafficking Discourse in New Zealand

The discourse surrounding sex work in New Zealand has not been dominated by concerns about trafficking to the same extent that it has in some other regions globally. Even in the process of prostitution law reform pre-2003, anti-trafficking discourse did not play a significant role until the latter stages of the debate. Annah Pickering explained:

At the end, yeah, there were people talking about trafficking because there were people saying you decriminalise prostitution [and] hordes of women will be coming from abroad and you know coming into those borders and the thing was, people panicked, it was a moral panic.

Expanding on this point, Annah explained that while this eleventh hour panic about the potential impacts of decriminalisation was connected to the issue of trafficking, it appeared that it largely related to concerns that the sex worker population would ‘explode’ as sex workers flooded into the country. Some individuals who were anti-decriminalisation hypothesised that ‘we’re going to have prostitutes everywhere’. Thus, while framed as a concern regarding the potential for trafficking, such concerns were also representative of anti-immigration sentiment. However, while there was no evidence to suggest that decriminalisation would be conducive to trafficking, or result in an increase of sex workers, these concerns had a significant impact, enabling the introduction of a clause which prohibited migrants with temporary visas from engaging in sex work or operating a sex work business.³⁰

When asked about the presence and impacts of anti-trafficking discourse, research participants also referred to the influence of international debates and, particularly, the annual US Department of State *Trafficking in Persons* (TIP) Report, which has in the past identified New Zealand as a ‘destination country’ for victims of trafficking into sex work. It was felt that overall the New Zealand government had been effective in

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responding critically to these claims, on the basis that there is no evidence to date that New Zealand is a destination country for victims of trafficking into sex work. However, one interviewee observed an increase in law enforcement activity which appeared to coincide with the release of the report, noting:

My experience working at grassroots level is when that American document, the Trafficking in Person report, usually comes out in June yearly and so there’s like this pressure I think from I don’t know who—the powers [that] be or the people who think that there’s things that are happening here in New Zealand that shouldn’t be happening... the government departments, particularly like New Zealand Customs,

³⁰ See Section 19 of the Prostitution Reform Act.

Immigration New Zealand, New Zealand Police, Department of Internal Affairs have this, have a group or some people in those departments that will shift and things will start rolling around before that report comes out. And in my experience in Auckland...we've had brothel raids.

It was also felt that the proliferation of anti-trafficking discourse internationally influenced a minority of NGOs in New Zealand to draw on inaccurate statistics and claims about trafficking into sex work, as the external key informant noted:

Think it's fair to say there's still within some of the anti-trafficking groups that we have in New Zealand there's still that near obsession with sex trafficking... and we've still got this mentality and we over-exaggerate figures as you would well know. So, the same old figures that got no basis to them keep getting rolled out again and again and again.

The proliferation of anti-trafficking discourse internationally influenced a minority of NGOs in New Zealand to draw on inaccurate statistics and claims about trafficking into sex work

It was acknowledged that, while a minority of individuals and organisations continue to make claims about trafficking into sex work that are not based on evidence, on the whole it is recognised that in New Zealand trafficking appears to be an issue that is associated more with

other industries, such as fisheries, agriculture and hospitality, than with sex work. Thus, while anti-trafficking discourse had the unfortunate consequence of shaping aspects of sex work policy in the past, in the current context local debates relating to trafficking are, overall, grounded in evidence and trafficking is not framed nationally as a sex work issue.

Anti-Trafficking Discourse Engagement and Impacts: *'Well, at least I'm not in "Taken" ...'*

The anti-trafficking discourse may not have dominated debates in New Zealand but the focus on it by some individuals and organisations, and international interest in it, means that NZPC has had to engage with it. Participants emphasised that NZPC's approach has always been to focus on evidence, and sex workers' observations and experiences. One of the strengths of the organisation is their willingness to engage with people with diverse ideological positions, which has enabled them to rationalise debates regarding trafficking. As Catherine Healy noted:

We've kept some doors open definitely with anti-trafficking organisations here and we've, you know, communicated with them and met with them

and talked. We try and avoid polarisation unless there really is no alternative... And I think because we've tried to avoid polarisation we've done reasonably well at 'dampening down' [...] false stories about sex workers and the reality of trafficking in this country.

Anti-trafficking discourse means that sex work exploitation is portrayed in extreme terms, eclipsing the more mundane forms of exploitation that sex workers experience.

It was clear however that, despite this, anti-trafficking discourse still has impacts for sex workers in New Zealand. The most obvious impact is section 19 of the PRA which prohibits migrant sex work. However, participants explained that anti-trafficking discourse also has less

obvious implications for sex workers and NZPC's work to support them. They expressed frustration due to the anti-trafficking discourse sex work exploitation is portrayed in extreme terms, eclipsing the more mundane forms of exploitation that sex workers experience. This, it was argued, means that actual instances of exploitation are not addressed because such situations are constructed as 'boring' and trivial when set against, as Catherine Healy put it:

...this nebulous kind of fanciful scenario about sex workers who are sex slaves, who are chained to the bed and they're going to be found in somebody's attic somewhere.

This was a source of significant frustration for participants since, as Calum Bennachie put it, officials 'ignore the real issues of coercion and things that may be happening within a brothel and look for this fantasy that doesn't exist'. This point was also raised by the sex workers. Danielle, for instance, felt that anti-trafficking discourse could lead sex workers to be accepting of lesser forms of exploitation:

I feel like all those trafficking narratives also contribute to sex workers being more willing to put up with exploitation. Like you hear a story about I don't know let's use the example girls being locked in a room pumped full of drugs and then sold off to the highest bidder, and you think 'well thank god that's not happening to me'. I mean yeah my management may be treating me badly, they might be making me stay 14 hours at work every single night, they might be withholding my pay...but at least I'm not being, you know, raped.

She expanded:

And it means you ignore the ways in which you are being exploited, which are the same boring ways that anyone's exploited under capitalism... the kind of exploitation that most of us are facing is the

*exploitation of working long hours, the uncertain pay, of management trying every trick they can to scam every dollar out of you that they can...it's not the exploitation of being chained to a bed and raped for twelve hours straight... And in saying that that's what we're experiencing just invalidates when something bad does happen to you. And it makes it hard to recognise when bad things are happening when you're always thinking well at least I'm not, you know, at least I'm not in 'Taken.'*³¹

Participants strongly rejected the emotional appeal of the anti-trafficking discourse which influences not only how officials respond to reports of 'mundane' exploitation in sex work, but may also influence how sex workers conceptualise the situations that they encounter as managed workers. Thus trafficking 'talk' has important impacts for sex workers in potentially obscuring the true nature of exploitation that can occur in sex work, while also having implications for NZPC when they are attempting to respond to these issues.

Analyses of Trafficking

All participants were asked to describe what trafficking means and involves, and to reflect on the extent to which trafficking into sex work is an issue in New Zealand. Overall their understanding reflected the international definition: it was seen to represent circumstances in which there was movement of a person into a situation that was characterised by

deception and coercion. Trafficking was also seen to be characterised by a lack of choice and freedom—as a situation in which an individual would be forced to do sex work against their will without remuneration. The NZPC's migrant community liaison described this as:

It was also felt by NZPC and sex worker participants that trafficking is an ill-defined, vague term that is used to describe a diverse range of exploitative practices, is conflated with sex work in popular discourse in many countries, and is often used to the detriment of sex workers.

Like it's someone, they come here, they don't know where they go and they come here, they do something against their will, they don't let them go, no freedom, they don't paid or anything like that.

³¹ Taken is a 2008 fictional movie which depicts the kidnapping of two young women by human traffickers for the purposes of sexual slavery.

All participants were unequivocal that they had not observed or heard of any cases of people being forced to come to New Zealand to engage in sex work. This is consistent with existing data which shows that despite intensive investigations by Immigration New Zealand, no cases of trafficking in the sex industry have been identified to date. Calum Bennachie noted:

Immigration has continued to visit brothels on a regular basis to inspect to see if there is anybody who could be trafficked and when they go in they do check to see if it's a double wall, if there's hidden cupboards, people under crawl spaces and things like that, so they do a complete search and they have not yet found one person who's been trafficked into sex work in New Zealand

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It's such a poorly defined term that anything can be trafficking if you want it to be. I mean, like I said to you before, by some definitions, by travelling overseas to work I have experienced human trafficking even though I travelled under my own volition.

Similarly, Michelle noted:

I think it's a really vague and ill-defined term. To be honest, my emotional reaction when I hear it, is just my hackles come up, I'm ready for anti sex worker sentiment... and I have seen arguments about human trafficking being used so many times to argue for things that would reduce my rights as a sex worker.

While all key informants were critical of the term trafficking and had not observed any instances of what they felt could be defined as trafficking, concerns were raised regarding the potential to exploit migrant sex workers in the context of the current law. As Catherine Healy explained:

I think it's important to remember that... you know... the conditions are there [and] they're facilitated by the law. The law facilitates the conditions that are required for trafficking by rendering the sex workers who are working as migrants illegal. So, I think you know we keep an ear and an eye definitely, you know we have a concern... the concern is very, very real.

Linked to this point, although sex workers interviewed were adamant that they had not seen or heard of any situations in which an individual was being forced to do sex work against their will, or had been tricked into it, two participants reported that they had heard of migrant sex workers being subjected to unacceptable working conditions. Amy, a migrant

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sex worker who was born in China described hearing of sex workers being encouraged to come to New Zealand to work in a brothel for a short time, in which it was suggested they could make large amounts of money. However, when they arrived, while they were able to make a lot of money, they were also expected to be available for work at all times. She explained:

No not forcing but... they asked the girls to come and work for them but they didn't care about the girls—that's my point. So they have them working long hours, like really long hours.

Michelle also expressed concerns about some migrant sex workers having reduced control over their working hours, and unreasonable living costs:

I've seen migrant workers who have planned to come here to work, have gotten in touch with the employer or the brothel owner and had arranged to come here to work and have been staying at the premises. I think that that is potentially problematic, I think that quite often those girls are paying quite high board and expenses and because they were staying on the premises [and] were working really long hours really frequently. And I can't speak for them but I know that a lot of the girls weren't happy with that, would have preferred to have more time off or more flexibility in how they worked.

Thus, all participants expressed a concern that the laws relating to migrant sex work create conditions that facilitate exploitation. While migrant sex workers are diverse in their experiences and circumstances, they can encounter working conditions that would be considered unacceptable to most local sex workers.

Migrant Sex Work and the Law of Unintended Consequences

All participants were asked to describe what they thought were the main challenges for sex workers in the current New Zealand context. A range of issues were highlighted, such as ongoing stigma and discrimination, issues with exploitative and/or patronising

management, and an insufficient supply of clients. However, the most common issue related to the precarious legal status of migrant sex workers, which has a number of important implications in the context of concerns regarding migrant exploitation and trafficking.

Migrant sex workers in New Zealand are disempowered in interactions with clients.

Disempowering sex workers, empowering abusive clients

Migrant sex workers in New Zealand are disempowered in interactions with clients. Their precarious legal status provides an opportunity for abusive clients to make unreasonable demands because, as Lydia noted, they will assume 'this person is ... probably not going to call the police'. In line with this, Amy recalled an adverse experience with one individual who had made a booking with her, explaining:

...One client will say [...] they will think that you don't have a proper visa here and they will say, um, give them a good service and if not, they will tell the police.

Amy also described a specific type of client with a racist view of migrant workers. This type of client would push her boundaries because they had a stereotypical, racialised view of Asian workers as passive. She explained:

Because I'm Asian some clients they travel to Asian country before and they especially like Asian girls cos they think they can do what they wanna do. Cos normally we no like Kiwi girls that really know that we have these rights to say 'no'. Cause in Asia we [sex workers] are being treat really inhumanely. So when this kind of client comes to New Zealand they will think we just like in China ... For example they will grab you and say 'I'm gonna do this' and you can say 'no' but they won't listen to you... you will say 'stop' and they say they want their money back...'Cos they can't get what they want like in other Asian country so they just say [mocking voice] 'Oh I want my money back' (laughs).

Lydia described a situation in which a migrant sex worker had been blackmailed by an individual who had approached as a client and then used the threat of a disclosure to immigration to extort free services from her:

I met a girl once who [...] had a guy yep call her and say that he wanted to make a booking and then... he had shown up and said 'you have to have sex with me for free or I'm going to call immigration'. And she was like [thinking] 'god what am I going to do?' And she couldn't get rid of him so she just did it and then she changed her work name and changed

her phone number and then he found her again. And I think it happened to her like three times and she was really scared and really traumatised... she was having a really bad time.

Risk of deportation

Migrants who are found to be doing sex work can be deported, which inevitably creates a fear of contact

with authorities such as police. This means that if a migrant does encounter an abusive client, there is a strong disincentive to report the experience. While it is an offence under section 16 of the PRA to use the threat of disclosing that a person is unlawfully in New Zealand to induce or compel another person to provide commercial sexual services, the precarious legal status of migrant sex workers means that they are unlikely to report adverse experiences to the police. Amy did not feel that police could provide protection to people who were working illegally, noting, ‘if you’re illegal you can’t call the police. If you’re illegal they can’t protect you’. She also felt that brothels which employ migrant workers may be reluctant to report minor disputes with clients because ‘they will think “Oh I don’t want the policemen to be coming to my building”’.

*‘If you’re illegal you can’t call the police.
If you’re illegal they can’t protect you’.*

In the case that Lydia described, the sex worker was too afraid to report her predicament—although Lydia was confident that a police officer may be willing to employ discretion regarding the sex worker’s immigration status. She explained:

She didn’t want to call the police because she was worried and I said to her, ‘you probably actually could call the police because... cops care that there’s not some rapist out there who’s trying to rape sex workers. They probably care more about that than passing your details to immigration’... What she actually did was go and get somebody who was going to look after her... I guess that’s what happens... If you can’t get protection from the law then you have to go and find someone who will protect you in some other way.

Compounding this is the fact that migrants, who have previous experience of being targeted by law enforcement and immigration officials because they have been profiled as a possible trafficking victim or undocumented migrant, may be particularly reluctant to engage with authorities. Lydia described a friend who had multiple experiences of

Migrants, who have previous experience of being targeted by law enforcement and immigration officials because they have been profiled as a possible trafficking victim or undocumented migrant, may be particularly reluctant to engage with authorities.

being harassed when she was travelling abroad:

I guess like a lot of indigenous people in colonised places, their whole family is really poor, and people don't expect them to be able to travel and stuff. So they're always getting stopped at borders... and yeah so they have heaps of anxiety around that and they would never call the police.

Stigma, discrimination and peer support

The precarious legal status of migrant sex workers also means that they experience an additional layer of stigma since they are breaking the law, whereas other sex workers are not. This may mean that some migrant sex workers isolate themselves and do not benefit from peer support and information sharing with other sex workers. As Michelle explained:

That fear that you would get caught working illegally and be deported which is like a huge consequence. It's a terrible thing to have to face just because you're doing sex work. And I think that there is kind of stigma to them, like it sets migrant workers aside as they're doing something illegal and the rest of the girls working in the brothel weren't doing something illegal... And also I think... yeah, it makes them less likely to insist on their rights at work being respected.

Migrant sex workers may isolate themselves because they fear that New Zealand born sex workers will inform on them if they become aware of their immigration status. Annah Pickering noted:

We've even had New Zealand-born sex workers who can be really racist and will [...] inform authorities because there's a way migrant workers market themselves—they're very industrious and I find that the New Zealand-born sex workers feel threatened by them.

At the same time, many stand in solidarity with migrant sex workers, if they are experiencing exploitation. Annah Pickering recalled a situation in which a migrant sex worker was supported by New Zealand-born sex workers when they became aware of her situation:

There was these people that were running a commercial brothel in the city and they also had a private establishment in a residential area. They had some migrant workers working at the residential brothel [and] on this particular night one of the workers from the residential brothel got asked to go to the commercial brothel. There were Kiwi workers working in that brothel and she ended up telling them she had been here for you

know this amount of time and that she didn't have access to her passport and the owners of this brothel were withholding her passport. And so the Kiwi sex workers, when they heard her story, they were like 'Fuck, you need to ring the police'. With the worker's consent they rang the police, the police came to that brothel and then it just got the ball rolling. That woman she got her money back and she got her passport and then she returned home... I remember the Kiwi workers they just said to me it just blew them away, they were like 'Who the fuck are these people to do that? How dare they do that to her!'

Barriers to reporting

The New Zealand-born sex workers in the case detailed above were clearly shocked to learn of what they considered to be a completely unacceptable situation, perhaps due to the normalisation of sex worker rights under the PRA and an

Michelle explained what she would do if she encountered a migrant sex worker who had been exploited: I think that my first reaction would have been to offer to take them here to the NZPC.

expectation of decent workplace conditions, at least to some extent. However, while this situation had a positive ending, there is a possibility that contacting police in such a situation could have unintended negative consequences for the migrant sex worker, particularly if they wished to stay in New Zealand. The sex workers interviewed for this project did not feel confident that they would be able to contact the police if a migrant co-worker had experienced exploitation, and they would only contact NZPC. Michelle explained what she would do if she encountered a migrant sex worker who had been exploited:

I think that my first reaction would have been to offer to take them here to the NZPC. I know that the NZPC has resources and other languages and has workers who can communicate with people who don't speak English. So I think that that would have probably [been] my first move. I think if they felt like they were in real danger I would have let them know that the police wouldn't be horrible to them, but I don't know how likely I would have been to recommend that because of the possible consequences of deportation which, if someone's here on a working holiday, it doesn't seem like such a big deal, but then there's the flow-on effects—if you've been deported from one country for doing sex work you might not be able to get into other countries, it could affect your whole life and all of your options for travel.

Similarly, Amy didn't feel confident that the police would be able to help someone who was working in sex work illegally and said that she would be reluctant to suggest contacting police because 'they will get in trouble [...] the policeman will take them'.

When asked what the consequences would be, Amy replied that ‘probably they would say “You can’t work here—you can’t work and you need to go back to your country”’.

Surveillance and control

In addition to facing barriers to reporting adverse experiences, migrant sex workers also live with the constant possibility of being

Migrant sex workers also live with the constant possibility of being identified by authorities in the course of their work.

identified by authorities in the course of their work. While brothel raids are not commonplace in New Zealand, raids are carried out by Immigration New Zealand officials intermittently. Participants also described instances of sex workers being questioned at the border when trying to enter New Zealand, a practice that has also been identified in an Australian study.³² Furthermore, one participant described Immigration officials reviewing the online adverts of sex workers and comparing with social media profiles in an attempt to identify individuals who may be working illegally. Annah Pickering explained:

I’ve dealt with a migrant worker who was advertising online through [an online platform] and Immigration New Zealand have been going through, they sent her a letter showing her ad and saying you have lied and you’ve been advertising here, we can prove it because on your Facebook, your Instagram—this is you... She challenged it but Immigration New Zealand said to her if you don’t get out of the country we’ll give you this time, if you don’t get out at this date [...] we’re going to serve you a deportation liability notice. So she ended up negotiating with them that she has a return ticket to her country of origin and she won’t come back here.

Media reports of Immigration New Zealand activity in relation to sex work indicate that such enforcement activities have not, so far, identified any victims of trafficking. In 2007 six brothels were raided in Auckland by police and Immigration officers, accompanied by a film crew from the reality television series ‘Borderline’. In one of these raids a client jumped to his death from a window to avoid being identified. While it was said that police were present for the raid in case any victims of trafficking were identified, a spokesperson for Immigration New Zealand said that the raids were ‘aimed at ensuring prostitution and immigration regulations were not being broken’.³³ Since then, further

³² S Pickering and J Ham, ‘Hot Pants at the Border: Sorting sex work from trafficking’, *British Journal of Criminology*, vol. 54, issue 1, 2014, pp. 2–19; L Armstrong, 2014.

³³ B Fawkes, ‘Police banned from brothel raids’, *The Dominion Post*, 21 February 2009, retrieved 12 April 2017, <http://www.stuff.co.nz/national/1752325/Police-banned-from-brothel-raids>.

raids have taken place involving Immigration officers and/or police. In 2012, it was reported that eight brothels were raided and officials located 21 sex workers who were working illegally. Two elected to leave the country voluntarily and 19 were served with Deportation Liability Notices.³⁴ A brothel raid in 2014 did not identify any victims of trafficking or underage sex workers but resulted in three sex workers being served with Deportation Liability Notices.³⁵

The prohibition of migrants engaging in sex work has created a contradictory context in which New Zealand-born sex workers enjoy the benefits of a work context that is characterised by openness and transparency, while migrant sex workers are essentially forced 'underground' and are vulnerable to exploitation and violence as a result.

The prohibition of migrants engaging in sex work has created a contradictory context in which New Zealand-born sex workers enjoy the benefits of a work context that is characterised by openness and transparency, while migrant sex workers are essentially forced 'underground' and are vulnerable to exploitation and violence as a result. New Zealand's policy of decriminalisation has been proven to be a successful policy;³⁶ however in excluding migrant sex workers it does not go far enough and it is fair to say that **the current policy creates conditions that are conducive to trafficking, rather than protecting against it.** The predicament of migrant sex workers in New Zealand also has implications for how NZPC responds to cases of exploitation.

Responding to Exploitation: NZPC's role and approach

As an organisation that was established by and for sex workers 30 years ago, NZPC has a deep commitment to sex workers' rights and occupational health and safety. This commitment is evidenced in the years of work they committed to decriminalising sex work, in addition to the numerous other ways that they support sex workers' right to reasonable and fair working conditions on a daily basis. NZPC therefore has a significant role to play in responding to the diverse array of exploitative practices encompassed under the trafficking 'umbrella'.

³⁴ L Tan, 'Immigration raids catch 21 illegal sex workers', *New Zealand Herald*, 26 April 2012, retrieved 20 June 2017, http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10801461.

³⁵ Stuff NZ (no author), 'Brothel raid sparks court action', *Stuff NZ*, 30 May 2014, retrieved 14 May 2017, <http://www.stuff.co.nz/national/10103579/Brothel-raid-sparks-court-action>.

³⁶ Armstrong, 2016; Abel, Fitzgerald and Brunton, 2007.

Insider status

The unique value that NZPC brings in responding to exploitation in sex work is that they are part of the sex worker community. They are therefore insiders rather than outsiders and, as a consequence, sex workers and others involved in sex work are likely to share information with NZPC that they would not be willing to share with other organisations. While I was in NZPC doing an interview, a brothel operator came in and took away resources in different languages that NZPC has developed for migrant sex workers, and disclosed that he has sex workers working in his business who are not from New Zealand. Recalling this interaction, Catherine Healy explained:

NZPC are 'insiders' rather than outsiders and, as a consequence, sex workers and others involved in sex work are likely to share information with NZPC that they would not be willing to share with an organisation that is not part of the community.

An operator at a brothel has just disclosed that he has three workers and felt able to talk about it... who are clearly from another part of the world and then he was able to take some resources and that he knows are targeted at migrant workers—that's trust... That's someone who could actually lose their operator's certificate for hiring migrant workers and is telling us something very sensitive and that's kind of the difference [to outsider agencies]... we're of these communities... We're more insiders than outsiders. And insiders usually share stuff [with other insiders].

NZPCs insider role as a peer-based organisation also means that sex workers are more likely to disclose concerns and adverse experiences to them than other organisations. Their role is particularly important in the context of supporting migrant sex workers who may fear authorities such as police either because of their precarious legal status, or because of their previous experiences with police in their home countries. Annah Pickering noted:

Some of our migrant workers come from countries where, you know, there's police corruption and immigration corruption and stuff like that... Migrant workers will trust our word, yeah, than over someone like in authority.

All four of the sex workers who were interviewed for this project said that NZPC would be their first port of call if they experienced exploitation or violence, or if they encountered a sex worker who was being exploited. Danielle explained that NZPC's insider status and the work that they undertake is sometimes criticised by prohibitionists who accuse NZPC of supporting exploitation by developing resources for sex workers. She felt that NZPC would be very concerned if they became aware of a trafficking case, noting:

If something happened I think the NZPC would be incredibly supportive to the worker. I mean because they are already, I suppose in some ways, putting themselves at risk by producing information for foreign workers and especially in Auckland by producing information in Chinese... like the anti's will jump on that kind of thing and say 'Oh the NZPC supports trafficking'... It's not, it's just a case of trying to make sure that everyone has access to information that can keep us safe.

The external key informant interviewed also valued NZPC's insider status, explaining that because of this NZPC has unique insights into what is going on in sex work that other organisations are not privy to:

I think Catherine has got, and the people she works with because all her folk are spread around, she is going to hear what is happening quite a bit... They are in all those places that the rest of us are not... they're going to hear better than the rest of us... more of an opportunity in knowing what's going on.

This also means that they know how to handle problematic situations in which sex workers may be experiencing challenges but have difficulty addressing them, particularly when they wish to continue working at a certain establishment and do not want to damage their relationship with management by making a complaint. An initial strategy for NZPC, depending on the individual situation, is to use an indirect approach to maintain lines of communication with operators—attempting to educate in the first instance, providing an opportunity for the operator to improve their practices. Catherine Healy noted:

We might speak directly to the operators and sort of say look you know 'We don't know if this applies to you or not but we're just saying this [to] everyone'. So it's sort of general approach that there possibly could be a crackdown on how people are managing their staff. So, you know, plant awareness of malpractices and point out that there could be a repercussion.

Challenging exploitation and resolving conflict

Maintaining relationships with brothel operators was considered key since this ensures that communication is actually possible when problems do arise. The interviewed sex workers were also very clear that NZPC could help them in such situations, by putting pressure

When sex workers do wish to use official channels to challenge exploitation, the decriminalised framework means that their complaints are taken seriously by authorities.

on operators on their behalf; like Danielle who explained that if she was fined by an operator, she would contact NZPC because ‘I know Catherine is quite capable of putting a bit of pressure on’. The self-determination of sex workers is fundamental to NZPC’s approach, which is always driven by what the sex worker wants. For example, while immediately going through official complaint processes is sometimes not the most appropriate response if a problem could be solved informally, if this is what the sex worker wants then NZPC always respects these wishes. Catherine explained:

It does depend [on] what the sex worker wants. We can’t override what the sex worker says. [If they say] ‘No damn it I want to go straight to the authorities to address this’ then that’s what we’ve got to do.

NZPC has also built important relationships with other organisations which can help in such situations, such as Medical Officers of Health who have appropriate knowledge and expertise. They can alert other officials and work with them to formulate a response. For example, NZPC was receiving complaints from sex workers regarding other sex workers offering unsafe sex practices. NZPC worked with the Medical Officers of Health to develop a non-threatening response so that they could contact brothel operators.

When sex workers do wish to use official channels to challenge exploitation, the decriminalised framework means that their complaints are taken seriously by authorities. This is well-evidenced by a 2014 case in which a sex worker, who was supported by NZPC, won a case she had pursued through the Human Rights Tribunal against a brothel owner who had sexually harassed her. The decision of the tribunal stated that it was not acceptable for the owner of a brothel to use sexual language when communicating with sex workers and ordered the owner of the brothel to pay the 22-year-old woman NZD 25,000 (around USD 21,000 at the time) in damages.³⁷

Developing sex worker rights ‘champions’

To ensure NZPC can rely on authorities to respond appropriately to sex workers who are experiencing challenges, they work to develop ‘champions’ in organisations who can

The relationships that NZPC has with other organisations are vitally important for facilitating responses to exploitation of migrant sex workers, and would be particularly important if there was a case of human trafficking.

³⁷ M Duff, ‘Sex worker gets \$25,000 over harassment’, *The Dominion Post*, 28 February 2017, retrieved 28 July 2017, <http://www.stuff.co.nz/business/industries/9777879/Sex-worker-gets-25-000-over-harassment>.

be called on when needed, and who can also strengthen institutional knowledge within their own organisations of the best approaches to supporting sex workers. Danielle had been threatened by an ex-partner that he would out her to her family if she did not do what he wanted her to do. She confided in her manager at the time who connected with NZPC. She explained:

My then manager [...] liaised with NZPC and found out the name of a sex work friendly police officer and I went and spoke to him and he was incredibly supportive.

The relationships that NZPC has with other organisations are vitally important for facilitating responses to exploitation of migrant sex workers, and would be particularly important if there was a case of human trafficking. NZPC's ability to respond to migrant sex workers who experience exploitation is hamstrung by the current law, which means that although migrant sex workers will approach NZPC with problems, they are often very reluctant to take the complaint any further and approach NZPC because they simply want to tell someone about their experience. However, the strong connections that NZPC has with individual sex worker 'champions' in governmental organisations means that if a sex worker is willing to make an official report, they are sometimes able to manage this to ensure there are no adverse consequences. Lydia recalled a migrant sex worker who had been helped by NZPC after she had been sexually assaulted, explaining:

She was worried about immigration and went to NZPC and they helped her. They helped her, like, they talked to the police and then they got the police to talk with her without putting her at risk... like, she didn't end up getting deported or anything... so I think that NZPC are really good at managing that stuff.

Partnerships, and outreach services

NZPC also brings other organisations to deliver services to sex workers under NZPC's sex worker-focused framework. For instance, confidential, free sexual health services are provided which brings many sex workers into the organisation in the first instance. In Auckland, advisors from the Work and Income³⁸ provide a satellite clinic for sex workers who are managing significant challenges in their lives. Annah Pickering noted:

... Like here in Auckland we have, you know, Work and Income are here today... they do social benefits and social housing. So we have developed a relationship with government agencies that can assist our community.

³⁸ Work and Income forms part of the Ministry for Social Development and is the organisation responsible for providing financial assistance to people in unemployment.

NZPC also provides outreach services to sex workers, including in other parts of the country where there is not a community base. This is particularly important for some migrant sex workers who are known to move around the country, either touring to maximise their income, or to stay a step ahead of the authorities. Outreach services are also important for migrant sex workers in the major cities, and in Auckland, NZPC has a dedicated project, the Migrant Education and Information (MEI) project, which is coordinated by a Mandarin and Cantonese speaking peer educator. The Migrant Community Liaison explained:

Sometimes they find [it] hard to access our office, most of the migrant... they don't know how to get there, even they don't know how to drive... they don't know how to come into us and we just go out and meet them, let them know what is the NZPC... The organisation support all the sex worker and because most of the Chinese worker they not much good English, [w]hen I work here I let them know what NZPC is [and that] we can help them, support them, they can report a crime, the NZPC can on behalf of them to report to the policeman.

Developing resources

Developing resources is also an integral part of NZPC's work to address exploitation in sex work. Most often these resources are developed with current sex workers, such as the 'All Business Code of Conduct', which sets guidelines for acceptable conduct and practices in sex work businesses. NZPC can also assist brothel operators to implement this code of conduct.³⁹ The organisation also develops resources in partnership with other organisations, such as a leaflet developed with Immigration New Zealand which provides advice in numerous languages for sex workers who have their passport or wages withheld.

Supporting people who want to stop with sex work

Given that NZPC is committed to sex workers' self-determination, they also fully support anyone who wishes to leave sex work. While participants thought that most sex workers did not require any specific help to leave sex work, for those who do require assistance, NZPC helps them to contact Work and Income to access financial assistance. NZPC will refer sex workers to other services, such as a faith-based refuge for people who are leaving sex work, if this is of interest. Catherine explained:

We describe that place in neutral language and say that 'there's a place where you could stay if you wanted' and that 'it is faith-based

³⁹ See <http://www.nzpc.org.nz/For-Brothel-Operators>.

and that may or may not be an issue for you. And they will assist you to do other things if that's what you would like' ... We recognise this organisation has a particular ideological approach but we also recognise that sex workers have variable ideological approaches as well.

Supporting young people's safety

A significant strength of NZPC is its commitment to supporting everyone involved in sex work—regardless of their immigration status or their age—to be as safe as possible. For young people who become involved in sex work, this means addressing their immediate needs and circumstances. As Annah Pickering explained:

When I ask young people 'why are you here, why are you working?', they won't actually say 'I'm sex worker - I'm happy and I'm proud'... it will be stuff like 'I need to survive, I need to eat'... With young people I always make sure that, you know, have they got clothes, have they got food, have they got a safe place to sleep.

It was felt by research participants that defining young people involved in sex work as victims of trafficking was an unhelpful response since they are usually in this situation because of immediate economic needs, sometimes having run away from home or state care. Danielle felt that automatically defining young people as victims of trafficking was unhelpful because it could mean that organisations are reluctant to provide practical information that can help to keep the young person safe, noting:

The most helpful approach to responding to young people who are being paid for sex was to provide them with practical assistance which would help to alleviate their immediate economic needs and strengthen their support system.

Taking the sort of hands off 'Oh no, no, no sorry we can't help you, can't have anything to do with you because we don't want to be done for trafficking'...that's completely unhelpful.

Similarly, Lydia noted:

Calling them 'trafficked' doesn't help. Like calling them 'homeless' and calling them 'not having a family that they can rely on', that would be better.

Instead it was agreed that the most helpful approach to responding to young people who are being paid for sex was to provide them with practical assistance which would

help to alleviate their immediate economic needs and strengthen their support system. This was thought to be an approach that NZPC was modelling. Danielle noted:

I think that coming in heavy handed and telling someone that the choice that they're making is totally wrong is going to alienate people who you could be helping. If you approached it in a more supportive, respectful way, say 'what can we do to help you' and inquire into the reasons why they're doing sex work, inquire into their circumstances... I think that being open-minded and non-judgemental and figuring out ways you could tangibly support them, yep which is stuff that in my experience the PC does really well.

While the NZPC are committed to providing practical support to young people who are involved in sex work, they are also strongly committed to enabling access to justice for young people who are exploited. Annah Pickering noted:

On the streets, you know there's some adults who can be very exploitative... when that's happening... I always say to them 'these are your rights, this is your rights under the law. What do you want to do about it, because we can tell the police and you know get these people put away'. And here in Auckland I've dealt with some cases that we've had people put away who have exploited young people.

Telling someone that the choice that they're making is totally wrong is going to alienate people who you could be helping.

NZPC therefore plays an incredibly important and unique role in working with sex workers to challenge exploitation. Their key strength is that

they are a peer based organisation, they are sex industry insiders and therefore they are most likely to be trusted by others involved in sex work, and they are also ideally positioned to provide services and develop resources that sex workers will have access to and will benefit from.

Trafficking, Exploitation and the Decriminalisation of Sex Work

It is well documented that decriminalisation has had positive impacts in terms of strengthening options for sex workers to challenge exploitation.⁴⁰ The decriminalisation of sex work arguably has important implications for protecting against trafficking. As Catherine Healy noted, decriminalisation has changed expectations of what is acceptable in sex work:

⁴⁰ Abel, Fitzgerald and Brunton, 2007.

Decriminalisation means that people have a higher expectation of things working well and working properly and that, you know, they shouldn't be coming across situations that are appearing to be unfair or dangerous without a sense that they could do something to put it right. So 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'.

Decriminalisation has created a context in which sex workers can safely disclose if they experience exploitation or perceive unfair treatment of others.

Decriminalisation has created a context in which sex workers can safely disclose if they experience exploitation or perceive unfair treatment of others. This is well-evidenced by the story told by Annah Pickering earlier in this chapter of a migrant sex worker who was

supported by New Zealand-born sex workers who were outraged to learn that she did not have access to her passport. New Zealand's decriminalised framework also means that clients can speak to authorities more easily if they are concerned that a sex worker may be exploited. Calum Bennachie noted:

It often means that clients are more willing to speak out if they suspect a case of trafficking. Because of the illegality beforehand the clients wouldn't really speak out, would they, they wouldn't say much at all because they wanted to remain completely anonymous then, even though they weren't the criminals. Whereas now they're more likely to speak out and report something that they suspect is trafficking.

The assertion that clients are aware of the potential for exploitation, and are concerned about the wellbeing of sex workers, is supported by Amy's experience who explained that as a migrant sex worker she had been asked by clients before providing a service whether she is compelled to work, noting:

Um yeah some client will think you forced to work... They just say to you 'has anyone made you do this?'... I will tell them I'm not being forced and that I think it's a job for me and I do and I enjoy it and um it help me save money. It's good...

NZPC, too, have received phone calls from clients who are concerned about the welfare of migrant sex workers. Annah Pickering explained:

Clients who pay for sex, you know there's good and bad clients and then there's some clients who almost take it upon them to be a social worker, you know, for sex workers because [...] they have this huge endearment towards a sex worker and particularly for some of the migrant workers... a client who pays for sex that has gone into an establishment and has, you know, paid a migrant worker and then she has told him stuff that's happening in there. That client will actually ring NZPC and will say 'look, I'm really concerned, I went to this establishment... I'm really concerned about what's going to happen here.'

Thus, decriminalisation has undoubtedly created an environment of openness and transparency that may help protect against trafficking to some extent. However, it is vital that this is further strengthened by, at the very least, extending rights to migrant sex workers who are holders of temporary permits. Participants expressed frustration with the current policy which means that decriminalisation has provided better conditions for some but not all sex workers. Lydia explained:

It's really really racist actually to have like the different set of laws, you know, and so like that's really terrible discrimination... people should have equal rights. Yep it just seems really discriminatory and racist and dangerous to make them illegal. So I think they should have the same rights as anyone else and I think if you look at it like the same rights as any other migrant workers then that's a huge step forward.

Participants expressed frustration with the current policy which means that decriminalisation has provided better conditions for some but not all sex workers.

The current context in New Zealand is therefore a contradictory one. On the one hand, the decriminalisation of sex work is a protective factor against the exploitation of sex workers, since they have the right to challenge exploitation. However, the policy which prohibits migrant sex work means that not all sex workers

fully benefit from decriminalisation. Migrant sex workers are rendered more vulnerable to exploitation which creates conditions in which trafficking could conceivably occur. While no cases of trafficking into sex work have been identified to date, the vulnerability of migrant workers within the current policy framework means there is no room for complacency. Further change is required to better protect against the exploitation of migrant sex workers in New Zealand.

Conclusions and Recommendations

This report explored perceptions and experiences of exploitation and anti-trafficking tactics, and the NZPC's response to these issues within New Zealand's current legislative framework. The findings indicate that although there is currently no evidence of trafficking into sex work in New Zealand, the existing policy which prohibits temporary migrants (including those with valid work visas) from engaging in sex work creates a vulnerability for the exploitation of migrant workers, including a risk of trafficking. NZPC plays a crucial role in assisting sex workers who have experienced different types of exploitation; however, their capacity to support migrant sex workers is hamstrung by this existing policy. To address this vulnerability and strengthen protection from exploitation, the overall recommendations of this research are:

To the New Zealand government:

1. Establish an inter-departmental committee led by Immigration New Zealand and comprised of a range of key stakeholders including police, the Human Rights Commission, the Ministry of Justice, the Ministry of Women, NZPC and other relevant non-governmental organisations as soon as possible to review the impacts of the current policy on migrant sex work, with a view to changing the law to end this discriminatory policy.
2. In the interim, establish a formal firewall between immigration officials and those who have a responsibility to protect sex workers (such as police), to ensure that sex workers who are working illegally can always report crimes that they experience and access justice without any risk of repercussions.
3. Actively promote the decriminalisation of sex work as a best practice model from which other countries can learn. However, in doing so it should also be recognised that the exclusion of migrant sex workers is a limitation of the current framework which can be improved on through extending the policy to better protect the human rights of all sex workers.

To anti-trafficking organisations:

1. Recognise sex work as a form of work and acknowledge that supporting labour rights is integral to protecting against exploitation, including risks of trafficking. As such, anti-trafficking groups should revise the language they use and refer to labour exploitation instead of sexual exploitation when they are referring to exploitation in the context of sex work.
2. Support NZPC in identifying and calling attention to the harms caused by enforcement of the existing law which prohibits temporary migrants from working in sex work. Stand in solidarity with sex workers in calling for the repeal of this discriminatory clause, and other forms of discrimination against sex workers.

To donor organisations:

1. Identify representative groups of sex workers and organisations to fund who work on community empowerment and human rights.

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VAMP Sanghatana Meeting at Gokulnagar. Photo credit: VAMP

INDIA

Madhu Bhushan

Through this micro case study of VAMP, an independent sex worker collective located in the state of Maharashtra, this chapter attempts to understand the complex history and realities of prostitution and trafficking in India, the legal and moral regime that attempts to conflate the two, the impact of doing so on sex workers and the ways they have evolved to understand, define, and respond to issues of abuse and exploitation within the industry and also the stigma and criminalisation from society, police and anti-trafficking organisations.

The broader context for the study is established through tracing the historical evolution of prostitution in precolonial times and its interlinkages with caste and local cultures, the impact of colonisation on the way it came to be defined and regulated in law, and the transformation of sex work and trafficking in the context of globalisation and neoliberalism.

The primary methodology used to gather the different dimensions of the work and thinking of VAMP, was through focus group discussions and individual interviews with sex workers conducted in three towns where the Collective is located, with representatives of SANGRAM and CASAM, and those representatives of the police and legal community they collaborate with while addressing issues related to trafficking, as they define it.

VAMP's multipronged approach to addressing the rights of sex workers includes, among others, the Thanta Mukti Samithis or Conflict Redress Committees which deal with issues of conflict and abuse within the community as well as issues of trafficking; Mitra that seeks to empower and educate the children and sex workers; and continuing networking and dialogues with different social movements. Their advocacy initiatives are done collaboratively with SANGRAM and CASAM through which their voices and perspectives are channelled into processes of policies and laws that affect their lives and their right to work and livelihoods.

It is clear that SANGRAM and VAMP's core strategy of strengthening self-organised communities of sex workers and building on their capacity to negotiate change, while challenging the status quo through appropriate legal and political strategies to protect their rights, has been both effective and empowering. While dealing with traumatic

raid and rescue operations by anti-trafficking groups, they have also been able to deal with the issue of trafficking into sex work and other forms of labour in the way that they experience and understand it. To the extent that today even the police and judiciary are beginning to acknowledge the need to not only evolve separate laws that deal with the crime of trafficking without criminalising or infantilising adult sex workers, but also make them allies in this fight against trafficking. While this is a fragile consensus that has broken down frequently, their collective efforts to challenge and change the discourse on trafficking and sex work to accommodate their rights and realities remains strong and sustained at the local, national, and global level.

A personal note on public intent

Since the model of enquiry in this research was based on the principles of Feminist Participatory Action Research, some personal disclosures are in order as a way to begin, and to make clear the sources of both my own subjectivity and objectivity.

A product of the autonomous women's movement of the seventies/eighties, I have personally travelled a long way from understanding prostitution as a form of patriarchal violence against women to understanding it as a livelihood choice exercised by women, largely from those classes, castes and communities that have already been marginalised by the economic, political, and cultural mainstream.

They, the women of VAMP, the collective which is the subject of my research, whom I first met in the mid-nineties have played a fundamental role in reshaping my understanding of prostitution and sex work while enabling me to appreciate better their bitter struggles for dignity and rights through an organic process of collectivising and community building. These lessons were deepened in interaction with the women of Sadhana, a smaller collective of street women based in Bangalore with whom I have been associated since their inception in early 2000s.

She, Meena Seshu, the founder of SANGRAM that incubated VAMP, has been a dear and old school friend with whom I have shared a long and tumultuous journey that has been as much personal as political. For it is one traversed through arguments, differences and debates about the many critical issues that mutually concern us, and the love, and respect I have for her large and expansive heart, her strong political convictions and deep commitment to the women whom she has worked and travelled with for decades.

Both VAMP and Meena have helped me put aside the lens of a feminist morality that saw the women as victims as much as survivors of a capitalist patriarchy. And so without totally discarding that framework, I was able to, and continue to, flesh out and expand its understanding from the life journeys of sex workers or those women who live outside normative morality and the mainstream institution of marriage; filling it with not only their pain but also their power and perspectives.

This research is also enriched by the insights and experiences of another dear fellow traveller, Shakun Mohini, who was part of initiating and nurturing the Sadhana Collective, and who participated in my field visits, interviews and focus group discussions.

Here is to continued collective journeys and individual epiphanies!

And for all sex worker collectives....

Speak, for your lips are free;

Speak, for your tongue is still your own;

Speak, it is your own body.

Speak, your life is still your own.

Speak, this brief hour is long enough;

Speak, for the truth is still alive;

Speak, say whatever must be said.

Faiz Ahmed Faiz

Introduction

India is a land of multiple cultures, diverse realities, histories and economies. This diversity has also informed the institution of sex work/*veshya vyavasay*, or *dhanda*,¹ as it is colloquially known, that itself has multiple histories and many forms linked with gender, religion, caste, class and even the arts. However, this plural reality has been systematically homogenised and increasingly devalued, stigmatised and criminalised by the logics of colonisation, urbanisation, and globalisation, on the one hand, and the dominant legal, cultural, and moral regime on the other. In this chapter, we examine how these processes of homogenisation have impacted an institution that has evolved as the shadow ‘other’ of the institution of marriage and the contemporary dominant economy, and contributed to sex work becoming inseparable in legal and public perception from the criminal offence of trafficking that is defined by some as the ‘the activity of buying and selling goods or people illegally’.²

A Demographic Overview

In June 2017, the population of India stood at about 1.34 billion, comprising 652 million women and 696 million men with the national sex ratio at 945.³ About 16.6% of the population are ‘Scheduled Caste’ or dalits and 8.6% are ‘Scheduled Tribe’ who have historically been discriminated. Scheduled Castes and Scheduled Tribes are constitutionally defined and designated groups of historically disadvantaged people in India.⁴ The largest religious group are ‘Hindus’⁵ at about 79.8% with the rest

¹ In Sanskrit and Hindi, *Veshya* means prostitute and *vyavasay* and *dhanda* mean business. All the three terms, i.e. sex worker, *veshya vyavasay* and *dhanda* are used in this research as appropriate to give both the global and local context while acknowledging the diverse strategies of women in the *dhanda* who choose to define themselves and the work they do in different ways and in different languages. It is also to acknowledge organisations and collectives who have retained the word prostitution to reclaim it and divest it of its inherent stigma. As VAMP did in its earlier years when it chose to put ‘Veshya’ in its name Veshya Anyaya Mukti Parishad.

² See, for example, *Cambridge English Dictionary*, <http://dictionary.cambridge.org/dictionary/english/trafficking>.

³ Population of India 2017, *Indiaonlinepages.com*, <http://www.indiaonlinepages.com/population/india-current-population.html>.

⁴ The Scheduled Castes are considered ‘untouchable’ in orthodox Hindu scriptures and practice based on the highly discriminatory caste system. The Scheduled Tribes are outside the caste structure but are closed communities bound by kinship ties and distinct cultural practices and livelihoods who have lived away from the mainstream and generally within forests or are nomadic.

⁵ I place ‘Hindus’ within inverted commas, because I believe that Hindu is not one homogenised religion the way it is being defined by the State today. It was and is a plural way of life that encompasses diverse communities and varied rituals and customs that have been forcefully brought together. For instance, many dalit and tribal faiths that are animistic have been coopted into mainstream Hinduism.

comprising Muslims, Christians, Sikh, Parsis, Buddhists, Jains, etc. India has 122 major languages and 1599 other languages/dialects.

All this has provided the complex soil for an organic and incredible diversity that may be a challenge to centralised forms of governance from above but on the ground, does keep more spaces open for multiple forms of autonomous democratic self-governance that marginalised communities, including sex worker communities, have greater access to.

A Historical Perspective

The processes of colonisation were as much internal as external. Even as legal, social, and political institutions like parliamentary democracy were being reconfigured and handed down to the 'uncivilised' natives by the departing colonial rulers, what they also left behind were more fundamental ways in which people perceived themselves, down to

their basic gendered realities and notions of sexuality. During colonial rule the existing androgynous and diffused models of gender were gradually replaced by more hyper masculine models that were a product of western civilisation.⁶ Consequently, relatively open and non-moralistic attitudes to sex and sexuality were displaced by Victorian notions of morality and marriage, all of which the imperial State sought to monitor and regulate.⁷

These blurred notions of sexuality that transgressed rigid boundaries of marriage and caste were a fundamental challenge to a colonial empire driven, on the one hand, by a deeply puritanical Victorian morality, and on the other, by the need to accommodate the sexual needs of its soldiers far away from home.

In ancient and medieval India, for instance, divine dancing girls, courtesans, and transgenders who provided sex outside the confines of marriage were central to all epics, myths, legends, and oral traditions. In North and Central India under the Mughal rule the institution of the dancing 'nautch' girls and *kothas* flourished. In South India, there was the *devadasi* tradition, in which girls (both cis- and transgender), largely from the dalit community, were dedicated to the Goddess Yellamma, and were also equipped with considerable skills in poetry, music and dance while being provided with livelihood, security, community identity, and support.⁸

⁶ A Nandy, *Intimate Enemy: Loss and recovery of the self under colonialism*, Oxford University Press, Oxford, 1988.

⁷ A Tambe, *Codes of Misconduct: Regulating prostitution in late colonial Bombay*, University of Minnesota Press, Minneapolis, 2009.

⁸ L Murthy and M Seshu, *The Business of Sex*, Zubaan books, Delhi, 2013.

These blurred notions of sexuality that transgressed rigid boundaries of marriage and caste were a fundamental challenge to a colonial empire driven, on the one hand, by a deeply puritanical Victorian morality, and on the other, by the need to accommodate the sexual needs of its soldiers far away from home. The British East India Company set up red light areas for their troops and officials. These 'exotic' if dangerous sexual encounters, while impossible to control, needed at least to be regulated, such that they did not disturb the imperial equilibrium. As Ballhatchet argued, 'Colonial attitudes to sexual behaviour across the boundaries of race and class, it is clear, were shaped by the desire to preserve the structures of power and protect vested interest'.⁹

So began the slow and irreversible definitional shift. 'Prostitution' became a 'degrading' way to make money by 'undesirable' women who needed to be regulated and/or reformed by the State, who saw them as a threat to public and moral health and hygiene. And the creation of the monolithic identity of the 'prostitute' divested the women of the ability to name their occupation on their own terms, even while their daily lives challenged colonial definition.¹⁰ Detailed anthropological research like that of Ashwini Tambe also provides accounts of how law-making during that period, and its ineffective attempts to regulate and curb the industry, in fact ended up nurturing specific forms of prostitution, concurrently increasing the coercion of prostitutes.¹¹

Post-Independent Global India

Despite constitutional goals dedicated to reversing social and economic inequalities, including gender inequality, the lived realities of marginalised populations show deepening disparities and deprivations grafted onto an existing continuum of violence. The roots of this violence can be traced to two parallel and complementary developments: the processes and politics of globalisation and neoliberalism that since the early nineties sought to open the national economy to the vicissitudes of global capital, and the growth of a regressive fundamentalist and majoritarian nationalism that has also sought to homogenise and hegemonise diverse local cultures, ripping apart the pluralistic fabric of a diverse society even while reinforcing existing caste hierarchies. The present government in India is avowedly right wing with a clear Hindutva nationalist agenda that is building on the legacy left behind by the earlier centrist government that opened out the economy to neoliberal policies.

⁹ K Ballhatchet, *Race, Sex and Class Under the Raj*, Vikas Publishing House, India, 1979.

¹⁰ P Levine, 'Orientalist Sociology and the Creation of Colonial Sexualities', *Feminist Review*, no. 65, 2000, pp. 5–21.

¹¹ Tambe.

Despite India's emergence over the past three decades as a supposedly strong globalised state, the World Bank lists it as a lower middle-income country¹² with a Gini coefficient that is reportedly at an all-time high, touching close to 0.50, indicating wider income disparities than ever before, according to claims made by well-known economists Lucas Chancel and Thomas Piketty.¹³

Almost 72% of India's population live in villages and the rest in towns and urban agglomerates according to the latest estimates.¹⁴ But the country is rapidly urbanising as a result of which it now has 25 of the 100 fastest-growing cities worldwide. In 2007-08, the National Sample Survey measured the migration rate (the proportion of internal and international migrants in the population) in urban areas at 35%.¹⁵

However, despite this massive push for urbanisation and infrastructure building that, as per the logic of global capital, is perceived as 'growth-enhancing', and India's seemingly impressive rates of economic growth over the past three decades, vast numbers of Indians are unable to secure a meaningful and sustainable livelihood. This is especially true in the rural areas that have been devastated by a policy-driven destruction of agriculture, that has led to unregulated casual labour, chronic unemployment, and devalued small trades, on the one hand, and increased suicides among farmers, on the other.¹⁶ Migration from the rural to the urban is therefore driven more by despair than through a rational exercise of choice to better one's prospects in a fairly equitable world.

Women, Migration, and New Vulnerabilities in the Age of Globalisation

These economic insecurities are among the major factors for the increasing migration of women that traditionally had been attributed to social factors like marriage.¹⁷ Lack of livelihoods, coupled with dismantling of safety nets such as the Public Distribution Systems and slashing of agricultural subsidies has pushed more people,

¹² World Bank, *List of Economies*, March 2017.

¹³ While these figures are supposedly debatable, the issue of rising income disparities are real as argued by T Kundu in his article 'Is Thomas Piketty right about inequality in India?', *Livemint*, 15 September 2017, <http://www.livemint.com/Politics/iATqx10XSWaThxs0PBwHRO/Is-Thomas-Piketty-right-about-inequality-in-India.html>.

¹⁴ Population of India, 2017.

¹⁵ R Abbas and D Varma, 'Internal Labor Migration in India Raises Integration Challenges for Migrants', *Migration Policy Institute*, 3 March 2014, <http://www.migrationpolicy.org/article/internal-labor-migration-india-raises-integration-challenges-migrants>.

¹⁶ V Siva and K Jalees, *Farmer's Suicides in India*, Research Foundation for Science, Technology and Ecology, n.d., http://www.navdanya.org/attachments/Organic_Farming10.pdf.

¹⁷ S R Mahapatro, *Patterns and Determinants of Female Migration in India: Insights from census*, Working Paper 246, Institute for Social and Economic Change, 2010.

especially women, into poverty, even destitution, forcing them to move to urban centres for survival and alternative livelihoods. The adverse impact of globalisation upon women's lives and livelihoods has been highlighted by numerous national and international reports, including impacts such as an increase in violence against women; deterioration of the health system; an increase in female-headed households as men lose jobs or are pushed out of their traditional income-generating roles; the shrinking of resources available to women; and an increase in women's total labour hours.¹⁸

However, while on the one hand the processes of globalisation have engendered new vulnerabilities for women, on the other, they have also opened up other opportunities, increased mobility, economic independence, and technology-engendered autonomy that were not hitherto available, particularly for women from the more marginalised castes, dalit, and minority communities. It is at this cusp of change and challenges that we need

It is these same intertwining factors of vulnerability and 'choice' that lead to both trafficking of women into different forms of labour, including sex work or domestic work, and to creating conditions of an enabling anonymity and safe mobility within which women can choose sex work as a way to survive and sustain their families.

to locate the complex factors that lead to the conflation of trafficking with migration, and sex work with trafficking. For it is these same intertwining factors of vulnerability and 'choice' that lead to both trafficking of women into different forms of labour, including sex work or domestic work, and to creating conditions of an enabling anonymity and safe mobility within which women can choose sex work as a way to survive and sustain their families.

Sex Work in India

There are a wide range of estimates for the number of sex workers in India indicating that there is a dearth of sound and sensitive methodologies to capture their complex realities. One source states that there are more than two million 'prostitutes' and 275,000 brothels, while another estimates the number to be as many as ten million 'commercial sex workers'.¹⁹ In 2007, the Ministry of Women and Child

¹⁸ A Jaiswal, 'An Anthropological Vision on the Impact of Globalization on Indian Rural Women: A critical reality', *Arts Social Sci*, vol. 5, issue 2, 2014.

¹⁹ 'Prostitution in India', *Facts and Details*, 2015, http://factsanddetails.com/india/People_and_Life/sub7_3h/entry-4190.html.

Development reported the presence of over three million female sex workers in India, with 35.47 percent of them entering the trade before the age of 18 years.²⁰ However, in reality there is no comprehensive and credible data on the numbers, sites and forms of sex work, nor on forced prostitution and child trafficking. The most realistic estimates appear to be from the National AIDS Control Organisation, which bases them on listings made in its Targeted Intervention programmes, that places the number of sex workers in the country at a little more than one million.²¹ Most data available is conjecture based on narrow models that do not encompass the large canvas of sex work and prostitution in the country.

Apart from the brothel system of prostitution in larger metropolises like Bombay, Delhi, and Bangalore there are also street-based and home-based sex workers who have been either forced or drawn into this *dhandha* as a source of livelihood. The arrival of new technologies and the internet has also changed the nature of the industry making it more flexible and diffused.

It needs to be pointed out that sex work is not the sole source of livelihood for the women involved in it—a fact that is rarely recognised by mainstream studies and research. The first ever pan-India survey of sex workers conducted by Centre for Advocacy on Stigma and Marginalisation (CASAM) over two years and released in 2011 found that ‘in describing their working lives, a significant number of females move quite fluidly between other occupations and sex work. For example, a street vendor may search for customers while selling vegetables, and a dancer at marriages may also take clients. It is not easy to demarcate women’s work into neatly segregated compartments. Sex work and other work come together in ways that challenge the differentiation of sex work as an unusual and isolated activity.’²²

Trafficking Discourse: Context and conceptual clarity

On trafficking too, whether into or out of India, or even internally, there are no accurate or reliable statistics. There is ample evidence that people, including in some instances young boys, from Bangladesh and Nepal have been trafficked via

²⁰ *India Country report*, Ministry of Women and Child Development and the United Nations Office on Drugs and Crime, 2008.

²¹ D K Dash, ‘6.8 lakh sex workers in India, Delhi red-light capital’, *Times of India*, 21 July 2010, <https://timesofindia.indiatimes.com/india/6-8-lakh-sex-workers-in-India-Delhi-red-light-capital/articleshow/6193566.cms>.

²² R Sahnii and V K Shankar, *The First Pan-India Survey of Sex Workers: A summary of preliminary findings*, CASAM, 2011.

India to the Middle East for various reasons, including factory work, performing in circuses, camel jockeying, begging, domestic labour, adoption, organ removal, marriage, bonded labour, and sex work. India is also a destination for women from

Despite the multiple forms trafficking takes, most anti-trafficking initiatives seem to be especially concerned with sex work and sex workers.

these countries who are brought in for work, marriage or sex work, either through deception or coercion or voluntarily.²³ Internal trafficking happens too, when traffickers coerce women with offers of employment into sectors like the garment industry and then trap them by withholding their documents or payments. Despite the multiple forms trafficking takes, most anti-trafficking initiatives seem to be especially concerned with sex work and sex worker.

According to Kapur, 'The push and pull factors that compel unsafe movement, the various sites into which trafficking takes place and the larger issue of migration all remain largely unaddressed within the debates on trafficking in India. As a result of the narrow focus of the debate, the legal and policy responses focus almost exclusively on regulating sex work, strengthening border controls and prosecuting brothel-keepers and those who profit from the sex work industry'.²⁴

Legal Frameworks for Trafficking and Sex Work

Sex work and trafficking are conflated in law, policy, practice, and public perception. The primary legislation at present in place to address both sex work and trafficking is The Immoral Traffic (Prevention) Act of 1986 (ITPA) that is an amended version of the earlier Suppression of Immoral Traffic in Women and Girls Act of 1956 (SITA). It is significant that SITA was passed as a consequence of India's signing of the 1949 UN Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, rather than as a result of any mass movement from within.

SITA and subsequently ITPA do not penalise women engaging in prostitution, whom they treat as victims, but punish those who profit from or exploit them. In addition, Article 23 of the Constitution prohibits trafficking in human beings. India is also a signatory to international frameworks such as the Convention on the Rights of the

²³ R Kapur, 'India', in GAATW, *Collateral Damage: The impact of anti-trafficking initiatives on human rights around the world*, GAATW, Bangkok, 2007.

²⁴ *Ibid.*

Child (1989), Convention on the Elimination of all forms of Discrimination against Women (1979), UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000), and the South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2002). Apart from these laws, the legal regime for trafficking also includes the Juvenile Justice (Care and Protection of Children) Act 2000 and the Protection of Children from Sexual Offences Act of 2012 (POCSO).

Under ITPA, the following conditions surrounding prostitution are defined as crimes: maintaining a brothel (section 3), living off the earnings of a prostitute (section 4), procuring or detaining a woman for the sake of prostitution (sections 5 and 6), soliciting for the purpose of prostitution (section 8), and carrying on prostitution in the vicinity of public places (section 7).²⁵ In addition, the Act provides for the establishment of corrective institutions in which female offenders are detained and ‘reformed’ and envisages the appointment of Special Police Officers to enforce these provisions.²⁶

Apart from ITPA, other sections of the Indian Penal Code, State legislations and municipal statutes are also used by local enforcements officials, perhaps because offenses under such laws can be disposed of in a manner less stringent than they would be under the ITPA, which requires that the regular trial procedure be followed. Thus, sex work becomes criminalised under the authority of vaguely-worded statutes relating to ‘public decency’, ‘morality’ ‘nuisance’, ‘loitering’ and ‘vagrancy’ or zoning or health regulations.

As a result, sex workers all over India are routinely arrested even when not soliciting. HIV/AIDS activists and peer educators have even been harassed by police while distributing condoms and educating sex workers about HIV prevention.²⁷

Sex workers all over India are routinely arrested even when not soliciting. HIV/AIDS activists and peer educators have even been harassed by police while distributing condoms and educating sex workers about HIV prevention.

²⁵ SANGRAM, *Sex Work and Laws in South Asia: A monograph*, SANGRAM, 2010, https://www.sangram.org/resources/sex_work_and_laws_in_south_asia.pdf.

²⁶ P Kotiswaran, ‘Preparing for Civil Disobedience: Indian sex workers and the law’, *Third World Law Journal*, vol. 21, issue 2, 2001, pp. 161-242.

²⁷ Sadhana Mahila Sangha, *Violence against People in Sex Work in India: Submission to the Special Rapporteur on Violence against Women*, n.d. retrieved 6 August 2017, <http://www.ohchr.org/Documents/Issues/Women/SR/Shelters/Ramya%20Jawahar%20Kudekallu.pdf>.

Current Challenges to the Law

There has been pressure on India to amend its trafficking laws and policies thanks to the US annual *Trafficking in Persons Report* (TIP Report).

Since India does not have a law that directly criminalises prostitution, the threat of sanctions pressurised the Indian government to draft the Immoral Traffic (Prevention) Act (ITPA) Amendment Bill, 2006, that completely ignored trafficking into other sectors and criminalised sex workers' clients, omitting employers or companies that use trafficked labour.

In response to the draft amendment bill, sex worker organisations lobbied the Parliamentary Committee formed to consider this matter and the Health Ministry to which these proposals were referred, arguing that criminalising clients would drive the sex industry underground and put the sex workers at higher risk particularly to HIV/AIDS. The Health Ministry in a landmark decision recommended that the proposed amendments to criminalise clients be dropped and the Bill ultimately lapsed in the Parliament.²⁸

However, the threat seems to have resurfaced with the Criminal Law Amendment Act passed in 2013 that amended Section 370 of the Penal Code to protect women and children from being trafficked. Despite the fact that the Justice Varma Committee, whose report fed into this Act, reassured sex worker organisations that this section would not bring into its ambit adult sex workers, in reality it is being used to arrest clients of adult sex workers without attempting to differentiate between 'trafficked victims' and 'adult women in sex work'. In fact, the Andhra Pradesh High Court in 2016 *suo moto* took cognisance and directed the police to file cases against clients of sex workers under Section 370 IPC.²⁹

In May 2016, the Ministry of Women and Child Development released a draft of the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill that was pushed as the country's first ever anti-trafficking law whose main purpose was to unify existing legislation, increase the definition to cover other sectors, and make rehabilitation a right for those who are rescued. Although presented as a unique opportunity to address police violence, significant sexual health risks, sexual

²⁸ P Kotiswaran, 'Beyond the Allures of Criminalisation: Rethinking the regulation of sex work in India', *Criminology & Criminal Justice*, vol. 14, issue 5, 2014, pp. 565–579.

²⁹ Interview with Aarthi Pai, CASAM.

assault, financial insecurity and other issues sex workers face, the proposed Bill was opposed by sex worker collectives and unions since it did not adequately define trafficking nor did it involve sex workers in the process of drafting the Bill.³⁰

³⁰ See, for example, P Kotiswaran, 'India's New Anti-Trafficking Bill is an Empty Gesture', *The Wire*, 5 July 2016, <https://thewire.in/48494/indias-new-anti-trafficking-bill-is-an-empty-gesture/>; S Data, 'Why sex-workers are opposing Modi govt's anti-trafficking law', *Catch News*, 2 July 2016, <http://www.catchnews.com/india-news/why-sex-workers-are-opposing-modi-govt-s-anti-trafficking-law-1467444055.html>.

Methodology

The rationale for the research and its different elements were presented and discussed with representatives of VAMP Collective, Mitra, and SANGRAM before deciding on the focus groups discussions, interviews and field visits.

Accordingly, the following was planned and executed with the community as part of the research:

- a. Documenting through interviews, video recordings, and publications, three case stories on trafficking and how the group dealt with the issues that arose from them:
 - a woman trafficked from Nepal and returned to her family by VAMP
 - a woman trafficked from Bangladesh
 - a minor trafficked from Rajasthan.
- b. Documenting the return of a grant to USAID since VAMP refused to sign the Anti-Prostitution Loyalty Oath (APLO), commonly known as the 'prostitution pledge', and the backlash from this act resulting in 'raid and rescue' operations in 2005.
- c. Two focus group discussions with the Gokulnagar and Miraj communities on the raids and the Thantha Mukti Samithis (TMS) respectively. In the former about 15 women and men representatives from VAMP and Mitra participated, and in the latter—about 10 women from VAMP. The TMS are internal committees which address issues of violence and discrimination within the communities, including trafficking of minors and women into sex work.
- d. Meetings with organisations and individuals they have reached out to while seeking support to address issues they identify as trafficking or violence within /against their community. These included the Deputy Superintendent of Police, representatives of the District Legal Services Authority, and a senior Advocate who has helped them deal with false cases of trafficking that are foisted on their members.
- e. Visit to Mahalingapura, a neighbouring district on the Karnataka-Maharashtra border which is part of the 'Devadasi belt'.
- f. Individual interviews with sex workers in the different communities, with representatives of Mitra, and Meena Seshu and Aarthi Pai as the representatives of SANGRAM. In total we interviewed eight sex workers, two children of sex workers and two organisational representatives.

The focus group discussions and interviews happened in Kannada, Hindi, English, and in some instances, in Marathi. Apart from taking notes we also documented these discussions and interviews on audio tape and transcribed them.

While there was a broad structure to the discussions, by keeping it open we were able to ensure more spontaneous and free flowing responses.

Limitations

While VAMP works with brothel sex workers, street walkers, home-based workers, and housewives in sex work, a primary limitation of this research is that it is restricted to those self-organised collectives of women in brothel-based prostitution located in a very specific geographical location of Sangli/Miraj in the state of Maharashtra that has its own history and culture. Since the aim was not to obtain a representative sample of sex workers but to focus on those collectivised in this specific context, the findings cannot be generalised to understand the situation of all unorganised street-based sex workers or even brothel-based sex work in larger metropolises like Mumbai or Calcutta. However, lessons can surely be learnt from their struggles and strategies.

Findings

Background of VAMP/SANGRAM

The organisation that is the subject of this study is Veshya Anyay Mukthi Parishad, VAMP,³¹ the collective of women in prostitution and sex work, and also its parent body, the NGO Sampada Grameen Mahila Sanstha, SANGRAM (Organisation of Rural Women).

Since this study was focused on a community-based organisation that is working in old red-light areas, it is important, even if briefly, understand the context for sex work and trafficking in Sangli and Miraj, the two fairly prosperous twin towns in Southern Maharashtra that are situated in the middle of predominantly agricultural societies. These towns were the district centres with marketing yards to which farmers from villages would bring their produce to sell. Red-light areas, bars and restaurants sprung up in these towns to cater to the visiting farmers who would have extra money once they finished their trading. Farmers would also bring their 'mistresses' here, set them up in Miraj in small rooms and then abandon them. Once their money ran out, the women would get assimilated in the red light areas. Once the women who had come as young girls grew older, they would become *gharwalis*³² who would go back to their villages to bring younger women.

Being a major railway junction, Miraj also became the gateway and stopover point for women from Karnataka who were running away to Bombay, including devadasis who used this route to reach the 'Maximum City'.

Now there are large numbers of girls and women migrating from different states like Rajasthan, West Bengal and the North East and countries like Bangladesh and Nepal to Miraj and, to a lesser extent, to Sangli. These are considered 'safe' spaces to work largely on account of the presence of VAMP in these communities.³³

SANGRAM

SANGRAM started its work in 1992 with women in sex work in the context of the merciless rise of the HIV/AIDS pandemic in the early nineties, and the identification of this group of women as a particularly 'high risk' population that needed targeted

³¹ Note: Veshya is the colloquial and derogatory term for prostitute, Anyay Mukthi translates to freedom from injustice, and Parishad translates to Council. Using the same term and converting into the acronym VAMP was a way of appropriating the term and subverting its meaning.

³² Literally means 'woman of the house' but in this context it refers to the Madams who run the brothel.

³³ Conversation with Meena Seshu.

intervention. Based in Sangli district, which has the highest incidence of HIV/AIDS in Maharashtra after Mumbai, SANGRAM has since then spread its work among diverse populations across the districts of South Maharashtra and Karnataka including rural and Muslim women, as well as sexual minorities.

SANGRAM's efforts were focused on building up a community-based organisation of women in sex work to create a collective consciousness in a hostile and competitive atmosphere. It was not easy, given the siege from an outside world that abused, stigmatised and marginalised them, and rendered the community fragile from within with constant competition over clients, patronage, resources, internal exploitation and violence. In 1992, sixteen women sex workers from Gokulnagar, with the tacit support of some of the madams who ran the brothels, formally became peer educators for the HIV/AIDS prevention work in SANGRAM which catalysed the emergence of the sex worker movement in Maharashtra which was women-centred, process-oriented and empowerment-focused. In 1995, the collective registered independently as VAMP.³⁴

VAMP

Initially called the Veshya AIDS Muqabla Parishad, in 1998 the name was changed to Veshya Anyay Mukti Parishad. As they claim in an analysis of their own beginnings 'this transition from "AIDS Muqabla" (struggle against AIDS) to "Anyay Mukti" (freedom from injustice) is an important marker for a collective journey that began as a struggle against AIDS but has now broadened to a movement that seeks liberation from oppression and injustice.'³⁵

Acknowledging and not sweeping aside issues of power dynamics between and within the organisations, a decision-making process has been put into place that is totally decentralised, broad-based and participatory to ensure that hierarchies are constantly challenged and a collective process is sustained.

VAMP has a membership of over five thousand women in sex work. Functioning as a loose collective, the membership is more needs-based than formal. Any woman in sex work from the sites where VAMP works is entitled to the services offered, can attend the weekly *mohalla* (neighbourhood) committee meetings, make a complaint, or help in arbitration of community disputes. Other activities include lobbying with the police, helping colleagues access government health systems and facilitating leadership potential among members.

³⁴ SANGRAM/VAMP Team, 'The SANGRAM/VAMP Sex Worker's Movement in India's South West' in S Batliwala (ed.), *Changing the World*, 2nd Edition, AWID, Toronto, Mexico City, Cape Town, 2011.

³⁵ *Ibid.*

VAMP continues to work together with the other collectives initiated by SANGRAM that include HIV-positive sex workers (VAMP Plus), male and trans sex workers (Muskaan), children of sex workers (Mitra), rural women (Vidrohi Mahila Manch) and Muslim women (Nazariya).

Notes from the field

It is clear that SANGRAM and VAMP have come a long way from the time when Meena began her work with the women's movement in rural Maharashtra. The focus shifted in a fundamental way from working with issues related to the 'good' woman i.e. the 'wife', who was the socially accepted and defined 'victim' who needed empowerment and rights within the institution of marriage and family, to working with the 'bad' women, who were seen as a threat to these very institutions. While SANGRAM brought in the political framework of collectivisation from its beginnings in the women's movement, this got rooted and replenished by getting embedded through VAMP within the marginalised and hitherto invisibilised communities of sex workers. This has put into place an inverse political praxis in which the 'victim' is her own saviour, the collective her political identity and the community her source of empowerment. And this has come about because of a few core values that guided their growth as articulated by Meena:

'Community leads the way for us. We let the community decide what is right or wrong. We realised that they did not see themselves as oppressed or victims and therefore began to learn from the agency they exercised in their lives.'

The Benefits of Organising

Almost all the women from the older generation we met who carry very vivid memories of their past speak of how they used to live in their own ghetto isolated and marginalised by society. Subject to violence and humiliation both by the police who saw them as criminals, or by 'rowdies', violent clients, pimps, and *gharwalis* who

Subject to violence and humiliation both by the police who saw them as criminals, or by 'rowdies', violent clients, pimps, and gharwalis who abused them at will, their voices were silenced under the shroud of stigma that enveloped their lives. The benefits of organising, especially in the context of the HIV/AIDS crisis, therefore have revealed themselves over time at several levels.

abused them at will, their voices were silenced under the shroud of stigma that enveloped their lives. The benefits of organising, especially in the context of the HIV/AIDS crisis, therefore have revealed themselves over time at several levels.

Breaking the Isolation through Confronting the HIV/AIDS Crisis

The primary issue around which they started collectivising was HIV/AIDS. Initially, the community was distrustful of anybody from the outside and wary of the morality-based interventions they were used to. So when Meena first started visiting the communities in Sangli and Miraj the women used to literally run away from her.

In the civil [government] hospital a pregnant woman got admitted and was diagnosed with HIV. Everybody felt that HIV was spreading because of the dhandha. That is when Meena madam came to our community. When she first came, we all thought she was the police and ran away from her! She came with a big kettle of tea which nobody drank. But she kept coming back. We gradually listened to why she had come and she began teaching us how to protect ourselves through using nirodh [condoms]. We gradually started more regular meetings and started making friends in other localities and forming small groups to talk about these issues.

FGD, Premnagar, Miraj

In the context of the discriminatory treatment from the both the civil hospitals and the police, the primary struggles at this initial stage of organising were around access to quality health services (including access to good quality condoms), and protection against police brutality. This approach of enabling women to directly engage with the government and wider society contributed fundamentally to breaking the isolation and ghettoisation, challenging the social stigma attached to sex work, and making them visible not as criminal vectors of HIV, but as those battling the pandemic from the frontlines.

Collectivising to Resist Violence and Define Work

By 1996/97 when the health of the community began improving, the focus gradually shifted to the everyday violence in the lives of the women, the source of which was primarily the police from outside and the *goondas* (rowdies) from within. Organising was taken to another level as VAMP took on major cases of police harassment and brutality and made connections between these cases and the broader violations of sex workers' human rights through effective campaigns, lobbying and advocacy.³⁶

³⁶ See, for example, a case described by Human Rights Watch: 'Human rights abuses linked to HIV/AIDS outreach to women in prostitution', in *Epidemic of Abuse: Police Harassment of HIV/AIDS Outreach Workers in India*, Human Rights Watch, 2002, <https://www.hrw.org/reports/2002/india2/india0602-05.htm>.

They also began addressing internal violence including exploitative brothel owners, goons, violent clients and local political leaders, all of whom are today forced to negotiate with the collectives. The effectiveness of their interventions has eventually prompted the police to recognise that sex workers can play a key role in reducing violence within sex work.

If the gharwali didn't give the sex worker her due, the mohalla committee would go talk to the gharwali and force her to do so. Or if the malak [partner of the gharwali or sex worker] was troubling them for free sex, as they would do in earlier times, these committees would intervene. They became spaces that if you were in trouble you could go to and they'd help resolve your problems, including like that of debt bondage which is more on account of local caste-based money lenders than the madams. Today on account of the intervention of the local committees, it is the women who set the rates of interest and not the money lenders.

Meena Seshu, SANGRAM

Those days we had tremendous problems with not only the police, but also local Ambedkar³⁷ and dalit organisations that used to take our money but not include us in their programmes. Along with local rowdies, local politicians and police also used to abuse us during the day and come for free sex in the nights. Now not only has the dadagiri [rowdyism] come down, but the communities around us now come to us for justice! We now know the laws better and are empowered enough to fight for our rights even independent of both VAMP and SANGRAM that we go to only in cases that we cannot handle on our own.

Focus Group Discussant, Miraj

Forging a Fragile Consensus with Authorities

There was a general consensus from the participants that by and large police violence, including that associated with mass raids, has decreased since the 1990s. This can be attributed to the tremendous amount of work done in the initial years to address police attitudes and violent misuse of the law. SANGRAM and VAMP conducted advocacy and lobbying, sensitisation programmes and legal education at all

The police today are more aware of the nuances of the law and appreciative of the work that the collectives are doing in terms of addressing internal violence. VAMP and the police have developed a fairly stable, if uneasy, working relationship with each other.

³⁷ Organisations of the lower castes who normally name themselves after Dr Ambedkar, the iconic framer of the Indian Constitution who was himself a dalit.

levels from the local, through the district and state, to the national and international. As a result, the police today are more aware of the nuances of the law and appreciative of the work that the collectives are doing in terms of addressing internal violence. VAMP and the police have developed a fairly stable, if uneasy, working relationship with each other.

It must also be said, however, that if the police do accept the right of the women to do sex work it is not so much because they acknowledge it as a 'right' but because they also concur with the self-perception of many of the women themselves that the work they do keeps other 'normal' women 'safe' from those men who are sexual predators.

As the police officer we met, Deputy Superintendent Patki stated:

More than a police, I am also a social worker. I have no problem with sex work as long it happens within the home and not on the street. And yes, 'normal' women are protected from the dangers of rape since these women are taking care of the animal instincts of men who are looking for sex. Sex workers should be made to feel secure and safe and we will not trouble them as long as they help us in managing more criminal activities that happen within the community. Like that of minors being brought in or women being forced and trafficked into sex work.

However, this is a consensus that is fragile and conditional, and therefore in constant danger of breaking down as it did during the 'cleaning-up operations' in Premnagar, the red light area in Miraj in 2016, when sex workers were beaten in a bid to stop them from sitting on the side of the road in front of their houses.

Premnagar, a red light area which is home to about 300 families, lies on the Miraj – Kolhapur highway which is perhaps why it became the centre of so much attention from the police. Women here used to place chairs on the side of the road and sit through the day, as much for fresh air, as to attract clients. The Police Superintendent, Ms Patki used to travel up and down this road on duty since it is used frequently by VIPs. Offended by the sight of these women sitting in the open she came with the police in November/December 2016, broke the chairs, flung them aside and abused the women in the choicest language and warned them about coming and sitting in public the way they did. The women took up the issue and went to Meena Seshu and SANGRAM who then spoke to high-level police officers. The matter was peacefully resolved when Ms Patki proceeded to invite the women for a Haldi Kumkum ceremony (a quasi-religious/social function specially for women in which turmeric and vermillion is given) and made peace with the women.

It is also interesting that the community-based approach to collectivising draws upon shared traditions and rituals which engender ways of relating with authority that can be as convivial as they are confrontational. As for instance in this case when *haldi kumkum* became part of a reconciliatory gesture between the police and the women using a symbol that typically represents the 'good' wife or woman but which is appropriated by and offered to the

traditionally 'bad', other woman. By negotiating with the notion of 'normalcy' on their own terms while also staying rooted in their own autonomous marginality that they are not willing to cede, the women are in fact broadening its common sense meaning and making it more inclusive. In doing so, they are also perhaps even subverting mainstream norms. While these subversions can be problematic since they could end up reinforcing regressive stereotypes, it is a difficult but perhaps inevitable process of negotiation that continues to happen between marginalised communities and centres of power and authority that are trying to find common ground and meaning.

One sees a clear concern among VAMP members for the children of the community, without being apologetic about choices they themselves have made or judgmental about the choices that their daughters might make. This nuanced position has guided SANGRAM and VAMP's decision to work with the children of sex workers, and to implement programmes that enhance their self-esteem, self-confidence and knowledge levels.

Expanding Choices for Coming Generations

Organising the women within the context of the community in which VAMP is rooted, coming as it does from long-term intergenerational involvement, has allowed for a more sustainable vision of change and transformation to take root that is relevant to their realities. One sees a clear concern among VAMP members for the children of the community, without being apologetic about choices they themselves have made or judgmental about the choices that their daughters might make. This nuanced position has guided SANGRAM and VAMP's decision to work with the children of sex workers, and to implement programmes that enhance their self-esteem, self-confidence and knowledge levels. These programmes have had a positive impact in terms of broadening the children's livelihood options, but without the judgment and shame that often accompanies morality-driven 'exit' programmes.

Devadasis and Minors

The devadasi practice of dedicating girls to the Goddess at a young age has also been considerably reduced as a result of the influence of the collectives. Many devadasis are ensuring that their children are not dedicated to the Goddess, and are instead

receiving an education that provides opportunities for alternative employment. This however has not been an easy journey.

As Meena recollected, ‘Yes, it was distressing to see young girls come into this business and more distressing to see them dying so early because of HIV. But since it was so much the norm, it was tough to break it and have any conversation around this. We began with a campaign among the devadasis suggesting to them that if they were thinking of sex work for their daughters they should at least postpone their entry till they start menstruating. I got a lot of flak for this with people thinking that I was cruel and encouraging of sex work. But most of the devadasis were dismissive initially even of this. I started by asking the women, what the most traumatic part of their lives were and many of them came up with “when I started having sex”. We kept pushing the question asking “why” after which we would turn around their answers, asking if what happened to them should happen to their young girls. To their credit the women really responded positively, and after much discussion and about 10 years of persistent, non-judgemental work, the communities have rooted out children in *dhanda* in those areas where VAMP works.’

As part of the field work we visited Suvarna, a devadasi whom I had first met many years ago.

She is delighted to see us and gives us a warm welcome into her house, and introduced us to her colleagues, Shalavva and Mala. Mahalingapura, the town where she lives, is dominated by devadasis. As noted above, the devadasi system is controversial. Mainstream society of course sees it as morally reprehensible. Since almost all devadasis come from the poor, dalit communities, dalit organisations view it as a heinous symbol of caste and gender discrimination. Organisations like VAMP/SANGRAM have a more nuanced view, noting that, traditionally and in practice even today, devadasis enjoyed a better status within the larger community of which they are a part. Unlike married women from the dominant castes who were cloistered in their domesticity, they were always part of public life expressing themselves on community affairs. Even now when girls and women are dedicated, they get the same status as men and therefore are entitled to a share in the family property.³⁸

Apart from other insights, Suvarna, Shalavva, and Mala shared the huge changes that have happened within their profession and practice. They said that it is true that previously a lot of girls who had become devadasis were trafficked as children into big cities for prostitution. Often they would come back totally diseased and broken and die in the villages. But that

³⁸ Conversation with Meena Seshu.

has changed since the girls have now become independent and strong, well aware of their rights, and able to take responsibility for their health.

On the one hand, the age of the girls being dedicated and moving into prostitution is increasing as awareness grows. On the other, many children of devadasis are now also opting out of the system and choosing to study and take up other jobs. Of Mala's two daughters for instance, one is married and the other is a school teacher. Suvarna's daughter has also completed her graduation and is trying to get government employment. At present, she is working in a local agricultural cooperative.

Before we leave, Suvarna insisted on taking us around to show all the houses she has built with her own hard-earned money for each of her children. She is all gratitude for her malak [partner] of so many years, who despite having his own family, has stood by her firmly in her attempts to live a life of self-reliance, dignity and independence.

VAMP's approach, which is to improve the rights, health and living conditions of devadasis, is based on the principle of empowering and dignifying the women, not disempowering or further objectifying them. The lives of Suvarna, Shalavva, Mala, and their children seem to bear live witness to the long-term effectiveness of this approach.

Challenges for Sex Workers

Apart from the continuing threats of violence for sex workers posed by the police and changes in the law, new challenges are posed to their collectivisation by not only the abolitionist lobbies but also the more progressive organisations, including those from the feminist and dalit movement. Ironically these resurgent moralities are beginning to rear their heads just when it appeared that state agencies are becoming tentatively more acknowledging of the rights and realities of sex workers.

Recriminalised and Recolonised by the Right

Even as the police have been slowly changing their approach and becoming more accepting of the rights of sex workers, the abolitionist lobby keeps pressuring the State to initiate brutal raid, rescue and rehabilitation operations. While the worst of these raids happened between 2005—2007 in the areas where VAMP is located, the psychological and organisational repercussions are felt to this day. It is for this reason that VAMP selected the case described below as representing a defining moment in the history of their organising.

The Return of the *Gora* (White man)

‘We find audacious ways to restore justice to children and the poorest of the poor’, declares the website of Restore International, a US-funded evangelical organisation. Its partner organisation Freedom Firm describes itself as an organisation that rescues underage Indian girls from prostitution, ‘restores them in Christ’ and prosecutes the perpetrators.³⁹

In 2003 in the US, legislation that allocated funds for PEPFAR (President’s Emergency Programme for AIDS Relief) required that organisations receiving the US government’s support for HIV/AIDS programme sign the APLO.⁴⁰

SANGRAM, which previously received USAID funding through Avert, was not prepared to sign APLO and so ended their collaboration in 2005 by mutual agreement.⁴¹

SANGRAM was falsely accused by US-funded groups of engaging in child trafficking, despite the fact that the US Embassy wrote a letter in October clarifying and confirming that the ending of US funding was by mutual agreement and had nothing to do with any accusation of trafficking.⁴²

However, as Meena reiterated ‘In the environment of prostitution policy dominated by a “rescue” mentality and backed by heavy HIV/AIDS funding, SANGRAM’s well-known work was targeted for attack.’

The funders told us that we have to stop sex work and have to be rehabilitated. We told them we don’t want this kind of funding and sent the money back saying we know how to take care of our women and manage our organisation. If today we get four customers, tomorrow we know we can get eight. Then one day a white man suddenly came into the community without informing anybody and went around saying he would like to distribute chocolates to the children. And wanted to know how many children there were in each house and of what age. We learnt later that he was Greg Malstead.

Focus group discussant, Sangli

³⁹ M Gupte et al., *In the Name of Rescue: A report of the fact finding committee investigation into alleged molestation/rape of a minor girl by a decoy customer in Uttamnagar, Miraj, Maharashtra*, 12 May 2007.

⁴⁰ CHANGE Center for Health and Gender Equality, *Anti-Prostitution Loyalty Oath: Fact sheet*, 2015, http://www.genderhealth.org/files/uploads/change/publications/Updated_APLO_factsheet.pdf.

⁴¹ Interview with Meena Seshu

⁴² Gupte.

In May 2005, one Greg Malstead and persons associated with the International Justice Mission (IJM) and Restore International, induced the police to make a violent raid on brothels in Sangli, the home of SANGRAM, on grounds that minors were being forced into prostitution. Women were beaten and threatened with guns; more than 70 police kicked doors and threw their belongings around.

It was around 12.00 – 12.30 in the middle of the night and women ran helter skelter, jumping over walls. The police stormed/raided each and every lane. They tracked us as though we were terrorists. There were nearly 10 -12 vehicles and they pulled the women by their hair abusing us in the most foul language...bosudi, chinal, randi [colloquial insults for prostitutes] and slapping us if we screamed. Some ran away. Even to today when we remember that incident although it happened about 12 years ago, we get scared.

Focus group discussant, Sangli

Around 35 women and girls were arrested and forced to undergo medical examinations. In the end only two girls under the age of 18 years were discovered. Another two minor girls were visiting their mothers for the summer holidays, but were nevertheless detained unjustly for two weeks.

My sister was not doing dhandha but they took her too though she too was a minor and staying with our mother. They caught and beat me saying I was encouraging dhandha because I was distributing condoms as part of our Targeted Intervention⁴³ programme. I tried telling them she was my sister but they took her and went. She also was so shaken that she now does not want to either get married or do dhandha. But she is now with us in the Thanta Mukti Samithi.

Focus group discussant, Sangli

The raid affected the two younger girls badly since it was widely reported in the newspapers and on TV, and they were upset that they would not be able to go back to school because their names were tarnished and their future was spoilt. Finally, one of the girls came into the dhandha because she felt that her name had anyway been spoilt and the other one got married to someone from Karnataka. One of them even attempted suicide.

Focus group discussant, Sangli

⁴³ India HIV/AIDS Resource Centre: Targeted Interventions, <http://www.indiahivinfo.naco.gov.in/naco/targeted-interventions>.

We organised a strike in front of the police station for three days. We didn't cook nor sleep. How could we when we were so afraid? The women and girls were in the remand home for three months and they would be constantly counselled to say that they were being forced into it whereas the girls would say that they were doing the dhandha voluntarily.

Focus group discussant, Sangli

Later the same year, two people affiliated with Restore International returned to Sangli, and posed as fake clients in the same brothel. Suspecting that something was wrong, some of the younger sex workers got enraged and beat up the men. Some of the older sex workers intervened and protected the men from serious injury. This incident resulted in IJM and Restore International spreading more slander about SANGRAM.

In May 2007, a team from the two organisations came back to Miraj and raided the brothels there on intelligence that a minor had been trafficked into prostitution. After a 'sting' operation in which one of the team again posed as a client and, as alleged by some members of the community, raped a 13-year-old girl, the irony is that the minor who was 'rescued' was sent back to her mother who lived in the red-light area, since the police felt that she would be safer there than anywhere else. After members of VAMP discussed various solutions with her mother, the girl was sent to a government facility for young girls and committed there with the help of the police. Unethical media coverage ensured that the girl's face was splashed all over the papers and she was declared to be a 'prostitute' despite there being no evidence that she was either trafficked or was in prostitution.

Unethical media coverage ensured that the girl's face was splashed all over the papers and she was declared to be a 'prostitute' despite there being no evidence that she was either trafficked or was in prostitution.

Both Meena and the members of VAMP state that the Evangelists clearly targeted VAMP and publicly accused them of being traffickers simply because they are not against adult women entering the trade on their own volition.

The collective impact of these dramatic, violent and high-profile raids was traumatic for the women of the Sangli community. They began to feel targeted as criminals whereas till then they had only seen themselves as victims of stigma and discrimination.

They also said that after the raids, there were tremendous emotional and health problems within the community, as a result of which some women even died. Further it made the community more suspicious of outsiders, fearing that outsiders might again be decoys.

Just when they were getting collectivised and getting visibility engaging with mainstream society, suddenly criminalisation was happening all over again. The women could understand society thinking they are bad. Even post the Nippani incident in which Shabana was targeted, a lot of discussions happened. The women could understand the logic of the police who wanted to take over the land and give it to the local leaders they were hand in glove with, and so abused and tried to evict them from that place. But after that the women became stronger till the raids started happening at the behest of some outside groups. We had been looking at issues of violence both towards and within sex work, but then this white man comes during the raids and calls us 'debauched' and 'debased'. This had a huge impact on the women, confusing and traumatising them. Bhimavva, one of the local leaders was so shocked that she was yelled at and called a 'slave master' by the gora with his finger pointing at her that she had to be hospitalised in the ICU.

Meena Seshu, SANGRAM

Left out by the Left and Other Progressive Movements

Unfortunately, the backlash to collectivisation of sex workers has come not only from the traditional opponents like the religiously-motivated organisations, but also from progressive movements with whom the sex worker rights collectives share many values and principles. These opponents include some feminist and dalit organisations, who believe that sex work in all its manifestations should be eradicated, and view the assertion of autonomy and agency by sex workers as a product of false consciousness that reinforces patriarchal and/or casteist agendas. They frame sex work as structurally part of an upper caste brahminical patriarchy that uses and commodifies the body and sexuality of dalit women.

The moral and political stigma directed towards sex workers and the organisations representing them was experienced by members of VAMP and Mitra shortly after our fieldwork. In March 2017, members attended a mass rally against growing fascism in India. We learnt that after the women from VAMP spoke at a public meeting following the rally, many in the audience and the organisers expressed outrage that the women had been allowed to speak, since they were 'criminals' and 'morally degraded'. This was truly ironic considering that it was a meeting against fascism and intolerance.

This is perhaps the biggest challenge that the sex worker movement is facing today. Taken together, this combined assault from both the left and the right could pressure the State towards renewed criminalisation, jeopardising the hard-won gains of the movement vis-à-vis dealing with the violence in their lives on their own terms.

Defining Trafficking

From the interviews and discussion with representatives of VAMP and SANGRAM it is clear that they have been responding to all the elements of what is legally defined as ‘trafficking’ almost from the beginning of their work. Specifically this would include the entry of minors into prostitution, women being brought by deception and against their will, and their exploitation and ill-treatment by *gharwalis*, pimps and clients. While initially SANGRAM made clear that they considered these acts illegal, it was only after VAMP was formed that the community too began to internalise and respond to them as acts of violence, which however were and continue to be viewed as acts of exploitation and *anyaya* [injustice] that are defined by the women’s own sense of collective morality and ethics and therefore need to be addressed from within, not so much through the legal lens of ‘trafficking’.

Commenting on the changes in the context, Kasturi, an older generation sex worker from Miraj, told us in the focus group discussion, *‘Earlier there was no “trafficking”. Women would come on their own into the dhandha, there were no dalaals (pimps). Local goondas exploited us but we fought back. Now dalaals have started coming from outside. Younger girls are brought and left here while they take the money and go away.’*

It was only after the series of targeted raids by the abolitionist groups that they began to see these issues along with that of young women being brought by *dalaals* from across borders, like Bangladesh, with no documentation and on the promise of jobs, as *criminal acts* of ‘trafficking’ that need *legal* intervention. However even now in most cases of internal exploitation they would try to deal with it themselves unless it requires the active intervention of the police.

Sometimes we do not know if a gharwali has brought in a young girl although now we have made it a rule that they must inform us. Sometimes they don’t and when it comes to our attention we go and warn them that what they are doing is wrong. If they don’t listen then we go and get police help and make it a big issue. We used to avoid doing this earlier since the police would expect money but now after we have made our organisation they are more cooperative. There are no young girls here and all are above 18 years. My daughter who was 14 when she went to Bombay would not have been allowed into the dhandha in today’s context.

Kasturi, sex worker, Miraj

From Injustice to Crime: The Collective's response to trafficking

From the discussions, interviews and case studies shared, it was clear that VAMP and SANGRAM are making a systematic attempt to understand the law as it related to sex work and trafficking. Further, while reiterating that the former is a matter of personal choice and right to livelihood, they believe that the latter is a crime that they are ready and willing to counter and fight from within the community. This they are doing at several levels.

1. Dealing strategically and not emotionally with the law

After battling the backlash from the anti-trafficking and abolitionist lobbies, both VAMP and SANGRAM realised that they needed to proceed more strategically as opposed to reacting emotionally. With the help of lawyers, they began a systematic process of understanding ITPA within their own context, and in the context of the law. Based on this knowledge they became even more vigilant within the communities on issues like minors in sex work and exploitation by *dalaals* and *gharwalis* especially in the context of an increase in migration from other states and countries. Monitoring the ages of new entrants into the local sex worker community became routine and in cases of suspected minors, in Sangli, the controversial bone density tests are done at the public hospital to verify age.

2. Strengthening community organisations to counter violence/ redefine rehabilitation

Thanta Mukti Samithis:

As the VAMP collective developed, the organisation's attempts to deal with injustices were often frustrated by mainstream redress mechanisms, such as the courts and the police, which were moralistic and anti-sex work. The Thanta Mukti Samithis (Conflict Redress Committees) were therefore initiated to explore organic community solutions for all the internal and external issues that confronted the collective. Formed at the level of every community that VAMP works in, the members are chosen for a specific term during which time they organise regular meetings, intervene and resolve local disputes, file police complaints, hand over violent clients/bullies to the police, and keep track of money lenders to ensure equitable rates of interest. They also keep track of new

They organise regular meetings, intervene and resolve local disputes, file police complaints, hand over violent clients/bullies to the police, and keep track of money lenders to ensure equitable rates of interest. They also keep track of new entrants to ascertain that they are adults and in sex work of their own volition.

entrants to ascertain that they are adults and in sex work of their own volition. They sit together and formulate strategies on how to deal with the internal violence even while they ensure that they are not violating laws that might criminalise them. For instance women in brothels are being encouraged to live alone and ply their trade independently so as to not be under the regime of a *gharwali*.

They therefore are playing a critical role in not only increasing the confidence of the community to deal with the stigma and discrimination of the outside world but also deepen its own capacity to deal with forms of injustice in the way that they would choose to define it.

Some case studies that were shared with us indicate the ways in which the TMS have been dealing with issues related to trafficking.

Case Study I: Girl from Rajasthan

In April 2016, a Rajasthani *dalaal* brought a 17-year-old girl to the house of Gangu Bai, a *gharwali* in Sangli. Suspecting that she was too young, Gangu Bai showed the girl to one of the members of TMS and said that she had no records proving her age and asking whether they should keep her. This issue was discussed by members of TMS who agreed that she looked too young and they were suspicious about the intentions of this particular *dalaal*.

They all went together to Gangu Bai's house where the *dalaal* was. As soon as he saw them coming he took the girl and ran away with her to Miraj, a fact they came to know from the taxi driver who drove them there. The members of the TMS from Sangli got in touch with VAMP members in Miraj, who went to catch him but found he had escaped again. When the TMS women went to the police to lodge a complaint against him, the latter's response was lukewarm, saying that they should bring the *dalaal* in themselves. Finally, after the TMS members threatened the taxi driver who had helped them escape, the girl was traced, although the *dalaal* had once more escaped. On talking to the girl, it was found that the *dalaal* had promised to get her a job in the garment factory before bringing her to the *gharwali's* house. After confirming that the girl was indeed a minor, VAMP members contacted the parents who, along with the girl, were counselled in the police station and later at the remand home where she was taken. Although the girl refused to give the name of the *dalaal* who had brought her, the strong action they took had such an impact that the *dalaal* dared not come again to the community.

Case Study II: Shilpi from Bangladesh

Shilpi was a young undocumented Bangladeshi immigrant who left her village with a friend, who said they could get a job in a garment factory in Calcutta. She was married to a violent and abusive alcoholic husband and had a seven-year-old

daughter, whom she left behind with her parents. With the help of the friend, she managed to evade the border authorities and come into India. The woman then handed her over to an agent who brought her to Sangli and put her in the house of a *gharwali*. She was initially shocked that she was expected to sell sex, but later decided that it was the only way she could make a decent living and send money back home. In due course, she also got married to a man, and they moved in together, but she continued with her *dhandha*.

Through the local TMS, she approached SANGRAM for help following a raid in her area. During the raid, her agent's wife had been arrested, and three minor Bangladeshi girls were sent to a remand home. Fearing that they would get into trouble for harbouring an illegal immigrant, both her agent and *gharwali* told her that she should go back to Bangladesh. However, she did not want to leave since she needed to keep supporting her family, and she could not do sex work in Bangladesh since her family would find out. She wanted to find a way to stay on despite all the dangers both from the authorities and from the agent who was obviously involved in trafficking.

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Shilpi and her husband were counselled extensively by members of the TMS and SANGRAM who explained to them the illegality of her presence in India. They explained that firstly, she was a victim of trafficking since she was brought into the country through deception. Secondly, she had no documentation to prove that either her entry to India or her stay was legal. Thirdly, she was in danger from her *dalaal* since if she was detained in a raid, Shilpi would probably be forced to incriminate him. They suggested that Shilpi and her current husband had two options: either prove their marriage through proper documentation so that she could stay on as his wife, or she should go back. Although the choice was left to the couple, SANGRAM felt uneasy about the complex situation, which presented many risks, both to the woman herself, and the reputation of SANGRAM.

After confirming that the girl was indeed a minor, VAMP members contacted the parents who, along with the girl, were counselled in the police station and later at the remand home where she was taken.

After we all spoke to her we were convinced that she was here out of her own choice. Yes she was from another country but she is also like us, earning her livelihood so how could we force her to leave? But since she is not from this country and has no papers she herself could get into trouble and also put us into trouble. We will get a bad name. We were confused about what to do.

Maya, VAMP, Sangli

These cases of ‘trafficked’ Bangladeshi women also pose a real challenge for us since we are also caught in our own political understanding of these issues within which we are struggling with trying to understand whether theirs is a case of trafficking or unsafe migration. Our political understanding is that borders should not be a barrier to free movement of people. Our political understanding is also that sex work is work and that the women should be able to move anywhere—it is just that they should be safe and secure. This is why it becomes difficult when we try to tell women who don’t have proper documentation to go back. Like this girl who told me ‘Ok I will go back since you are telling me to but I will have to do it on my own and so will have to use the man who brought me, otherwise how do I go back?’ Or another one who said ‘how can I complain against the agent who brought me? If I do, how will I send money back home? He is my conduit—by catching him you’re killing me and my family’.

Meena Seshu, SANGRAM

Mitra and working with children of sex workers

Since its inception VAMP has been working with sex workers’ children, since members recognise the impact that stigma and discrimination have on them, leading to low motivation and self-esteem, poor academic performance and ultimately diminished opportunities and choices of livelihoods. Mitra implements an after-school programme, which uses older children of sex workers as leaders, and provides extra tuition classes as an entry point to teach children core life skills. These are safe spaces in which the children are not only given emotional support and academic guidance, but also encouraged to examine their identities and explore ways to claim self-worth and respect. This work led to the establishment of tuition centres in Miraj, Karad and Sangli and the Mitra Hostel in

She acknowledged that the raid and rescue operations could sometime be counter-productive, especially if there is no comprehensive rehabilitation scheme in place that would provide viable income-generating alternatives to minors.

2008 in Nippani town. Housing only children of street-based sex workers, at present it has about 40 children. All are admitted to local government schools with the Mitra teacher providing supplementary education.

When we were doing the SANGRAM's Trucker programme we did a survey in which we found that the situation of children of those women who did dhandha in the open was very bad. There was one case for example of a 10-year-old boy, Deepak and his 8-year-old sister, Komal, in Karad who were left alone to cook and look after each other by their mother who was on the move. There was another 14-year-old girl who was singlehandedly taking care of her mother who was ill. Another woman was trying to pull her into sex work. After we brought her to the hostel she did her Degree in Commerce, fell in love and got married. But she continues to study and work.

I myself am not educated. But I am so happy that our younger children are getting educated and have alternative ways by which they can earn their livelihood without necessarily coming into sex work. I believe in self-rehabilitation. When a woman wants to give up sex work after her children are working is that not 'punarvasthi' [rehabilitation]?

Mahesh, child of sex worker, Mitra

3. Working with State Agencies on Trafficking

Despite a history of conflict and enduring mistrust between the police and sex workers, there seems to be a growing synergy between them when it comes to addressing issues related to trafficking. Both the police and legal representatives we met were very appreciative of the work that VAMP was doing to address the genuine needs of sex workers and their children, and also helping them identify traffickers and their networks.

The Police

The senior police officer in charge of the anti-trafficking Cell spoke at length about their work on trafficking and with VAMP as well as other NGOs. Making a distinction between sex work and trafficking, she emphasised that they do not interfere with the right of any adult woman to earn her livelihood through selling sex. She acknowledged that the raid and rescue operations could sometime be counter-productive, especially if there is no comprehensive rehabilitation scheme

Mitra implements an after-school programme, which uses older children of sex workers as leaders, and provides extra tuition classes as an entry point to teach children core life skills.

in place that would provide viable income-generating alternatives to minors. In short, while she accepted the rights of sex workers, even if with some expected ambiguities, there was a clear expectation that the community partners with them in combating trafficking.

Yes, it is important we work with sex worker collectives to prevent trafficking. We need to help each other. We don't want to randomly pick them up and throw them into rehabilitation centres. But there are a few ladies who are [HIV] positive or have not taken protection who can spread the disease and who need support and shelter. There is also the problem of those sex workers who have grown old but also need to make money in order to eat and are so desperate that they are willing to do anything for even Rs.20 and people end up robbing and cheating them. On the other hand, girls have come from as far as Assam, Pune, Uttar Pradesh, have settled here for many years and are doing well. The Government and NGO's should do something for the older sex workers. You should also help in conceiving of better rehabilitation programmes for those who don't want to do sex work and minors. Or they will be forced to come back into it if they are not given alternatives.

Deputy Superintendent Patki

Legal Support

The District Legal Services Authority (DLSA) is a service for poor and marginalised communities to improve their access to justice. Its lawyers conduct weekly legal clinics at SANGRAM's to advise them on social entitlements, domestic violence, property rights issues, child trafficking etc. The lawyers we met from the DLSA told us that they have not come across or dealt with any cases of trafficking in the process of these interactions.

We also interviewed a senior defence lawyer, who serves on DLSA, Advocate Maruti Mane. He has supported VAMP and Mitra over the years, through paralegal training of their members, as well as providing legal support for sex workers prosecuted under the ITPA. He provided reflections on some of the developments he has witnessed.

Firstly, he said that there has been a dramatic decline in the incidence of minors entering the industry. In previous years, women used to bring their children into the business because of low levels of education and poverty. VAMP and SANGRAM have contributed to reversing this

In previous years, women used to bring their children into the business because of low levels of education and poverty. VAMP and SANGRAM have contributed to reversing this trend by ensuring that sex workers' children are educated.

trend by ensuring that sex workers' children are educated. Secondly, the incidence of raids has also decreased substantially over the past few years. When they do still happen, they are usually initiated by foreign Christian missionaries who collaborate with local NGOs in reporting cases that are often false, fraudulent or distorted. Besides these raids being disruptive and traumatic, Mane also pointed out that in majority of the cases in which sex workers were arrested and prosecuted during the raids, the women were acquitted on technical grounds of the raids being conducted without following the due process of law. Mane felt that the police should be much more cautious and critical of such reports.

He also felt that while the judiciary is very hard on cases of trafficking, in the Courts where he has worked, to date, not a single trafficker has been arrested. He strongly felt that traffickers should be dealt with severely under the law.

4. Documentation and Media Dissemination

Apart from more structured studies, VAMP and SANGRAM have been trying to use more creative means to raise awareness on the issues their work with, and the perspectives that inform them. Some of these include:

- ***Daughter of the Hills: Trafficked and Restored***: a comic book that documented the case of Kopisha from Nepal, which was a clear case of coercion, trafficking, and act of rescue and restoration, as well as issues of migration and safe mobility by the sex worker's collective.⁴⁴
- ***My Mother The Gharwali, Her Malik His Wife***: a play performed by members of VAMP and Mitra with the support of professional theatre groups and directed by Sushma Deshpande in 2008. It told the many stories of their lives with a lot of humour, joy, pain, and sorrow.
- ***A Study on Forced Marriage***: An anecdotal study was done by allied organisation Vidrohi Sanghatan on trafficking that is happening for marriage in North Karnataka from where brides are being bought on payments ranging from INR 40,000 (about USD 600) to INR 90,000 (about USD 1,300) through agents to South Maharashtra. While the incidence has been established no detailed study has been done to ascertain the root causes. Once the women are brought, the agents disappear and the women are left at the mercy of the family they were 'trafficked' into. All the known elements of trafficking, such as deception, debt bondage and slavery are present in these situations but are not addressed with the seriousness they deserve which SANGRAM and VAMP would like to explore deeper through more structured studies.

⁴⁴ Available at <https://www.sangram.org/resources/Daughter-Of-The-Hills-Sangram.pdf>.

5. Advocacy highlighting the difference between sex work and trafficking, and between trafficking and unsafe migration

VAMP and SANGRAM consistently engage in advocacy at the local, national and global level, through their membership of broader networks such as National Network of Sex Workers (NNSW), the Asia-Pacific Network of Sex Workers (APNSW), and the Global Network of Sex Work Projects (NSWP). Through these platforms, they emphasise the distinctions between sex work and trafficking, and between human trafficking and situations in which women enter the sex industry through voluntary, but irregular migration. Based on the fundamental principle of ‘Nothing about us, without us’, they also advocate for and facilitate bringing the experiences and perspectives of sex workers into the debate on trafficking.

At present both VAMP and SANGRAM through their national network are also engaged in an intense and widespread consultative process and advocacy to highlight the shortcomings of the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2016. They issued a response signed by sex workers and other partner organisation in which they argued:

‘The trafficking bill ignores the problems associated with unequal growth, skewed development and inequity, including aspirations to migrate for better livelihood. Further instead of focusing on creating conditions and laws that make migration safer for women, these policies are focused on deterring women’s right to mobility and movement. There is a dual approach in the explicit protection offered to people rescued from bonded labour and from other situations (women who are surrogates and women in sex work) which needs to be scrutinized and addressed.’⁴⁵

They also reiterated other more specific concerns that include separating adult trafficking laws and child trafficking laws, excluding adult persons voluntarily doing sex work from the ambit of the Bill and no subversion of rights under rescue and rehabilitation that results in a draconian provision to ‘repatriate’ and resend person from one state to another without giving an opportunity to ascertain the wishes of the individual rescued. Their core demand remains that the sex worker organisations should be central to not only drafting the Bill but also to its implementation.

⁴⁵ Draft Comments to Trafficking Bill 2016, VAMP, SANGRAM.

‘Time and again sex worker collectives, organisations working with sex workers have shown that they are natural allies and partners to root out exploitative practices and provide alerts on trafficking for sexual exploitation. Despite this, the proposed committee precludes their participation. It is proposed that any committee at the district level that seeks to fight human trafficking must have participation of and consultations with sex worker groups and collectives. Additional members should include members of the Human Rights Commission at the district level. The social workers must have a proven track record of working on women’s issues/ empowerment and not limited to anti trafficking work in order to ensure a more holistic perspective. Lawyers with a track record of working with sex workers, women in distress, violence against women should be included in the Committee.’⁴⁶

⁴⁶ *Ibid.*

Recommendations

VAMP, along with several other organisations comprising the National Network of Sex Workers⁴⁷ have put forth the following recommendations regarding trafficking, many of which have been drawn from their submissions to the UN Special Rapporteur on Violence against Women during her visit to India in April 2013.

To the Indian Government:

1. Decriminalise sex work so that sex workers can legitimately assist in the efforts to fight trafficking and all forms of exploitation.
2. Trafficking is a criminal offense and should not be conflated with sex work. Trafficking of adults and trafficking of children should be dealt with under two separate laws to ensure that consenting adults are not infantilised and children are given justice.
3. Repeal laws that prohibit consenting adults to buy or sell sex, as well as laws that otherwise prohibit commercial sex, such as laws against 'immoral' earnings, 'living off the earnings' of prostitution and brothel-keeping. Take complementary legal measures to ensure safe working conditions for sex workers.
4. Shut down all compulsory detention or rehabilitation centres for people involved in sex work or for children who have been sexually exploited. Instead, provide sex workers with evidence-based, voluntary, community empowerment services. Provide sexually exploited children with protection in safe and empowering family settings, selected based on the best interests of the child.
5. The policy of raid, rescue, repatriation and rehabilitation as a primary and only response to trafficking for sexual exploitation needs to be reviewed. Survivors of trafficking need to be supported through affirmative mechanisms such as extinguishing debt bondage, schemes that release their families from debt cycles, soft loans that enable them to escape the cycle of poverty and vulnerability that force them into all forms of forced labour.
6. Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and ILO conventions related to migrant workers, to ensure adequate human rights protection to women who have migrated across borders for work.

⁴⁷ See NNSW, <http://www.nnswindia.org/>.

To judicial officers:

1. Anti-trafficking laws must be used to prohibit sexual exploitation and they must not be used against adults involved in consensual sex work.
2. Enforce laws against all forms of child sexual abuse and sexual exploitation, clearly differentiating such crimes from consensual adult sex work.
3. Ensure that existing civil and administrative offences such as 'loitering without purpose', 'public nuisance' and 'public morality' are not used to penalise sex workers.
4. Ensure that the intent of Section 370 IPC as developed by the Justice Verma Commission is adhered to in spirit. The commission stated that recast Section 370 IPC ought not be interpreted to harass adult sex workers who work of their own volition and their clients.
5. Section 370 A IPC should not be used against adult clients of sex workers.

To donors:

1. Support communities of sex workers to research and collect data on the impact of anti-trafficking policies on their lives; document case studies of sex worker collectives fighting exploitation and force within the sex trade.
2. Ensure long-term support to sex worker collectives and networks as a strategy to strengthen leadership to fight trafficking for sexual exploitation.
3. Ensure accountability of all grantees to human rights framework. Take all precautions to ensure that grants are not used to forcibly raid, rescue and incarcerate adult consenting sex workers in detention homes resulting in large scale human rights violations.

Conclusion

It was an intense journey. But one that yielded several invaluable micro insights into the ways in which a vibrant process of collectivisation and self-organisation can enable a marginalised and stigmatised community to become central to the process of challenging the dominant moral and legal regime which by conflating sex work and trafficking has historically tried to trap them between the binary of the victim or the vamp; the trafficked or the trafficker. Breaking this binary through reclaiming their dignity and the power to define their own realities, rights, and destinies has been as much a pedagogic as a programmatic imperative.

By defining violence, work, livelihood, and rehabilitation on their own terms and in their own context they've been able to not only question the roots of the violence and injustice they have been subjected to, but simultaneously redefine and broaden the moral and legal framework for sex work and also trafficking. It is clear that this process of self-organising at different levels has empowered the community to deal with the challenges they face from society with great clarity and confidence, despite the threats from resurgent moralities and regressive legal and policy level changes that threaten to undo all the successes they have been able to garner over the past decades.

Madhu Bhushan was as a full time activist of Vimochana that was part of the autonomous women's movement in India and member of CIEDS Collective from 1983 to 2014. As such, she was involved with crisis intervention, community outreach and campaigns and advocacy on violence against women, even while writing, reflecting and speaking on diverse issues related to gender, cinema, communalism and human rights. Since 2014 as a retired public feminist of sorts, she continues to be an independent activist-writer and (re) searcher; occasionally involved with film making and extending support and solidarity to various networks and social movements including that of the sex workers, transgenders, women and youth.

CONTRE L'EXPLOITATION CONTRE LA PROHIBITION



**Pour les droits des travailleuses du sexe,
le droit de travailler**



Montréal sex workers protesting increased police repression and surveillance of sex workers during the Grand Prix in Montréal in 2016. Photo credit: Stella, 2016.

CANADA

Annalee Lepp

I acknowledge with deep respect that this work was conducted on the unsundered territories of the *Songhees, Esquimalt, and WSÁNEĆ First Nations; the Kanien'keha:ka First Nations; and the Huron-Wendat and Petun First Nations, the Seneca, and Mississaugas of the Credit River.*

There is a growing body of important community-based and academic literature in Canada that seeks to challenge prevalent and harmful misconceptions about the relationship between sex work and human trafficking¹. This chapter builds on such work and takes a localised case study approach based on research conducted with two Canadian sex worker organisations—Stella, l'amie de Maimie (Montréal, Québec) and Butterfly: Asian and Migrant Sex Workers Support Network (Toronto, Ontario)—as well as interviews with seven sex workers affiliated with one or both organisations and a former sex worker involved with two allied organisations. The entry point and overarching thematic framework of this study is sex worker organising. It considers the histories and stories of sex worker organising, as well as an exploration of the empowering and transformative potential of organising and how it has enabled sex workers to address discrimination and stigma. It also examines whether and to what extent sex worker organisations have engaged with anti-trafficking discourses, and how these discourses have impacted their organisational work and sex workers' lives, and in particular Indigenous, Asian, and migrant sex workers who are most affected by anti-trafficking discourses. Finally, it explores what strategies and initiatives sex workers and sex worker organisations employ to address situations of coercion, deception, abuse of authority, etc. in the sex sector, as well as what factors facilitate or hinder their ability to do so.

This chapter begins with a brief discussion of the Canadian context and the methodological considerations that guided the research design and process. It then analyses the main research findings as they pertain to the aforementioned themes and concludes with the recommendations articulated by the sex worker organisations as well as the sex workers who participated in the study.

¹ See, for example, the cluster of essays, 'Critical Perspectives on Canadian Anti-Trafficking Discourse and Policy', edited by A DeShalit and E van der Meulen, *Atlantis: Critical Studies in Gender, Culture and Social Justice*, vol. 37, no. 2, 2015, pp. 1–80; A Clancey, N Khushrushahi and J Ham, 'Do Evidence-Based Approaches Alienate Canadian Anti-Trafficking Funders?', *Anti-Trafficking Review*, issue 3, 2014, pp. 87–108; K Kempadoo and N McFadyen (eds.), *Challenging Trafficking in Canada: Policy brief*, Centre for Feminist Research, York University, July 2017.

Introduction

Socio-economic and Political Context

Canada, which has the second largest landmass in the world and a population of 35.2 million people, was ranked tenth in the UN Human Development Index in 2016. In the late 1960s and early 1970s, it was officially designated a bilingual (English and French) and multicultural nation. At the federal level, equality rights are encoded in the *Canadian Charter of Rights and Freedoms*,² and the *Canadian Human Rights Act* identifies prohibited grounds of discrimination³; in 2005, same sex marriage was legalised. Such global rankings and legal protections, however, render invisible the histories of white settler colonialism in these territories, state-sponsored genocidal and assimilationist practices imposed on First Nations and Inuit peoples, as well as persistent racial discrimination against Black, Asian, and racialised⁴ communities. In the 1980s, Canada's immigration patterns shifted from favouring predominantly European immigrants. Currently, it accepts about 300,000 permanent immigrants per year and, and in 2016, most (56%) continued to choose to settle in the country's largest urban centres, especially Toronto, Montréal, and Vancouver⁵. In 2016, too, there were 79,755 temporary foreign workers labouring in various sectors under often substandard conditions, including in agriculture (57%) and as live-in caregivers (10%).⁶ The number of 'non-status' migrants living in Canada is unknown, but estimates have ranged from 80,000 to 500,000.⁷ Since the 1980s and 1990s, with the introduction of neo-liberal, fiscal austerity, and economic

² *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*.

³ Currently, the main prohibited grounds include race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression (added in 2016), marital status, family status, genetic characteristics, and disability. The provinces and territories also have their own human rights acts.

⁴ Canada's *Employment Equity Act* and Statistics Canada use the term 'visible minority' to refer to 'persons, other than Aboriginal peoples, who are non-Caucasian in race or non-white in colour'. This category includes the following groups: South Asian, Chinese, Blacks, Filipino, Latin American, Arab, Southeast Asian, West Asian, Korean, and Japanese. See Statistics Canada, 'Visible minority of person', 19 October 2015, <http://www23.statcan.gc.ca/imdb/p3Var.pl?Function=DEC&Id=45152>. Given critiques of the official term, 'racialised' is now commonly used as an adjective to refer to these demographic groups, particularly since many of them do not self-identify as 'people of colour'.

⁵ Canadian Council for Refugees, *2017 Immigration Levels – Comments*, n.d., <http://ccrweb.ca/en/2017-immigration-levels-comments>; Statistics Canada, 'Immigration and Ethnocultural Diversity: Key results from the 2016 census', *The Daily*, 25 October 2017, <http://www.statcan.gc.ca/daily-quotidien/171025/dq171025b-eng.pdf>.

⁶ 'Canadian Temporary Foreign Workers – 2016', *Canadian Magazine of Immigration*, 15 April 2017, <http://canadaimmigrants.com/canada-temporary-foreign-workers-2016/>.

⁷ Canada, House of Commons, *Temporary Foreign Workers and Non-Status Workers: Report of the Standing Committee on Citizenship and Immigration*, May 2009, p. 47.

restructuring policies as well as the significant expansion of precarious employment, Canada has also seen deepening social and economic inequalities. While universal healthcare and public education have been maintained, there have been successive and drastic cuts to the social safety net, such as to national unemployment insurance and provincial social assistance programs.

For those who reside in and have im/migrated to Canada, access to economic opportunities and experiences of discrimination and marginalisation are fundamentally shaped by the intersecting lines of Indigeneity, gender, racial and class

Within a national context of persistent income inequalities, various intersecting forms of discrimination, and an inadequate social safety net, sex work can be the best or only revenue-generating option for some.

background, and immigration status to name but a few. Canada has no federal poverty reduction strategy and over 4.8 million (or one in seven) Canadians live in poverty. Single working adults, single parent families, people with disabilities, refugees and refugee claimants, and Indigenous peoples (representing 1.4 million people or 4.3% of Canada's population) experience the highest poverty rates and Indigenous peoples continue to be subjected to persistent forms of colonial violence and racial injustices.⁸ Canada ranked 35th in the World Economic Forum's 2016 global gender gap rankings. Full-time employed women earn 74 cents to every dollar earned by men. Indigenous women face a 57% gender pay gap, immigrant women a 39% wage gap, and racialised women a 32% gap, and these populations experience significantly higher rates of poverty.⁹ Women are more likely to be employed in low wage, part-time, insecure, and temporary jobs, and racialised and newcomer women predominate in the lowest paid occupations, such as childcare workers, cashiers, and food service workers.¹⁰ Research also indicates that transgender and non-binary people experience chronic un/underemployment and job insecurity in the Canadian labour market.¹¹

⁸ Citizens for Public Justice, 'Poverty Trends 2017', October 2017, <https://www.cpj.ca/poverty-trends-2017>.

⁹ T Grant, "Who is minding the gap?", *Globe and Mail*, 6 March 2017, <https://www.theglobeandmail.com/news/national/gender-pay-gap-a-persistent-issue-in-canada/article34210790/>; Canadian Women's Foundation, 'Fact Sheet: Women and Poverty in Canada', February 2017, <http://www.canadianwomen.org/facts-about-women-and-poverty>; F Faraday, 'Closing the Gender Pay Gap: Canada's pay gap means women effectively work for free for the rest of the year', *Canadian Women's Foundation Blog*, 14 September 2017, <http://www.canadianwomen.org/blog/closing-gender-pay-gap-canada%E2%80%99s-pay-gap-means-women-effectively-work-free-rest-year>.

¹⁰ Law Commission of Ontario, *Vulnerable Workers and Precarious Work: Final report*, December 2012, <http://www.lco-cdo.org/wp-content/uploads/2013/03/vulnerable-workers-final-report.pdf>.

¹¹ See, for example, D Irving, 'Gender Transition and Job In/Security: Trans* Un/der/employment Experiences and Labour Anxieties in Post-Fordist Society', *Atlantis: Critical Studies in Gender, Culture & Social Justice* vol. 38, no. 1, 2017, pp. 168–178.

Within a national context of persistent income inequalities, various intersecting forms of discrimination, and an inadequate social safety net, sex work can be the best or only revenue-generating option for some. Structural factors, however, do not tell the whole story. While there are no existing statistics on the number of sex workers in Canada, estimates suggest that less than 20% of sex workers are street-based (with Indigenous women over-represented in some regions), 75% are cisgender women, and 25% are men, transgender, two-spirit, and non-binary people.¹² Those who work indoors labour in a variety of sectors, including massage parlours, strip clubs, hotels, in-call and out-call agencies, dungeons, porn, webcamming, erotic phone work, or as independent escorts. Cecilia Benoit *et al.* conducted interviews with 218 sex workers aged 19 to 61 in six Canadian communities (including in Montréal). Seventy-seven percent of interviewees identified as women, 17% as men, and 6% as two-spirit, transgender, gender fluid, etc.; 19% identified as Indigenous and 12% as racialised. Among the participants, 25% worked on street, 20% in managed indoor settings, and the rest worked indoor and as independents; the average age that they first engaged in sex work was 24 years. The interviews further revealed that most participants earned income through sex work because of the ‘desire or need for money’ (87%), citing under/unemployment, debt, inadequate social assistance, or supporting dependents or addictions or identifying sex work as the best of the labour options available, as flexible, and as offering the opportunity to make large sums of money in a short time. Some interviewees (25%) also mentioned ‘the personal appeal of the work’ (including the opportunity to explore and express their gender and sexuality).¹³

Legislation on Sex Work and Trafficking

Canada originally inherited its prostitution laws from Britain, which were eventually codified in the 1892 *Criminal Code*. They treated prostitution as a ‘status’ offence and ‘prohibited every aspect of prostitution except the ... specific act of commercial exchange for sexual services’.¹⁴ The 1880 *Indian Act* and the 1892 *Criminal Code* specifically prohibited Indigenous women from ‘keeping, frequenting, or being found in disorderly houses’ in an effort to prevent miscegenation and classified those in interracial relationships as prostitutes as a mechanism to uphold racial segregation between Indigenous peoples and the white settler population.¹⁵ Subsequent amendments to the *Criminal Code*

¹² B Belak and D Bennett, *Evaluating Canada’s Sex Work Laws: The Case for Repeal*, Pivot Legal Society, 2016, p. 34, http://www.pivotlegal.org/evaluating_canada_s_sex_work_laws_the_case_for_repeal.

¹³ C Benoit, N Ouellet, M Jansson, S Magnus and M Smith, ‘Would you think about doing sex for money? Structure and agency in deciding to sell sex in Canada’, *Work, Employment and Society*, vol. 31, no. 5, 2017, pp. 731–747.

¹⁴ C B Backhouse, ‘Nineteenth-Century Canadian Prostitution Law: Reflection of a discriminatory society’, *Histoire sociale/Social History*, vol. 18, no. 36, 1985, pp. 387–423, p. 395.

¹⁵ *Ibid.*, pp. 420–422; Kempadoo and McFadyen, p. 7.

focused on street-based sex work—the provisions shifted from regulating vagrancy (1892) to prohibiting soliciting (1972) to criminalising communication in public (1985). Prior to 2013, ‘prostitution and the sale of sexual services [were] not illegal in Canada, yet the laws that surround[ed] prostitution-related activities [made] it extremely difficult to work without breaking the law’.¹⁶

With the enactment of the *Charter of Rights and Freedoms* (1982), the constitutionality of Canada’s prostitution laws was challenged on a number of occasions in the late 1980s and early 1990s.¹⁷ Eventually, the 2007 constitutional challenge by three current and former sex workers (*Bedford v Canada*) was successful when, in 2013, the Supreme Court of

The Bill C-36, Protection of Communities and Exploited Persons Act, redefined in December 2014 prostitution as ‘sexual exploitation’ and all sex workers as ‘victims’. The laws criminalise clients and third parties, public communication in certain areas, working with others, and advertising sexual services with the main objective being to eradicate prostitution.

Canada struck down three *Criminal Code* provisions as unconstitutional: the communication, living off the avails, and bawdy house offences. The plaintiffs argued that the laws violated section 7 of the *Charter*, namely the right to life, liberty, and security of person, and that the criminal laws that regulated adult prostitution worked to endanger sex workers’ safety and security. With the legal vacuum created, the Conservative government enacted Bill C-36, *Protection of Communities and Exploited Persons Act* (PCEPA)¹⁸ in December 2014, the ‘made in Canada end demand regime’. Previously defined as a ‘public nuisance’, PCEPA redefined prostitution as ‘sexual exploitation’ and all sex workers as ‘victims’. The laws criminalise clients and third parties, public communication in certain areas, working with others, and advertising sexual services with the main objective being to eradicate prostitution.¹⁹ Three years after

¹⁶ E van der Meulen, E M Durisin and V Love, ‘Introduction’ in *Selling Sex: Experience, advocacy, and research on sex work in Canada*, UBC Press, Vancouver, 2013, pp. 7–11.

¹⁷ *Ibid.*, p. 10.

¹⁸ Department of Justice Canada, *Technical Paper: Bill C-36, An Act to amend the Criminal Code in response to the Supreme Court of Canada decision in Attorney General of Canada v. Bedford and to make consequential amendments to other Acts (Protection of Communities and Exploited Persons Act)*, 1 December 2014, <http://www.justice.gc.ca/eng/rp-pr/other-autre/protect/index.html>.

¹⁹ According to the Department of Justice, ‘Bill C-36 harmonize[d] the penalties imposed for human trafficking and prostitution-related conduct to ensure a consistent response to practices that are linked’. See Canada, Department of Justice, ‘Prostitution Criminal Law Reform: Bill C-36, the *Protection of Communities and Exploited Persons Act*’, 18 March 2015, http://www.justice.gc.ca/eng/rp-pr/other-autre/c36fs_fi/. Given this criminalised environment, it is not surprising that Stella’s website contains the following statement: ‘The information presented on this website is not intended to influence anyone to commit an illegal act. This website is a tool offered to sex workers to improve living and working conditions’. See Stella, ‘Contact Us’, <http://chezstella.org/en/contact/>.

the laws were enacted and based on sex workers' reports across the country, the Canadian Alliance for Sex Work Law Reform has confirmed PCEPA's endangering effects with the greatest impacts on Indigenous, transgender, racialised, and im/migrant sex workers: it has intensified the displacement and isolation of sex workers; increased targeted violence, stigma, and discrimination against them; and enhanced police profiling and surveillance.²⁰

Canada's *Immigration and Refugee Protection Act* (2002) criminalises human trafficking and smuggling, and anti-trafficking provisions were introduced into the *Criminal Code* in 2005. In 2012, the Conservative government, as an anti-trafficking protection measure, closed down the temporary exotic dancers' visa (which had been available since the 1960s), barred all sex work-related businesses from accessing the temporary foreign worker program, and any migrant workers who are issued open work permits are restricted from working in the sex sector. Trafficking—in conjunction with national security, moral values, and protection of the vulnerable—has been deployed to justify stringent migration policies, heightened border surveillance, and repressive enforcement raids of indoor sex work establishments. Furthermore, beginning in the late 2000s, federal and provincial governments increasingly focused on domestic trafficking, arguing that 90% of trafficked persons are Canadian residents and, of those, 25% are minors, including Indigenous youth.²¹ Anti-sex work advocates in the political and civil society sectors have cast domestic trafficking as a national crisis and it has been used to legitimate the ongoing criminalisation, and rescue operations in the sex sector, and to dismiss the longstanding legal and policy demands of the sex worker rights movement. Canadian sex worker rights activists and their allies have consistently maintained that sex workers must be at the centre and fully represented, as the workers most affected, in the development of sex work legislation and policies, in devising strategies that address the complex social conditions that shape their lives (colonialism, racism, homophobia, transphobia, poverty, immigration status, etc.), and in all efforts to address coercive and exploitative labour situations in the sex sector.

²⁰ Canadian Alliance for Sex Work Law Reform, *Safety, Dignity, Equality: Recommendations for sex work law reform in Canada*, March 2017, p. 7. As will be discussed in more detail below, the Alliance was formed in 2012 and currently has twenty-five member organisations consisting of sex worker rights and allied groups from across Canada. Its main mandate is to advocate for sex work decriminalisation as 'one part of the larger struggle for the recognition and actualization of sex workers' rights'. See <http://sexworklawreform.com/>.

²¹ Government of Canada, *National Action Plan to Combat Human Trafficking* (Ottawa, 2012), p. 8; R Remiorz, '25% of Canada's Human Trafficking Victims are Minors: Statistics Canada', *Globalnews.ca*, 19 July 2016, <https://globalnews.ca/news/2819281/25-of-canadas-human-trafficking-victims-are-minors-statistics-canada/>.

Methodology

The selection of one organisation as the focus of this study was challenging, especially given that there are many important and active sex worker organisations that have been established in large and smaller urban centres across Canada, many of which are currently members of the Canadian Alliance for Sex Work Law Reform. Stella was chosen for two main reasons. First, established in 1995, it is recognised as one of the longest standing Canadian sex worker-led organisations, and is well-known for its depth of experience and expertise in the areas of low barrier service provision and sex worker rights advocacy in Canada and beyond.²² Second, Stella is located in Montréal, which, according to reputation and estimates, has a higher number of sex-related businesses than other Canadian cities.²³ I made initial contact with Jenn Clamen at Stella in January 2017, and, after outlining the purpose and parameters of the project, she expressed support for its focus and direction. Jenn, however, recommended that I also include another direct service organisation—like Butterfly—that specifically works with Asian and migrant sex workers. I then contacted Elene Lam at Butterfly in Toronto and she too agreed to participate.

When developing the research design and methodology, I allowed each organisation to determine how best to proceed with and structure the research, especially given the fairly tight timeframe of the project, and the geographical distances between Victoria (where I am based) and Montréal/Toronto. I was also very cognizant of the fact that sex worker organisations in Canada tend to receive countless requests from researchers and I wanted to be mindful and respectful of each organisation's time, resources, priorities, and protocols for participating in research.²⁴ I also hoped that such an organisation-led process would enhance the potential for the project to be beneficial to both Stella and Butterfly and their members.

²² Other longstanding sex worker-led organisations include, for example, Maggie's Toronto Sex Workers Action Project founded in 1986 (<http://maggiestoronto.ca/>) and Providing Alternatives, Counselling and Education (PACE) in Vancouver incorporated in 1994 (<http://www.pace-society.org/>). Stella has also won multiple awards for its support and advocacy work as detailed on its website at <http://chezstella.org/en/about-stella/accolades/> and, as Ava, one interview participant noted, the organisation has done this 'kind of work under the spectre of criminalisation'.

²³ S Gabriele, 'Sex Work in Montreal: First location report', *The Oldest Game: Creating a Newsgame about Sex Work in Canada*, 13 February 2013, <https://theoldestgame.concordia.ca/?p=274>.

²⁴ See, for example, Sex Workers of Winnipeg Action Coalition, *Good Sex Work Research Checklist*, <http://sexworkwinnipeg.com/for-everyone-else/for-researchers-and-students/>; E van der Meulen, 'Action Research with Sex Workers: Dismantling barriers and building bridges', *Action Research* vol. 9, no. 4, 2011, pp. 370–384.

Jenn has been a member of Stella for many years and has been actively involved with the Canadian Alliance for Sex Work Law Reform since its inception in 2012. As part of the research process, she consulted with Stella staff and volunteers, including outreach workers, and compiled the history of the organisation as well as Stella's responses to the guiding interview questions that pertained to its work.²⁵ Jenn also invited a number of sex workers affiliated with Stella to contact me if they were interested in participating in in-depth individual interviews. Four sex workers (Alice, Ava, Daria, and Jade²⁶) contacted me directly. Prior to conducting the individual interviews, I forwarded the participant consent form and interview question guide to them, and reviewed the focus and purpose of the study, provisions related to anonymity and confidentiality, and how the interview results would be used. The interviews, which lasted between 1.5 and 2 hours, were conducted in English over Skype, audio recorded, and transcribed. Participants were able to review the interview transcript for accuracy upon request. Any concerns raised by the participants after the interviews (for example, pertaining to anonymity or requests that certain information be redacted) were noted and their wishes were respected when analysing the results. Each interviewee was given a small honorarium as a gesture of thanks for sharing their time, knowledge, and expertise.

Given the heterogeneity of the sex sector in Montréal and the fairly narrow scope of this study, interviewing a diverse and representative sample of sex workers was not possible.²⁷ I asked each participant to share as much or as little information about themselves and their work as they felt comfortable revealing to me. The four sex workers I interviewed are in their late twenties to late forties and have worked full-time and/or part-time in the sex industry for between ten and twenty-five years with some leaving the industry for a time and then returning, and one self-identifying as semi-retired. They have worked in different indoor sectors, including as porn performers (online and independent), cam workers, strippers, phone sex operators, independent escorts, and/or as pro doms/dominatrices. Most have been or are engaged in consultative, educational, artistic, activist, and/or advocacy work related to sex work and/or sex workers' rights.

²⁵ Given Jenn's critical role in undertaking this research, I asked her if she wished to be named as a co-investigator or co-author. She responded by saying that it was vital for 'allied groups' like GAATW to undertake research on its own that features sex worker organisations, which the latter can then use for public awareness and other purposes. Jenn Clamen, email communication, 9 April 2017.

²⁶ These are all pseudonyms.

²⁷ van der Meulen, p. 377.

The research process with Butterfly unfolded in a similar organisation-led manner with Elene, my contact, providing me with the information about the organisation's history and mission as well as specific responses to the guiding interview questions. She also offered to interview three migrant sex workers affiliated with the organisation, given that the interviews needed to be conducted in participants' first language and in order to maximise the protection of anonymity. Translated interview transcripts were made available to me for analysis and, in addition to giving each of the participants a small honorarium, Butterfly was compensated for translation costs. The participants (Fanny, Daisy, and Ching²⁸) were or are indoor workers with varying but tenuous immigration statuses in Canada, including as an international student, failed refugee claimant, and now undocumented; on a tourist visa and then deported. Finally, I conducted an interview with Kerry Porth, a former sex worker, who has been the chair of the Board of Directors of Pivot Legal Society (Vancouver), and is a public educator with the Living in Community project (Vancouver).²⁹ She was interviewed because she has worked in a leadership role in various non-profit organisations, and has been at the front lines of sex work activism, advocacy, and legal reform in Canada.

²⁸ These are all pseudonyms.

²⁹ Pivot Legal Society, based in Vancouver, is a human rights organisation that combines 'strategic litigation with high impact public education and advocacy campaigns'. Working 'in partnership with communities affected by poverty and social exclusion', it focuses on 'four policy areas: police accountability, health and drug policy, homelessness and sex workers' rights.' Living in Community is also based in Vancouver and is 'an innovative community initiative that works to find solutions to the impact of sex work and youth sexual exploitation on communities and to reduce the harms and isolation that sex workers experience.' See <http://www.pivotlegal.org/> and <http://livingincommunity.ca/>.

Findings

The Benefits of Organising

Stella was established in 1995 through ‘the initiative of a handful of sex workers, public health researchers, and allies’ and was ‘created as a project within a HIV programme’ with sex workers integrally involved from the start. During the 1980s to the mid-1990s, Montréal was ‘hit hard’ by the HIV epidemic and public authorities were debating whether medical exams and mandatory HIV testing should be introduced and imposed on sex workers. Stella was formed in response to this proposed form of social and medical control and on the advice of public health researchers and downtown street-based sex workers who together wanted to launch a project that would address sex workers’ real needs in the context of the HIV/AIDS pandemic. Stella’s first team comprised four employees, a handful of volunteers, and a few allies and, from there, this community-based organisation continued to build a constantly evolving, accessible, and dynamic resource for sex workers in Montréal and beyond. Founded on and continuing to institute the organisational principle ‘by and for sex workers’, there is, according to Rachel,³⁰ ‘always a majority of sex workers in decision-making roles—whether that be the Board of Directors, whether that be staff, and there are certain tasks or certain services at the organisation where the person providing that service must have sex work experience’.

Stella’s work is directed at women sex workers (both cis and trans) of all ages, including Indigenous, Black, and racialised sex workers, who work or have worked in any sector of the industry and regardless of their immigration status in Canada³¹. Other affiliated organisations in Montréal provide services to cis and trans gay and bisexual male sex workers (Rézo, projet travailleurs du sexe), and trans sex workers (Action Santé Travesti(e)s et Transexuel(le)s du Québec (ASTTeQ)).³² Jenn further noted that Stella also collaborates with non-sex-working allies—both individuals and groups—who support the mission of the organisation, have ‘a good understanding of the current realities experienced by sex workers’, ‘recognise sex work as legitimate form of income generation’, and ‘seek to support sex workers and help fight for decriminalisation of all forms of sex work’.

³⁰ This is a pseudonym of a pseudonym as requested by one of the sex workers interviewed.

³¹ This includes refugees, those on temporary visas, those with landed immigrant status, and permanent residents.

³² See Rézo at <http://www.rezosante.org/> and ASTTeQ, a project based within Cactus Montréal and a member of the Canadian Alliance for Sex Work Law Reform, at <http://www.astteq.org/aboutus.html>.

According to Jenn, ‘community organising is integral to the work’ that Stella does. As a ‘by and for’ organisation, ‘sex workers *are* the organisation’, so ‘connecting with sex workers across Montréal and Québec’ is what makes Stella strong and effective in its mission to improve sex workers’ quality of life, their working conditions, and their capacity to live and work safely and

While ‘there are few women’s groups that support sex workers’, it currently has a representative on the Board of the Fédération des femmes du Québec, the province’s largest feminist organisation, ‘to ensure that an intersectional approach to feminism is respected, which includes the experiences of sex workers’.

with dignity. Organising has also allowed ‘sex workers [to] have a visible presence’, so that ‘sex workers who are isolated or not in touch with others can see they are not alone and may decide to join in the movement’ and in the struggle against discrimination and stigmatisation. Visibility also ‘helps to increase pressure’ on lawmakers and social services providers ‘to pay attention to sex workers’ needs’. Jenn further emphasised that ‘sex worker organising does not happen in a vacuum’—building connections with sex workers locally, provincially, nationally, and globally has given the organisation the opportunity to ‘learn and grow’ and in turn has inspired ‘all of our actions and initiatives’.³³ ‘It also reminds us that sex workers are not alone ... When sex workers in our region realise that there are others in different parts of the world, it’s very empowering’. Beyond sex worker communities and its involvement and investment in the Canadian and global sex workers’ rights and decriminalisation movements, Stella ‘organises with allied groups around reproductive health, substance user rights, housing and economic rights, migrant rights, labour rights, LGBT2s rights, and health rights.’ While ‘there are few women’s groups that support sex workers’, it currently has a representative on the Board of the Fédération des femmes du Québec, the province’s largest feminist organisation, ‘to ensure that an intersectional approach to feminism is respected, which includes the experiences of sex workers’.

Butterfly was established in 2014 and filled a significant gap in the support of and advocacy for Asian and migrant sex workers in Toronto.³⁴ Initially established by sex

³³ Stella provided two examples of this process. First, when Stella ‘was laying the seeds for our organisation in 1995, we borrowed the rules and procedures guide’ developed by Maggie’s in Toronto ‘to inspire our own’. Second, the first edition of the *XXX Guide* was inspired by the first 1998 edition of the Scarlet Alliance, Australian Sex Workers Association’s *Sex Workers Handbook*.

³⁴ The other sex worker organisation in Canada that works specifically with newcomer, migrant, and immigrant women who work in massage parlours and other indoor sites is SWAN in Vancouver, which was officially launched in 2004 and was registered as a non-profit in 2008. See <http://swanvancouver.ca/her-story/>.

workers, social workers, and legal and health professionals in Toronto, it is now 'a migrant sex worker-led organisation' and has expanded its work to other cities in Canada. Butterfly works with Asian and migrant sex workers of any gender (but primarily women) who have different immigration statuses

(including permanent residents, international students, tourists, refugees, and people without status) and who mainly work in indoor apartments, hotels, and massage parlours. Founded on the principle that 'migrant sex workers' rights are human rights', Butterfly maintains that 'Asian and migrant sex workers are vulnerable and their human rights are denied because of their race, language, social, immigration and legal status. Stigma and marginalisation increase their exposure to violence and exploitation and hinder their access to basic health, services, protection and justice'. In addition to actively advocating for the recognition of sex work as work and for decriminalization, Butterfly further asserts that, 'regardless of their immigration status, Asian and migrant sex workers should receive the same respect and human and legal rights as other workers'.³⁵

Self-organising is a key mechanism through which sex workers, and, in Butterfly case, Asian and migrant sex workers, are able to become more empowered and foster greater respect for their agency.

According to Elene, self-organising is a key mechanism through which sex workers, and, in their case, Asian and migrant sex workers, are able to become more empowered and foster greater respect for their agency. In addition, 'instead of relying on the protection of law enforcement, the sex worker community can', by organising and reducing isolation, 'build capacity and support networks to protect themselves' and their human rights, safety, and dignity. In the case of Asian and migrant sex workers, this includes sharing information and strategies to deal with bad bosses or clients and how to negotiate better working conditions to reduce exploitation and violence, change workplaces or find a place to work, and find clients and advertise within a criminalised legal environment. In addition, when sex workers learn about their rights under existing laws, they build capacity and enhance their skills to negotiate varied and difficult circumstances. Through the building of networks and solidarity, sex workers can support each other when they find themselves in crisis situations and assist in accessing the legal, health, and social services they need. Finally, when sex workers organise, the community has greater power to influence discriminatory immigration and legal policies that affect their lives and work and to create spaces and opportunities where they can share their experiences and let their voices be heard.

³⁵ See 'Migrant Sex Workers' Rights are Human Rights' at <https://www.butterflysw.org/> and 'Mission' at <https://www.butterflysw.org/copy-of-contact>.

Organisational Work

Stella's physical space is located in a large warehouse-type facility on rue Parthenais in Montréal. Here, according to interview participants, very welcoming, accessible, well-informed, and experienced staff not only offer a wide range of low barrier, confidential, and individualised support services, resources, and programmes to sex workers, but also create opportunities to exchange information and facilitate the building of a sense of community and solidarity among them. For example, the organisation runs a highly in-demand support or 'listening' line and a drop-in centre (open four days a week) where 'you can always drop by ..., you can bring your kids there and do whatever you need—it feels like a home (Jade). Sex workers can also access free prevention supplies (condoms, syringes, etc.), and, according to Ava, 'Stella is really, really effective in terms of its providing heaps of safer sex gear, safer using kits'. It also offers self-defence courses, legal clinics, housing, psychological, and criminal justice support, art workshops, and self-esteem courses, and assists with transition or exiting plans for those who wish to stop sex working. The organisation also hosts various social events, including monthly community dinners, which creates opportunities for sex workers to get together and socialise over food. Jade described one event as follows:

A few days before Christmas, they had this giant party—the place was packed to the gills ... There are trans women, there are women who seems like they haven't had a decent meal in a while, there are women who were still active sex workers in their late 60s and early 70s ... [T]here are a lot of sex worker populations that the mainstream society just shuts out and you see these women right here. And they have this family that they can come to—like everyone there knows each other and, even if they don't, even if you're brand new, when you come there, people will introduce themselves to you and they'll make you feel comfortable.

Daria commented on the important protocols Stella has instituted at such events:

There were procedures in place ... I didn't even have to go ask for them, they were offered to me, that allowed me to go to these events and know where to physically be in the room if I didn't want to be in photos or I didn't want to be filmed, recorded. The fact that I never used my name and never had to use my name wasn't an issue ... There was just a sense, there was the ability to be completely open and vocal and share everything under sun and simultaneously it was completely normalised and welcomed if you also had your own sort of boundaries, security, and anonymity practices.

Interview participants described the medical clinic reserved for sex workers that Stella runs every Tuesday evening as a discreet, non-stigmatising, and invaluable service. During clinic hours, a nurse is available for treatment, STI testing, gynaecological exams,

and the administration of Hepatitis A and B vaccines, and will provide referrals to clinics that are best suited to provide follow-ups and long term medical care if needed. Importantly, sex workers are not required to show identification or a Medicare card to access this anonymous and confidential service. As Ava emphasised,

I was sitting in the office for maybe two hours the other day ... and they get dozens of phone calls. Many of them are geared towards the clinic—that is such an important resource for sex workers who don't feel comfortable going to a health clinic and potentially having a stigmatising interaction with a doctor. We have all been there. The other thing is if you don't have a health card or you don't have access to getting a health card, that kind of interaction with yet another person in one of these spaces feels oppressive and scary to you. Having access to a health clinic that is sex worker focused is so important.

The importance of Stella's very existence as a sex worker-run organisation in Montréal and as a physical space where sex workers are able 'to gather privately or publicly' was emphasised by all the Stella interview participants. Daria recalled how, as a young sex worker new to the industry, she encountered Stella posters 'around town':

I knew there were sex working women who created a community that they gave a name to ... and had the audacity and creativity to publicise it because there was this poster. And that was in itself a mind-blowing experience for me as a young woman ... I could conceive of the idea that I wanted to do sex work, I could conceive of the idea of doing sex work, but I couldn't yet conceive of the idea that women who did this work were able to resonate in public space. And that was an extremely inspiring and empowering thing to know about ... I think there's a lot of sex workers in Montréal that ... do feel a sense of protection and empowerment and dignity just by knowing of this existence.

Alice talked about the physical space as a place 'that you can go to connect, to get really good resources, not just a box of condoms ... but someone to talk to you when you tell your ridiculous story of the idiot client you had or the fantastic client or the bad thing that happened, you're not going to have to explain yourself more. They'll know what you're talking about ... It's really great to be in a space where you feel completely grounded and appreciated'. Daria echoed this sentiment when she spoke about the 'benefit of speaking to people who have the expertise you need. As a sex worker, it's so difficult to access a lawyer or medical professional who can actually understand your situation. So the overall benefits of having resources and people with lived experience and collective knowledge—not only what they have experienced but what the community has taught them over the years'. Ava emphasised that,

the fact that the space is open just for sex workers to come in and make themselves at home in the lounge area is monumental ... [S]ex trade workers have to carve out these spaces for themselves. So a space where they are comfortable and unimpeded from discussion or not being harassed by the police or on the verge of being kicked out because they don't have the money to sit there for a long period of time is super important. And also where their knowledge and stories are respected.

Stella also runs an extensive outreach program. In fact, most of Stella's contact with sex workers is through its outreach work on the street, in houses specifically for drug use, in massage parlours, in-call and out-call agencies, home visits, strip clubs, and hotels in Greater Montréal. Jade noted that 'Stella is legit—they don't just say that they're for all sex workers, they really are for all sex workers ... they have women strapping on backpacks to walk around the city and giving condoms [and other supplies] out to women and just making sure they're okay. They're basically like a mobile army that silently takes care of the women'. Stella also runs a monthly prison outreach program, which focuses on STI and sex-related information and which, according to Jade, 'empowers the women there through knowledge'. Outreach workers will also accompany sex workers to any appointment or service (medical, social services, legal, etc.) and provide support and accompaniment to those workers who decide to engage with the criminal justice system when they have experienced violence.

Stella has women strapping on backpacks to walk around the city and giving condoms [and other supplies] out to women and just making sure they're okay. They're basically like a mobile army that silently takes care of the women'.

Interview participants highlighted the critical importance of the 'rigorously researched information' that Stella produces, all of which is developed or conceived by sex workers.³⁶ It includes working, safety, and rights guides for sex workers such as the *XXX Guide* (now in its fifth edition), which covers different aspects of sex work and offers 'suggestions for living and working with dignity in a healthy and safe environment'. Stella has also created specific guides for strippers, clients, and substance users as well as rights tools for those navigating various institutions,

³⁶ These print and online documents are available in French and English and some in Spanish and Inuktitut. Jade shared that she has been assisting in translating some materials into Russian.

including the courts, prison, immigration, youth protection, or housing. In addition, the organisation publishes a bad client and aggressors list in its monthly *Stella Bulletin*, which includes descriptions of incidents that are reported anonymously,³⁷ and a magazine called *ConStellation*, where sex workers can share their knowledge and perspectives.³⁸ For Alice, this information and having the opportunity to learn from other sex workers with varied experiences ‘helped me make more informed decisions about my work’. During the *Bedford v Canada* constitutional challenge (2007-2012), Stella worked with allies to produce information sheets to assist sex workers in Montréal and across Canada to follow and understand the case.³⁹ After the enactment of PCEPA in 2014, Stella, in collaboration with the other member organisations in the Alliance, immediately produced another series of what participants referred to as ‘really thorough’ and ‘highly useful’ information sheets/cards detailing the intricacies of Canada’s new prostitution laws.⁴⁰

Finally, interview participants acknowledged Stella’s public education work and activism that foregrounds sex workers’ lived experiences and realities. As Ava emphasised, the organisation ‘is a huge source of pride for sex workers in Montréal’ and provides ‘a really brilliant visibility to sex work activism’. Much of the ‘activism is activity-based so they place sex workers front and centre in these activities ... Stella really centres creativity in its activism which foregrounds and also acknowledges the creativity of sex workers’, while at the same time ‘respecting people’s anonymity and safety’.

Given its work with Asian and migrant sex workers in Toronto and beyond, Butterfly offers a range of multi-language and specialised services, resources, and programmes. For example, it runs a 24/7 hotline in English, Mandarin, and Cantonese, provides emergency and counselling support, and engages in outreach work in apartments and massage parlours, and to escorts. Butterfly also provides health, social service, and legal information, support, referrals, and accompaniments and its expertise is much

³⁷ Alice indicated that she tended to rely more on what she called ‘black and grey lists’ available on online message boards where the information is more immediately distributed and accessed. She also acknowledged that it could be more challenging and risky for Stella to digitise their bad clients and aggressors lists as the online lists ‘are not secure’; ‘they can be shared’ and ‘hacked’.

³⁸ Many of these resources are available on Stella’s website at <http://chezstella.org/en/sex-work-resources/>.

³⁹ These information sheets were entitled, ‘The Basics: Decriminalization of Sex Work 101’, ‘Sex Work and the Charter’, ‘Challenging Prostitution Laws: Bedford v. Canada’, ‘Language Matters: Talking about Sex Work’, and ‘10 Ways to be a Great Ally to Sex Workers’. See Stella, ‘Guides & Infosheets’ at <http://chezstella.org/en/guides-infosheets/>.

⁴⁰ These information sheets covered such topics as advertising and the law; arrest and detention; clients and the law; communication and the law; our friends, family and the law; police powers: in-call and outcalls; third parties and the law; immigration status and the law; and working in Canada without Canadian citizenship. *Ibid.*

in demand in other regions of Canada. For example, Rachel noted that the organisation's outreach workers have developed extensive 'knowledge and experience with navigating the immigration systems', engaging with 'different legal actors', and knowing 'who and what needs to be involved in detention review hearings or inadmissibility hearings ... [T]hey've really developed the capacity to be able to support and assist migrant sex workers who are detained'. Butterfly also hosts workshops for migrant sex workers, which focus on leadership training, capacity building, and legal rights especially in relation to law enforcement and these meetings create spaces for them to gather and share information, expertise, and knowledge. In the summer of 2017, in addition to its core constituencies of Asian and migrant sex workers, Butterfly invited 'sex workers who identify as BIPOC (Black, Indigenous, People of Colour)' to participate in its workshop series, which tackled such issues as 'self-marketing and branding' and 'immigration and law.'⁴¹ As part of its grassroots organizing, Butterfly also offers English language and massage classes, hosts social gatherings, and organizes community art projects, which give migrant sex workers an opportunity to speak out about their experiences.

Butterfly also produces (in some cases, in collaboration with Stella⁴²) and disseminates 'accessible, relevant, and applied legal information' and harm reduction tools that seek to minimise the harms and risks that Asian and migrant sex workers experience when they come into conflict with and interact with authorities, be they city inspectors, municipal, provincial, or federal police, or immigration and Canadian Border Services Agency (CBSA) officials.⁴³ As Rachel emphasised, when sharing information with Asian and migrant sex workers about potential conflicts with criminal and immigration laws and possible encounters with law enforcement, it is hoped that this 'contributes to their empowerment versus increasing panic and fear. [T]he process takes a lot of time, takes a lot of care, takes a lot of work, takes a lot of support beyond those interactions'. In this sense, Butterfly 'provides holistic support to the individual that goes beyond what you

Butterfly helps you get the information you need, while simultaneously [providing] support in all the other aspects of your life'.

⁴¹ See Butterfly, 'Workshops 2017' at <https://www.butterflysw.org/workshops>.

⁴² For example, Stella and Butterfly collaborated on two documents released in October 2015: 'Immigration Status and Sex Work' and 'Working in Canada Without Canadian Citizenship'. See Stella, 'Guides and Infosheets' at <http://chezstella.org/en/guides-infosheets/>.

⁴³ See, for example, Butterfly, 'Who is Who: Identifying law enforcers', July 2017, https://docs.wixstatic.com/ugd/5bd754_748f9f3d7c9a4139b999f5b4a26b9f7a.pdf.

can access at a legal clinic or ... by consulting a lawyer per se. They help you get the information you need, while simultaneously [providing] support in all the other aspects of your life'. As Ching emphasised with reference to Butterfly, 'I think it is helpful that you could find someone to talk to and ask, especially when you are lonely, feeling bad, or if you have problems. They are reliable and you know that they will not hurt you'.

Butterfly also engages in public education with a focus on anti-discrimination, anti-racism, and anti-sexism. It is also actively involved in education and advocacy in the areas of sex worker and migrant rights, access without fear policy in relation to law enforcement and service providers,⁴⁴ and the decriminalisation of sex work. Given that Asian and migrant sex workers are often targeted by law enforcement during anti-trafficking 'rescue' operations, one of the main issues that Butterfly focuses on is 'stopping the harms of anti-trafficking policy and investigations'.⁴⁵

Sex Workers' Experiences: What are the challenges?

When asked about some of the main challenges sex workers confront or she herself had experienced, Daria stressed that it is critical to be cognizant of 'the extreme diversity within sex working communities in terms of the actual experiences and the individuals themselves' and 'in terms of our ways of working'. With that important caveat in mind, all of the participants affiliated with Stella and Butterfly did identify a number of challenges. While some of them are sector specific, most of them were linked directly to Canada's anti-sex work legislation (PCEPA), local and provincial anti-trafficking initiatives, and, in the case of Asian and migrant sex workers, immigration and border security enforcement regimes.

Criminalisation

Ava talked about the 'constant white noise fear' she has lived with working in a criminalised informal labour sector for twenty-five years:

⁴⁴ Access Without Fear or Don't Ask, Don't Tell policies are designed to make essential municipal services available to all residents regardless of immigration status and without fear of being detained or deported. In the case of migrant sex workers, it also specifically refers to police officials not sharing information with CBSA when the former seek assistance from law enforcement.

⁴⁵ See, for example, E Lam, Butterfly: Asian and Migration Sex Workers Support Network, in collaboration with the Migrant Sex Workers Project, Maggie's, Canadian HIV/AIDS Legal Network, Strut and No One Is Illegal, 'Stop the Harm from Anti-Trafficking Policies & Campaigns: Support Sex Workers' Rights, Justice, and Dignity', March 2016, <https://www.butterflysw.org/harm-of-anti-trafficking-campaign->. This work will be discussed in greater detail below.

I do sex work to make money, like every job I have had since I was 11 years old ... I am a worker. That's what I've had to do in my life and most of the women I meet in the sex trade are the same. But, as I see it, the major issue is criminalisation and this affects safety and mobility. There's the fact that your in-call can be raided at any time. That there are people paid to watch your movement and actions online ... Frankly, after twenty-five years, I just find all of this oppression tedious ... For me, as an older sex worker, that kind of criminalisation is an issue because it prevents me from screening ... I don't necessarily feel that I have the luxury of screening people as rigorously as some young hot thing. But I do the best I can for me.⁴⁶

Rachel added that the 'illegal or quasi-illegal status imposed on sex workers places us in situations where it is very difficult for us to enforce our rights, and puts us in situations where we fear things such as eviction when neighbours or landlords make comments that "there is a lot of coming and going" ... And that leads to all of these different challenges and issues that are related to increasing an individual's vulnerability to violence, which includes forms of harassment and extortion'.

In addition, Stella emphasised that Canada's current prostitution laws have contributed to greater sex worker invisibility, which in turn has had an effect on the its capacity to organise at the local level. Fewer sex workers 'are inclined to be visible and to mobilise for fear of being identified by other workers and by the media and the public, though this has always been a challenge under a criminalised regime. Criminalisation in general drives the industry further out of reach'.

'Illegal or quasi-illegal status imposed on sex workers places us in situations where it is very difficult for us to enforce our rights.'

⁴⁶ With respect to mobility, Ava also added that 'many sex workers don't know that they're not allowed in the United States'. Alice expressed fears about travelling to the US because 'I have known sex workers barred from entry even if you're going for pleasure ... I wanted to go recently and I was just so scared of being banned and going through the trauma ... it's eight to twelve hours of interrogation.' As Jenn at Stella explained, 'being a sex worker is a crime of "moral turpitude" in the US so if you are identified at the border as a known sex worker, you can be banned from the US for ten years. Border security officers are increasingly doing research on sex workers online so when they arrive at the border, they are identified and sent back'. In response, Maggie's in Toronto has developed a document, 'Safer Border Crossing Tips for Sex Workers', given that 'sex workers are at risk of being detained and questioned at the US border'. See http://maggiestoronto.ca/uploads/File/FINAL_USborderrights.htm.

Jade also suggested that then Montréal Mayor Denis Coderre⁴⁷ seemed to be 'staunchly anti-sex work' and 'it doesn't feel like the city wants to talk to sex workers.' In particular, the mayor had 'been under pressure by the local neighbourhoods to close the massage parlours ... around town and that has resulted in hundreds of women losing their jobs. And since they were mostly working in a cash economy, they now don't have unemployment insurance, they don't have work experience that they can put on a resume'. She also talked about the city's gentrification projects:

Montréal doesn't have a red light district anymore. There used to be a stretch of the city that used to be just all strip clubs and sex shops and whatever, but they're now actually trying to gentrify the city more and more especially the parts of it that used to have sex work establishments in them ... even though the history of Montréal is such that sex work has been here out in the open for so long.

It is well documented that Indigenous, transgender (especially trans women), racialised, and migrant sex workers in Canada experience specific vulnerabilities, and their challenges also include intensified profiling, harassment, and abuse perpetuated by law enforcement which contribute to greater isolation, increased stigma, and heightened levels of violence. As Elene at Butterfly explained, under new immigration legislation enacted by the Conservative government in 2012, migrant workers, including those with open work permits, are specifically prohibited from working in sex-related businesses and have no access to any protections. In this environment, as Ching indicated, migrant sex workers tend to be very isolated upon arrival—they 'don't know anyone' and 'don't have any information'. Daisy added that what makes the situation worse is that 'you cannot tell others what you are doing'. Ching also identified challenges with transportation (until she hired a driver) and with booking hotel rooms where she could work. In the latter case, clients were very reluctant to make the booking because 'they are afraid their identity will be exposed' and she had to start paying someone to undertake this aspect of her business.

Due to language barriers and lack of financial resources, some migrant sex workers do work with others and rely on each other and third parties for support and assistance with, for example, advertising, answering phones, contacting and communicating with clients, providing transportation, and sharing profits. Given that all of these activities are violations of PCEPA's provisions and given that third parties risk being mistakenly identified as 'traffickers' rather than as co-workers and employees, migrant sex workers' capacity to work safely and rely on peer supports is severely restricted.

⁴⁷ Denis Coderre was defeated in Montréal's mayoral election on 5 November 2017 after my interview with Jade.

Violence and Safety

Rachel emphasised the need to talk about violence. This can be difficult, she maintained, because dominant prohibitionist and public discourses perpetuate the idea that violence experienced by sex workers is ‘inherent or inevitable’, which

Talking about violence can be difficult because dominant prohibitionist and public discourses perpetuate the idea that violence experienced by sex workers is ‘inherent or inevitable’.

‘causes great, great harm to sex workers and actually increases rates of targeted violence’. To unpack this, Rachel referred to other sites of labour (e.g. the taxi cab example) where vulnerability to and rates of violence are high: in these contexts, ‘[t]he objective is not to prohibit the practice or to determine the moral value of the practice—rather [it is] to develop relevant safety measures’. In her view, then, it is imperative to deconstruct dominant representations and assumptions, while at the same time consider the physical and psychological violence that sex workers experience, including forms of harassment, extortion, and stalking, and the numerous ‘possible spaces and sources of this violence’. These might include intimate relationships, ex-partners, landlords, neighbours, colleagues at other non-sex work related jobs, or ‘people associated with your sex work workplace’. In fact, she argued, ‘violence experienced by sex workers is often located in intimate partner violence, for example, as is often the reality of non-sex working women who experience violence. In addition, violence against sex workers is often inflicted by aggressors that specifically target sex workers because of their illegal and stigmatised social status’.

Understanding violence in this way is, for Rachel, critical ‘because the dominant prohibitionist discourse—the “pimps and johns” discourse—vilifies all clients and third parties and frames them all as violent men, and it presumes and fosters the narrative that violence within sex workers’ lives is always directly and inherently linked to their sex work’. It is also important to distinguish between aggressors (who perpetuate acts of violence against sex workers) and bad clients (‘someone who makes appointments and doesn’t show up and tries to push your boundaries but never forces you’). This distinction and the ‘de-vilification of clients’ allows for greater attention to be paid to the factors that contribute to and increase vulnerability to violence in the sex industry—that being different forms of conflicts with the law that force people into geographical isolation or not being able to work with other people in your physical space’.

Alice focused on how PCEPA provisions made advertising her services, the screening of clients, and running the business very challenging. The laws criminalise any person or business that advertises another person’s sexual services and she described how,

after they were enacted, ‘the [online] advertising sites were so scared of them getting shut down ... so it made it really difficult for us to advertise with them’. In effect, ‘we had to use very non-sexual language’ and ‘the stuff that really helped clients and for us to figure

out if we were a good match, we weren’t allowed to do that anymore’. With more sex work having moved online, Alice noted that, ‘harm comes to webcam workers but it’s not physical. It’s doxing⁴⁸ most likely ... The safety needs I think aren’t addressed because they’re always evolving and it’s really hard to track down hackers. Or people who troll you and cause you a lot of stress. I don’t think any organisation is really [addressing this], we just don’t have the tools yet.’ Another safety concern, which made it ‘excessively stressful to work’, was the direct result of the criminalisation of clients under PCEPA and the added difficulty of screening them: ‘it was really impossible for me to get their real information ... [whereas] before they would offer that up when you would screen them ... We [now] have to really rely on references [but] it was really hard if there was a client who didn’t have a reference and then you might take an appointment with less information than you used to get’. For Alice, ‘safety [is] a big deal’: ‘criminalising clients makes the work dangerous. Limiting communication makes work more dangerous.’

‘Criminalising clients makes the work dangerous. Limiting communication makes work more dangerous.’

Ching and Daisy also raised safety concerns. They emphasised that ‘there are a lot of people who may take advantage of you when they know you are undocumented or you cannot work in Canada’. Daisy mentioned unnamed individuals who ‘come to get “protection fee”’: ‘They will give you trouble or call the police if you do not do so’. She also referred to ‘gangsters’ who ‘rob us because they think they can do whatever to us’. Given these difficulties, Daisy stated that she wanted to work in a massage parlour again because it is safer, but since she is now undocumented and ‘the license [inspector] came very often’, she is unable to change workplaces. ‘When you have no document, you have no rights’, she added. Ching and Daisy both suggested that they had received various forms of assistance from clients, including help with advertising, renting an apartment, opening a bank account, shopping, making community connections, and sometimes sight-seeing. Fanny, however, indicated that, in her experience, there is ‘the pressure of getting enough business’ and that ‘most workers in this profession know there will be chances of bad clients’ and there are risks of abuse and ‘things getting stolen’. Elene shared that a survey conducted by Butterfly revealed that 60 per cent of respondents had experienced some form of violence, including being robbed, sexually and physically assaulted, or abused by police, and three Asian and migrant sex workers were murdered in Ontario within a three-year period.

⁴⁸ Doxing means to search for and publish private or identifying information about (a particular individual) on the Internet, typically with malicious intent.

Law Enforcement

When they experienced forms of violence, none of the Montréal-based sex workers interviewed trusted law enforcement to take the incident seriously whether prior to or after the enactment of PCEPA and the inclusion of protectionist language about the law seeking ‘to encourage those who sell sexual services to report instances of violence’.⁴⁹ Alice maintained that, even though she is relatively privileged as a white, cis woman in her forties,

there’s no way I would go to the police ... if I were assaulted or robbed ... I know that Stella offers the services to help people through the justice system but I was like, even with their help, it’s not something I want to go through ... And then I was assaulted and I was like, nope. I’m going to deal with this in another way which was just to deal with myself and to blacklist the client. I didn’t have a violent assault but it was definitely non-consensual and I was like, nope.

Because of their preeminent, presumed position as ‘victims’ in anti-sex work and anti-trafficking discourses, along with Indigenous women and youth, migrant sex workers are subjected to increased police surveillance and are one of the primary foci of anti-trafficking investigations.

When asked about Montréal police (Service de police de la Ville de Montréal) and its interactions with local sex worker communities, the interview participants indicated that street-based workers tend to have the most contact with police and, as Alice stressed, there’s ‘just horrible treatment there’, especially when police ‘go through these clean up phases’. Jenn also noted that, most recently, some Montréal law

enforcement officials, like elsewhere in the country, are collaborating with the Royal Canadian Mounted Police (RCMP) to increasingly focused their anti-trafficking intervention efforts on Indigenous sex workers, Asian and migrant women working in massage parlours, and young women living in group homes who have run away and are assumed to have become ‘part of prostitution rings’. For those who work on the street, this means more police presence in their lives and for others, this results

⁴⁹ Jade shared that when she contacted the police about an incident she experienced, ‘they were of no help whatsoever. They loved hearing the story, but when it came to actually doing anything about it, they did nothing, knew nothing’. She added that in talking to other sex workers in person or on social media about the police, ‘I actually asked on my twitter account if sex workers have bad stories about the police, and I’m telling you, my direct message inbox just overflowed because the police tend to be like most of our problems’.

in visits to their indoor workplaces—both under the guide of ‘protecting’ or ‘saving’ sex workers. Ava referred to Operation Northern Spotlight, an anti-trafficking ‘rescue’ strategy, which various law enforcement agencies across Canada have participated in since 2014.⁵⁰ ‘You’ve seen the raids that have happened across Canada where the police made appointments with women to see if they were trafficked. It’s just fucking bullshit, man. Again, a power play ... And by the way, this is hurting me. You just made an appointment with me and you’re not paying me. And additionally, the fucking media is here’.

Butterfly shared that, regardless of immigration status, Asian sex workers working in massage parlours in Toronto have also complained about the racism, racial profiling, arbitrary harassment, and abuse at the hands of municipal law enforcement and other officials, from being issued tickets and fines to being strip searched and physically and sexually assaulted. Because of their preeminent, presumed position as ‘victims’ in anti-sex work and anti-trafficking discourses, along with Indigenous women and youth, migrant sex workers are subjected to increased police surveillance and are one of the primary foci of anti-trafficking investigations. While such joint law enforcement operations, usually involving local police forces, the RCMP, and CBSA, are ostensibly intended to ‘rescue’ trafficking victims and target clients and third parties, they often result in the arrest, interrogation, detention, and deportation of indoor migrant sex workers. In an eighteen-month period, twenty-one Butterfly members were deported as a result of such raids. Under these conditions, as Butterfly emphasised, some sex workers ‘complain that they are forced to identify themselves as victims in order to obtain social services or to avoid being treated as criminals by police or non-profit organisations’. In general, however, ‘the fear of law enforcement and arrest push[es] migrant sex workers [to] work underground’ where workers live and work in isolation and in less visible locations with fewer safety protections and are reluctant or not able to access the legal, health, and social supports and protections they might need.

With regard to law enforcement, Daisy pointed out that ‘most of the people will not go to the police as they think it is not useful’ and ‘it would make you have more trouble. We don’t want the police [to] come to us’. She also identified immigration authorities as a problem and suggested that ‘workers in small town[s] have more trouble when

⁵⁰ SWAN Vancouver reports that, ‘since 2014, there have been five “waves” of Operation Northern Spotlight coordinated among law enforcement agencies across Canada ... Typically, police officers posing as clients set up dates online with sex workers, through websites like Craigslist and backpage, then surprise them in hotel rooms’ or they conduct ““shock and awe” raids on indoor sex work venues’. See SWAN Vancouver, ‘Open Letter to BC Law Enforcement Regarding Operation Northern Spotlight’, 6 July 2017, <http://capacitycentre.ubc.ca/2017/07/06/open-letter-to-bc-law-enforcement-regarding-operation-northern-spotlight/>.

they meet the police’ as ‘they will call immigration and arrest you’. Fanny and several co-workers did get arrested in the hotel where they were working and were detained. She described what unfolded as follows:

I didn't know why they [law enforcement] had come. I could tell they were police officers because one was carrying a gun and wearing the uniform ... The officers stayed at the door, spoke with the client, didn't really speak to me besides asking me who helped with booking the hotel room and to see my passport document. I replied that my friend helped me book the hotel room. The police officers asked if we had a boss or if someone controlling us to work. I said no one was controlling us to work ... We were arrested and detained in the detention facility. Two days later we had court. The judge told us we were arrested for working in Canada without permission to work. We were not granted bail.

As Butterfly shared, although the lawyer Fanny’s boyfriend hired argued in court that she ‘was visiting a friend in the hotel room’, the judge was not convinced and, after being detained for one week, Fanny was deported from Canada.

Stigma

Some of the Montréal-based sex workers interviewed also mentioned stigma as an issue. Alice, as a semi-retired former independent online porn performer and then escort, shared that, in her experience, ‘when you work in such a stigmatised way, you can’t have a resume, you can’t necessarily have access to banking, you can’t have access to housing because you can get turned away’. She also mentioned ‘the social situations of life and how to deal with stigma, how to deal with judgement, how to deal with gossip, how to deal with harassment’. Daria asserted that, while some sex workers choose to remain ‘invisible’ for various reasons, including as a strategy to mitigate the risks and violations associated with stigma and ‘people’s bullshit’,

if we're public about it, then we're actively persecuted. Later in life, whether it's trying to access different resources, different forms of employment, different institutions, we're often barred for life because we have been branded a sex worker ... if you choose to be visible or if you have chosen at any point to be visible—with the way things are now recorded and shared, it's for life. Even if you're no longer working—but it is obviously infinitely heightened, ramped up if you are still working—you can experience potential loss of employment, custody, housing, and just increased exposure to different kinds of physical and psychological violence.

Jade, however, who is very active on social media, especially on Twitter, as a young and out sex worker stressed that having visible and ‘strong voices in the community is very important’:

There aren't a whole lot of avenues for sex workers to speak out about their experiences ... And there are a lot of women that don't feel comfortable speaking out ... It's important as a sex worker to have a voice because the whole world, sometimes it feels like it's conspiring [to] take your voice away from you—whether it's through violent media or through police interactions or through the laws being passed without our consent. Stuff like that. Or through the client violations. Or even how the different companies or platforms that we have to make money take money away from us. So it's a whole lot of crap that we're given on a day to day basis or it feels like we can't really ever talk about it ... Even though I didn't start off as like trying to inspire people, I kind of wound up doing that inadvertently.

Sex Workers, Sex Worker Organising, and Human Trafficking Discourses and Campaigns

Stella and the Montréal-based sex workers interviewed had much to say about how prohibitionist and anti-trafficking narratives and campaigns impact them and their work. In setting the Québec context, Jenn explained that the province ‘is home to one of Canada’s largest anti-sex work movements’, which has been ‘vicious and attacking in their approach’ and has attempted

‘Prohibitionist campaigns against sex work have taken on the language of trafficking and [they] do not, in practice, make a distinction between sex work and trafficking. Even when this distinction is made, prostitution is seen as sexual exploitation by anti-sex work groups in Québec.

to shut the organisation down ‘both politically and financially’. In Québec, as Rachel clarified, the ‘catch-all term’ and ‘frenzy’ is ‘*exploitation sexuelle*’ and ‘everything related to sex work gets trapped’ in that category. Over the years, according to Jenn, ‘prohibitionist campaigns against sex work have taken on the language of trafficking and [they] do not, in practice, make a distinction between sex work and trafficking. Even when this distinction is made, prostitution is seen as sexual exploitation by anti-sex work groups in Québec. This is *‘Prohibitionist campaigns against sex work have taken on the language of trafficking and [they] do not, in practice, make a distinction between sex work and trafficking. Even when this distinction is made, prostitution is seen as sexual exploitation by anti-sex work groups in Québec.*

especially true for Indigenous and Asian sex workers in Montréal'. In the former case, Jenn referred to the Canadian Alliance for Sex Law Reform's CERD submission, which argues that 'much of the violence against Indigenous women who sell or trade sex is mis-categorized and conflated with "trafficking"—which has grossly inflated estimates of the number of "trafficked" Indigenous women and girls in Canada, and misdirected efforts to address violence against Indigenous women who sell or trade sex. The focus on trafficking, like the presumption that Indigenous women cannot exercise choice and are therefore victims, has deeply influenced the initiatives governments and non-profit organizations take to address violence against Indigenous women', such as over-policing in Indigenous communities.⁵¹

Regardless of what terminology is used, Rachel pointed out that 'it's all the same ideology': 'everyone who's providing a sexual service is a victim; everyone else who is involved in it in any way is a criminal, an aggressor, and needs to be punished'. Under these circumstances, Stella does not engage directly with the anti-trafficking movement—with the exception of being put in the position where 'we are responding to it on a daily basis in the media and with law and policy makers', and of experiencing 'burn-out' from 'trying to engage and counter the discourses of the prohibitionists'. However, Jenn did emphasise that 'contrary to allegations made by prohibitionists, we do recognise that human trafficking exists ... [and] that some sex workers may experience trafficking, according to the legal definition. The problem is the overzealous application of such laws to encompass activities and relationships that are not exploitative'.

Understanding and Analysis of Trafficking

All the sex workers affiliated with Stella had heard the term trafficking (*traite* in French), and had a good understanding of the elements and processes to which it referred, including situations of 'coercion', 'force', and 'kidnapping'. While most indicated that they had not encountered anyone who had been trafficked in their work contexts or in their informal sex worker

'Trafficking for the purpose of sexual exploitation' typically involves 'kidnapping and rape and violence and abuse and displacement and that's not work—that's kidnapping and rape and violence and abuse and displacement'.

⁵¹ Canadian Alliance for Sex Work Law Reform, 'Issues Prior to Reporting: Canada's Compliance with the *Convention on Elimination of All Forms of Racial Discrimination*', United Nations Committee on the Elimination of Racial Discrimination, 93rd Session, 31 July – 25 August 2017, pp. 5–6, <http://sexworklawreform.com/cerd-93/>.

collectives/networks, Ava did state that she had ‘met women who identify as victims of trafficking’, and some of them had continued in sex work. That said, they all recognised that trafficking, *as legally defined*, occurs in the sex industry and some, like Alice, invoked broader systemic issues such as differential access to opportunities as well as ‘capitalism, colonisation, just general poverty’. They all, however, insisted that the vast majority of sex workers in the industry have not been trafficked and that there are, as Rachel emphasised, ‘an enormous number of circumstances that are not related to trafficking but are labelled as such’. Ava made a further distinction: ‘trafficking for the purpose of sexual exploitation’ typically involves ‘kidnapping and rape and violence and abuse and displacement and that’s not work—that’s kidnapping and rape and violence and abuse and displacement’.

What Stella participants most took issue with was, as Alice stated, the ways in which the terms trafficking or sexual exploitation are used ‘to describe every possible scenario and transaction in the sex industry’. Rachel added that legal definitions of trafficking and ‘the elements of the definition should matter, but when it comes to anything of a sexual nature, sexual labour, they cease to’. As a

result, trafficking ‘is a term thrown around very, very loosely particularly when we’re talking about individuals involved in sex work ... [I]t’s actually a term you’re allowed to drop all the time without actually saying what the heck you’re talking about. That’s [the] status quo’. When it comes to its application and how laws are enforced, ‘situations that do not involve exploitation, that do not involve coercion, where no one is “being forced”—these situations are also swallowed up by the framework and label of trafficking when they are associated with sex work’. While Rachel recognised that trafficking is ‘not limited to the sex industry’ and ‘may be more frequent in informal forms of labour’, she was not sure ‘if people in agricultural work, people in factory work also experience this—this meaning, being targeted and labelled and swallowed up in trafficking discourse’. For her, this disregard for ‘actual elements of trafficking’ goes ‘back to stereotypes and the stigma towards ... sex work and the false assumption that this is de facto degrading work, no one would ever want to do it; if they’re doing it by definition it must be against their will’.

When it comes to how laws are enforced, ‘situations that do not involve exploitation, that do not involve coercion, where no one is “being forced”—these situations are also swallowed up by the framework and label of trafficking when they are associated with sex work’.

While Stella does not ‘have an officially documented position on human trafficking’, it does attempt to convey certain messages on the issue in its public education and in the media. For example, Stella recognises that sex workers rights groups sometimes ‘use the term “consensual sex work” as an informal strategy to counter the inaccurate and

problematic conflation between sex work and trafficking or sexual exploitation’ or, as Daria noted, to challenge ‘the myths and stereotypes related to sex workers and consent — either we consent to everything or we consent to nothing’. Stella, however, tries to avoid this terminology ‘because people can be at work consensually but not consent to the conditions of their labour’. The organisation also tries to nuance ‘the difference between exploitation and trafficking because some sex workers experience exploitative working conditions and/or violence at work’, which law enforcement, the media, and prohibitionists ‘often automatically categorise ... as trafficking’. In other words, Stella attempts to explain that ‘consensual sex work’ can still involve situations in which sex workers experience exploitative working conditions and/or violence. For Stella, it is very important to acknowledge the ongoing efforts of sex worker rights organisations in combatting violence and exploitation in the sex industry, whether through extensive outreach work or by ‘speaking about and fighting against (where/when possible) the exploitation we may experience at work. For example, physical or verbal abuse and harassment; exploitative working conditions such as unfair working hours; non-payment; dangerous physical working environments; discrimination; inability to negotiate contracts or services with third parties; theft; and fraud’. Of equal importance, it was noted, ‘these exploitations are supported by criminalisation of our industry and of third parties’.

Trafficking in False Narratives

What many of the Montréal-based sex workers found equally troubling and angering was how trafficking/sexual exploitation narratives negated their realities. A key part of the problem, according to Rachel, is that ‘people who don’t work with sex workers, who aren’t listening to numerous numbers of actively working sex workers who are sharing their experiences and telling you what they need’ are ‘publicly representing the experiences of sex workers’. Ava also mused that:

it’s just weird too, for something that is actually quite a mundane job that we have to have so much expertise around it. And not just the work itself, which is an area of expertise in and of itself ... It’s amazing to learn from street-based sex workers what they know about a city, for example. The breadth of knowledge that we hold is very, very interesting ... But when we’re not asked to share that, when we are simply asked to contest or justify our existence, it’s fucking tiring.

Jade shared a personal anecdote about an old childhood friend whose ‘dream in life was to work’ for the Polaris Project, a US-based anti-trafficking organisation: ‘When she found out that I was a sex worker and very out and proud about it, our relationship completely changed because all of a sudden she thought I was a monster for not supporting anti-trafficking organisations’ and could not see that ‘there’s a different

'It's not just creepy clients that we might have to deal with or violent abusers, we have to deal with women who are threatened by our experiences and our lives and they're just trying to negate us out of existence to "protect all women"'

reality for consensual sex workers that Polaris actually makes more difficult'. A number of participants mentioned the House of Commons Justice Committee (dubbed the 'Shame and Loathing Hearings' by Kerry Porth⁵²) and the Senate Legal and Constitutional Affairs Committee hearings on Bill C-36, during which

sexual exploitation and human trafficking took centre stage. Alice stated that she found them to be 'devastating, they were really traumatic. I think I actually had some sort of PTSD after that because I was just in shock with what the government, Members of Parliament were saying about people like me'. In her opinion, 'people who don't want to do sex work really shouldn't be doing sex work, who really hate it, who feel disgusted, and demoralised from it ... But there are people who are fine and have the ups and downs of it and it's just never addressed'.

Ava focused on how much she resented the extent to which prohibitionists '*get to traffic in false narratives about us*' (author's emphasis). If trafficking refers to 'someone who is coerced, who is not heard, who is disrespected', these and other terms 'can all apply to the way that those anti-trafficking narratives traffic sex workers'. For example, she took issue with 'the way our bodies are tossed around by prohibitionists' through the 'extremely violent' discourse they produce, such as the idea that 'we're just a series of holes' to men. In addition, after working in the industry for twenty-five years, she is 'tired of being told that I'm delusional', that 'I don't know when I'm being oppressed ... And I really actually resent having to argue that sex work is empowering outside of the money. Why do I have to be empowered by my work? Why can't it be just one of many millions of things I do to make ends meet?'

Ava also shared how she and other sex workers are unable to speak publicly about their experiences, be they 'positive or complex or not coerced', without being 'eviscerated' by prohibitionists and anti-trafficking activists and told that 'I am in the minority, that I am privileged, and that I do not represent the prevailing experience'. In these contexts, she and others are also told that 'we are akin to pimps and abusers' and 'called to task for encouraging the trafficking of people for sexual exploitation'. And then 'when you are being told that you are contributing to the denigration of women worldwide' and that 'we do not care about women', 'I

⁵² K Porth, 'Justice Committee on Bill C-36 Ignored Sex Workers', 14 July 2014, http://www.pivotlegal.org/justice_committee_ignored_sex_workers.

don't even know what to say to that ... [I]t is utterly devastating' and 'insulting'. Alice echoed this sentiment when she stated that 'it's not just creepy clients that we might have to deal with or violent abusers, we have to deal with women who are threatened by our experiences and our lives and they're just trying to negate us out of existence to "protect all women"'. Finally, Ava suggested that Canada and the United States were both 'built on human trafficking' and 'continue to profit from it through their prison system', but now that governments are 'firmly opposed to it in the form of human trafficking for the purpose of sexual exploitation', the 'whole fucking burden is laid on us'. 'I can't be taken away from my work for one more minute', she concluded, 'to argue about this' as it is 'very difficult and painful to have a conversation about this because these aren't really conversations at all'.

The Cost of a Rumour

Two of the Montréal-based sex workers interviewed also drew attention to the Grand Prix Formula 1 weekend each June, which is one of the city's biggest tourist draws and during which, according to local prohibitionist and anti-trafficking

'Our stories are often co-opted by anti-sex work organisations where the only solution offered to exploitation in the sex industry is the 'elimination of the industry'.

organisations, Montréal 'becomes, more than ever, a hub of [sexual] exploitation and trafficking ... and a place known for international sex tourism'.⁵³ In Alice's experience, 'we never have business during Grand Prix ... It's always been dead for me and I've worked for eight years'. She suggested that, 'yes, you see sexiness' and 'you're getting sexism, but you're not getting sex work at the Grand Prix'. Montreal's annual international Jazz Festival, the largest in the world, however, 'was good for my business. But no one bitches about Jazzfest. I would love to see that, that would be so funny. Close down Jazzfest'.

During the Grand Prix in June 2016, Stella organised an action partly in response to the 'police repression and surveillance of escorts and massage parlour workers', such as

⁵³ These groups include La Concertation des Lutes contre l'Exploitation Sexuelle (CLES), whose fifty members include union federations, Montréal's YWCA, and sexual assault organisations, as well as FEMEN, a radical feminist activist organisation. See R Lau, 'Montreal to Target Human Trafficking During Grand Prix Weekend', *Global News*, 29 May 2017, <http://globalnews.ca/news/3470784/montreal-to-target-human-trafficking-during-grand-prix-weekend/>; G Henriquez, 'Grand Prix Kicks Off With Topless Protester, Ribbon-Cutting', *Global News*, 7 June 2017, <http://globalnews.ca/news/3511543/grand-prix-disruptions/>; A Riga, 'Canadian Grand Prix: Is Montreal Formula One Race Really a Sex-Trade Hotbed?', *Montreal Gazette*, 9 June 2017, <http://montrealgazette.com/news/local-news/canadian-grand-prix-is-montreal-formula-one-race-really-a-sex-trade-hotbed>.

undercover sting operations via websites and workplace raids that have happened on that weekend as a result of ‘pressures from anti-trafficking and anti-sex work prohibitionists’. As Stella further noted, ‘one of the most frustrating things about [the sex work/sexual exploitation/trafficking] conflation is the fact that “exploitation” and “bad working conditions” no longer belong to sex workers ... Our stories are often co-opted by anti-sex work organisations where the only solution offered to exploitation in the sex industry’ is the ‘elimination of the industry’. Hence, the organisation created a social and mainstream media campaign called *Contre l’exploitation, Contre la prohibition* (*Against exploitation, Against prohibition*), which ‘highlighted that, in order to fight exploitation, we need workers’ rights with the byline: “For the rights of sex workers, the right to work”’. The project enabled ‘us to mobilise sex workers in our community’ and each of the fifteen images produced was intended to emphasise the dangers of and the repression that ensues from the conflation of sex work and exploitation/trafficking, prohibitionist prostitution laws, and the overall disregard of ‘sex workers’ agency and decision-making capacity’.

Migrant Sex Workers: Viminals

Butterfly prefers not to use human trafficking as a framework to understand the realities of Asian and migrant sex workers. Rather, the organisation is more interested in addressing the actual issues that they experience, be they related to violence, labour exploitation, or intimate partner violence. For example, Butterfly provides support to migrant sex workers who have problems with their employers or managers who hold their passports, do not pay them, or impose unreasonable charges, by assisting them to change workplaces, empowering them to negotiate with their employers, and informing them about their rights. It also recognises the rights of people who decide to work in or leave the industry and, in the latter case, it offers massage and English classes and referrals to help them develop alternative sources of income. That said, Butterfly stressed that its work has been negatively impacted by anti-trafficking campaigns. In the context of heightened surveillance, investigations, and arrests, migrant sex workers have been pushed out of sight, making it more difficult ‘to reach out to migrant sex workers’, especially those without status. It is also more challenging to undertake ‘public education and build partnerships with other service providers because they often assume that Asian and migrant sex workers are trafficked victims and they are not able to see and respect their agency’.

When it comes to anti-trafficking discourse, if you don’t agree that you are a victim, you will be criminalized and if you don’t agree that you are criminal, you will be victimized... the word viminal was that combination of constantly being in that liminal space’.

The three migrant sex workers interviewed indicated that they had heard the term human trafficking but insisted that they had not been trafficked nor did they know anyone who was being 'forced'. Ching stated that 'trafficking is not the big issue for us. [R]obbery and assault are issues of concern'. Daisy and Fanny suggested that there are sometimes 'mean' or 'bad' bosses who verbally abuse workers but do not 'control' them. In all cases, they emphasised that making money was their main priority. Daisy also noted that there seemed to be more police investigations in the past two years: 'trafficking is just the excuse to arrest us. They said we are trafficked but they arrest us ... and took the money from you and you cannot get [it] back'.

Butterfly has been involved in various initiatives that focus on resisting the harms of anti-sex work and anti-trafficking policies and campaigns, especially as both the federal and Ontario governments have committed to investing millions in anti-trafficking strategies.⁵⁴ For example, in January 2016, in honour of Tammy Le, an Asian sex worker murdered in Hamilton, Ontario and in response to Ontario's proposed Bill 96 *Anti-Human Trafficking Act, 2017*⁵⁵, Butterfly and the Canadian HIV/AIDS Legal Network issued a public statement drawing attention to the impact that 'repressive legal policies' and anti-trafficking measures have on sex workers, especially Asian and migrant sex workers. 'We encourage creative responses', they stated, 'that provide sex workers an opportunity to create safe and secure measures for their work and their lives. We wait with impatience for an end to a climate of hatred of sex workers that encourages people to violate and prey on sex workers ... [W]e stand up for human dignity and the right for all sex workers to live free from violence, racism, and discrimination'.⁵⁶ In March 2016, Butterfly, in collaboration with the Migrant Sex Workers Project, Maggie's, the Canadian HIV/AIDS Legal Network, Strut, and No One Is Illegal Toronto, launched another similar public awareness and advocacy campaign. Their four recommendations included the recognition of sex work as work and 'the right not to be "rescued"'; support for 'peer-led models so that

⁵⁴ In June 2016, the Ontario government announced that it 'would spend up to CAD 72 million over four years in a new anti-trafficking strategy', including bolstering 'culturally appropriate services for indigenous survivors of trafficking', establishing 'a provincial anti-trafficking coordination centre', and creating 'a specialized prosecution team for human-trafficking crimes', see T Grant, 'Ontario Unveils \$72-Million Plan to Fight Human Trafficking', *Globe and Mail*, 30 June 2016, <https://beta.theglobeandmail.com/news/national/canada-continues-to-be-a-source-for-sex-trafficking-annual-report/article30700484?ref=http://www.theglobeandmail.com&>.

⁵⁵ This provincial legislation, which received Royal Assent in May 2017 and builds on Bill C-36, named 22 February as Human Trafficking Awareness Day, introduced a provision that enables a trafficked person to get a restraining order against an alleged trafficker, and created a tort of human trafficking. See Legislative Assembly of Ontario, Bill 96, *An Act to enact the Human Trafficking Awareness Day Act, 2017 and the Prevention of and Remedies for Human Trafficking Act, 2017* at http://www.ontla.on.ca/bills/bills-files/41_Parliament/Session2/b096ra_e.pdf.

⁵⁶ See 'Honouring Tammy Le', 29 January 2016, <https://www.butterflysw.org/statement>.

the sex work community can connect with others and assist in cases of exploitation and abuse'; the repeal of PCEPA, 'which endangers sex workers' lives, health, and safety'; and the halt to 'raids, detention, and deportation of sex workers' and to CBSA's involvement in anti-trafficking investigations.⁵⁷

One sex worker I interviewed highlighted the multi-disciplinary art show Butterfly created, which was featured at the Art Gallery of Ontario in Toronto in 2015 and sought to draw attention to the realities and experiences of Asian and migrant sex workers. It was called 'Viminal Space' and addressed what it is 'like to actually be called, labelled, and framed a criminalized body'. The term 'viminal' was 'a portmanteau of victim and criminal and liminal ... [W]hen it comes to anti-trafficking discourse, if you don't agree that you are a victim, you will be criminalized and if you don't agree that you are criminal, you will be victimized ... the word viminal was that combination of constantly being in that liminal space'. As part of the show, 'some of the workers at Butterfly dressed up as border agents and put people through the process that they are put through when they are basically removed from their places of work—labelled as victims of trafficking and all of the questions that they are asked to confirm that'. They had 'stamps that said victim, criminal, [and] viminal'; it denoted an 'official but very highly subjective a space where it's just like you're asking me these questions, but you've already decided who I am'.

Organisational Responses to Sex Workers' Challenges

A Source of Support

Kerry stated that 'everything I learnt about keeping myself safe when I was a sex worker came from other sex workers ... That sort of inside information on what to look out for, how to keep yourself safe, you can't get that from anyone else. You're only going to get that from a sex worker so that's a huge benefit to sex work organising—the ability to provide safety planning, safety training, even self-defence that's particular to sex work'. The Montréal-based sex workers indicated that they relied on and obtained support and information from various sources, including partners, clients, fellow sex workers who are friends, informal indoor work collective members, sex-worker friendly medical professionals, and online/social media forums.

At the organisational level, the Montréal-based interview participants accessed Stella for different purposes and discussed what types of supports, services, and resources it

⁵⁷ See *Stop the Harm from Anti-Trafficking Policies & Campaigns: Support sex workers' rights, Justice, and Dignity*, March 2016, <https://www.butterflysw.org/harm-of-anti-trafficking-campaign->. Stella also emphasised that specific police guidelines and policies should be established 'to deter the unnecessary seizing and sharing of information with and CBSA involvement in policing matters'.

provides to local sex workers and how it fostered a space to build connections and community among them. Daria recounted how Stella has been an ‘incredible source of support in so many different ways over the last fifteen years—from showing up as a total stranger, not knowing anyone at the organisation, just arriving and knocking on the door and saying “hi, I am a sex worker and I would like to chat. Can I have some support?”’ to helping her ‘develop information and skills to apply to sex work ... how to navigate living in this world with an invisible status and in an informal labour market’. Alice liked ‘knowing that they’re there—it’s more for the legal stuff that I feel I need them, how to navigate the laws and keep myself informed about what’s coming around the corner’.

Stella characterises its approach to service provision as “an empowerment approach” (before the concept was co-opted); this means ‘we meet sex workers where they are at and provide a space for sex workers to determine their own path ... to guide the terms of the service they want from us’. As a confidential service, Stella does not turn anyone away, including those with tenuous

Stella takes a non-directive approach in which ‘the person comes first—their needs and their decisions as they define them’ ... And so back to autonomy, back to respecting people’s decisions, back to treating people as the experts and masters of their own situation and their own decisions’

immigration status or minors who sell or trade sex. As Rachel stressed, what makes Stella’s services so strong is the fact that the organisation takes a non-directive approach in which ‘the person comes first—their needs and their decisions as they define them’: ‘There’s no agenda—to support a person to attain a certain goal. You don’t define the person’s goals and, quite frankly, you don’t even have an opinion as what is a more virtuous goal ... And so back to autonomy, back to respecting people’s decisions, back to treating people as the experts and masters of their own situation and their own decisions’. She emphasised that this non-directive approach is ‘applied to everyone’ regardless of their background or situation—whether they are experiencing custody and housing issues, violence, threats, or extortion, ‘financially tough times, they’d like to have more clients, be able to make more money, or they are working in shitty conditions [e.g. unfair or extremely low pay], or they are in a situation that is actually exploitative [e.g. coercion and abuse]’. As Stella maintained, its doors are open to ‘sex workers who want to enter the industry, stay in the industry, or leave a very transient industry permanently or temporarily’. Alice expressed strong appreciation for the fact that ‘they’re always checking about our needs. They’re not trying to determine what our needs and wants are. We come first as their client base and they’re not going to decide what’s best for us. If I want to get out of the business, they can offer me some help with my resume. But if I want to stay in the business, they’re not telling me how to run my business, [but] they’ll give advice’.

The Asian migrant sex workers interviewed indicated that, despite their sense of isolation and need to be self-reliant, they too came to draw on diverse sources of emotional, financial, and practical support, including co-workers, drivers, and clients. Daisy, Fanny, and Ching learned about Butterfly through various means, including via an organisation in their home country, through its outreach work in massage parlours, or when arrested. They discussed the multiple ways in which Butterfly had supported them—providing legal information and strategies on ‘how to face police’, offering emotional support and connecting them to other workers, assisting them to leave an exploitative workplace ‘carefully’ so there would not be ‘trouble in the future’, taking them shopping and to medical appointments, or, in Fanny’s case, ‘assisting with communication outside of detention’ and organising her return to her home country after receiving her deportation order. Daisy also stated that Butterfly dealt with the police when her co-worker/friend died and then assisted with raising money for and organising the funeral, including helping to bring her friend’s family members to Canada to attend. What they seemed to value most about the organisation was that the outreach workers were so dedicated and could be trusted. While Ching emphasised that Butterfly was reliable, Daisy stated that ‘it is good to have an organisation which give you information and care about you ... [T]hey understand us ... They speak our language which is very helpful ... When you ask other [people] to do something for you, you have to pay. Butterfly doesn’t get money from us and they will not cheat us ... They are working for us, not for government, [and] they fight for us’.

Continued Dedication Despite Exclusion

Stella also undertakes more ‘systemic work’, such as addressing law enforcement’s treatment of sex workers from an intersectional understanding and advocating for sex work law reform. Alice commented that, during the House of Commons and Senate hearings on Bill C-36, she appreciated having ‘an organisation ... go and speak on your behalf ... I’m glad my voice was heard’. She also valued the fact that Stella ‘consulted with us before going to present—like what are our needs’. Within the context of anti-trafficking work, it is also essential, according to Rachel, to have ‘sex worker organisations providing nuance and informing this context ... We’re constantly trying to dismantle these things that are built up and harm us ... So we need to have groups out there that are constantly trying to clarify and disentangle the conflation’ between human trafficking/sexual exploitation and ‘consensual sex work’.

When asked what Stella could do to more effectively address the challenges that sex workers experience and what might be inhibiting that work, interview participants, like Jade, were very clear that the organisation is ‘already doing so much’ with the very limited funds and resources they have available: ‘I’m telling you, given their existing resources ... it’s kind of ridiculous to even suggest that they should be doing more’.

Rachel agreed, arguing that ‘we have limited resources’ and yet ‘we’re constantly building’ and ‘growing’, and seeking to ‘offer things of value’ to sex workers from ‘different walks of life’ and with ‘all different kinds of challenges and needs’. Jade was, however, troubled by the fact that, ‘[w]hen I see that politicians are talking about trafficking and prostitution in the same breath’, they are ‘talking to basically everyone except places like Stella and places like Maggie’s and Butterfly. It’s very draining to watch these meetings go on without having even been given an invitation or a seat at the table when these laws are being passed when these things involve our safety and our rights.’ As one antidote, she suggested that Stella build a bigger presence on social media, especially to combat the misinformation circulated by some anti-trafficking organisations. ‘A lot of my work is online and I found just how important it is in reaching people and changing minds and hearts’.

Rachel identified a number of factors that, in her view, inhibit Stella’s work. On the one hand, she argued that the organisation is incredibly stigmatised, targeted, and misrepresented and ‘one of the reasons is because we’re by and for sex workers’. In some instances, this means that Stella members are unwelcome in certain spaces when

Anti-violence, social justice, and labour organisations who, sometimes intentionally and other times not, do not include sex workers as part of their long list of marginalised groups that experience human rights violations.

undertaking outreach or advocacy work, which could be the result of ‘a level of ignorance such as “oh you’re not relevant”, or it could be straight out disdain, “you’re all social parasites and problems and we don’t want your kind here”’. On the other hand, there are other individuals and organisations that fail to include and invisibilise Stella ‘without necessarily speaking out publicly against us’. She was referring mainly to anti-violence, social justice, and labour organisations who, sometimes intentionally and other times not, do not include sex workers as part of their long list of marginalised groups that experience human rights violations.

Best Positioned to Detect Exploitation

When asked whether or not there is a role for sex worker organisations in anti-trafficking work, there were varied responses. Rachel stressed that the inclusion of ‘sex work specific groups’ into conversations about working conditions and trafficking in the industry would require the recognition of ‘sex work as legitimate work’. Kerry insisted that ‘sex workers are best positioned to detect cases of exploitation and trafficking. I don’t know anyone else who’s better placed to do that ... I mean sex workers know how to regulate their own industry, know what occupational health

and safety looks like in the sex industry, know what fair practices should look like'. However, 'people with actual expertise in the subject matter [are] ignored' and 'just get kicked to the side lines'. Kerry suggested that there are two main reasons for this lack of consultation and inclusion:

One is the stigma associated with sex work and it's a pretty intense form of stigma ... when you decide that an entire population of people engaged in a particular activity are either victims or criminals, you kind of write them off, you 'other' them, and you don't have to listen to them. Plus, certain feminists and anti-sex work campaigners have done a really, really good job of discrediting sex work organising—they call us 'the pimp lobby' ... [claim] that sex work organisations exist to keep women in the sex trade. I mean sex work support organisations have been supporting women to exit sex work forever, and we generally do that off the side of our desk and without there being any specific funding for it.

Kerry further emphasised that anti-sex work campaigners have 'also done a really, really good job of saying that sex work activists, the ones who are able to come out publicly, are a privileged minority—and, in a certain sense, we reinforce

In Butterfly's view, 'sex workers are the best people to protect the sex workers who are in exploitative and vulnerable situations'.

that because we haven't done a good job in the movement of supporting intersectionality, supporting racialised and Indigenous sex workers to speak for themselves'.⁵⁸

Ava agreed that 'with the resources, skills, backgrounds, research, and gifts and talents that so many [sex worker] organisations have, they could be leaders in anti-trafficking ... We are often in spaces, we are the ones who share spaces with people in all kinds of different states'. However, from her perspective, organisations like Stella are underfunded, overworked, 'absolutely burdened enough' with 'supporting women who are in the state of criminalisation ... [I]t takes a lot of energy out of you to produce rigorously researched information, to maintain contacts in those communities, to go hat in hand to Conservative MPs and talk about issues that

⁵⁸ With reference to migrant sex workers in particular, however, Ava identified the risks of visibility and speaking out: 'it's like anti-trafficking narratives almost get to rely on the fact that those who are the most marginalised ... don't speak out because they can't ... Then it just looks like there's all these white women speaking on their behalf and then we're told, "oh you're privileged, you're non-representative". But it's just like "well, you've put these women in the situation where they can't fucking say anything" because if they do, they identify themselves.'

they don't even want to fucking listen to. The amount of energy that that takes while simultaneously being burdened by these anti-trafficking narratives is unbelievable'.

Butterfly takes a holistic approach to addressing the different realities and needs of Asian and migrant sex workers in Toronto and beyond. As Rachel emphasised, in contrast to many anti-sex work and anti-trafficking initiatives that 'funnels people into limited and specific frameworks', Butterfly 'dares to put the defence or protection of migrant sex workers' rights first, and then look at the way they can support migrant sex workers needs from this approach'. In Butterfly's view, 'sex workers are the best people to protect the sex workers who are in exploitative and vulnerable situations'. Fanny concurred, stating that, instead of relying solely on outside organisations, it was critical that migrant sex workers 'form supportive connections' among themselves to share information about safety and to address issues of 'discrimination or bullying'. She and Ching also hoped that Butterfly could reach and provide emotional support and information to more sex workers, especially workers who have just arrived or are in a difficult situation. As Ching stressed, 'each country and each city should have something like Butterfly'.

Organising for Change: Bedford (2007-2012) and after Bedford (2013 – present)

The *Bedford v. Canada* constitutional challenge (2007-2012), the Supreme Court decision (2013), and the enactment of Bill C-36 (2014), have been the subject of much

The Supreme Court's unanimous (9-0) decision to strike down all three Criminal Code provisions as violating constitutional guarantees to life, liberty, and security of the person in December 2013 was the culmination of an over thirty-year sex workers' struggle for decriminalisation.

commentary produced by Canadian sex worker organisations, academic scholars, and journalists. Less well known is the story of sex worker organising during this period of struggle and optimism, victory and setback. It was this account that Stella wanted to share, one that highlights the work of sex worker rights groups and their allies

across Canada who came together in the Canadian Alliance for Sex Work Law Reform beginning in 2012.⁵⁹

While sex workers and sex worker organisations across Canada had previously attempted to form a national movement, the Alliance was born out of a sense of urgency and the need for a united voice on sex work law reform. The Alliance started as a small group of sex worker activists who came together to organise around the *Bedford*

⁵⁹ The following is an edited version of the story about sex worker organising in the *Bedford* and post-*Bedford* period as shared by Jenn Clamen.

case as it was going through the courts between 2009 and 2012. Its first national meeting was attended by two of the three *Bedford* plaintiffs as well as sex workers and close allies who intended to file applications for intervener status in the Supreme Court case. The gathering provided an opportunity to prepare for the hearings, devise a coordinated legal intervention strategy so as to ensure that sex workers' realities were fully represented in the court, and to craft a national media and education strategy with a focus on sex workers' human and labour rights. On 8 June 2013, just prior to the Supreme Court hearing, a National Day of Action to Support Sex Workers Rights was organised, which included a huge mobilisation of sex workers on the steps of the Supreme Court in Ottawa.⁶⁰

The Supreme Court's unanimous (9-0) decision to strike down all three *Criminal Code* provisions as violating constitutional guarantees to life, liberty, and security of the person in December 2013 was the culmination of an over thirty-year sex workers' struggle for decriminalisation. The Supreme Court, however, gave the federal government one year to craft a replacement law that complied with the *Canadian Charter of Rights and Freedoms*. The Alliance knew very well that the Conservative government would not sit idly by and abandon its strong prohibitionist, anti-trafficking, and law and order approach to sex work. Given the short one-year timeline, it was essential that Canadian sex worker-led organisations and allies join forces. As a result, a 'national working group' was organised, consisting of eighteen sex worker-led organisations from across the country that then formed a very loose alliance under the banner of the Canadian Alliance for Sex Work Law Reform. Both prior to and after the introduction of Bill C-36 in June 2014, the Alliance was able to develop a constantly evolving and increasingly more inclusive national strategy to resist the legislation and build national visibility.

This national strategy consisted of a number of elements. One component revolved around the media engagement as well as the production of public education materials about C-36 and the legislative process and their regular and broad dissemination to sex workers and allies. In May 2014, the Alliance also developed a series of information sheets that could be used to educate lawmakers and the public on matters related to sex work law reform.

⁶⁰ POWER, 'June 8, 2013: National Day of Action to Support Sex Worker Rights', News Release, 2013, <http://www.powerottawa.ca/POWER%20Day%20of%20Action%20Media%20Release.pdf>; G Macdougall, 'Decriminalization of Sex Work and the Bedford case in Supreme Court: What It's All About', *rabble.ca*, 13 June 2013, <http://rabble.ca/news/2013/06/decriminalization-sex-work-and-bedford-case-supreme-court-what-its-all-about>.

Another component of the strategy was to strengthen the capacity of sex working communities to engage with the legislative processes that impact their lives, mobilise them into action, and, in some cases, meet with local and federal politicians. Two advocacy guides were produced to facilitate this work. The first guide—*Sex Work on the Hill: A Guide to Getting Involved in Legislative Processes that Impact on Our Lives*—was released in May 2014 and was intended to demystify the Canadian Parliament. It explained how laws are made, how to set up a meeting and engage with Members of Parliament (MPs), how to develop strategic messaging tailored to different political party positions on sex work, and how to confront stigma during those interactions. The second guide—*Sex Work on the Hill: A Guide to Getting Involved in Legislative Processes that Impact on Our Lives PART II: Appearing Before Committees and Submitting Briefs*—was released one month later. With a specific focus on the Bill C-36 legislative process, it provided a step-by-step guide on how to submit a brief to or appear as an expert witness before the House of Commons Justice Committee and/or the Senate Legal and Constitutional Affairs Committee. Intended to empower sex workers and allies to interact with and have their voices heard in institutions of political power, both advocacy guides were in high demand and were widely distributed. During this period, Alliance members and allies also spent time on Parliament Hill. Two days were devoted to a two-day concerted national effort, which involved building advocacy capacity on one day and meeting with over 50 MPs and Senators on the next. Even though sex workers found the meetings and the stigma they encountered challenging, this was a very empowering initiative. It was critical that Alliance member groups positioned themselves as experts on sex work and the law and worked to make sex workers and their needs visible in that context.

The passage of Bill C-36 in December 2014 changed the context of sex workers' lives and work as well as the landscape of the Alliance's advocacy work. Given that 2015 was a federal election year, it was important for the Alliance to maintain its visibility and the law reform momentum it had developed in 2014. In June 2015, the Alliance created and distributed a third advocacy guide—*Sex Work on the Hill: A Guide to Getting Involved in Legislative Processes that Impact on Our Lives PART III: Hot on the Campaign Trail!* It was designed to educate sex workers and allies about various aspects of the electoral process and how to meaningfully engage with electoral candidates before and during the election. By this time, the Alliance had grown to twenty-eight member groups as new sex workers organisations were established in Canada and others were strengthened.

It was critical that Alliance member groups positioned themselves as experts on sex work and the law and worked to make sex workers and their needs visible in that context.

With the formation of a Liberal government in 2016, the Alliance decided to strengthen its future public education and advocacy by engaging in a one-year national consultation project. It involved all twenty-eight Alliance members and focused on developing a united voice on, and specific recommendations for, law reform on the federal, provincial, and municipal levels. The resulting document, entitled *Safety, Dignity, Equality: Recommendations for Sex Work Law Reform*, was released in March 2017 and endorsed by twenty-four Alliance members⁶¹. At the same time, the Alliance needed to maintain a media presence, speaking to the dangers of PCEPA, the harmful framework of victimisation and criminalisation, and the intersectional experiences of sex workers on the ground. In September, it published twenty-one ‘Sex Work Stories’ on *Ricochet Media* that offered diverse perspectives on the impact of Canadian sex work laws.⁶² Other media interventions were designed to put pressure on the new Liberal government to tackle sex work law reform within the context of a broader criminal law reform agenda. In April 2017, members of the Alliance met with the Minister of Justice and high-level MPs in the Prime Minister’s Office. As Jenn noted, it ‘became painfully clear that, while the Liberals ‘voted against and promised to look into the constitutionality of Bill C-36, they require quite a bit of pressure to actually act’. Hence, there is an urgent need for the Alliance and its allies to ‘create more visibility around the harms of Bill C-36’.

The Alliance and its member organising has sought and continues to seek to facilitate sex worker involvement in legislative processes that impact their lives and work, and to ensure that their diverse realities are at the centre. It is currently in the process of strengthening its structure so that it can include allied and supportive member groups as there are many Indigenous, LGBTQ2s, reproductive rights, and youth organisations that have expressed an interest in joining the Alliance.

⁶¹ Canadian Alliance for Sex Work Law Reform, *Safety, Dignity, Equality*, p. 4.

⁶² Founded in 2015, *Ricochet Media* is an online and multiplatform independent news site with offices in Vancouver and Montréal. For the series on the impact of PCEPA produced by the Alliance, see <https://ricochet.media/en/contributors/229>.

Conclusions and Recommendations

The knowledge and expertise shared by participants in this research have been invaluable in illuminating the rich histories of two Canadian sex worker organisations and the support, service provision, education, and advocacy work they undertake in their communities. Their insights have underscored the importance and ongoing need for sex worker organising especially in the current Canadian context in which the sex industry is criminalised and sex workers (and especially Indigenous, transgender, racialised, and migrant sex workers) experience very high levels of stigmatisation, marginalisation, isolation, and vulnerability to various forms of state and other violence. Contrary to the claims of prohibitionist and anti-trafficking campaigners, sex workers are indeed best positioned, through peer-based models, to detect cases of exploitation and coercion and to address working conditions in the various sectors of the industry. Over the course of this research, participants articulated different recommendations both implicitly and explicitly. Some key ones include the following:

Canadian and Provincial Governments:

1. Repeal PCEPA and other *Criminal Code* provisions criminalising sex workers, clients, and third parties. The federal government needs to lead the reform process with decriminalisation before other laws and regulations for sex workers' health and safety can be enacted.
2. Decriminalise all aspects of sex work as a first step towards the recognition and actualisation of sex workers' rights.
3. Repeal legislative, regulatory, and policy restrictions on all work permits that prevent migrants from working in sex-related businesses, issue open and unrestricted work permits to all temporary workers, and create pathways to permanent residency.
4. Provide federal support for municipal Access Without Fear/Don't Ask, Don't Tell policies that allow migrants, including migrant sex workers, to report violence and receive essential services, such as health care, without fear of deportation.
5. Increase funding to Indigenous communities to support the self-determined development of specialised services as well as educational, housing, income assistance, employment, healthcare, and safe transportation programmes.
6. Review existing anti-trafficking policies and programs that equate sex work with human trafficking and revise policies to remove assumptions that sex work, absent coercion, is a form of trafficking, sexual exploitation, or violence.
7. Use evidence-based research to inform anti-trafficking initiatives and prohibit the overbroad use of anti-trafficking measures as a general law enforcement strategy to target sex work in general and Indigenous, racialised, and im/

migrant sex workers in particular. Halt the raids, detention, and deportation of migrant sex workers under the façade of anti-trafficking investigations and end CBSA's unnecessary involvement in such investigations.

8. Conduct regular impact assessments of anti-trafficking legislation and enforcement practices with respect to the rights of sex workers in general and Indigenous, racialised, and im/migrant sex workers in particular.
9. Defund anti-trafficking law enforcement measures and redirect resources to community safety initiatives that are developed by sex workers and, in particular, by Indigenous, transgender, racialised, and im/migrant sex workers.

Anti-Trafficking Organisations and Civil Society:

1. Support sex workers' rights and stop conflating sex work, migration, and trafficking.
2. Recognise sex work as a legitimate form of income generation and the right not to be rescued.
3. Treat sex workers with respect and as stakeholders who are concerned about and have long worked at the grassroots level to improve the safety, wellbeing, and dignity of those working in all sectors of the sex industry.

Sex Worker Organisations:

1. Engage in more grassroots organising so that sex workers who are marginalised, especially Indigenous, transgender, racialised, and im/migrant sex workers, can fully participate in the movement.
2. Deepen the intersectional practices in the sex worker movement, including creating spaces for Indigenous, racialised, and im/migrant sex workers to speak for themselves.
3. Support and expand peer-based models so that sex workers can assist each other in situations of exploitation and abuse.

Donors:

1. Support self-organising among sex workers as a way to address abuse, violence, and exploitation in the industry and ensure that sex workers' voices are heard and represented.
2. Recognise sex workers rights as a human rights issue and support the international movement for the advancement of sex workers' rights.

Community-Based Researchers:

1. Build on this project and engage in further evidence-based research on sex worker organising, which would include more countries, sex worker-led organisations, and sex workers.
2. Place the experiences of sex workers still working in the industry at the heart of research that attempts to address human trafficking.

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The Annual Mothers for the Future SolidariTea event, which is hosted annually to highlight the work done by M4F for mothers who o sex work.
Photo credit: Lesego Tlhwale

SOUTH AFRICA

Ntokozo Yingwana

From the establishment of the Cape Colony in the 1600s, to the 'gold rush' of the Witwatersrand in the 1880s, and today's self-identifying 'proud migrant sex worker(s)', the selling of sex in relation to mobility and migration has a long and nuanced history in South Africa. Therefore, in trying to understand sexual exploitation (and, more specifically, human trafficking) in the sex work industry requires a revisiting of these colonial and *apartheid* pasts, and the remnants of those eras that still permeate South African current laws and policies.

Although sex work is criminalised in the country it is still widely practised and tolerated by the general public; while most people deem it immoral for religious and/or cultural reasons, many still consider it a 'necessary evil'. Poverty is highly racialised and feminised in South Africa. The unemployment rate of approximately 27.7% (of a 55 million population) is most notable among black women, accounting for 49.1% of unemployed people. Therefore, for many poor black women with limited formal education, selling sex is a viable means of making a living. Sex workers with a primary school education are able to earn nearly six times more than the typical income from formal employment, such as domestic work.

In order to avoid being identified by family and friends, many choose to sell sex away from their immediate communities, thus making sex workers a highly mobile population. Although South Africa is a source, transit, and destination country for migration, only 2.8% of the population are non-citizens. This means that internal migration is far more prevalent than cross-border migration; with migration flows usually from rural to urban areas such as Johannesburg, Cape Town, and Durban.

Although (migrant/mobile) sex work is often conflated with human trafficking, numerous studies have revealed that in comparison to other forms of human right violations that occur in the sex industry human trafficking is not a significant issue. Working with a non-governmental organisation (NGO) that advocates for the human rights of adult consenting sex workers called the Sex Worker Education & Advocacy Taskforce (SWEAT) and Sisonke, the national sex worker movement, this country study documents how these groups deal with human trafficking in the sex industry through their advocacy and organising.

The scope of the fieldwork was limited to two cities—Johannesburg and Cape Town—because of their central roles in the country’s sex work, migration, and trafficking historical landscapes and debates. Two focus groups were held in each city with Sisonke members (21 participants in total), and two individual interviews with other sex workers. In addition, eleven interviews were conducted with staff representatives from SWEAT, Sisonke, the Asijiki Coalition, Women’s Legal Centre (WLC), Sonke Gender Justice, Sediba Hope Medical Centre, and the South African National Human Trafficking Resource Helpline.

Even though they were not aware of international protocols or national laws and policies, the majority of the sex worker respondents hold the understanding that human trafficking is some form of exploitation linked to movement. The focus group participants and interviewees agreed that even though trafficking does take place in sex work, it is not as prevalent as other forms of human right violations they experience in the industry. Consequently, the obsession that government officials, anti-trafficking NGOs and international organisations have with human trafficking in the sex industry actually detracts attention from these more widespread but less salacious abuses.

When dealing with suspected human trafficking cases SWEAT and Sisonke sometimes work with the Department of Social Development (DSD), the Hawks anti-trafficking unit, and the South African Human Trafficking Resource Line, run by the global anti-trafficking organisation A21, although they expressed some frustration over the lack of trust and partnership often displayed by government entities. This not only makes it difficult to effectively identify and deal with cases of trafficking in the sex industry, but it also results in tensions between sex worker rights activists and anti-trafficking activists.

Therefore, a more constructive model of understanding is needed; one that makes a clear distinction between human trafficking and sex work, and which also recognises sex workers and sex worker rights organisations as allies in the fight against human trafficking. However, for these partnerships to be effective sex work needs to be decriminalised in South Africa.

Introduction

Historical, Political, and Socio-Economic Overview

The sale of sex has a long history in South Africa, often involving complex forms of coercion and abuse of (specifically enslaved and subjugated black) women. Therefore, understanding sex work and its connections to sexual violence and exploitation requires a revisiting of that colonial and apartheid-era history of racism and its manifestation through sexual interactions and laws.

In 1652, Jan van Riebeeck of the Dutch East India Company (VOC) established the Cape Colony in South Africa as a re-supply and layover port for ships trading with Southeast Asia. The settlers subjugated the indigenous Cape (San) population and also imported slaves to work in the rapidly growing colony. Even though the VOC preached against sex between the sailors and slaves, it largely tolerated sex work at the ports, as it was generally thought that after months at sea away from their wives, the sailors needed to relieve their assumed pent-up sexual urges. While it is not clear to what degree—if at all—the indigenous Cape (San) women engaged in sex work, records do show that slave women shipped from other parts of Africa were routinely sold for sex to the sailors and soldiers in the colony.¹

Built in 1676, the Company Slave Lodge (today's Iziko Museum in Cape Town) also operated as a brothel. The extent to which the already enslaved women consented to selling sex has been debated. Some historians in the 1700s, argued that the women were forced by their male partners to have sex in exchange for money with the sailors/soldiers,² while others contend that some of the women sold sex out of their own free will.³ Sex work allowed some of the slave women to buy their freedom, and free men who wanted to marry a slave woman could buy her freedom for 150 florins (colonial Dutch coin/currency).⁴ Many of the women who obtained their freedom in this way were also able to buy the freedom of their mixed-race children.

¹ EB Van Heyningen, 'The Social Evil in the Cape Colony 1868-1902: Prostitution and the Contagious Diseases Acts', *Journal of Southern African Studies*, vol. 10, 1984, pp. 170–197.

² As quoted in N Worden, *The Chains that Bind us. A history of slavery at the Cape*, Juta, Cape Town, 1996.

³ RCH Shell, *Slavery at the Cape of Good Hope, 1680 to 1731*, Yale University, 1986.

⁴ *Ibid.*, p. 2.

Two centuries later, in the 1880s, the discovery of gold in what was to become Johannesburg ignited a global migration by prospectors and miners to the then Transvaal Province.⁵ Newly established mining shantytowns created ideal opportunities for sex work to flourish. Again, sex workers were often from marginalised racial groups, including indigenous women and the so-called 'continental women' (mainly poor European Jewish women)⁶ who had migrated to southern Africa. The South African War (1899-1902) saw an even greater influx of European women into the country for organised sex work. Johannesburg was dubbed the City of Gold; not only for its precious metal, but also for the promise of an improved livelihood. The city largely attracted young black men who migrated from rural areas and neighbouring countries to work in the gold mines. They lived in men-only mining hostels, while women were mostly left behind in the villages/homesteads to take care of their families. The men were granted leave only once a year. This contributed to the thriving of sex work in the mining towns, especially around the migrant miners' hostels.

Around 1948 the white minority Afrikaner National Party legitimised racial segregation through the *apartheid* system. Black people were compelled to carry an identity document called the *dompas* (especially when travelling outside the villages and townships). This law greatly restricted black people's mobility and limited their economic opportunities. So while black men were able to find employment in the gold mines, black women often ended up selling sex or alcohol to the mineworkers.⁷

After decades of white oppression, Nelson Rolihlahla Mandela of the African National Congress (ANC) became South Africa's first black and democratically elected president in 1994. During this time (1994-1997) the country's Bill of Rights was drafted and enshrined in the Constitution.⁸ At the time of writing of this report, the ANC is still the governing party under President Jacob Gedleyihlekisa Zuma.

Today South Africa has a population of approximately 55 million people, with just over 80% black Africans,⁹ nine provinces and 11 official languages. Mining remains the backbone of the country's economy, with both internal and international migrants still

⁵ H Trotter, *Sugar Girls & Seamen: A journey into the world of dockside prostitution in South Africa*, Jacana Media, 2008.

⁶ C Van Onselen, *New Babylon and New Nineveh: Studies in the social and economic history of the Witwatersrand, 1886-1914*, London and New York City, 1982, reprinted Johannesburg, 2001.

⁷ C Van Onselen, 'Who Killed Meyer Hasenbus? Organized Crime, Policing and Informing on the Witwatersrand, 1902-8', *History Workshop Journal*, no. 67, 2009, pp. 1-22.

⁸ South African History Online, *A History of the South African Constitution 1910-1996*, <http://www.sahistory.org.za/article/drafting-and-acceptance-constitution>.

⁹ Statistics South Africa, *Community Survey 2016*, <http://cs2016.statssa.gov.za/>.

providing most of the manual labour. With a GDP of USD 294.8 billion (2016),¹⁰ South Africa is considered a middle-income country. However, the rampant corruption by the current government has led international markets to lose faith in the country's economy. Two leading global credit rating agencies recently downgraded South Africa to 'junk status', citing 'poor governance' as one of the main deterrents for investors.¹¹ The high unemployment rate of about 27.7%¹² is most notable among black women, at approximately 49.1%.¹³ Therefore, poverty is still highly feminised in South Africa. In this climate, many black women turn to sex work as the only or best option of making a living. Sex workers with a primary school education are able to earn nearly six times more than the typical income from formal work, such as domestic work.¹⁴ On average female sex workers support around four dependents, while their male colleagues about two.¹⁵

Gender and sexuality

South Africa's progressive Constitution recognises gender as a social act of expression (as opposed to biological sex), and upholds the rights of gender non-conforming persons. However, the country's rates of sexual and gender-based violence (SGBV) are still among the highest in the world. A 2014 study found that 25.3% of women had suffered some form of sexual violence, while 37.4% of men admitted to having been violent.¹⁶ In a country where rates of violence against women are already high, the rates of violence against sex workers are extreme, with female transgender sex workers at an even higher risk of abuse, as they overtly flout heteronormative ideas about gender, sexuality, and sex.

¹⁰ The World Bank, *South Africa GDP (current US\$)*, <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=ZA>.

¹¹ Huffington Post, 'Fitch Confirms SA's Junk Status, Says Poor Governance and Weak Economy Remain "Real Risks"', *Huffington Post*, 1 June 2017, http://www.huffingtonpost.co.za/2017/06/01/fitch-confirms-sas-junk-status-says-poor-governance-and-weak-e_a_22121106/.

¹² Statistics South Africa, *Quarterly Labour Force Survey – QLF5 Q1: 2017*, <http://www.statssa.gov.za/?p=9960>.

¹³ A van Wyk, 'Are 37.5% of jobless young S. Africans black women, and 31.5% white men?', *Africa Check*, 19 November 2014, <https://africacheck.org/reports/do-black-women-make-up-37-5-of-unemployed-south-africans-aged-15-34/>.

¹⁴ C Gould C and N Fick, *Selling sex in Cape Town: Sex work and human trafficking in a South African city*, Institute for Security Studies, Pretoria/Tshwane, 2008.

¹⁵ M Richter *et al.*, 'Characteristics, Sexual Behaviour and Risk Factors of Female, Male and Transgender Sex Workers in South Africa', *South African Medical Journal*, vol. 103, no. 4, 2013, pp. 246–51.

¹⁶ L Vetten, *Rape and Other Forms of Sexual Violence in South Africa*, Institute for Security Studies, Policy Brief 7, 2014.

The South Africa Demographic and Health Survey (SADHS) 2016 Key Indicator Report¹⁷ states that one in five (21%) of ever-partnered women aged 18 years and older reported having experienced domestic violence, while 8% reported having experienced it during the 12 months preceding the study. Moreover, about 6% of ever-partnered women reported they had experienced sexual violence by a partner, with 2% of them having experienced that sexual violence in the previous 12 months. It is not known how many sex workers account for the above statistics on domestic violence in the country as a whole, but according to a 2017 study, 53.8% of sex workers in Soweto had experienced intimate partner violence in the previous 12 months, while 55.5% had experienced non-intimate partner violence.¹⁸ More research is needed on intimate partner violence among sex workers, in order to ascertain exactly how to best help support victims.

The SGBV meted out against sex workers is deeply rooted in patriarchy. This opens up sex workers to a lot of client abuse, with few avenues for legal recourse. In addition, when police, who are also predominately male, enforce criminalisation there is often a gender bias; they tend to detain the sex worker (or ask for sexual favours), while letting the client go on a warning (or bribe).¹⁹ A 2012 study by the Women's Legal Centre (WLC) revealed that 70% of sex workers reported having experienced some form of police brutality.²⁰ Consequently, when attempting to address SGBV in sex work, it is important to consider these gender and sexual dynamics, in relation to the criminalised status of the industry.

Migration and xenophobia

South Africa is a source, transit, and destination country for migration. According to the country's Community Survey 2016 report only 2.8% of the population are non-citizens.²¹ Internal migration is far more prevalent than cross-border migration,²² with migration flows usually from rural to urban areas such as Johannesburg, Cape Town, and Durban.

¹⁷ Statistics South Africa, *South Africa Demographic and Health Survey (SADHS) 2016 Key Indicator Report*, <http://www.statssa.gov.za/publications/Report%2003-00-09/Report%2003-00-092016.pdf>.

¹⁸ J Coetzee *et al.*, 'Cross-Sectional Study of Female Sex Workers in Soweto, South Africa: Factors associated with HIV infection', *Public Library Of Science (PloS) ONE* 12(10), 2017, <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0184775>.

¹⁹ S Manoek, '*Stop Harassing Us! Tackle Real Crime!*': *A report on human rights violations by police against sex workers in South Africa*, Women's Legal Centre, 2012, <http://wlce.co.za/wp-content/uploads/2017/02/210812-FINAL-WEB-version.pdf>.

²⁰ *Ibid.*, p. 18.

²¹ *Ibid.*, p. 10.

²² I Palmary, *Gender, Sexuality and Migration in South Africa Governing Morality*, Palgrave Macmillan, 2016.

The number of migrants in the sex industry is much higher. A 2010 cross-sectional survey revealed that of the 1,653 female sex worker respondents, 46.3% were cross-border migrants.²³ The concentration of migrant sex workers in the metropolitan areas often gives members of those communities (and local sex workers) the impression that migrant sex work is very prevalent. As a result, during a recent spate of xenophobic violence, residents of a Johannesburg suburb attacked brothels allegedly owned by foreign nationals.²⁴ These attacks and subsequent police raids were often justified as attempts to combat drugs, human trafficking and other perceived forms of criminality of migrants.

A quarter of the interviewed cross-border migrants sold sex before leaving their place of birth. This study, along with others, challenges the notion that foreign-born sex workers in South Africa enter sex work initially as victims of human trafficking and/or sexual exploitation.

However, the abovementioned survey also found that a quarter of the interviewed cross-border migrants sold sex before leaving their place of birth. This study, along with others, including Oliveira, 2011²⁵ and Gould, 2011,²⁶ challenges the notion that foreign-born sex workers in South Africa enter sex work initially as victims of human trafficking and/or sexual exploitation.

Sex Work Landscape

Sex work socio-demographics and the law

According to a 2013 sex worker population size estimate study there are approximately 153,000 sex workers in South Africa: around 6,000 transgender females, 7,000 males and about 138,000 females (nearly 0,9% of the country's female

²³ M Richter *et al.*, 'Migration Status, Work Conditions and Health Utilization of Female Sex Workers in Three South African Cities', *Journal of Immigrant and Minority Health*, vol. 16, issue 1, 2014, pp. 7–17.

²⁴ 'UPDATE: Four "brothels" set alight in Rosettenville', *eNCA.com*, 12 February 2017, <http://www.enca.com/south-africa/four-brothels-set-alight-in-rosettenville>.

²⁵ E Oliveira, *Migrant Women Sex Workers: How urban space impacts self-(re)presentation in Hillbrow, Johannesburg*, MA thesis, Forced Migration Studies Programme, University of the Witwatersrand, 2011.

²⁶ C Gould, 'Trafficking? Exploring the relevance of the notion of human trafficking to describe the lived experience of sex workers in Cape Town, South Africa', *Crime, Law and Social Change*, vol. 56, issue 5, 2011, pp. 529–546.

population)²⁷ most of whom are black and around 70% street-based.²⁸ The average age of debut into sex work is 24 years²⁹, and the average length of time in the industry is 12 years.

Sex work in South Africa is fully criminalised under Section 20(1)(aA) of the Sexual Offences Act (SOA) of 1957, and its 2007 Amendment. This means that the sex worker, client, and anyone living off the earnings of a sex worker is considered a criminal under this law. The Act is a remnant of the Immorality Act of 1927, which criminalised sexual interactions across racial lines, specifically prohibiting sex between white and black (African, Indian, and 'Coloured' or so-called *non-white*) people. In 2007 the Criminal Law Amendment Act adjusted the law to explicitly include the purchasing of sex.³⁰ This came as the result of the *Jordan v. State* Constitutional Court judgment of 2002.³¹ Following a conviction under the SOA, a massage parlour owner, Ellen Jordan, and two of her employees, appealed to the High Court for the constitutionality of that law. They argued that the Act was gender-biased as it penalises the sex worker (predominantly female) and not the client (usually male). Although the High Court ruled in favour of Jordan, the Constitutional Court overturned this verdict. Its judges upheld the constitutionality of criminalising unlawful sexual intercourse for reward, as well as the brothel-keeping provisions. The majority judgment also maintained that the Act did not discriminate against male and female sex workers, and was therefore gender neutral.³²

While sex work remains criminalised by law, it is difficult to prosecute someone for sex work unless caught in the act, which is why law enforcers tend to employ entrapment tactics. Police have been known to pose as clients, purchase sex workers' services, and use that as evidence to arrest.³³ Authorities also tend to rely on

²⁷ South African National AIDS Council, *Estimating the Size of the Sex Worker Population in South Africa*, 2013, <http://www.sweat.org.za/wp-content/uploads/2016/02/Sex-Workers-Size-Estimation-Study-2013.pdf>.

²⁸ *Ibid.* Twenty percent work in brothels, while the remaining 10% are self-managing (working from their own homes or online).

²⁹ *Ibid.*, p. 16.

³⁰ Republic of South Africa, Criminal Law (Sexual Offences and Related Matters) Amendment Act, No. 32, 2007. https://www.saps.gov.za/resource_centre/acts/downloads/sexual_offences/sexual_offences_act32_2007_eng.pdf.

³¹ R Krüger, 'Sex Work from a Feminist Perspective: A visit to the Jordan case', *South African Journal of Human Rights*, vol. 22, issue 1, 2004, pp. 138–150.

³² Constitution of South Africa, Southern African Legal Information Institute (SAFLII), *S v Jordan and Others (Sex Workers Education and Advocacy Task Force and Others as Amici Curiae (CCT31/01) [2002] ZACC 22; 2002 (6) SA 642; 2002 (11) BCLR 1117*: <http://www.saflii.org/za/cases/ZACC/2002/22.html>.

³³ Sonke Gender Justice, *Entrapment–Patra*, retrieved 15 August 2017, <http://www.genderjustice.org.za/digital-stories/entrapment-patra/>.

municipal by-laws, such as those against loitering and public nuisance, to prosecute sex workers.³⁴

In 1999, the South African Law Reform Commission (SALRC) was tasked with investigating and making recommendations regarding the legislative reform process of the country's legal system response to sex work, a process known as Sexual Offences Act 'Adult Prostitution' Law Reform Project (107).³⁵ Sex worker rights activists such as the Sex Worker Education and Advocacy Taskforce (SWEAT) and other civil society organisations submitted recommendations to the 'Adult Prostitution' Discussion and Issue Papers, which outlined the implications of full criminalisation, regulation, legalisation, and decriminalisation of sex work.³⁶

Although finalised in 2015, the long awaited SALRC report on sex work was only released in May 2017.³⁷ The report rejected the decriminalisation of sex work, while recommending either the continuation of complete criminalisation of all aspects of sex work or the adoption of partial criminalisation (the so-called 'Swedish Model'). The report also includes recommendations for diversion and exit strategies, which are meant to 'lift people involved in prostitution out of coercive circumstances and to place them in rehabilitation, training and reintegration' programmes.³⁸ Now that the SALRC has released the Project 107 report, the Department of Justice and Constitutional Development (DoJ and CD) has to present its recommendations before members of parliament for deliberation. It is not yet known when this might take place. However, the DoJ and CD has indicated that while it will take the SALRC's report into consideration, it is still open to further public engagement on the matter.³⁹

³⁴ *Ibid.*, p. 18.

³⁵ South African Law Reform Commission, *Project 107 Sexual Offences Discussion Paper 85, 1999*, <http://salawreform.justice.gov.za/dpapers/dp85.pdf>.

³⁶ S Shackleton, *Sex Worker Education and Advocacy Taskforce (SWEAT) Submission to the Portfolio Committee on Justice and Constitutional Development Comments on the Criminal Law (Sexual Offences and Related Matters Amendment Bill)*, http://media.withtank.com/04b4265571/submission_sweat.pdf.

³⁷ Justice and Constitutional Development Republic of South Africa, *Media Briefing: Report On Sexual Offences: Adult Prostitution*, retrieved 1 June 2017, http://www.justice.gov.za/m_statements/2017/20170526-SALRC-Report.html.

³⁸ South African Law Reform Commission, *Report Project 107 Sexual Offences Adult Prostitution, June 2015* (released 26 May 2017), <http://www.justice.gov.za/salrc/reports/r-pr107-SXO-AdultProstitution-2017.pdf>.

³⁹ South African National AIDS Council (SANAC), *Decriminalising Sex Work: Highlights from the dialogue hosted by SANAC and Mail & Guardian*, 28 July 2017, <http://sanac.org.za/2017/07/28/decriminalising-sex-work/>.

Sex work and HIV policies

South Africa has the highest number of people living with HIV, at an estimated 7 million⁴⁰ (about one in five people living with HIV globally).⁴¹ This is equivalent to 13% of the entire population, and 19.2% of the age group 15 to 49.⁴² About 19.8% of all new HIV infections in South Africa are estimated to be sex work-related (which includes sex workers, their clients, and their clients' sexual partners).⁴³ The national HIV prevalence rate among sex workers is approximately 59.6%.⁴⁴ The South African Health Monitoring Survey (2013-2014) estimates the prevalence of HIV among female sex workers in three metropolitan areas as ranging between 71.8% in Johannesburg, 53.5% in Durban and 39.7% in Cape Town.⁴⁵

Years of sustained engagement and collaboration between the South African National AIDS Council (SANAC), government and the sex work sector finally led to the development of the first ever SA Sex Worker HIV Plan. At its launch in March 2016, South Africa's deputy president Cyril Ramaphosa (who is also the SANAC chair) stopped just short of calling for decriminalisation of sex work, when he urged the country to recognise selling sex as a form of work, as aligned with the Constitution.⁴⁶ In a powerful symbolic gesture, Ramaphosa handed Kholi Buthelezi, the national coordinator of the sex worker movement Sisonke, a sunflower.⁴⁷ This paved the way for initial roll out of Pre-Exposure Prophylaxis (PrEP) and test-and-treat medication to sex workers.⁴⁸

⁴⁰ UNAIDS, *Prevention Gap Report*, 2016, http://www.unaids.org/sites/default/files/media_asset/2016-prevention-gap-report_en.pdf.

⁴¹ South African National AIDS Council (SANAC), *Let Our Actions Count: National Strategic Plan (NSP) for HIV, TB and STIs 2017-2022*, http://sanac.org.za/wp-content/uploads/2017/05/NSP_FullDocument_FINAL.pdf.

⁴² UNAIDS, *South Africa: HIV and AIDS estimates (2015)*, <http://www.unaids.org/en/regionscountries/countries/southafrica>.

⁴³ AVERT, *HIV and Aids in South Africa*, https://www.avert.org/professionals/hiv-around-world/sub-saharan-africa/south-africa#footnote15_h950g59.

⁴⁴ S Baral *et al.*, 'Burden of HIV among Female Sex Workers in Low-income and Middle-income Countries: A systematic review and meta-analysis', *The Lancet Infectious Diseases*, vol. 12, no. 7, 2012, pp. 538–549.

⁴⁵ Department of Health Republic of South Africa (DoH) and South African National AIDS Council (SANAC), *South African Health Monitoring Survey (SAHMS): An Integrated Biological and Behavioural Survey among Female Sex Workers, South Africa 2013-2014 Final Report*, http://sanac.org.za/wp-content/uploads/2016/03/UCSF-South-African-Health-Monitoring-Survey_SAHMS_2016.pdf.

⁴⁶ SABC News, 'SA should consider legalising sex work: Ramaphosa', *SABC News*, 11 March 2016.

⁴⁷ Kagee, 'The Power of the Orange Sea', *Izwi Lethu: Our Voice*, 2016, p. 2, https://issuu.com/move.methods.visual.explore/docs/izwi_lethu_issue_10_v.3_final__inte.

⁴⁸ N Bhavaraju and D Uribe (PrEP Watch), *Early Lessons from South Africa's Rollout of Oral PrEP to sex workers*, <http://www.prepwatch.org/early-lessons-south-africa-rollout/>.

In 2017, the latest National Strategic Plan for HIV, TB and STIs 2017-2022 was launched.⁴⁹ Even though many civil society organisations had made sustained submissions, and SANAC's own Sex Work Sector pushed for unequivocal language on the decriminalisation of sex work, these were barely covered in the final version.

So even though HIV/AIDS has enabled sex workers to make strategic inroads in their engagement with decision-makers, it has not been compelling enough to encourage the recognition of their full range of human rights (including sexuality and labour rights). Paradoxically, choosing only to recognise sex workers' right to access HIV/AIDS treatment also runs the risk of labelling sex workers as merely vectors of the virus, thus further exacerbating stigma against sex workers.

Human Trafficking and Sex Work

Human trafficking policies

The 2017 US *Trafficking in Persons* (TIP) Report notes South Africa as a 'source, transit, and destination country for men, women, and children subjected to forced labor and sex trafficking' and therefore ranks it as a Tier 2 country for the seventh consecutive year.⁵⁰ However, there is little to no empirical evidence to support this, and measuring trafficking in the country remains an 'elusive statistical nightmare'.⁵¹

Claims made by some anti-trafficking organisations that 30,000 children are annually trafficked into South Africa for sexual exploitation⁵² have been exposed as 'exaggerated and unsubstantiated'.⁵³ Although

While the majority of human trafficking is in other labour sectors (namely agriculture, mining, construction and fishing), the government failed to prosecute or convict any traffickers in these industries in 2016. Indeed, the government's focus appears to be on the sex industry.

⁴⁹ *Ibid.*, p. 41.

⁵⁰ US Department of State, *Trafficking in Persons (TIP) Report*, 2017, <https://www.state.gov/documents/organization/271339.pdf>.

⁵¹ M van der Watt, 'Human Trafficking in South Africa: An elusive statistical nightmare', *The Conversation*, 16 July 2015, <https://theconversation.com/human-trafficking-in-south-africa-an-elusive-statistical-nightmare-43949>.

⁵² T Monama, '30 000 kids prostituted in SA annually', *IOL News*, 7 October 2013, <http://www.iol.co.za/news/crime-courts/30-000-kids-prostituted-in-sa-annually-1588062>.

⁵³ K Wilkinson and S Chiumia, 'Are 30,000 Children Really "Trafficked" in South Africa Every Year? The claim exaggerates the problem', *Africa Check*, 18 October 2013, <http://africacheck.org/reports/are-30000-kids-trafficked-into-south-africas-sex-trade-every-year-the-claim-exaggerates-the-problem/>.

discredited, the same statistic was used by the Department of Home Affairs (DoHA) to justify the introduction of discriminatory immigration policies and stringent visa laws for child travel,⁵⁴ that following uproar from the tourism industry these were later amended.⁵⁵

In August 2015, South Africa's *Prevention and Combating of Trafficking in Persons (PACOTIP)* Act was promulgated. This was the country's first comprehensive legislation on human trafficking, which actively sought to uphold its international treaty obligations under the United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (UN Trafficking Protocol).

Similar to the Protocol, the *PACOTIP* Act (section 4.1) describes a human trafficker as '[a]ny person who delivers, recruits, transports, transfers, harbours, sells, exchanges, leases or receives another person within or across the borders' of South Africa through force, coercion and deception, with the victim being trafficked for exploitation purposes.⁵⁶ According to the TIP report, the *PACOTIP* Act resulted in increased law enforcement and convictions of human trafficking cases.⁵⁷ However, the report does criticise that while the majority of human trafficking is in other labour sectors (namely agriculture, mining, construction and fishing), the government failed to prosecute or convict any traffickers in these industries in 2016. Indeed, the government's focus appears to be on the sex industry. The fixation and conflation of sex work with human trafficking have often pervaded the drafting of laws, policies and interventions geared towards combating trafficking in South Africa.

Sex Work and Human Trafficking Debates in South Africa

Although sex work is criminalised, it is still widely practised and tolerated in South Africa; and while most people deem it immoral for religious and/or cultural reasons, many still consider it a 'necessary evil'.⁵⁸ In relation to human trafficking, as in the rest of the world, in South Africa there are essentially two opposing positions: those

⁵⁴ This visa law required that all minors under the age of 18 years produce, in addition to their passport, an Unabridged Birth Certificate (showing the particulars of both parents) when exiting and entering South African ports of entry.

⁵⁵ L Lombard, 'UPDATE: SA to introduce new passport measures for minors', *Traveller24*, 5 February 2016, <http://www.traveller24.com/TravelPlanning/VisaInfo/dha-scrap-unabridged-birth-certificate-rule-for-updated-passports-for-minors-20160205>.

⁵⁶ *Trafficking in Persons (TIP) Report*, p. 57.

⁵⁷ *Ibid.*

⁵⁸ J Gardner, 'Criminalising the Act of Sex: Attitudes to adult commercial sex work in South Africa', in M Steyn and M van Zyl (eds.), *The Prize and the Price: Shaping sexualities in South Africa*, Human Sciences Research Council Press, 2009, 329–340.

who argue that sex work is intrinsically linked to trafficking, and those who assert that even though human trafficking does occur in sex work, it is not necessarily inherent to it. However, Joanna Busza cautions against the dangers of oversimplifying the anti-trafficking discourse in sex work to these binaries:

[S]ex workers' experiences fall along a continuum, with women who have undergone widely varying degrees of choice or coercion... [A]dditionally, individual sex workers may go through different phases; for example, a woman who was originally tricked into selling sex might independently choose to continue doing so. Initial pathways into sex work, therefore, do not necessarily define sex workers' current perceptions, motivations, or priorities...⁵⁹

This is a point I return to later in this report when one of the respondents relays how she had initially been trafficked into sex work, but now self-identifies as a 'proud migrant sex worker'.

In addition, the Gould and Fick study revealed that trafficking is not a significant feature of the sex work industry in Cape Town. Only eight female sex workers out of the 164 respondents had experienced some form of trafficking as defined by the UN Trafficking Protocol. Moreover, these had taken place in the past, and the trafficked sex workers had managed to escape those conditions by themselves. The study also found five children selling sex, although they had not been trafficked. Reports of coercion and exploitation, especially by brothel-owners/managers, which did not meet the criteria of trafficking, were however commonplace.⁶⁰

⁵⁹ J Busza, 'Sex Work and Migration: The dangers of oversimplification – A case study of Vietnamese women in Cambodia', *Health and Human Rights*, vol. 7, no. 2, Sexuality, Human Rights, and Health, 2004, p. 231–249.

⁶⁰ C Gould and N Fick, p. 16.

Research Methodology

As the South African partners in this study, SWEAT and Sisonke assisted in the review of the guiding research questions, organising focus groups and interviews, and identifying integral stakeholders/participants to involve. The scope of the fieldwork was limited to two cities—Johannesburg and Cape Town—because of their central roles in the country’s sex work, migration and trafficking historical landscapes and debates. Therefore, in each city, a focus group was facilitated with SWEAT service users, who were predominantly Sisonke members (either current or former sex workers).

There were 21 focus group participants in total, fourteen in Johannesburg, and seven in Cape Town, and two individual interviews with sex workers (also based in Cape Town). The participants in this study were mostly black women, including two transgender women, and two migrant sex workers from Zimbabwe. The Johannesburg respondents were largely brothel-based, while Cape Town respondents were mainly street-based. All were over 18 years of age, as Sisonke only deals with adult consenting sex workers.

In addition, eleven individual interviews were conducted. Six initial interviews were with SWEAT or Sisonke staff members: two Sisonke peer educators in Johannesburg and four SWEAT staff members in Cape Town: the Director, the Helpline Coordinator, the Human Rights and Lobbying Officer, and the Asijiki Coalition⁶¹ coordinator. Four interviews were with representatives of partner/allied organisations: the Women’s Legal Centre (WLC),⁶² Sonke Gender Justice, Sediba Hope Medical Centre, and the South African National Human Trafficking Resource Helpline. The initial findings of this country study were first shared with SWEAT and Sisonke for validation, and to ensure there was no misrepresentation. During this review process the National Coordinator of Sisonke gave additional insights, which are also used in this report.

Although the research interview guidelines and consent forms were in English, when discussing them with participants I would also translate some of the questions/clauses into either *isiZulu* or *isiXhosa* (local languages) for better understanding. Respondents were encouraged to engage in the language they are most comfortable with, so we often toggled between the three. This greatly improved our communication, but made it slightly difficult when transcribing. In focus groups participants also assisted each other with translations where needed.

⁶¹ Asijiki is a coalition of over seventy civil society organisations that are supporting SWEAT and Sisonke in advocating for the decriminalisation of sex work in South Africa, see: <https://asijiki.org.za>.

⁶² The lawyer and a paralegal working on the Sex Worker Programme were interviewed at the WLC office in Johannesburg.

Participant observation was also employed when I joined SWEAT, WLC, and Sonke Gender Justice in investigating and documenting a suspected human trafficking attempt at the Sediba Hope Medical Centre (Pretoria, February 2017). Details of the Sediba Hope Medical Centre case study are described in a later section of this report.

A Wits University research ethics clearance certificate was obtained for this study, and consent forms were discussed and signed for all focus groups and interviews. Most of the sex worker respondents opted to remain anonymous and provided pseudonyms instead. In this report I indicate the pseudonyms in italics. Organisational respondents whose real names are included in this report have given explicit consent.

Findings

The Organisational Story

SWEAT was founded in Cape Town in 1994 as a safe sex education project, by a male sex worker, Shane Petzer, and clinical psychologist, Ilse Pauw, because they noticed a gap in sexual health services available to sex workers. SWEAT was later registered as an NGO in 1996. The organisation views selling sex as a form of work and advocates for the human rights of adult consenting sex workers, and the decriminalisation of sex work in South Africa. SWEAT's human rights approach to sex work is person-centred: it is the needs of the client/beneficiary that guide their responses. The NGO also works to support sex workers' empowerment and leadership. SWEAT offers services to sex workers in South Africa under three main programme areas: Sex Worker Empowerment and Enabling Environment (SWEEEP), Advocacy and Law Reform (ALRP), and the national sex worker movement Sisonke (which recently registered as an independent organisation, but is still hosted and administratively supported by SWEAT).

The services that SWEAT offers include human rights defence workshops; safe space workshops (called 'Creative Space'), support groups and outreaches, facilitated by peer educators;⁶³ a legal clinic; a health clinic staffed with trained nurses;⁶⁴ psychosocial counselling; and a 24-hour toll-free help line. With Cape Town still the main head office, SWEAT also has provincial offices in Gauteng (Johannesburg) and the Eastern Cape (East London).⁶⁵

In 2003, SWEAT helped found Sisonke (which means 'we are together' in *isiZulu*)—the national movement of sex workers. South African sex workers felt it was time for their own voices to be heard in discussions that affected them and their work, hence the movement's slogan 'Nothing about us, without us'. Sisonke mobilises and organises sex workers across the country to stand up and fight for their human rights. According to Sisonke's national coordinator Kholi Buthelezi, the movement currently has just over 1100 members across all nine provinces. Sisonke also helps sex workers in combating stigma and abuse from the general public, clients, pimps/brothel-managers, and law enforcement. The movement is part of the continental African Sex Worker Alliance (ASWA), which SWEAT helped establish at the first ever African Sex Work Conference in 2009 (and hosted until 2015), and the Global Network of Sex Work Projects (NSWP).

⁶³ Peer educators and paralegals are either current or former sex workers. Their experience in the industry makes for the effectiveness of these programmes.

⁶⁴ SWEAT recently (June 2017) launched the Cym Van Dyke clinic, see F Collins, 'Cape Town sex workers get their own clinic in a South African first', *TimesLIVE*, 13 June 2017, <https://www.timeslive.co.za/news/south-africa/2017-06-13-cape-town-sex-workers-get-their-own-clinic-in-a-south-african-first/>.

⁶⁵ SWEAT also has presence in Limpopo (Polokwane) and the North West (Klerksdorp).

The Benefits (and Challenges) of Organising

Sisonke's National Coordinator Kholi Buthelezi describes the movement as the mediator between sex workers on the ground and policymakers and programme implementers—'[t]he more the movement grows, the more we get consulted on programmes relating to sex workers, so we can be the guides'. To illustrate this, Buthelezi relayed how having Sisonke sit on the SANAC Civil Society Forum since 2011 resulted in the formation of the SANAC Sex Work Sector, and allowed the movement to give inputs for the drafting of the South African National Sex Worker HIV Plan.⁶⁶

'The more the movement grows, the more we get consulted on programmes relating to sex workers, so we can be the guides'.

During the interviews, Sisonke peer educators stressed the importance of coming together to organise as a movement, as this enables them to advocate for their rights and call for decriminalisation in a unified voice. Johannesburg Sisonke peer educator

Doris Nyongwana also described how being part of Sisonke has helped them in addressing public stigma, and also in negotiating for their labour rights with brothel-owners:

It helps in that the stigma we have as sex workers is no longer the same as it was in the beginning. [...] With Sisonke we now go to different places [outreach] and the women would say that the brothel-owner used to be rude, but now it's not the same as before, because Sisonke had gone to talk to the brothel-owner face-to-face. [...] Even the community now respects sex workers.

However, the solidarity that comes with organising as a movement is at times not extended to migrant sex workers. This was illustrated during the Johannesburg focus group when tensions arose between some South African sex workers and migrant sex workers. Addressing one of the migrant sex workers in the group, *Thembisa Mnguni* (a local sex worker) said:

You know what my friend, it's not that we don't want you here in South Africa. The problem is we are suffering. We need money, but you also need the jobs. [...] But what is worse, most of the foreigners they don't have papers, and that thing has an impact on us. [...] So if

⁶⁶ South African National AIDS Council (SANAC), *South African National Sex Worker HIV Plan*, retrieved 25 September 2017, <http://sanac.org.za/2016/03/29/south-african-national-sex-worker-hiv-plan-2016-2019/>.

ever government could be sure that if ever you've got a working permit you can stay. [...] We understand that you came here in South Africa because you guys need a job, but the thing is you come with the other mentality of corrupting South Africa, like the Nigerians. They sell drugs. You see Jo'burg now - the way it is? And they use our children.

The concentration of migrant sex workers in metropolitan areas, like inner-city Johannesburg, results in fierce competition with local sex workers. This also leads to some South African sex workers drawing from government and media rhetoric about foreigners (specifically Nigerians) bringing corruption and crime to the country, as a means to justify their (at times violent) frustration. Helpline Coordinator, Nomsa Remba, also affirmed that this tension between migrant and local sex workers does exist, but that it has also led to an even stronger solidarity among migrant sex workers themselves, especially in Limpopo Province, where there is a high concentration of migrant sex workers from the neighbouring countries Botswana, Zimbabwe, and Mozambique:

What is amazing about Limpopo sex workers is that they do support each other more than anything else. You know it's the only province that I have seen, when a sex worker has a problem they will donate for her upkeep. That's the only province I've seen. Without any hassles or anything they coordinate themselves.

When asked how Sisonke deals with this tension between local and migrant sex workers Buthelezi explained that in order to strengthen solidarity the movement runs sensitisation workshops whereby they teach the members to 'love each other since [they] are a marginalised community'. In addition, Sisonke makes a concerted effort to diversify its membership, staffing and leadership across race, gender and nationality. Currently Sisonke has several foreign national staff members, which include the Assistant National Coordinator Pamela Chakuvunga who is Zimbabwean.

Challenges for Sex Workers in the Country

A 2011 report compiled by ASWA found that sex workers in South Africa experience varied human right violations ranging from police brutality, discrimination by healthcare providers, abuse by pimps and brothel managers, violence from clients, and stigma

Sex worker respondents also identified the stigma and abuse that filter down onto their children because of their sex work and intimate partner violence as two other main challenges that they face.

from community members.⁶⁷ These violations were largely attributed to the criminalisation of sex work. The participants in this study echoed the same challenges, as explained by SWEAT's human rights and lobbying officer Nosipho Vidima:

The most human right violations that we come across are police brutality, police bribes, the use of by-laws to arrest sex workers... The by-laws themselves don't really work, so we sit with women being kept overnight or over weekends, only for them to not even appear in court. The other [challenge] would be client abuse towards sex workers, where sex workers are raped, not paid, sometimes being left in areas that are isolated and in the dark.

Members of the Johannesburg focus group reiterated the abovementioned police and client abuse, but also raised challenges they face when working in brothels, such as high rentals and inadequate security. One of the participants explained:

As sex workers we also wish we could get brothels with tight security, because sometimes you might find that you're fighting with a client, they overpower you, and then some of the security side with him, while others can't even help. (Translated from isiZulu.)

In addition to these human rights violations, the sex worker respondents also identified the stigma and abuse that filter down onto their children because of their sex work and intimate partner violence as two other main challenges that they face. These have been less well documented in previous studies. During the Cape Town focus group one of the participants broke down in tears describing the physical and emotional abuse she was experiencing from her live-in boyfriend:

I want to ask a question... My problem is that... What should a person do if you are a sex worker, and as a sex worker you met this person, but the rest of the time you tried to hide it from him. So now he finds that out. Then he has a problem and loses his job. He sees you helping him out. He just takes whatever you buy—doing this and that. Then he beats you up. What are you supposed to do? (Translated from isiXhosa.)

⁶⁷ F Scorgie et al., 'I Expect to be Abused and I Have Fear': Sex workers' experiences of human rights violations and barriers to accessing healthcare in four African countries, ASWA, 2011, http://www.plri.org/sites/plri.org/files/ASWA_Report_HR_Violations_and_Healthcare_Barriers_14_April_2011.pdf.

She went on to explain that she had tried to leave her violent partner before, but that he always managed to find her, and drag her back home. Her peers in the group were visibly angered by her situation and quick to offer comfort and support. They advised her to leave the abusive relationship, and also inform the SWEAT Helpline counsellors, so they can help her in reporting the case to the police. Arrangements were also made to contact her best friend, who could offer her an alternative place to stay.

How does Trafficking Fit into These Challenges?

Even though they were not aware of international protocols or national laws and policies, the majority of the sex worker respondents hold the understanding that human trafficking is some form of exploitation linked to movement, as explained by one of the Johannesburg focus group participants, *Nonhle Zulu* who simply stated, '[f]or me human trafficking is when someone takes me where I do not want to go'. However, the sex worker respondents also tended to speak of human trafficking interchangeably with

labour exploitation by their brothel owners/managers in the form of overwork, little or no pay, restricted movement, and extortion through hefty fines. The participants and interviewees agreed that even though trafficking does take place in sex work it is not as prevalent as other forms of human rights' violations they experience in the industry. Consequently, the obsession with trafficking by government officials, NGOs and international organisations detracts attention from these more widespread but less salacious abuses.

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When sex workers listed their main challenges—as outlined in the previous section—human trafficking was not initially mentioned. However, when we started discussing trafficking in general, some began recalling trafficking cases they had heard of in the course of their work. A few even started sharing how they now suspected that they too might actually have been initially trafficked into sex work. One of the focus group participants, *Chidhawazo Vhembe*, a Zimbabwean migrant sex worker, described how she started selling sex in 2007:

To my experience when I started I didn't want to be a sex worker, but for me to get into this business I was taken by a friend all the way from

Zimbabwe to Botswana, saying we're going to do some 'piece jobs'—to do the washing and cleaning the yards, and whatsoever—so she provided me with money for transport, for bus fare. When we arrived in Botswana there was a truck-stop.

At the stop her friend took her to one of the trucks, and started to privately discuss something with the driver. She then went into the shop and left *Chidhawazo* inside the truck with him:

Then the truck-driver started to ask me to have sex work with me. I was refusing and I was not interested, but I was not having any option. Then I just have sex with that man, and he didn't give me the money. He gave the money [to] the lady who came with me because she was saying she want her money back for transport first.

South African sex workers relayed similar stories of how they had been enticed, misled or coerced into sex work by either a friend or family member. However, they explained that once they found themselves earning enough to provide for their children and families they opted to continue with selling sex.

Chidhawazo has since gone on to travel across Namibia, the Democratic Republic of Congo, and South Africa as a self-identified 'proud migrant sex worker'. However, she does acknowledge that she had been initially tricked into sex work, and that the experience had been 'painful'. At least two other South African sex workers in this same group relayed similar stories of how they had been enticed, misled or coerced into sex work by either a friend or family

member. However, they explained that once they found themselves earning enough to provide for their children and families they opted to continue with selling sex. These respondents evoke Busza's earlier mentioned continuum of varying degrees of choice or coercion that sex workers may experience when entering sex work, but which should not be used to deny them of their current agency and bodily autonomy in deciding to continue selling sex.⁶⁸

The Impact of the Anti-Trafficking Discourse: 'I think they don't trust us enough'

SWEAT sometimes works with the Department of Social Development (DSD), the Hawks anti-trafficking unit, and more recently the South African Human Trafficking Resource Line, run by the global anti-trafficking organisation A21. However, the national

⁶⁸ Busza, p. 59.

helpline coordinator Nomsa Remba expressed some frustration over the lack of partnership often displayed by government entities. Once SWEAT has referred a case to the Hawks there is often no report back on its progress; 'I think they don't trust us enough', she said.

SWEAT staff respondents also repeatedly lamented the negative impact that the anti-trafficking discourse has had on their ability to engage with anti-trafficking organisations. Around 2010 SWEAT joined the Western Cape Counter-Trafficking Coalition, in order to strategically partner with anti-trafficking organisations that have the resources and mandate to effectively deal with trafficking. The ideological differences pertaining to sex work, which existed among the Coalition member organisations, at times manifested in blatant hostility against SWEAT. As SWEAT director Sally-Jean Shackleton explains:

One of the organisations, in fact, was publishing information on their website that was inflammatory about SWEAT. It was saying that we were funded by pimps and traffickers, so it just got untenable. We couldn't be in that situation and be genuine.

This general lumping of sex worker rights' activists with pimps and traffickers further demonstrates the conflation of sex work with human trafficking, which is so common in the anti-trafficking discourse. According to Shackleton, anti-trafficking coalitions tend to take on the 'rescue approach' instead of being person-centred, and they are often premised from an anti-sex work ideological standpoint. As a result, SWEAT, WLC and Activists Networking against the Exploitation of Children (ANEX) decided to come together to draft a *Counter Sexual Exploitation in Sex Work Protocol*,⁶⁹ which would guide them in coordinating interventions/responses. As a person-centred and rights-based response tool, the draft protocol aims to address exploitation in the sex industry including, but not limited to, human trafficking.

As part of this study, I worked with SWEAT, WLC, and Sonke Gender Justice in the reviewing of the draft counter sexual exploitation protocol, with the aim of developing a similar one for the Gauteng province. The protocol had initially been drafted as a response to conventional anti-trafficking interventions, which are often insensitive to sex workers' unique challenges and needs. As Shackleton explained, the protocol was drafted with consideration of a sex worker who is either:

[t]oo young, high or drunk, and trafficked or a combination of those three things [or] all of the three. So the protocol was a result of our initial thinking around these three circumstances. Also, because a lot of anti-

⁶⁹ This was the outcome of a joint project between ANEX, SWEAT, and WLC in 2012. Even though it was never finalised, some parts of it have been adopted in certain interventions.

trafficking initiatives don't operate after hours, [and] don't really offer any practical assistance in the immediate term.

Hence, this draft protocol proposes that the initial assessment take on a two-pronged approach—individual and situational—which takes into consideration the presumed trafficking victim's immediate safety and health status in relation to their socio-economic environment, so as to arrive at a person-centred response. In reviewing the draft protocol it was agreed that a shorter, more accessible, version would be more helpful: a basic manual or leaflet with emergency contacts and a simple breakdown of what steps to take when one suspects a case of human trafficking.

Strategies to Respond to the Challenges that Sex Workers Face

Every Sex Worker is a Human Right Defender

In 2009 WLC, in partnership with SWEAT and Sisonke, initiated the Sex Worker Programme (also referred to as the *Every Sex Worker is a Human Right Defender* Programme), which is geared towards educating sex workers about their rights, providing legal advice and representation in court, and documenting human right violations for strategic litigation in cases of police abuse. Mosima Kekana⁷⁰ is the WLC attorney managing this programme. She is assisted by trained paralegals that are either current or former sex workers. Kekana and the paralegals accompany SWEAT and Sisonke peer educators on outreaches to areas where sex workers operate, and also attend 'Creative Space' workshops⁷¹ to offer legal services. Kekana explained:

We have these safe spaces, which we call Creative Space [...], [w]here sex workers talk about their issues, which includes their daily experiences, and they understand that this is a safe space for them to express themselves. So one picks up a lot in those spaces; that there is a lot of trafficking that

Although the WLC team does try to assist sex workers in reporting suspected trafficking to the police, these informants often fail to follow through because they fear being arrested for sex work. This illustrates the extent to which criminalisation deters sex workers from reporting cases of human trafficking.

⁷⁰ Kekana is now an attorney with the Legal Resources Centre (LRC).

⁷¹ Creative Spaces are support groups for sex workers that are organised by SWEAT and Sisonke. In these spaces sex workers collectively discuss their challenges and means of overcoming them, and are trained on how to access their health and legal rights.

happens, but because sex work is criminalised and sex workers are seen as criminals, they are afraid to interact with the police and report such cases of trafficking.

So although the WLC team does try to assist sex workers in reporting suspected trafficking to the police, these informants often fail to follow through with the process because they fear being arrested for sex work. This illustrates the extent to which criminalisation deters sex workers from reporting cases of human trafficking. Consequently, Kekana was unable to give an indication of the number of suspected trafficking cases they have come across in this way.

‘...Cases that would give you goosebumps...’

The SWEAT 24/7 toll-free helpline was established in 2010 to support sex workers with legal, health and psychosocial advice and referrals. According to Nomsa Remba, the national helpline coordinator, they receive an average of 150 calls per month, and up to 400 when there is an international event in the country involving sex workers, such as the International AIDS Conference in 2016.

The helpline receives a lot of calls reporting sex workers’ human right violations, ranging from by the general public, to discrimination from health-care providers, and abuse by law enforcers.⁷² Remba highlighted the intense level of brutality of most Limpopo cases:

The cases that they get there are just genuinely hectic cases. Those cases that would make you have goosebumps for the rest of the week... There, if someone has been beaten, they will need some CT scan to be done on them. They’ll need to be stitched. Some die.

Between January and April 2017, the SWEAT helpline had registered four serious cases of vicious beatings and two deaths in that province. According to Remba, the helpline receives a few human trafficking related cases, but that these are about one or two every three months. The definition of human trafficking that SWEAT works with is derived from the *PACOTIP* Act. According to the helpline coordinator a trafficking victim/survivor is ‘... someone who has been taken away from where they were staying without really knowing where they were going, and without consenting to be taken to that place’, for exploitation purposes.

⁷² In addition to the police, law enforcers also include private security guards.

Sex Workers Responding to Human Trafficking

The 2015 Asijiki Coalition fact sheet on Sex Work, Human Trafficking & the Harm of Conflating the Two, points out that:

Sex workers are more likely than social workers or the police to become aware of trafficking, adults or children being forced into selling sex [and] other coercive practices, have a strong interest in preventing these practices, and are often highly effective in doing so.⁷³

This was illustrated through SWEAT and Sisonke's own responses to human trafficking. Despite their active exclusion from formal anti-trafficking structures, as described in the previous section, SWEAT staff members stressed that they are able and willing to identify and assist in cases of trafficking, if only they are afforded sufficient resources, referral networks and training. The cases that follow exemplify this point.

Case studies

Durban trafficking case

Thulisile Khoza, one of the former Sisonke peer educators in KwaZulu-Natal (KZN) described a case that started in 2012 when she and her colleagues helped police in identifying 38 young women (some as young as 12-years old) who had been trafficked and forced into selling sex at a Durban brothel. Khoza explained that the women had also been forced to take drugs until addicted, so that the traffickers could keep them under their control. Throughout its investigation and trial this case enjoyed a lot of media coverage, and much was made of the fact that the owner of the lodge where the women had been kept was a doctor, but nothing in the news ever mentioned how Sisonke sex worker peer educators had been integral in unearthing the case.⁷⁴

Khoza described how Sisonke came across the trafficked women:

We were doing outreach in KZN, it was at night, around the beach area—Point beach area. So we could see these young girls around the streets, and then when we were trying to talk to them they were shaky, and you could see they are scared to talk. And they kept on looking

⁷³ Asijiki Coalition, *Sex Work, Human Trafficking & the Harm of Conflating the Two*, 2015, <http://www.sweat.org.za/wp-content/uploads/2016/02/Sex-work-and-Human-trafficking-Asijiki-1.pdf>.

⁷⁴ African News Agency, 'Life Sentence Call for Men who Trafficked Girls as Young as 12', *South Africa Today*, 27 October 2016, <https://southafricatoday.net/south-africa-news/kwazulu-natal/life-sentence-call-for-men-who-trafficked-girls-as-young-as-12/>.

around to see if the people who are actually looking after them could see them. Then afterwards when we saw that they were scared we said, 'Okay fine, we're only going to give you the condoms. Then we'll take our pamphlets and write the numbers on the pamphlet, and then we'll take the pamphlet and throw it in the dustbin'. When we did that apparently the girl—because she really wanted to be helped—whilst her pimps were not looking, she went to the dustbin and took out the pamphlet with the numbers and then she actually called Cape Town. And then when she called Cape Town, the Sisonke helpline, that's when the case was actually brought forward to us. Then after that we took up the case, called the police and the police actually did the investigation; where they actually went to the place where the pimps were keeping the young women.

The doctor and his wife were acquitted, but three of their employees were found guilty on charges of human trafficking for sexual purposes, sexual exploitation of minors, racketeering, running a brothel (for 10 years), living off the earnings of sex work, and dealing in cocaine. In

The sex worker respondents also reported sometimes coming across girls that they believe are under the age of 18 in the industry, but mostly feeling helpless to do much about it.

November 2016 the three men were sentenced; the main accused received a sentence of 35 years in prison, while his two accomplices each received 25.⁷⁵

The sex worker respondents also reported sometimes coming across girls that they believe are under the age of 18 in the industry, but mostly feeling helpless to do much about it. The young people often maintain that they are selling sex by choice, and they taunt the older sex workers, accusing them of being jealous because they cannot attract as many clients as when they were younger. If the older sex workers try to raise this concern with their brothel-owners/managers/pimps, they are simply told that the industry needs the girls for business, and are threatened with eviction if they pursue the matter further. Not wanting to risk their livelihoods (through an eviction or police raid) they are forced into silence. This further illustrates the extent to which criminalisation creates helplessness and unwillingness amongst concerned sex workers to report such cases.

⁷⁵ N Nxele, 'Three men found guilty of human trafficking, running Durban brothel', *SABC News*, 21 November 2016, <http://www.sabc.co.za/news/a/fba637004f0d25119b269f7f40da976a/Three-men-found-guilty-of-human-trafficking,-running-Durban-brothel—20161121>.

Touws River Case

Asijiki Coalition coordinator Constance Mathe related a few cases in which sex workers' clients had reported suspected trafficking to them. She also recalled a case in 2015, whereby a known gang leader in a place called Touws River (in the Western Cape Province) helped them rescue sex workers' children from traffickers. This was after the mothers had initially tried to report the kidnapped children to the police. However, the police had simply arrested them for being sex workers.

SWEAT/Sisonke peer educators and WLC paralegals managed to get the two women released on bail. They then went on to report the kidnapping to the 'ringleader' of a feared local gang, who has good relations with sex workers in the area. When they reached the house where the children were being kept they found the two children, aged 13 and 15, and another girl, also aged 15. The girls were visibly drowsy from being forced to take drugs, and before releasing them the traffickers threatened Mathe and her colleagues with guns:

Ayi, I almost died that day. They locked us inside the house, because we went there as like, 'No we just came here in peace; we just want to provide the safer sex material' [...] They said they can kill us immediately. Do we know what we're doing or what we're trying to do and stuff and everything. And then luckily they didn't know that we came with the ringleader of the gangsters, who was still outside answering the phone. Then he came inside; that's when we got released. So sometimes, as I said, it's not that all the gangsters or pimps are bad. There are good pimps who protect the girls, because the police failed; they didn't go into that area.

All the SWEAT and Sisonke respondents agreed that criminalisation hindered sex workers' ability to report cases of human trafficking in the industry, and to effectively respond to these cases. However, as this case shows, when it comes to helping their peers, sex workers come up with creative ways to address injustices, such as teaming up with local gangsters.

All the SWEAT and Sisonke respondents agreed that criminalisation hindered sex workers' ability to report cases of human trafficking in the industry, and to effectively respond to these cases.

Sediba Hope Case

In February 2017 the Sediba Hope Medical Centre in Pretoria reached out to NGOs that work with sex workers when they suspected that their health facility was being used to screen potential human trafficking victims. The medical centre provides

primary healthcare services to both privately paying patients as well as donor-funded at-risk populations, such as sex workers.

The Centre's company executive officer Vanessa Hechter recounts how it all began:

On 27 February, we were approached by a man and a woman with a list of names of young girls, who said to us—at our community clinic that's located on the ground floor—and [they] said that [they were] bringing us a list of names of girls who were going to come the following week to get an HIV test done, as well as a pregnancy test, as an employment requirement. And we were then to do those tests and give the girls their results in a closed envelope, and then the girls would return back to him. So immediately then my staff realised there could be a problem here because we don't get such requests. People who come to our clinic come on a voluntary basis for an HIV test or any primary healthcare services, so already there was a red flag.

When the women started arriving they were always accompanied by a female chaperone. The women explained that they had received a WhatsApp message telling them to come for the tests as part of a job application process for positions as long-distance bus hostesses. The only criteria were that they had to be between the ages of 19 and 25, light in complexion, with a slim body, and have an HIV and pregnancy test done.⁷⁶ Even though the job advert mentioned regional/cross-border travelling, no passport or identity document was required. Once they had their test results, the women were to email them together with two colour photographs of themselves. They had also been given different addresses for the follow-up interviews. The women reported having been recruited at a local church by a Congolese woman, on behalf of a Ghanaian pastor.

Suspecting that this could be a human trafficking case the medical centre approached the Wits Reproductive Health Institute (WRHI), a partner NGO that operates from the centre. WRHI then referred the case to Sonke Gender Justice and SWEAT. Donna Evans from Sonke described what then transpired as follows:

So Vanessa contacted me indicating that she believed that they might have had an issue that needed some further investigation. She was after some support on how to progress those inquiries. I then put out a summary of the situation to a number of sources and requested help in identifying options; Sally Shackleton at SWEAT, to Marlise Richter of Sonke Gender Justice, to Women's Legal Centre, etc. So at that point

⁷⁶ The women had been asked to purchase their own pregnancy test kits.

we sort of escalated it out and Sally in fact made an enormous effort to try and track down options on how to proceed.

SWEAT then liaised with Sonke Gender Justice and WLC on the case. Attempts were initially made to contact the International Organisation for Migration (IOM), but they were told that IOM only deals with foreign nationals. Shackleton explained:

The people trying to traffic the women were foreign nationals but the women were South African, so they couldn't get involved. A21 and IOM also can't. [...] And the Department of Social Development, who I called, who are members of the Anti-Trafficking Provincial Task Team—can't get involved directly. The police have to deal with it and then they are brought in afterwards.

It was actually A21's SA National Human Trafficking Resource Line that provided SWEAT with the relevant contacts at DSD. DSD then forwarded the case to DPCI's (the Hawks) anti-trafficking task team. SWEAT stressed that the police should not target sex workers attending the clinic, and that the investigating officers should not come in uniform, as this could scare sex workers away from the health facility. This was adhered to: two plain clothed female Hawks came to take the women's statements.

This demonstrates the level of sensitivity and caution that collaborating with sex worker rights' groups brings to such cases, which is required when investigating possible human trafficking. However, when Shackleton (and I) tried to follow-up with the case, or get in contact with the Hawks' investigating police officers, we were informed by DSD and the Human Trafficking Resource Line that because the case was still under investigation they could not discuss its progress with us.⁷⁷ Although the need to maintain sensitivity when investigating a possible human trafficking case is understandable, this lack of reciprocity in information sharing is frustrating and makes it difficult for sex worker groups to trust anti-trafficking government units or NGOs.

With that said, Remba and Shackleton reported a positive working relationship with the National Human Trafficking Resource Line. Although the Resource Line's call specialist was also not allowed to discuss this case, they were permitted to speak more generally about human trafficking in the country based on their call trends. They confirmed that false job prospects in the city were often used to entice and coerce vulnerable people into trafficking, in some cases by friends:

⁷⁷ April and May 2017 email correspondence with DSD and A21's resource helpline.

Vulnerability is one of the main aspects victims have in common to being trafficked. The main pattern that we have identified is false job opportunities. For example, a potential victim would live in Johannesburg, become friends or acquainted with a person—we call a recruiter—who has identified him/her. The recruiter would build a relationship with the potential victim, and through that relationship they would offer a false job opportunity by saying; ‘come to Cape Town we’ve got a job for you.’

The call specialist also pointed out lack of education as one of the main contributing factors to being vulnerable to trafficking, and noted that drugs were often used to subdue and maintain control over the victim. When asked if the Resource Line often receives calls, which relate to human trafficking for sexual exploitation purposes, they replied:

Yes, we have come across a lot of cases where victims are forced into prostitution. This form of trafficking we call sex trafficking, where the victims would have no choice working in the industry.

According to the same respondent, during the period of January to April 2017, nearly 40% of their calls were potential cases of ‘sex trafficking’, about 5% accounted for ‘labour exploitation’, 18% for ‘child trafficking’, 1% ‘organ trafficking’, and the remaining 36% where ‘other/not specified’ forms of trafficking.⁷⁸ Approximately 92% of their cases involved women, and 17% minors, which they referred to DSD as the Resource Line does not work directly with children.

⁷⁸ These statistics were confirmed by A21’s South African National Human Trafficking Resource Line January – April 2017 quarterly report, which the respondent made available after the interview.

Conclusions and Recommendations

The conflation of sex work with human trafficking creates challenges when trying to address trafficking in the sex industry. It not only makes it difficult to effectively identify and deal with cases of trafficking in the industry, but also alienates sex worker rights and anti-trafficking activists. The notion that supporting sex workers' access to human rights automatically makes you pro-trafficking, or that fighting human trafficking means you are anti-sex work, is fundamentally flawed. Naturally, sex worker rights activists are also against human trafficking, as it violates sex workers' human rights. Therefore, a more constructive model of understanding is needed; a model that makes a clear distinction between human trafficking and sex work, and also recognises sex workers and sex worker rights organisations as allies in the fight against human trafficking.

SWEAT and Sisonke's collaboration with A21's Human Trafficking Resource Line on the Sediba Hope Medical Centre's suspected human trafficking case illustrates how even though in the public domain there has been a conflation of trafficking and sex work, and this has created ideological differences between sex worker rights advocates and anti-trafficking organisations, when it comes to their daily operations these organisations have a shared commitment to rooting out trafficking, and have been able to work together. Furthermore, as demonstrated by the Durban trafficking case, sex workers (specifically peer educators) are best positioned to notice signs of human trafficking. Such insights coupled with their desire to rid the sex industry of all forms of violence, coercion and exploitation, makes sex workers essential allies in fighting human trafficking, which means they have to be given far greater roles in anti-trafficking efforts.

Although human trafficking does take place in South Africa's sex work industry, other forms of human right violations, such as police abuse and labour exploitation, are far more prevalent. In addition, some of these violations might have elements of trafficking, such as coercion or deception, but do not fit neatly into the legal definition of human trafficking. This does not mean that human trafficking in sex work should be ignored, but rather that policies and interventions should take into consideration sex workers' rights and well-being in an all-inclusive manner. This would also help identify and address more common, even if less sensationalistic human right violations, such as long working hours, non-payment of wages, and violence from clients or intimate partners.

However, criminalisation makes such strategic partnerships and holistic approaches to exploitation in the sex industry difficult. This legal model has also proven unhelpful in combating trafficking or child sexual exploitation in the sex industry. Instead, it makes it dangerous for sex workers to report such cases, as they fear workplace

raids, and/or being arrested by police themselves for selling sex.

To remedy this, sex worker rights organisations should be recognised as important stakeholders in combating human trafficking in the sex industry. SWEAT, Sisonke, and their partner organisations are willing to play this role if provided with sufficient resources and appropriate training. They suggested that a single point of reporting was needed to capture trafficking cases, and the National Human Trafficking Resource Line was often cited as a suitable platform. The Resource Line's call specialist also agreed to this. The draft *Counter Sexual Exploitation in Sex Work Protocol* can be used as a starting point in developing a more comprehensive referral system.

Thus in collaboration with the participants in this study, this report makes the following recommendations:

To the South African government:

1. Decriminalise all aspects of consensual adult sex work, while retaining the existing provisions against human trafficking, kidnapping, rape, child sexual exploitation, and related crimes;
2. Recognise sex work as work and regulate it through existing health and labour laws, so that sex workers have access to labour rights and measures to seek redress for any rights violations;
3. Train law enforcement and other relevant agencies on the distinctions between human trafficking and sex work, and sensitise them in respectfully dealing with sex workers;
4. Devise and implement socio-economic programmes that provide opportunities to those who wish to leave the sex industry and, more broadly, better economic opportunities for marginalised people.

To anti-trafficking organisations:

1. Stop the conflation on sex work and human trafficking and the use of sensationalistic images, unsubstantiated claims, and inflated numbers to promote an anti-sex work agenda;
2. Recognise sex worker rights organisations as essential partners in identifying and addressing human trafficking in the sex industry;
3. Establish/improve cooperation with sex workers rights organisations to help in identifying and addressing human trafficking in the sex industry.

To international organisations and donors:

1. Recognise the transformative and empowering effect that organising has on the rights and well-being of sex workers;
2. Support, through funding, advocacy and other resources, the organising among sex workers as a way of enabling sex workers to take control of their lives;
3. Ensure that the supported anti-trafficking initiatives do not have negative impact on the lives of marginalised groups, such as migrants and sex workers.

To sex worker rights organisations:

1. Review and rework the draft *Counter Sexual Exploitation in Sex Work Protocol* into a basic manual or leaflet with a simple breakdown of what steps to take when one comes across a suspected case of human trafficking, and the contact details of emergency referral systems;
2. Work with A21's South African National Human Trafficking Resource Line in establishing an emergency referral system/network with anti-trafficking NGOs and government units;
3. Collaborate with the National Human Trafficking Resource Line in training peer educators in safely identifying, documenting and referring cases of suspected human trafficking.

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Sex workers and their allies protest against the criminalisation of street based sex workers, 15 February 2014, Madrid. Photo credit: Johannes Mahn

SPAIN

Chus Álvarez

Legally speaking, prostitution¹ remains a grey area in Spain: while the buying and selling of sex are not criminal offences, municipalities are free to create their own regulations which are then used to target street-based sex workers under the guise of public safety. So far sex workers have not seen any progress in the recognition of their rights, although many agree that it is better not to have any regulation than having regulations that affect them negatively.

While there is a national alliance of sex worker rights organisations, most of the advocacy work and the services provided to sex workers are focused locally and done by organisations such as Hetaira in Madrid and Genera in Barcelona. Both of them were part of this research, along with the Feminist Group of Sex Workers (AFEMTRAS), and Sex Professionals Association (APROSEX), which are two self-organised groups of sex workers in Madrid and Barcelona respectively.

Most of the sex workers participating in this research are engaged with self-organising at different levels. Their voices show clearly how self-organising has empowered sex workers, allowing them to improve their working conditions, to face abuses and to advocate for their rights.

The anti-trafficking discourse in Spain is beset by an ideological divide over prostitution in which different concepts are used interchangeably. Prostitution is conflated with sexual exploitation and human trafficking, creating stereotypes that directly affect sex workers. As a result, sex workers and their organisations are stigmatised, misrepresented and, in many cases, criminalised. At the same time, this conflation means that anti-trafficking work is focused specifically on trafficking for the purpose of sexual exploitation, at the expense of assisting people trafficked in other labour sectors.

¹ The terms sex work and prostitution have been used interchangeably in this chapter because this is how Hetaira—the partner organisation in the research—uses it. Hetaira uses a variety of terms when talking about sex work and they do so for two reasons: 1) not all the women working in prostitution call themselves sex workers; and 2) they try to lift the stigma on the traditional terms by using them more often.

The human trafficking discourse is used to target the sex industry and, therefore, sex workers and the organisations that work with them. Sex workers' rights groups have seen how the anti-trafficking framework has not helped to identify the ways in which sex workers experience exploitation, or to fight abuses in the industry. On the contrary, it has served as a tool for stigmatisation and harassment against them.

Hetaira's stance on sex workers' rights is costing them dearly: the organisation has been refused membership in the Spanish anti-trafficking network twice; it has been subjected to insults; and finds it increasingly difficult to access funds and public spaces to keep defending sex workers' rights. Nevertheless the organisation is strong, maintains a discourse based on evidence, and is creating alliances with movements and organisations in defence of human rights for each and every person working as a prostitute.

This research reinforces the need for society to listen to sex workers in order to find new approaches when talking about and dealing with prostitution, and how protecting and respecting sex workers' human rights must be at the core of these approaches.

Introduction

Socio-economic and Political Context

Spain is a shared peninsula with Portugal, located at the crossroads between Europe and Africa. Its geographic location—just 14km by sea from North Africa—and the fact that it has two enclaves on the North African Coast, Ceuta and Melilla, have made Spain one of the southern gateways for migration from Africa to Europe.

Spain is classified as a high income country,² and is placed very high in human and gender development rankings³ in terms of living standards, gross income per capita, life expectancy, education, and gender equality. However, there is also considerable income inequality, with the twenty richest Spanish people having the same wealth as the poorest 20%.⁴ This inequality is particularly evident among migrants: the poverty rate among them reaches 31% — 12 percentage points higher than that among Spanish-born population.

Spanish modern history is marked by the Civil War of 1936-39 and the subsequent 36-year dictatorship which has still not been officially condemned in the country. After dictator Franco's death in 1975, Spain made the transition to a democratic state. This process has largely been admired as an exemplary one for looking forward and burying the past. However, it should be noted that most of the political cadres that supported the dictatorship remained within government institutions, such as ministries, police forces and the Supreme Court.⁵ Thus the country inherited several elements of the previous regime: ideological conservatism, a strong influence of the Catholic Church on the government, corruption, and impunity for those in power.

Nevertheless, Spain has made some progressive social reforms: divorce was legalised in 1981, and marriage between same-sex couples in 2005. In a country with an

² High income countries, as per The World Bank, are those with a national income per capita equal to or greater than USD 12,476.

³ See: UNDP, *Human Development Report 2016*, UNDP, 2016, pp. 198, 210 and 214, available at http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf.

⁴ Intermon Oxfam, *Gobernar para las élites; secuestro democrático y desigualdad económica. Reflexiones sobre España*, 2014, p.2, retrieved June 2017, <http://www.pensamientocritico.org/OxfamII0214.pdf>.

⁵ D Barcala, 'Los altos cargos del franquismo que acabaron mandando también en democracia', *El diario*, 2015, retrieved June 2017, <http://desmemoria.eldiario.es/cargos-en-democracia/>.

exaggerated sense of *machismo*, women's position in society has advanced considerably, rating the country in 2016 with a Gender Inequality Index of 0.081.⁶

Spain joined the European Union (EU) in 1986 and was a founding member of the Eurozone in 1999 which enabled it to integrate into the international community after a long period of relative isolation. EU membership has helped the country to open its economy, modernise its industrial base, and revise economic legislation to open its previously protected markets to foreign competition. Until 2009, the Spanish economy was one of the most dynamic in the EU and its growth inverted the traditional emigration pattern of the country, becoming, within a few decades, one of the countries with the highest net immigration globally: from less than 500,000 immigrants in 1995, to around 6 million today, or 14% of the population.

In January 2009, the bursting of the housing bubble threw Spain into a severe recession for the first time since 1993. The rise in unemployment that began with this crisis, continued until it reached its peak in April 2013 with an unemployment rate of 27.2% among the Spanish-born population, and more than 35% among migrants. By the fourth quarter of 2016 the unemployment rate had recovered somewhat to 18.6%, but was still the second highest in the EU after Greece.

Spain used to have a universal healthcare system in which every person registered in the municipal census, regardless of nationality and migration status, had access to public health care benefits. However, in 2012 the Ministry of Health amended the law, restricting access to services for both nationals and foreigners.⁷ Three years later, after acknowledging the detrimental effects of the approved policy, the government reversed the amendments. However, today migrants continue to be excluded from universal healthcare: either because of the prevailing chaos and conflicting information since the change, or because they cannot meet the administrative requirements for accessing a health card.⁸

⁶ This index is a composite measure which captures the loss of achievement within a country due to gender inequality. It uses three dimensions: reproductive health, empowerment, and labour market participation. The values of GII range between 0 and 1, with 0 being 0% inequality, indicating women fare equally in comparison to men, and 1 being 100% inequality, indicating women fare poorly in comparison to men.

⁷ Royal Decree 1192/2012 of 3 August, which regulates the status of insured and beneficiary for healthcare purposes in Spain through the National Health System, available at: <https://www.boe.es/buscar/doc.php?id=BOE-A-2012-10477>.

⁸ Médicos del Mundo, *Dos años de reforma sanitaria: más vidas humanas en riesgo*, MDM, 2014, retrieved June 2017 <https://www.medicosdelmundo.org/actualidad-y-publicaciones/noticias/dos-anos-de-reforma-sanitaria-miles-de-vidas-en-juego>.

A report by one of the main trade unions in Spain, UGT, shows how labour reforms and cuts have especially affected women, resulting in more temporary, part-time, and insecure employment. In addition, the absence of equality policies continues to hinder women's access to leadership positions. Thus Spain's supposed economic growth and rising employment rates are not affecting women and men equally.⁹ Nevertheless, the crisis has had the effect of prompting immigrant women who were previously inactive in the paid labour market to seek employment which has reduced the employment gap between migrant women and men.¹⁰

In Spain, most women are employed in only a few economic sectors. In 2016, more than half of women workers (52%) were grouped in four of the twenty-one categories distinguished by the National Institute of Statistics: retail (18%), health and social services (13.8%), education (10.2%), and hospitality (10%). Women make up more than 70% of staff in the cleaning and housekeeping services (90.4%), health and social services (80.2%), and education (71.3%), all of which generally pay lower salaries. This phenomenon, known as occupational segregation, culminates at the very top where amongst CEOs only 9% are women,¹¹ and contributes to the gender wage gap, placing Spain in the 29th position among 144 countries.¹² However, these differences are fuelled by other fundamental reasons: the unemployment rate for women is 20.5%—more than three points above that of men¹³—and 24.8% of the working women have part-time jobs, compared to 7.9% of working men.¹⁴

Sex Work in Context

Prostitution is frowned upon because it offers sexual and economic independence to women.

Ninfa, sex worker

⁹ Unión General de Trabajadores, *En pie de igualdad*, UGT, 2016, retrieved June 2017, <https://www.scribd.com/document/302667179/Informe-8-Marzo-2016-Ugt>.

¹⁰ Colectivo Ioé for IOM, *Impactos de la crisis sobre la población inmigrante*, 2012, p.6, retrieved June 2017, <https://www.colectivoioe.org/uploads/0bae582aa3b0842a9eaf50cde16f4f97d9527bcb.pdf>.

¹¹ G S Hora, *Where are the Female CEOs. A Global Study: Myths & reality*, retrieved July 2017, <http://www.ircsearchpartners.com/thought-leadership/where-are-women-ceos-myths-and-reality/>

¹² World Economic Forum, *Global gender gap report 2016*, retrieved July 2017, <http://reports.weforum.org/global-gender-gap-report-2016/economies/#economy=ESP>.

¹³ Spanish Statistical Office, *Unemployment rates by sex and age group*, data as for March 2017.

¹⁴ Spanish Statistical Office, *Workers by type of workday, sex and age*, data as for March 2017.

Prostitution is generally tolerated in Spain, but at the same time evokes reactions ranging from feelings of pity to disdain for those engaged in it.

At present, there is almost no statistical information about sex work and it remains a poorly quantified sector in Spain. Sex worker rights organisations claim that the bulk of it occurs in brothels and apartments. Street-based sex work occurs mainly in large cities such as Madrid and Barcelona or in regional capitals such as Seville, Valencia or Bilbao. The stigmatised and clandestine nature of

At present, there is almost no statistical information about sex work and it remains a poorly quantified sector in Spain. The only available figures are estimates, which are often manipulated to support an ideological agenda, rather than to show reality as it is.

sex work hinders the production of reliable data that could define where it is located, how many people are engaged in it, or their nationality. The only available figures are estimates which are often manipulated to support an ideological agenda rather than to show reality as it is.

According to the Ministry of Health, Social Services and Equality, there are an estimated 45,000 sex workers in Spain,¹⁵ while both the media and some civil society organisations have been claiming for years that the number is 300,000¹⁶ and between 80% and 90% of them do so against their will.¹⁷ However, there are no reliable studies to support these figures. What we can definitively say, based on the work of the sex worker organisations and the interviews conducted in the present research, is that people who engage in sex work freely and voluntarily are a reality that cannot be ignored.

¹⁵ Ministry of Health, Social Services and Equality, *Comprehensive Plan to Combat Trafficking in Women and Girls for the Purposes of Sexual Exploitation 2015-2018*, p. 37, retrieved July 2017, http://www.violenciagenero.msssi.gob.es/otrasFormas/trata/normativaProtocolo/planIntegral/DOC/Plan_Trata__2015_2018.pdf.

¹⁶ A Fotheringham, 'Spain, the world capital of prostitution?', *The Independent*, 5 December 2010, retrieved October 2017, <http://www.independent.co.uk/news/world/europe/spain-the-world-capital-of-prostitution-2151581.html>.

¹⁷ G Altares, 'El PIB de la esclavitud sexual', *El País*, 8 July 2014, https://elpais.com/sociedad/2014/07/04/actualidad/1404495394_132206.html; M Muradas, 'El 90% de las prostitutas son víctimas de la trata con fines de explotación sexual', *Diario de Sevilla*, 23 March 2010, http://www.diariodesevilla.es/sevilla/prostitutas-victimas-trata-explotacion-sexual_0_353065364.html; ABC, 'Ocho de cada diez mujeres que ejercen la prostitución en España lo hacen contra su voluntad', *ABC*, 18 September 2015, retrieved September 2017, <http://www.abc.es/sociedad/20150918/abci-mujeres-obligadas-prostitucion-201509181643.html>.

While there is a national alliance of sex worker rights organisations, most of the advocacy work and the services provided to sex workers are focused locally and done by organisations such as Hetaira in Madrid or Genera in Barcelona. Both of them were part of this research, along with the Feminist Group of Sex Workers (AFEMTRAS), and Sex Professionals Association (APROSEX) that are two self-organised groups in Madrid and Barcelona respectively, entirely formed by sex workers.

Legislation on Sex Work and Human Trafficking

The regulation of prostitution in Spain has undergone several modifications in the past two decades.¹⁸ In 1963, the Penal Code was amended to bring it in line with the UN Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others (1949), and defined sex workers as victims of sexual exploitation. Clients were considered their exploiters, and thus purchasing sex was criminalised, ignoring any difference between consensual and forced sex work. In 1995, the Penal Code was amended again,¹⁹ decriminalising the buying and selling of sexual services, as well as the management of prostitution by third parties as long as these activities were conducted voluntarily. In 2003, another modification established criminal liability for those who obtained benefits from the prostitution of others, even with their consent.

Politically [prostitution] is not appealing because it doesn't ensure votes. There is a lot of abolitionist pressure from the media and politicians are scared. You gotta be brave to tackle the issue.

Silvia García and Elisa Arenas, Hetaira activists and staff members

In February 2006, the Parliament adopted a decision establishing a special committee in order to prepare a report on the status of sex work in Spain, including an analysis of legislative options. The Special Committee adopted an abolitionist position, recommending an 'end demand' approach, combined with providing legal and social support to 'prostituted persons'.²⁰ It rejected the possibility of regulating sex work,

¹⁸ For a historic review of the legislation, see B Curiel, *Prostitución y políticas públicas: entre la reglamentación, la legalización y la abolición*, Fundación Alternativas, 2008.

¹⁹ Organic Law 10/1995, 23 November 23 1995, Chapter V: crimes related to prostitution, sexual exploitation and corruptions of minors, available at http://noticias.juridicas.com/base_datos/Penal/lo10-1995.l2t8.html.

²⁰ Comisión Mixta de los Derechos de la Mujer y de la Igualdad de Oportunidades en las Cortes Generales, *Informe final de la Ponencia sobre la prostitución en España*, 2007, http://www.lourdesmunozsantamaria.cat/IMG/pdf/INFORME_PONENCIA_PROSTITUCION.pdf.

claiming that it would clash with legislation on labour law and gender equality, and with the fundamental principle of equality recognised in the Constitution. The report also underlined the need to strengthen the implementation of legislation to combat trafficking in persons for the purpose of sexual exploitation. Since the publication of the report, prostitution has remained a grey area legally, and those who exercise it have not seen any improvement in their situation. In fact, the 2004 *Law on Comprehensive Protection against Gender Violence* left sex workers out of its protection by referring exclusively to violence against women within intimate relationships similar to marriage. An amendment introduced in 2010 reinforced the protection of minors and included a new section specifically devoted to trafficking in persons.

While the buying and selling of sex are not criminal offences, municipalities are free to create their own regulations, which are then used to target street-based sex workers under the guise of public safety.

A comprehensive plan against human trafficking, approved the same year, focused exclusively on human trafficking for sexual exploitation.²¹ In 2011, in order to foster coordination of authorities in the identification, protection, and care of victims of trafficking, the *Framework Protocol on the Protection of Victims of*

Trafficking in Human Beings was adopted,²² followed in 2015 by a new plan to combat trafficking in women and girls for sexual exploitation.²³ Other purposes of exploitation, besides labour and sexual, were added to the Penal Code only in 2015.

Currently, the buying and selling of sex by adults is not a criminal offence, but third parties and living off the proceeds of sex work are. It is also legal to have an establishment where prostitution takes place as long as sex workers are adult, independent and not coerced, and the owner does not obtain economic benefits from their work. It is thus illegal to establish work contracts for prostitution, and labour legislation does not apply to sex workers. However, several tribunals have recognised some activities related to prostitution as labour relations, such as the

²¹ Ministry of Health, Social Services and Equality, *Comprehensive Plan against Human Trafficking*, 2010, available at http://www.aulaviolenciadegeneroenlocal.es/consejoscolares/archivos/Plan_integral_contra_trata_serres_humanos.pdf.marco/docs/protocoloTrata.pdf.

²² Ministry of Health, Social Services and Equality, *Protocolo marco de protección de las víctimas de trata de seres humanos*, 2011, available at <http://www.violenciagenero.mssi.gob.es/ca/otrasFormas/trata/normativaProtocolo/>.

²³ See footnote 15.

solicitation of clients for the consumption of beverages.²⁴ Specifically, administrative and even criminal sanctions have been imposed on these establishments for ignoring the obligations derived from social security or labour rights, but not for exploiting prostitution.

In 2015, a controversial law, the Organic Law 4/2015 of 30 March, for the protection of Citizen Security, also known as the Gag Law because of its repressive nature, was promulgated. The law mentions specifically prostitution in article

The Gag Law criminalises prostitution in certain places at the national level and is used to harass sex workers.

36.11. It penalises the request and acceptance of paid sexual services when they occur in public areas nearby places intended to be used by minors, such as educational centres, playgrounds or parks, or when these behaviours, wherever they occur, can create a risk to road safety. The police require the persons who offer these services to stop doing so, informing them that failure to comply may constitute civil disobedience or resistance to authority—a catch-all article that makes invisible the real number of fines imposed to sex workers since they are mixed with all other fines. This Act criminalises prostitution in certain places at the national level and is used to harass sex workers. Some municipalities are not applying it, but Madrid does and very forcefully punishes sex workers.²⁵

We are categorically against the citizen security law in these terms... We find absolutely contradictory a governmental discourse that states that a high percentage of women in prostitution are victims of trafficking, but passes a citizen security law that instead of having an approach that helps to identify those victims and to guarantee their human rights, mainly deals with matters of public order disruption and fines.

Marta González, Proyecto Esperanza Coordinator

²⁴ Among others, see judgement of the Supreme Court no.1390/2004 (22 November 2004), and judgement of the High Supreme Court of Murcia no. 284/2012 (16 April 2012) which established that this activity, provided that the elements of payment, dependency and fixed time are present, can be considered as a working activity in order to protect the rights of workers, convicting the brothel owner for not having issued working contracts and social insurance.

²⁵ Colectivo Hetaira, *AFEMTRAS y Hetaira denuncian abusos policiales en el Polígono de Villaverde contra las prostitutas*, 2016, available at <http://www.colectivohetaira.org/WordPress/afemtras-y-hetaira-denuncian-abusos-policiales-contra-las-prostitutas-en-el-poligono-de-villaverde/>.

In addition, municipalities create their own specific regulations which can be used by the police to control and harass (especially) street-based sex workers for example bylaws relating to ‘public nuisance’. Prior to 2006, prostitution was not prosecuted at municipal level but after the first municipal ordinance was passed in Barcelona²⁶ other municipalities followed. As Janet, one of the sex workers from Barcelona interviewed for this research, explained: *The actual purpose (of the ordinance) was to carry out street cleansing (...) it was not aimed at the sex industry, but against the precarious, the poor, the ignorant, and the migrant. It has mainly been used to get rid of the street workers while at the same time was giving licenses to new leisure facilities for the business elite.*

Subsequently, in 2011, the City Council of Barcelona approved regulation that prohibited the *inappropriate use of public spaces*, which included sex work activities too. This law allowed the police to fine both sex workers and their clients. In 2015, after the leftist party *Barcelona en Común* became the largest party in the city administration, a new regulatory framework, designed with the participation of sex workers, finally put a stop to the fines.²⁷ The removal of fines in Barcelona has provided evidence that, on the one hand, prostitution sanctions do not have a

deterrent effect and, on the other, removing sanctions does not lead to an increase in the number of sex workers.²⁸

The removal of fines in Barcelona has provided evidence that, on the one hand, prostitution sanctions do not have a deterrent effect and, on the other, removing sanctions does not lead to an increase in the number of sex workers.

It is obvious that these ordinances are an example of ineffective public policy. None were designed to improve the safety of sex workers, although sex workers are exposed to high risks of

extreme violence and even death. Between 2010 and 2015, 31 sex workers were murdered in Spain, in most cases with extreme brutality. This figure is equivalent to 5% of all the femicides in that period. In 22 cases, the perpetrators were clients.²⁹

²⁶ Council of Barcelona, *Ordenanza de medidas para fomentar y garantizar la convivencia ciudadana en el espacio público de Barcelona*, 2006, <http://ajuntament.barcelona.cat/hisenda/es/ordenanza-de-medidas-para-fomentar-y-garantizar-la-convivencia-ciudadana-conv>.

²⁷ C Buesa, ‘Colau plantea eliminar las multas a las prostitutas’, *El Periodico*, 17 November 2015, retrieved July 2017, <http://www.elperiodico.com/es/noticias/barcelona/colau-plantea-eliminar-las-multas-las-prostitutas-4679554>.

²⁸ A L Congostrina, ‘Colau evita multar la prostitución callejera’, *El País*, 7 January 2017, retrieved July 2017, http://ccaa.elpais.com/ccaa/2016/12/31/catalunya/1483172309_482487.html.

²⁹ G Atencio *et al.*, ‘El feminicidio en el sistema prostitucional del Estado español 2010-2015’, *Feminicidio.Net*, 2016, <http://www.feminicidio.net/articulo/feminicidio-sistema-prostitucional-del-estado-esp%C3%B1ol-v%C3%ADctimas-2010-2015-31-mujeres>.

However, sex workers are not covered by the Law against Gender Violence due to the transactional relationship with the perpetrators.

Decriminalise, Abolish or Legalise

The three legal models—legalisation, abolition and decriminalisation—each have their proponents in Spain. Legalisation is supported by the National Association of Sex Work Venues (referred to in Spain as ANELA) and the Catalanian legislation.³⁰ This position proposes updating the old brothel legislation implemented as early as the end of the nineteenth century, which assumed that prostitution is a ‘necessary evil’ and that clients should be guaranteed safe sex, prostitutes registered, and street prostitution eradicated. The motivations of this model seem to be ensuring the economic benefits of prostitution and protecting clients, as opposed to protecting the rights of prostitutes. The abolitionist position is represented by some feminist associations with the support of some left-wing political parties. The abolitionist goal is to eradicate sex work in general since, according to their analysis, it involves the debasement of women. This position omits an analysis of the economic base that underlies sex work as a labour option, that is, that women decide to engage in sex work to earn an income and decide to do so in the face of alternatives that are less economically lucrative.

Both the legalisation and the abolitionist position fail to take into account the needs and wishes of sex workers themselves.

Both the legalisation and the abolitionist position fail to take into account the needs and wishes of sex workers themselves.

Sex worker rights organisations opt for a labour model which implies ‘depenalisation’. Hetaira argues that prostitution is not a crime in Spain, so it does not need to be decriminalised, and yet sex workers are being penalised under other regulations. Such an approach would remove these penalties, recognise sex work as work, regulate it under labour laws, and allow sex workers to demand better working conditions, or to pursue justice in cases of rights violations.

³⁰ A Laguna, ‘La regulación de la prostitución’, *Pensamiento Crítico*, March 2006, retrieved June 2017, <http://www.pensamientocritico.org/crigar0306.html>.

Methodology

Hetaira was the main partner in this research. It is the first feminist pro-rights organisation in Spain and through its work, has become a benchmark for sex workers' rights in the country.

The organisation participated throughout the process of the design and implementation of the research. An initial meeting was held in September 2016 to share the research goals and assess Hetaira's interest in participating. Subsequently, several Skype meetings were organised to inform them about the process and to hear their views about the work in the country. In these discussions Hetaira suggested that Genera, a sex worker rights organisation in Barcelona and a GAATW member, be included in the research. Although the research was mainly conducted in Madrid, the meeting in Barcelona allowed me to expand and enrich the national context. Most of the field work took place in February 2017.

Ten in-depth, semi-structured interviews were conducted, lasting between 45 minutes and two hours. In addition to these interviews, we organised two focus group discussions, which lasted between two and three hours. Participants were selected on the basis of their knowledge and experience with the organisation, but also their different positions within it to assure a variety of views. The purpose of the interviews was to document participants' views of the main issues affecting sex workers in Spain, the nature and impact of the anti-trafficking discourse and the strategies that sex workers and sex worker rights organisations employ to assist people who experience abuse and exploitation, including trafficking. Three categories of participants were interviewed:

1. Sex workers: a total of eleven sex workers were interviewed. Four of them participated in individual interviews: one cisgender woman and two transgender women from Ecuador, and one cisgender woman from Spain. In the focus groups, there were seven sex workers in Madrid—two of whom were also interviewed individually—and two in Barcelona. Out of these nine focus group participants, four were cisgender women—one from Ecuador, one from Uruguay and two Spanish—and five were transgender women from Ecuador. Throughout the report, reference will be made to the total number of participants as women, without distinction between trans and cis.
2. Organisational representatives: Mamen Briz, Hetaira co-founder and activist, Silvia García and Elisa Arenas, activists and employees involved in policy, research, operational roles, and direct assistance, and Johannes Mahn, activist, mainly involved with advocacy and international networks. At Genera, I talked to Anna Saliente and Clarisa Velocci, two long-term staff members.

3. Representatives of allied organisations: Marta González of Proyecto Esperanza³¹ and Mario Blázquez from the Lesbian, Gay, Transsexual and Bisexual Group of Madrid (COGAM). The purpose of these interviews was to elicit an external perspective on Hetaira's role in relation to responding to exploitation that sex workers can experience, and how they are perceived by other organisations.

All interviews with Hetaira and Genera staff and sex workers were conducted in their offices. The participants from allied organisations were interviewed in a private meeting room at their organisations' offices.

An information sheet was provided to all participants. It included project information, the contact details of the people involved in the research, the possibility to select a pseudonym to be used in the report and the consent form which were signed before the interviews.

I also visited the Industrial Park of Villaverde, one of the public spaces in Madrid where sex work is practised and where the women of AFEMTRAS work. This visit allowed me to have conversations with different sex workers and to listen to their concerns. Although at first the workers showed caution, their attitude became close and trustful when I was identified as collaborating with Hetaira, revealing the confidence that the organisation inspires among the workers. I also accompanied Hetaira to a meeting with the civic platform #nosomosdelito (a civil society platform to counter the abuses of the Gag Law). Here, I observed the organisation's alliances with other entities, and their capacity to create synergies with groups defending civil rights.

All interviews were conducted in Spanish and recorded. The quotes used in this report were translated to English by me and I humbly apologise to my interviewees if some of the authenticity of their language—sometimes angry, sometimes colourful and joking—is lost in translation.

All the data gathered was analysed and participants were invited to read and comment on the first draft report in order to ensure that their insights and views were accurately reflected.

The findings of this report cannot be considered representative of the wider sex worker population in Spain, due to the limited sample involved. Nevertheless, participants provided honest and in-depth insights to the empowering effect of self-organising and its role in addressing discrimination, stigma, and exploitation.

³¹ Support programme for women victims of human trafficking, part of the Congregation of the Sisters Adorers.

Finding

Background of Hetaira: Solidarity with sex workers

The first time we had a prostitute by our side telling us about her profession, I had the intuition that there were many more things uniting us than separating us.

Mamen Briz, Hetaira activist and co-founder

Hetaira is a national feminist pro-rights organisation that seeks the recognition of sex work as work. Being pro-rights means advocating for the recognition of social and labour rights of people engaged in prostitution. Hetaira acknowledges that prostitution occurs within a wider hetero-patriarchal system and therefore, feminists need to support the self-organisation of sex workers. Hetaira's mission is solidarity among women and the achievement of collective rights. Their aim is to improve the lives of those who work in prostitution and hence sex workers are the centre of the organisation.

With certain marginalised groups we tend to think that we are the ones having the answers. We wanted to be close to the places where the prostitutes worked, to know what they needed, what they wanted. Alone we could've done the wrong thing, but together we could create what prostitutes actually needed.

Mamen Briz, Hetaira activist and co-founder

Being pro-rights means advocating for the recognition of social and labour rights of people engaged in prostitution.

Hetaira was founded in 1995 but its history began years earlier when the feminist movement first mobilised against gender-based violence. Some of the women involved in this struggle started thinking how there were certain women with whom they

had no contact at all, and knew nothing about. In the case of sex workers, it was assumed that they were being abused because they were women and because they were sex workers. Therefore Hetaira organised a series of debates and panel discussions where, for the first time, prostitutes were invited to participate and share their experiences. They realised that, despite having different histories, there were many similarities in the sex workers' experiences of discrimination, exploitation and violence. They continued to meet with street-based prostitutes with the aim of developing an understanding of their lived realities and needs. Both sides were initially suspicious of each other and it took time to build rapport.

After two years of continuous work, Hetaira was created as a space to fight the ‘whore’ stigma³² that divides women into good and bad ones, and to promote a movement of solidarity with sex workers.

Hetaira is a very diverse organisation, comprising different professionals, including sex workers and academics, of different ages, nationalities and genders, all of whom contribute to a continuous exchange of ideas and perspectives. The majority of members are strongly motivated activists, although at the moment there are only two paid staff members.

In addition, Hetaira has created and strengthens alliances with the world of academia, LGBTI, queer and trans movements. Hetaira also has the support of individuals belonging to political parties and trade unions.

The Benefits of Organising

Prostitution is exercised in a very isolated way, with an individual experience of stigma and a lot of competition among workers. Self-organising creates a sense of collective and allows for collective empowerment; this enables everything else.

Elisa Arenas, Hetaira activist and staff member.

Self-organising is a process of collective education and learning in which people expand their knowledge and develop their skills through interaction with peers.

Supporting grassroots self-organising is the core of Hetaira’s work. Hetaira

reaches out to sex workers in their workplaces, but it is up to the sex workers to become involved with the organisation. This is a reciprocal process in which the most empowered women become engaged in Hetaira and, in turn, Hetaira identifies potential leaders among the community.

Self-organising empowers sex workers to be the protagonists of their own stories, allowing them to stand up and advocate for their rights.

³² ‘Stigma is an external mark from which social behaviour from a person or group is determined. This is the case with people who engage in sex work. By working as such, society deems it normal to deprive them of certain rights, they are devalued as persons and that prejudice stigmatizes them. It has a repressive function’, explains Dolores Juliano, an Argentine anthropologist and writer. Interview published in the newspaper *El País*, Spain, 20 October 2003, https://elpais.com/diario/2003/10/20/paisvasco/1066678810_850215.html.

Self-organising empowers sex workers to be the protagonists of their own stories, allowing them to stand up and advocate for their rights. As Rebeca, one of the interviewed sex workers stated, 'an organisation of sex workers allows them to be the ones who defend their own business'. Collective advocacy increases public awareness of the impact of stigma on sex workers, and the conditions in which they work. Self-organising also leads to increased self-esteem and self-care, which helps them to deal with abuses. This allows sex workers to deal with their feelings of guilt for being 'bad women' which follow them as part of the prostitution stigma.

Most of the sex workers participating in this study are women with a long history of self-organising to fight for their rights, and they have a strong feeling of belonging to something bigger than themselves. They highly value the support they receive from colleagues and from Hetaira. All these factors have a positive impact on their self-perceptions and their ability to respond to situations of aggression, abuse, injustice, and exploitation.

Being a whore has never been a stigma for me, I've never had to explain myself to anyone (...) I couldn't care less about being branded by society because society doesn't pay my bills.

Janet, sex worker

Hetaira recognises that self-organising has its challenges. At first, they were frustrated because sex workers were not as engaged as they had expected. However, they managed to understand and adapt, creating a permanent nucleus with the workers who are more involved, and maintaining a broader circle with those who participate occasionally.

The first group supported by Hetaira was the Montera Group in 2001. They took the name from a popular street in downtown Madrid where sex work takes place openly. An Ecuadorian sex worker leader wanted to organise her colleagues, and Hetaira asked what they needed. Another group of activists involved with Hetaira and defending their rights also since 2001, registered themselves as AFEMTRAS in 2015, in response to the police abuses under the Gag Law.

After forming our platform, we wanted politicians to say 'you know each other, let's meet up all those workers that are free and let you all register as sex workers, let's regularise this'. That is why we decided to form this organisation, to fight for our rights and those of many friends and colleagues while helping with the issue of human trafficking. But we are still invisible to the rest of the world.

Vera, sex worker from AFEMTRAS

On a more practical level, self-organising greatly improves working conditions: it gives sex workers the chance to talk with colleagues about their work, and ask each other questions about the profession (since prostitution is taboo, it is not easy to find information), care about each other, and increase safety through self-defined care strategies.

Self-organising greatly improves working conditions.

Challenges for Sex Workers in Spain

Stigma

Break the stereotypes: get a sex worker friend!

Focus group discussion

The stigma attached to earning a living as prostitute is the biggest problem faced by sex workers—they are stigmatised for being women who achieve their economic independence through the sale of sexual services. Religion, society and ideology aim to control the sexual behaviour of women and imbue the word ‘whore’ with pejorative meanings, establishing two classes of women—the good and pure ‘Madonna’ and the dirty, immoral and disposable ‘whore’.

Breaking the socially constructed stereotypes about prostitution would help dismantle stigma, and would allow sex workers to speak about what they do, without having to lead double lives.

When it comes to prostitution, we need to convince every person individually. With other issues, people come without preconceptions but in the case of prostitution, everyone brings their own prejudices.

Mamen Briz, Hetaira activist and co-founder

Stigma is deeply rooted and while policies do affect public perceptions, it does not disappear when laws and policies are changed. Indeed, some policies and interventions actually increase stigma. Most government campaigns repeatedly conflate prostitution with sexual exploitation, and aim to eradicate both as if they were the same thing.

It would be great to be able to identify where the basis of ‘whorephobia’ lies and how it influences public policies; to know what happened that sex workers are not considered citizens.

Mario Blázquez, COGAM

Breaking the socially constructed stereotypes about prostitution would help dismantle stigma, and would allow sex workers to speak about what they do, without having to lead double lives.

It is necessary to stand up. Other people did it earlier for other reasons. To take a step forward, you have to keep walking with your head held high.

Dayana and Viko Fetish, sex workers

To combat stigma, some sex workers consider it important to be open and show their face publicly although there may be consequences of openly identifying as sex workers.

The media are abusive and say whatever they want. They record us and show it on TV without our permission. As if one does not have a life of her own, an intimate life that should be lived intimately. And don't tell me that because I'm standing in that corner, I'm a prostitute and I get on TV. I've seen myself many times on television. They don't cover our face, they simply show us.

Catalina, sex worker

Stigma is especially grave for street-based workers. There is a hierarchy that positions street workers at the bottom, partly because they are the most visible, and thereby visibly challenging the established social conditioning. However, the street workers I talked to highly value the freedom of working in the street. It allows them to decide when to go or how long to stay, the services they are going to offer, to choose their clients and to support each other against police or client abuses.

Sex workers are workers who provide for their families, and citizens who contribute to the economy by paying taxes on the goods and services they buy. Ultimately, what should provoke outrage is that, as workers and citizens, they do not receive the same social and medical services as other citizens.

Sex workers are workers. Ultimately, what should provoke outrage is that, as workers and citizens, they do not receive the same social and medical services as other citizens.

If women's human rights are to be defended (...) then those of all women have to be defended, not just some and not the other.

Clarisa Velocci, Genera

Talking About us Without us

The most important thing is to be realistic. Try not to see what you want to see or what you think you see, but see what is really there.

Johannes Mahn, Hetaira activist

Both the media and the authorities talk *about* sex workers instead of *to* them. The interviewed sex workers shared several examples where their words have been misrepresented or what they said was taken out of context. The media manipulates reality to suit their agendas, and denies sex workers even the right to name themselves as they want. Sex workers find it increasingly difficult to find spaces where they can raise their voices, present their own reality and claim their rights.

Media never talks about the abuses of the police, this is a shame, we are suffering abuses and police humiliations but the media never talk about it.

Beyonce, sex worker

When a sex worker who does not fit the victim label imposed on her wants to share her experience and her perspective, she is dismissed as unrepresentative. This is especially evident with transgender women whose arguments are often dismissed as unrepresentative of women.

I am proud to be a sex worker, but I refuse to believe that just because I'm a transsexual I can't access other job options.

Dayana, sex worker

Finally, the voices of women who have suffered sexual exploitation are used to talking about prostitution without establishing a meaningful and rigorous differentiation between them. It is often contended that giving rights to sex workers would somehow take away rights and

The voices of women who have suffered sexual exploitation are used to talk about prostitution without establishing a meaningful and rigorous differentiation between them.

entitlements from victims of trafficking. This is a fallacy that only serves to pit one group of women against another and reduce the opportunities for feminist solidarity.

Public Policies

When sex workers are so strongly attacked, you ask them what is the main problem and they will respond that they want to work in peace. It's the same issue as 20 years ago, it's the same request. Except that before, the passing of certain ordinances seemed like a threat and now we are living it.

Mamen Briz, Hetaira activist and co-founder

Hetaira argues that penalising policies are not the biggest problem faced by sex workers, but they are certainly making everything more complicated and affecting their everyday life. As Mamen remarks 'sex workers are working in a very difficult context, with great helplessness. This situation relegated them to private spaces where they are not seen. When sex workers are no longer seen, people pretend they don't exist.'

In Madrid, there used to be streets with a significant concentration of apartments where sex workers worked, but since 2004 several measures have been implemented that have forced sex workers to work in more distant areas. Silvia García from Hetaira pointed out that 'women are forced to move to other places to work, but there is no response to their needs, nor a negotiation of safe spaces where they can work'.

Penalising policies not only fail to achieve their intended goals, but also increase the vulnerability of those they purport to protect.

More and more sex workers are working privately through the internet. Thus while sex workers' independence and earnings have increased, this has come at the expense of safety. In clubs, sex workers have alarm buttons under the bed and in the street they are surrounded by colleagues, but at home when meeting a client from the internet they are all alone.

As per the sex workers interviewed, penalising policies not only fail to achieve their intended goals, but also increase the vulnerability of those they purport to protect in two key ways. Firstly, the criminalised environment limits the time sex workers have to negotiate with prospective clients, both of which can result in them taking greater risks, for example, agreeing to riskier sexual practices. Secondly,

the fines cause a considerable reduction in their income, with some sex workers feeling compelled to move to other countries in order to work unhindered.

Still, the grey area in which prostitution remains in Spain has some advantages:

This legal limbo is not the worst, there are better models but there are also worse. This grey legal area makes sex work invisible but living in our society, where the stigma is so strong, this is an advantage. You are a prostitute and no one has to know. Sex workers do not have to expose themselves.

Johannes Mahn, Hetaira activist

The local government in Madrid, 'Ahora Madrid' (Spanish for 'Madrid now'),³³ has been insensitive to the needs of sex workers. Despite their commitment in their political programme *to develop policies in favour of the rights of prostitutes with their collaboration*,³⁴ they are simply continuing the previous victimising approach and the criminalisation of sex work without any critical questioning.

Economic Crisis

The economic crisis that hit Spain in 2008 has had a negative impact on the working conditions of prostitutes and has increased the precariousness of their work. The number of clients has declined and prices have fallen, which has led women to work more hours, see more clients, and be prepared to engage in riskier practices in order to maintain their income.

Abolitionist Movement

There is a well-meaning abolitionist speech towards women, but they consider them primarily victims and that causes prostitution to be approached from an unrealistic point of view regarding the different situations within it. Thus, either nothing is done to improve sex workers' conditions or, in the worst case, they are criminalised.

Elisa Arenas, Hetaira activist and staff member

The abolitionist discourse was not very strong when Hetaira was founded, but today it is the hegemonic position both within and outside government institutions.

³³ A party formed by the confluence of left-wing people, groups, parties and social movements which won the municipal elections in 2015.

³⁴ 'Ahora Madrid political programme', 2015, p. 35.

The abolitionist discourse has established an incomplete causality: it argues that women are trafficked because of the mere existence of a sex industry and if the industry disappears, trafficking will disappear.

Despite their good intentions, abolitionists promote the idea that sex workers are the ultimate victims of male exploitation without any capacity for individual thought or decision-making. The abolitionist discourse has established an incomplete causality: it argues that women are trafficked because of the mere existence of a sex industry and

if the industry disappears, trafficking will disappear. However, the reasons for human trafficking lie in deeper and more structural issues, such as poverty, lack of opportunity, lack of social protection, and restrictive migration policies. The abolition of the sex trade, or the criminalisation of sex workers or clients, will not address these conditions.

When abolitionism is brought to practice and takes the form of public policy, what it does is worsen sex workers' living and working conditions.

Silvia García, Hetaira activist and staff member

Participants from Hetaira agree with the abolitionist movement that prostitution is a patriarchal institution occurring in a patriarchal and neoliberal scenario, but Hetaira's starting point is what they can do within the current system to improve the lives of the women. The measures offered by abolitionists are generally 'rehabilitation', which is not only conceptually flawed but also ineffective given that there are few alternatives in very precarious labour sectors.

I work in the street because I earn more money than in other jobs and I determine my schedule. I choose the services I do and the clients I go with. The money I earn is mine.

Catalina, sex worker

As Elisa from Hetaira says, 'abolitionism denies systematically the different voices within prostitution and the existence of sex workers that are demanding rights. This is even more problematic when feminism is instrumentalised to that end.'

Training and Exchange of Knowledge

Sex workers mostly agreed that there is a lack information to guide those who decide to engage in sex work, for example, about the services they provide, prices

and working conditions, as well as a lack of social and psychological support, and information on more specific issues such as prevention of abuse, or the laws that could affect them.

I am a working-class whore because I work in the street, but we are no different from sex workers in other places. Each scenario has its own realities and the training we need should be focused on the reality of the place where we want to be (...)

Ninfa, sex worker

Sex worker rights organisations are the ones providing information and advice to women who start in the sector so that they know and understand their rights. As Paula Vip from APROSEX pointed out, ‘the professional must always hold the power because it is a relationship of money exchange.’

Organisational Challenges

Hetaira faces several organisational challenges, including loss of members to migration, an ideological offensive against it as a sex worker rights organisation, and funding challenges.

The difficulties which sex workers face due to relentless police harassment and fines have caused many sex workers to migrate to other European countries. The increasingly high mobility of potential leaders negatively impacts on the continuity and stability of self-organising, and weakens the movement.

More collaborative and coordinated work is needed among sex worker rights organisations as there is a strong offensive against them.

More collaborative and coordinated work is needed among sex worker rights organisations as there is a strong offensive against them. As organisations that support sex workers, they share the social stigma and face insults and defamation about the work they do, the funds they receive, or the motivations of their work. While Hetaira and Genera are members of a national pro-rights platform, the platform lacks effective coordination.

Alliances must be taken up. It is not only the sex worker organisation, but that each organisation of sex workers, from their own space (...) takes on the other sex workers' demands as their own. It generates a stronger and unified collective.

Clarisa Velocci, Genera

Hetaira has more than 20 years of experience working side by side with sex workers, and implementing best practice interventions to support sex workers' rights with very limited resources.

Hetaira's political position in defence of sex workers' rights usually prevents them from receiving funding from some government programmes. Instead of supporting organisations which implement programmes that improve the working conditions and human rights of sex workers, a lot of

resources allocated for prostitution and the fight against sexual exploitation are invested in 'awareness-raising' campaigns that stigmatise prostitutes.

Hetaira has more than 20 years of experience working side by side with sex workers, and implementing best practice interventions to support sex workers' rights with very limited resources. Economic constraints have forced Hetaira to stop providing some services which they previously offered, such as the support for women who wish to leave prostitution. Now these women have to be referred to other organisations where a whole new process of trust building has to start in order to receive quality assistance.

We have a lot of work, but we have no money. Our working conditions are very precarious and we can't implement all the ideas we have because of lack of funds.

Johannes Mahn, Hetaira activist

It is also important to note that sex workers organisations in the global north are often not considered for funding by international donors or specific funds for sex workers. There is an assumption that because they are located in wealthy countries, they have the necessary funds to exercise activism.

'Luxury bitch' ... I do not mind you calling me bitch, but I hate it when you talk to me about luxury because our situation in Europe is very precarious.

Clarisa Velocci, Genera

On Trafficking: Human trafficking as a reality and as a discourse

Since the 1990s, the rise in international migration has coincided with an increased concern about human trafficking. Originally, Hetaira considered that human trafficking was not their remit since their focus was the defence of sex workers' rights, and because they did not see instances of trafficking in the areas where they worked. However, due to the dominant abolitionist narrative, Hetaira is now compelled to understand and analyse the issue, get involved in the debate, and introduce an alternative analysis.

According to a 2010 UNODC report,³⁵ about 14% of women in prostitution are trafficked. This figure seems to be much closer to reality than the 90-95% that is often repeated by the police, politicians, media and social organisations. It also offers a further example of the contradictions between the official discourse on protection of victims, and the criminalising policies that have been implemented as anti-trafficking measures. Instead of identifying and assisting trafficked persons, authorities prosecute and fine sex workers, hampering the much-needed trust relationship between the police and prostitutes.

It is very funny that when we say that we do training, people assume that we train sex workers. We have to clarify that they are already very skilled, and that we train professionals to identify human trafficking because there is such confusion and stigma with prostitution, that same stereotyped narrative about human trafficking and prostitution is reproduced, and identification levels of human trafficking cases are very low.

Clarisa Velocci, Genera

A better reciprocal trust between sex workers and police could improve the anti-trafficking response since sex workers would be more inclined to report instances of abuse and exploitation to the authorities.

Participants in this research articulated that human trafficking as a reality, and human trafficking as a discourse, are two distinct issues that affect sex workers differently. The *crime* itself occurs in prostitution as it does in other labour sectors and obviously must be prosecuted, and the rights of trafficked persons must be protected. As far as the anti-trafficking *discourse* is concerned, they believe that it is being used to target the sex industry and, therefore, sex workers and the organisations that work with them.

Participants in this research articulated that human trafficking as a reality and human trafficking as a discourse are two distinct issues that affect sex workers differently.

In individual and group interviews, sex workers demonstrated a general understanding of what human trafficking is. They defined it as *capturing people, deceiving them and forcing them to do something*. They think that trafficking mainly

³⁵ UNODC; *Trafficking in Persons to Europe for sexual exploitation*, 2010, p.7, https://www.unodc.org/documents/publications/TIP_Europe_EN_LORES.pdf.

occurs in the indoor sex industry, although they were aware that in the street there are also cases of women who are coerced. In the areas where they work, most sex workers know each other so it is easy for them to recognise indications of trafficking. However, in the current legal regime, this would mean exposing themselves to the police and potentially to harassment and fines. They added jokingly that the police work along the same streets, and also know the workers. They too should be able to detect potential situations of exploitation, even more so than the sex workers, given their resources and capacity to act.

When sex workers organise to defend their rights, they are delegitimised by the abolitionists, and Hetaira and COGAM, as organisations that support them, have been called slaveholders and traffickers.

Mario Blázquez, COGAM

Being identified by the human trafficking discourse as victims irritates sex workers because it negates their personal realities and their ability to decide autonomously. In addition, individuals providing services to sex workers have been accused or slandered as traffickers. For example, a sex worker who used to earn extra money by bringing and taking the workers with her car to their workplaces was prosecuted for trafficking,

Anti-trafficking policies in Spain employ a definition of human trafficking which includes trafficking into all labour sectors, not just the sex industry. Nevertheless Spain focuses its anti-trafficking work on sexual exploitation.

although she was later acquitted because there was no evidence to support the case. In another case, a former client who used to sell snacks, soft drinks and water to street workers, was accused of trafficking. The case was shown on television as a case of sexual exploitation. In both situations the information was manipulated—for example notebooks in which the two accused kept accounts of

payments and debts were used to try to prove that they were exploiting sex workers.

Response to the Anti-Trafficking Discourse

Anti-trafficking policies have negatively impacted sex workers; they have been used to detect undocumented immigrants and to deport women. Migrant sex workers are counted in statistics as women at risk, but all that is done with these women is to deport them. In the end, these policies are a strategy to control female migration.

Silvia García, Hetaira activists and staff member

Anti-trafficking policies in Spain employ a definition of human trafficking which includes trafficking into all labour sectors, not just the sex industry. Nevertheless, and despite the recommendations of the *Group of Experts on Action against Trafficking in Human Beings (GRETA)* in its 2013 report,³⁶ in practice, Spain focuses its anti-trafficking work on sexual exploitation. In June 2017, GRETA again visited the country for its second round of evaluation of the country's implementation of the Council of Europe Convention on Action against Trafficking in Human Beings. The progress made in this respect is yet to be seen.

Some professionals [sex workers] do not want to know anything about the issue of trafficking, 'we are defending our rights, we are mistaken with trafficked women and on top of it we are asked to solve it' they say. At the same time, there are other professionals that consider that they are the best to intervene because they see and understand sex workers' reality.

Clarisa Velocci, Genera, and Janet, sex worker

Indeed, in 2008 and 2012 Hetaira applied to become a member of the Spanish anti-trafficking network but was rejected both times, despite fulfilling all the necessary requirements. While it did not receive any reasons for this rejection, the organisation suspects that it may be related to the fact that they work to support sex workers' rights.

Organised sex workers put a lot of efforts into challenging disempowering ideas about prostitution.

Despite these frustrations, Hetaira tries not to be adversarial with other organisations, and instead, aims to create alliances with organisations that can benefit the defence of sex workers' rights, which at the end of the day is its *raison d'être*. It participates in debates that critique the continued representation of women as victims, and in spaces where government representatives and public institutions can be influenced. As Mamen Briz said 'We go where the discourse on trafficking can serve and help us.'

Organised sex workers put a lot of efforts into challenging disempowering ideas about prostitution. For example, Marcela told me that one night while working an

³⁶ Group of Experts on Action against Trafficking in Human Beings, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain*, 2013, p. 34, retrieved July 2017, <http://globalinitiative.net/wp-content/uploads/2017/01/greta-spain-2013.pdf>.

NGO distributing condoms approached her. She asked them if they were helping sex workers out of pity and when they said no she kept asking, *'But then why aren't you pro-rights? Do you want us to have rights?'* To this question they replied hesitantly and Marcela told them, *'You see? You either help us or you don't, there are no nuances.'*

Hetaira's Approach

*There is no other organisation we can fall back on as we do with Hetaira.
The rest support us on their terms.*

Vera, sex worker

Hetaira's work has two main focus areas: political advocacy and social intervention. Political advocacy is focused on defending sex workers' rights, improving their working and living conditions, and breaking the stigma and the stereotypes by which society defines them.

The clear political stance of Hetaira is costing them dearly—they are marginalised socially, politically and financially. As Mamen stated, 'sometimes defending human rights causes you enemies'. However, their strength lies precisely in this political stance that has allowed them to create a relationship of trust with sex workers, a discourse based on evidence, and alliances with movements and organisations in defence of human rights and citizenship.

... All the things we do are things that they (sex workers) have taught us...

Silvia Garcia, Hetaira activist and staff member

Hetaira's social interventions can be divided into three main areas. First of all, they offer advice and support to sex workers, who want to work under better conditions. This includes counselling to register as a self-employed worker support for the development of additional skills (for example the provision of niche services), negotiation skills with customers, etc. Secondly, they also provide psycho-social assistance that is not strictly related to sex work, such as access to social resources, immigration formalities, conflicts within the family, and any other issue that could arise from their status as women, many times the head of family, and often migrant. Finally, they provide legal advice on a number of issues, ranging from dismissal from work, non-payment of wages, and assaults, to being photographed or videotaped without permission.

Hetaira distributes information materials among sex workers so that they become familiar with the laws that affect them, the rights that cover them, and how to defend these rights. For example, regarding the police abuses in the Villaverde Industrial Park, they developed, in coordination with #nosomosdelito,

Hetaira's strength lies in its political stance that has allowed them to create a relationship of trust with sex workers, a discourse based on evidence, and alliances with movements and organisations in defence of human rights and citizenship.

leaflets with recommendations that they distribute among sex workers so that there is an informed and collective response to the abuses.

Hetaira does not handle human trafficking cases directly, but if they detect a potential case, they refer it to Proyecto Esperanza which is the first anti-trafficking programme with which they collaborate. Proyecto Esperanza works from a human rights perspective, or in the words of the coordinator Marta González, *'our main interest is to listen to the women, to stand by them and to accompany them in whatever they decide to do'*. As for cooperation with the government and police, this is more difficult because of the significant mistrust due to cases of police abuses and immediate deportations. When the sex workers of AFEMTRAS suspect a potential case of human trafficking, they first discuss it among themselves to collect all the information, and subsequently communicate it to Hetaira or the NGOs working in the area. As Elisa from Hetaira says, *'being organised and being able to count on the colleagues gives them a lot of confidence to speak out about this or any other issues'*.

Organising to Resist Police Harassment

One month before the promulgation of the Gag Law, sex workers began reporting to Hetaira an increase of police presence and of insults, harassment and threats of physical aggression from the police unit which combats illegal immigration, called UCRIF,³⁷ particularly from the Chief of Brigade of a local unit, as well as one of his subordinates. Although abuses have been reported since 2013, the promulgation of the Gag Law in July 2015 was the trigger for the daily fines and continuous abuse.

³⁷ Unidad Contra las Redes de Inmigración Ilegal y Falsedades Documentales (Illegal Immigration Network and False Document Unit). UCRIF is responsible for investigating criminal activities at national and transnational levels related to human trafficking, migrant smuggling, illegal immigration and alleged forgery for migration. This case refers specifically to the XI Group of the Provincial Brigade of Alien Affairs and Documentation.

In the face of these events, Hetaira met with the local government delegate to report the police abuses and find out why the workers were being fined since when the Law was announced, assurances were given that it would not be used to fine sex workers. At that meeting, the Delegate promised that the fines that had been issued to sex workers would not be processed, and that in the future only clients would be fined. However, five months later, sex workers began receiving the fines at their homes, so Hetaira met with the Delegate again. The explanation given was that the workers were fined for disobeying the police, a charge that cannot be ignored. This explanation is inconsistent, due to that the disobedience they refer to is actually the fact of working as prostitutes. However, the evidence gathered by Hetaira showed that charges were more dependent on the authorities' whims than on actual violations.

The police are abusive, some say one thing, others say another, and nobody knows who to listen to. I used to work at a roundabout and nobody bothered me. The Gag Law came and the municipal guards told me that I couldn't work there anymore, but that I could do it a little bit further. Next day, I went to work where they had told me, but the UCRIF arrived and they told me that I couldn't work there and fined me. They told me another place where I shouldn't have problems. Next day I went there and a different UCRIF squad came and fined me for being where the commissary told me the day before. The officer added that she will fine me every day no matter where I stand.

Catalina, sex worker

As reported in the newspaper *Público* in December 2016,³⁸ several NGOs, including Hetaira and AFEMTRAS, filed a complaint with the Higher Police Headquarters, the Ombudsperson and the government delegation, in order to take the necessary measures to stop violating the rights of those who practise prostitution. Although a request was also sent to organisations which are members of the Technical Committee of Prostitution³⁹ to support the public complaint, none of them did so.

The spokesperson of the Higher Police Headquarters declared that 'after internal investigations, these facts have not been proven and that all the Security Bodies working in the Villaverde Industrial Park act in line with police ethics'.⁴⁰ In light of

³⁸ S Rodriguez, 'Un inspector jefe de la Policía intimida a las mujeres en prostitución en un polígono industrial de Madrid', *Público*, 20 December 2016, retrieved July 2017, <http://www.publico.es/sociedad/inspector-jefe-policia-intimida-mujeres.html>.

³⁹ Working group of associations that work on prostitution in Madrid, by gathering information and developing proposals on the matter.

⁴⁰ S Rodriguez.

this outcome, sex workers continued to organise different actions to demand a strong response to the police abuses. In January 2017, the inspector who was committing the abuses was asked to appear in Congress. At the time of writing, this has not yet happened, and Hetaira is planning its next steps.

There are several disappointing issues about this process. Firstly, there is an unsatisfactory response and lack of transparency of the Higher Police Headquarters. Secondly, there was a weak response from the institutions whose roles are to represent citizens' interests and respond to their concerns—the Government Representation Department and the City of Madrid. Finally, there was a lack of mobilisation and support from organisations working with prostitutes, which have neither publicly condemned the police abuses nor discussed strategies to combat them.

On the other hand, a positive outcome of these events was that they strengthened the movement. Since AFEMTRAS was formed as a loose collective in 2001, it had become increasingly organised and strong through the support of Hetaira. The campaign to resist the Gag Law helped AFEMTRAS gain more publicity as an independent organisation.

The abuses to which these agents subjected women increase the vulnerability of both sex workers and potential trafficked persons for whom confidence in the State bodies and security forces is fundamental (...)

Hetaira's formal complaint to the National Police Headquarters

Conclusions and Recommendations

This research has allowed us to identify the main issues affecting sex workers in Spain, and the strategies that they and sex worker rights organisations employ to counter them. The findings indicate that the trafficking framework does not help to address the ways in which sex workers do experience exploitation; it only diverts resources to useless and harmful interventions and public policies that empower the police to harass and abuse street-based sex workers and migrants in the sex industry.

The key to developing effective policies and programmes that affect sex workers is as simple as listening to them, and daring to create alternatives that break with the criminalising tradition of prostitution which deprives sex workers of the ability to enjoy their human rights.

The key to developing effective policies and programmes that affect sex workers is as simple as listening to them, and daring to create alternatives that break with the criminalising tradition of prostitution which deprives sex workers of the ability to enjoy their human rights. Complete depenalisation of prostitution and its regulation under

health and labour law is not a panacea, but it is the first step to better protect sex workers' rights. Additional measures need to be taken to destigmatise prostitution and, more broadly, fight gender violence and promote the value of women's paid and unpaid work in society.

A more effective approach to human trafficking in the sex industry requires a conceptual shift towards respecting and protecting sex workers' human rights. Punitive policies and police abuses are directly affecting sex workers on the street. The immigration authority, UCRIF, is responsible for investigating cases of human trafficking, but has failed to establish trust with sex workers which would improve the identification of exploitative situations. Likewise, it is necessary to train front-line professionals in identifying human trafficking cases beyond the stereotypical, sensationalistic narratives and images.

The anti-trafficking framework promotes more criminalisation and migration restrictions that are not helpful to either migrants or trafficked persons but only serve to restrict women's migration. Behind trafficking situations there is often a frustrated migration process. To eliminate trafficking in persons, states must ensure safe migration as a right, and guarantee the rights of all migrants.

The fight against trafficking in persons is used to target sex work, and as a consequence, sex workers and the organisations supporting them. Prostitutes who have chosen to work in the industry have encountered denial of their rights, both within and outside legal frameworks. They practically cease to exist as citizens and even human beings. The incessant debate on sex work exposes a frightening struggle for the supremacy of notions of morality and decency versus ‘justifiable’ rights. At the same time, the focus on the sex industry deflects attention from other sectors where human trafficking occurs and fails to identify and assist trafficked persons in them.

Although sex workers and sex worker rights organisations are able and willing to report instances of trafficking, they are actively excluded from formal anti-trafficking structures, regarded with suspicion and heavily underfunded.

The focus on trafficking distracts attention from the more everyday rights violations that sex workers face. Human trafficking and exploitation are different phenomena: both require an adequate response and real opportunities for the restitution of rights. Sex workers recognise themselves as workers and are demanding safe places for work, labour rights, and social benefits like other workers. Sex work policies which respond to them should be based on a human rights and feminist social justice perspective. Trafficked persons are entitled to rights and protections too but one reality cannot make the other invisible, nor can the rights of some women be placed above those of others.

Organising among sex workers has an empowering effect, leading to reduced risk of exploitation and trafficking. Self-organising strengthens sex workers both individually and collectively, and enhances their ability to respond to situations of violence and abuse. Self-organising is crucial in mitigating the isolation and stigma that permeate sex workers’ lives. Organised workers in any sector are empowered workers and are thus less vulnerable to rights violations, abuse, and exploitation. Human rights activists, trade unions and funders need to extend their solidarity to sex workers who organise to demand their rights.

Stigma is the greatest challenge for sex workers and the driver of all the difficulties they face. It permeates each and every aspect of their lives. Both the authorities and the media perpetuate a biased view of sex work, which in no way advances women’s rights. It is therefore urgent to break the socially constructed stereotypes about sex work to ensure that the people who practise it can live a full life, and enjoy the same rights as everyone else.

In the light of the above, this report makes the following recommendations:

To government and municipal authorities:

1. Repeal public policies that penalise sex workers and recognise the rights of those who work in prostitution through labour legislation;
2. Stop the fining of sex workers and clients under the Gag Law and local ordinances, and investigate allegations of misuse of power;
3. Focus more in detecting abuses and exploitation rather than minor administrative offences;
4. Establish areas where sex workers can work without fear of arrests or fines;
5. Invite sex worker rights organisations to participate as equals in the development of policies that affect them, including policies on human trafficking;
6. Implement awareness campaigns advocating for the respectful treatment of all women, without making distinctions between sex workers and other women;
7. Ensure that anti-trafficking campaigns do not stigmatise sex workers;
8. Ensure safe migration as a right, and guarantee the rights of all migrants.

To anti-trafficking organisations:

1. Put an end to the conflation of trafficking and sex work and the perpetuation of harmful stereotypes about both trafficking and sex work;
2. Recognise the potential role that sex worker rights organisations can play in the fight against trafficking;
3. Invite sex worker rights organisations to participate as equals in anti-trafficking structures;
4. Widen the focus of anti-trafficking interventions to identify both abuses within sex work and human trafficking cases beyond the sex industry;
5. Do not instrumentalise trafficked persons at judicial, political or organisational level in order to serve own agendas;
6. Offer realistic support and viable alternatives to sex workers who want to leave the industry.

To donor organisations:

1. Support organising among sex workers as a means to defend and promote their human rights;
2. Conduct regular and rigorous evaluation of funded anti-trafficking initiatives in order to ensure that these do not negatively impact the rights and wellbeing of sex workers.

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Independent sex workers march on 1 May 2017, International Labour Day, in La Merced, Mexico City. Photo credit: Brigada Callejera

MEXICO

Francisco Javier Lagunes Gaitán

Mexico is the largest Spanish-speaking country in the world. Although considered an upper-middle income country, it is marked by high levels of inequality, with rates of poverty higher among women, migrants and indigenous people. Furthermore, large proportions of the population are employed in informal jobs with inadequate labour protections.

Mexico is a country with high levels of violence and impunity, including violence against women. Gang-related criminal activity is widespread, and human trafficking into the sex industry, as well as other forms of coercion and exploitation in the industry, are relatively common, as several cases documented in this study illustrate.

Consensual sex work is also a reality and a livelihood option for many women. However, Mexico's human trafficking law does not adequately distinguish between the two phenomena. The conceptual vagueness of the law, combined with entrenched police and administrative corruption, has resulted in widespread, documented abuses and misuse of the law to target sex workers.

The current research documents how organising of sex workers contributes to protecting and upholding their human rights and improving their working conditions. The focus of the study is the organisation *Brigada Callejera de Apoyo a la Mujer* (abbreviated alternatively as BCAM or Brigada). The objectives of the study were: 1) To document the approach of BCAM towards empowering sex workers to claim their rights; 2) To explore their experience interacting with the anti-trafficking framework and how it impacts on their work; and 3) To examine the strategies used by BCAM to support sex workers and confront exploitation and abuse, including situations of trafficking.

The research was conducted with staff of Brigada at various levels—those involved in strategy and advocacy, and those who provide services to sex workers. Fieldwork was conducted in three locations: Mexico City, Guadalajara, and Chiapas State on the border with Guatemala. Sex workers were visited and interviewed in a variety of workplace settings. The interviews revealed that many sex workers operate in a hostile environment which is characterised by pervasive violence, abuse, corruption and impunity, both by criminal gangs and inept officials. Sex workers have to deal with these dual threats as they strive to earn a living. However, as the many of the quotes

in this chapter will illustrate, sex workers want an end to the multiple abuses in the industry, not the industry itself, which is their source of livelihood. Prohibitionist measures, which aim to eradicate the sex industry, only serve to deprive those involved in the industry of their livelihood, and have the perverse effect of actually pushing them under the influence of gangs and cartels.

Brigada's approach to the challenges that sex workers face is essentially threefold. Firstly, they provide comprehensive, person-centred legal, health, and psychosocial services to sex workers, in a way which respects their self-determination. Secondly, they support the self-organising and mobilisation of sex workers, amongst their own membership, and in alliances with organisations such as the Mexican Network of Sex Work. Thirdly, they actively advocate for the creation of a legal and policy environment which respects sex workers' rights, as human beings and as workers. Two recent successful constitutional court challenges have advanced the recognition in Mexico of sex workers as workers, and the distinction, in law, between sex work and human trafficking.

Introduction

Socio-Economic and Political Context

Mexico is the largest Spanish-speaking country in the world with an estimated of 123.52 million people as of 2017.¹ Demographically, Mexico is approaching a point of equilibrium, with population growth at 1.3% and fertility rate at 2.2 children per woman.² Mexico is considered an upper-middle income country, with the 15th highest annual Gross Domestic Product in the world at USD 1.046 trillion in 2016, and a Gross National Income per Capita of USD 16.383 (2011 PPP\$).³ The unemployment rate in June 2017 was 3.3% of the economically active population, the lowest since February 2006.⁴ However, although the total level of employment is high, most people are employed in informal and low-paid jobs, lacking full access to social security.⁵ As a result, close to half of the country's population live below the official national poverty line, and 3% live with less than USD 1.90 a day.⁶

Mexico's GINI coefficient (which measures differences in income) is 48.21,⁷ which makes it one of the OECD countries with the highest levels of inequality. One per cent of the population receives 21% of the country's income. Indigenous people (who constituted 10.1% of the total population in 2015⁸), are particularly affected by inequality, with 75% of them living in poverty and 38% in extreme poverty, compared to, respectively, 50% and 10% for the total population.⁹

¹ CONAPO, *Proyecciones de la población 2010-2050*, Actualización 2015, <http://www.conapo.gob.mx/en/CONAPO/Proyecciones>.

² World Bank data report 2016.

³ *Ibid.*

⁴ Redacción, 'Cae desempleo a 3.3% en junio, la cifra más baja desde 2006', *Excelsior*, 21 July 2017, <http://www.excelsior.com.mx/nacional/2017/07/21/1176993>.

⁵ Instituto Nacional de Estadística y Geografía, *Indicadores de ocupación y empleo, Cifras oportunas durante junio de 2017 (desestacionalizadas)*, http://www.inegi.org.mx/saladeprensa/boletines/2017/iooe/iooe2017_07.pdf.

⁶ World Bank data report 2016.

⁷ World Bank estimate, <http://data.worldbank.org/indicator/SI.POV.GINI?locations=MX>.

⁸ Comisión Nacional para el Desarrollo de los Pueblos Indígenas, *Estadísticas e indicadores vinculadas a los derechos de los pueblos y comunidades indígenas*, CDI, 2016, <https://www.gob.mx/cms/uploads/attachment/file/249028/cdi-nota-tecnica-indicadores-derechos-pueblos-indigenas.pdf>.

⁹ G E Hernández, *Extreme Inequality in México, Concentration of Economic and Political Power*, Even It Up/OXFAM-México, June 2015, http://www.socialprotectionnet.org/sites/default/files/inequality_oxfam.pdf.

Cold economic figures, however, do not describe the quality of life as well as UNDP's Human Development Index (HDI), which also takes into account health and education. Of 188 countries and territories, Mexico ranks 77 in HDI (with a score of 0.762), which places it in the High Human Development group, along with most of the rest of Latin America. However, when the index is adjusted for inequality, it decreases to 0.587.¹⁰

Two key programmes have been established by the government to assist the poor: *Prospera* (a conditional cash transfer programme) offers several essential health services, assistance for food for the elderly and school expenses for children to a total of 25 million registered beneficiaries. Besides social assistance, *Prospera* is intended to promote employment and women's economic inclusion.¹¹ *Seguro Popular de Salud* is a public and voluntary complementary social security programme to finance limited basic health services for people without access to the full regular Social Security system. In 2016 the number of beneficiaries of this programme was 54.9 million.¹² However, these programmes focus only on bringing essential relief to the poorest residents and do very little to actually improve their quality of life.

Despite the appearance of progress in the Latin American region, millions of people are being left behind. Poverty has a gender dimension: in Latin America there are 117 women living in poverty for each 100 men and inequality has increased 8% since 1997. Vulnerabilities are cumulative, so a rural indigenous woman without land will be more disadvantaged. Thirty-eight percent of Latin-Americans are in a position of high vulnerability with precarious employment in the services sector. Officially they are not considered poor, but they are not middle class either. In this situation of precarious work, and gender and income inequalities, many people, especially women, either migrate abroad for work or turn to sex work as the best available livelihood option.

Mexico has the reputation of being a source country for migration; however, migration trends are changing. Immigration to Mexico increased sharply over the past two decades. In 2015 the number of foreign-born people in Mexico reached the unprecedented level of one million, twice the number in 2000, but still less than 1% of the total population. Furthermore, although around 12 million Mexicans resided abroad in 2015, 97% of them in the United States, since 2009, the number of Mexicans returning

¹⁰ UNDP, *Human Development Report 2016: Human development for everyone*, UNDP, New York, 2016.

¹¹ L G D Lárrega, *How does Prospera work?: Best practices in the implementation of conditional cash transfer programs in Latin America and the Caribbean*, Inter-American Development Bank, Washington, 2016.

¹² Redacción, 'Depuran el padrón del Seguro Popular', *Excelsiór*, 4 August 2016, <http://www.excelsior.com.mx/nacional/2016/08/04/1108917>.

to Mexico has been exceeding the number emigrating to the United States.¹³ In addition, in 2015, an estimated 377 000 Central American migrants transited through Mexico en route to the United States.

Crime and Punishment

Latin America is the most violent region in the world. Despite being home to only 8% of the global population, it accounts for 38% of all homicides. In the years between 2000 and 2016, more than 2.6 million people were killed. The violence is on a scale that only the war zones of the Middle East and Central Asia can match.¹⁴ In the Northern Triangle of Central America, intentional homicides are the highest in the region, with 75 per 100,000 inhabitants per year in Honduras, 64 in El Salvador and 31 in Guatemala, compared to 16 in Mexico.¹⁵

According to the Global Impunity Index 2017 (GII) published by the Center of Studies on Impunity and Justice (CESIJ), Mexico is the country with the fourth highest Impunity Index in the world, after The Philippines, India, and Cameroon. The high levels of impunity are closely related to the country's socio-economic inequality. Social exclusion drives impunity and aggravates its consequences for those living in marginalised conditions.¹⁶

Against this backdrop of impunity, Mexico experiences very high rates of violence against women: in 2014, there were 6.3 femicides a day in Mexico.¹⁷ The State has been held responsible for not doing enough to address violence against women. In 2009 the Inter-American Court of Human Rights handed down a verdict against Mexico, with regards to the case of the Algodonero Field where eight women were found dead. The Court found the Mexican State guilty of denial of justice due to 'the lack of measures

¹³ OECD, *International Migration Outlook 2017*, OECD Publications, Paris, 2017.

¹⁴ M Marinho and D Tinoco, 'A New Campaign Against Latin America's Epidemic of Homicide', *Open Society Foundations*, 23 May 2017, <https://www.opensocietyfoundations.org/voices/new-campaign-against-latin-america-s-epidemic-homicide>.

¹⁵ UN Office on Drugs and Crime's International Homicide Statistics database.

¹⁶ Juan Antonio Le Clercq Ortega & Gerardo Rodríguez Sánchez Lara, *Global Impunity Dimensions. Global Impunity Index 2017 (GII-2017)*, Fundación Universidad de las Américas, Puebla, 2017, http://www.udlap.mx/cesij/files/IGI-2017_eng.pdf.

¹⁷ ONU Mujeres, SEGOB, and INMUJERES, *La violencia feminicida en México. Aproximaciones y tendencias, 1985–2014*, Mexico, 2016, http://cedoc.inmujeres.gob.mx/documentos_download/101258.pdf.

for the protection of the victims...the lack of prevention of these crimes, in spite of full awareness of the existence of a pattern of gender-related violence that had resulted in hundreds of women and adolescents murdered, the lack of response of the authorities to the disappearance (of the women), the lack of due diligence in the investigation of the homicides... as well as the denial of justice and the lack of an adequate reparation'¹⁸ to their families.

Sex work in Mexico

Culture and History

As in other parts of the world, in Mexico it is a commonly held belief that men *need* sex, and that women *bestow* it for the sake of love, as an exchange of favours, or by selling it. According to this belief, in the private sphere some women give sex *for free*, in exchange for security and sustenance, through marriage, while in the public sphere, *prostitutes* exchange it for money.

In Mexico, the practice of isolating and controlling a specific group of women to prevent them from transmitting sexual diseases is written in a variety of historical records—from some pre-Hispanic civilisations, through the colonial period, to the present.¹⁹

In colonial times, according to Roman Catholic traditional views, prostitution was considered a *necessary evil*, but morally despicable. Around the eighteenth century, sex workers were considered as *noxious beings*, bearers of venereal diseases or prone to public scandal. Consequently, the state implemented a regulationist model with clear policies and a legal-administrative-medical structure in order to fully control their lives and bodies. By the nineteenth century, however, sex work became marked by high mobility. Brothels and cabarets were established, following the French system, which aimed at the professionalisation of sex workers. The law recognised the respectable *matronas* (madams) as intermediaries responsible for maintaining order.

In the first half of the twentieth century, the approach changed to one of state abolitionism. Brothels were banned, and *matronas* were prosecuted, but *padrotes* (pimps) took over and unregulated street prostitution increased. Procuring was declared

¹⁸ See *Caso González y Otras ("Campo Algodonero") vs. México*, Interamerican Court of Human Rights, 2009.

¹⁹ C Gayet. *Infecciones de transmisión sexual en México: una mirada desde la historia y el género*, Secretaría de Salud (Ángulos del sida), Mexico, 2015, http://www.censida.salud.gob.mx/descargas/biblioteca/ITS_en_Mex_una_mirada_1.pdf.

a felony in 1929 in the capital city. In the second half of the century, some cities implemented new regulation systems, and so-called *tolerance zones*. However, these regulations coexist with a clearly abolitionist Criminal Code in all of the States, so the violence of pimps continues with impunity because of the lack of protection of women's rights. As an example, the small town of Tenancingo, Tlaxcala, is well-known for its *padrotes* who traffic women for coerced sexual services to the United States.²⁰

In 2014, after a lot of protests, mobilisation, lobbying, and strategic litigation, Mexico City's Government certified sex workers as non-salaried workers as a way to improve their safety and promote their rights.

Nowadays, in all of Mexico, offering sexual services for pay in the street is not a felony, but just an administrative offence, punishable with a maximum of 36 hours arrest, or a fine, and no criminal record. For decades this regulation has been used by corrupt police officers to extort money and sexual favours from sex workers. Similarly, in the State of Coahuila, the local Congress passed a law that allows the municipalities to issue ordinances to recognise and regulate non-salaried workers (street musicians, shoe cleaners, etc.), explicitly including sex workers too.

Socio-demographics of Sex Work

The sex industry had been growing and expanding, not just in size but also in diversity, brought about by technological and social changes. There are now new services and niches: live sex shows, erotic massages, lap dancing, stripping, escorting, telephone sex, and sex tourism.

It is impossible to know how many sex workers there are in Mexico, due to the stigma, and the hidden and often semi-criminalised status of their work. Brigada Callejera estimates that there are around 600,000 female sex workers (and an additional 200,000 young people selling sex).²¹ Most sex workers in the country are cis women, with a smaller number of men and trans women and are either Mexican citizens or migrants from other parts of Latin America. According to observations by Brigada Callejera, migrant sex workers from Colombia, Venezuela, Argentina, and Cuba work mainly in

²⁰ O M Torres, *Trata de personas: Padrotes, iniciación y modus operandi*, Inmujeres, Mexico, 2009, http://cedoc.inmujeres.gob.mx/documentos_download/101080.pdf.

²¹ BCAM extrapolates according to an ILO model; see L L Lim (ed.), *The Sex Sector. The economic and social bases of prostitution in Southeast Asia*, ILO, Geneva, 1999.

brothels, escort agencies, and lap dance clubs. In addition, for more than a decade, women from Eastern Europe have been increasingly coming to Mexico to work in the higher tiers of the industry.²² According to Brigada, some of these foreign workers were brought into Mexico by organised crime networks, but many of them came independently. The majority are undocumented and therefore vulnerable to abuse.

The HIV prevalence among female sex workers is 0.67% in contrast to 0.23% among the general population. In transgender and transvestites sex workers it is 15.5%.²³ Female sex workers are the only population group amongst whom HIV prevalence rates have decreased since the beginning of the epidemic, as a result of increased condom use and voluntary HIV testing.²⁴

The Incongruities of the Current Anti-Trafficking Law

Human trafficking was first included in the Mexican Federal Criminal Statute in 2007, in order to comply with the country's obligations under the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, (hereafter Trafficking Protocol). In the same year, a special federal law, *Ley para Prevenir y Sancionar la Trata de Personas* (Law for the Prevention and Punishment of Human Trafficking), was passed, which transposed the main aspects of the Protocol. This law was replaced in 2012 by the more efficient and comprehensive *Ley General para Prevenir, Sancionar y Erradicar los Delitos en Materia de Trata de Personas y para la Protección y Asistencia a las Víctimas de Estos Delitos* (General Law for the Prevention, Punishment and Eradication of Trafficking in Persons crimes and for the Protection and Assistance to the Victims of Such Crimes—hereafter the General Law on Human Trafficking).²⁵

The General Law on Human Trafficking defines the crime in article 10 as 'the conduct of one or many people to recruit, entice, transport, transfer, retain, give, receive or harbour one or many people for the purpose of exploitation', for which they would receive a sentence of 5 to 15 years in prison and fine.²⁶ Thus, unlike the definition of

²² Email correspondence with Brigada, 31 October 2017.

²³ Censida 2015, *Informe Nacional de Avances en la Respuesta al VIH y el Sida*, Secretaría de Salud, Censida, Mexico, 2015.

²⁴ CNDH, *Los derechos humanos de las y los trabajadores sexuales que viven con VIH o con sida*, Mexico, 2016, <http://www.cndh.org.mx/sites/all/doc/cartillas/2015-2016/29-DH-trabaj-sexuales-VIH.pdf>.

²⁵ R C Traulsen, *The Mexican Legal Remedies for Trafficking in Persons Victims and its Compliance with International Standards*, Student Working Paper, University of Notre Dame, The Center of Civil and human Rights, 2016.

²⁶ *Ibid.*

trafficking in the Trafficking Protocol, which requires three elements to establish the crime—act (recruitment, transfer, etc.), means (coercion, deception, force, etc.) and purpose (exploitation)—the Mexican law does not clearly articulate the ‘means’ element making, effectively, every movement of a person for the purposes of perceived exploitation equivalent to trafficking.

Article 19 apparently allows sexual contracts, as long as the consent is not vitiated. However, Article 20 *forbids* establishing the nature, frequency, and specific conditions of a contract for sexual matters, leading to a situation of legal uncertainty.

The General Law on Human Trafficking adopts a broad definition of the concept of ‘abuse of a position of vulnerability’, including considering all women as being in a ‘position of vulnerability’. An unscrupulous application of the law would tend to consider that no woman can engage in sex work, just because she belongs to a vulnerable gender. This is also in contradiction to the intentions of the Trafficking Protocol. The UN Office on Drugs and Crime (UNODC) guidance note on abuse of a position of vulnerability (APOV) states that: ‘The mere existence of proven vulnerability is not sufficient to support a prosecution that alleges APOV as the means by which a specific “act” was undertaken. In such cases both the *existence* of vulnerability and the *abuse* of that vulnerability must be established by credible evidence. [...] The use of “means” must be of a sufficiently serious nature and extent as to vitiate the consent of the victim.’²⁷

Article 40 of the General Law categorically deprives the adult alleged victim of trafficking of autonomy, because it declares the consent of the victim as irrelevant, even if given with full knowledge and valid free will. So article 40 is also inconsistent with the Trafficking Protocol: ‘The requirement to show “means” affirms that, at least within the Protocol, exploitative conditions alone are insufficient to establish trafficking of adults: Agreement to work in a situation that may be considered exploitative will not constitute trafficking if that agreement was secured and continues to operate without threat or use of force or other forms of coercion [etc.]. While exploitation alone may involve offences including human rights violations, “means” must be used to constitute trafficking of adults within the confines of the Trafficking in Persons Protocol.’²⁸

²⁷ UNODC, *Guidance Note on ‘abuse of a position of vulnerability’ as a means of trafficking in persons in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, UNODC, Vienna, 2012, https://www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Guidance_Note_-_Abuse_of_a_Position_of_Vulnerability_E.pdf.

²⁸ UNODC, *Issue Paper. The role of ‘consent’ in the Trafficking in Persons Protocol*, UNODC, Vienna, 2014, https://www.unodc.org/documents/human-trafficking/2014/UNODC_2014_Issue_Paper_Consent.pdf.

In so far as the General Law on Human Trafficking considers consent to be irrelevant, the lawmakers violate people's capacity to decide. Any paid sexual activity, even consensual, could potentially constitute a criminal offence, since the criminal definitions are not clearly related to the means.²⁹

In 2016 the Mexican Senate introduced a Bill to reform the General Law on Human Trafficking, which would have addressed these incongruities; however, it did not pass in the Lower Chamber.³⁰ Thus, the Mexican law remains aligned with the prostitution prohibitionist approach to sex work and fails to adequately ensure that victims of trafficking are identified, but enables the police to arrest and harass sex workers. The wide-reaching power of the drug cartels, as well as the criminalised and stigmatised status of sex work, create the conditions in which both organised criminals and private individuals, including family members, force women into sex work or take a large amount of their earnings. These points are illustrated by multiple personal testimonies in the Findings section.

²⁹ For a detailed critique of the General Law on Human Trafficking see: C T Patiño, *Problemas de la redacción y aplicación de la Ley General de Trata*, Brigada Callejera en Apoyo a la Mujer, Mexico, 2015, <http://es.calameo.com/read/000137394664b35814dd7>.

³⁰ Vanguardia.mx, 'Temas religiosos frenan ley antitrata: Adriana Dávila', *Vanguardia.mx*, 8 December 2016, <http://www.vanguardia.com.mx/articulo/temas-religiosos-frenan-ley-antitrata-adriana-davila>.

Methodology

In close consultation with the team of *Brigada Callejera de Apoyo a la Mujer, Elisa Martínez, AC* (*Street Brigade in Support of Women* or BCAM, for its initials in Spanish), the research took place where sex workers work and where they organise. Employing a feminist participatory approach, this research was intended to integrate social research, education and action with the purpose of sharing the creation of social knowledge with the oppressed. It was therefore critical to engage broadly with the staff of BCAM and their beneficiaries, the sex worker community, to discuss the purpose as well as the potential value of the research. There was consensus among participants that the study could benefit them by enabling their voices to be heard, and their experiences to be shared worldwide with other sex worker rights activists, committed academics, support organisations, and law- and policy-makers. The objectives of the study were: 1) To document the approach of BCAM towards empowering sex workers to claim their rights; 2) To explore their experience interacting with the anti-trafficking framework and how it impacts on their work; and 3) To examine the strategies used by BCAM to support sex workers and confront exploitation and abuse, including situations of trafficking.

In the past, BCAM have had complicated experiences with researchers, and are cautious that researchers may have hidden agendas. They therefore proposed that I, as a former volunteer collaborator (who has offered courses on HIV/AIDS and Human Rights for BCAM peer educators), conduct the research. The BCAM leadership team felt confident to take me to sex workers' workplaces, where they offer health and education services. In discussion with the organisation's leadership, we agreed that it was important to interview the following participants:

- Three leading BCAM members: one of the founders, Rosa Icela Madrid; the legal counsellor, Arlen Palestina; and a human rights promoter, Silvia Anguiano, in order to document the vision and overall perspective of the organisation.
- Five peer educators and/or field workers: Morti and Krizna in Mexico City; Raquel and Lenchita in Tapachula; and Berenice in Guadalajara, to document the field workers' experience of BCAM's programmes.
- Twelve sex workers, all of whom had received education or health services from BCAM in the past year. Three sex workers (Diana, Nadia, and Estela) are survivors of trafficking in persons and exploitation. A focus group discussion in Guadalajara was attended by eight additional sex workers. The focus group participants opted to be identified with a pseudonym, when quoted.
- Three victims of misapplication of anti-trafficking law in Chiapas (Claudia, Beata, and Lenchita, who is also BCAM field worker).

- Two external key informants were interviewed in order to include a wider perspective: Dora Patricia Mercado Castro, Secretary of State of Mexico City for Work and Employment, and *Dr Patricia Campos López*, Latin American Bureau Chief of *AIDS Healthcare Foundation (AHF)*, Guadalajara.

Three different locations were chosen for the interviews: Mexico City's La Merced Market (the largest concentration of sex workers in Latin America); Tapachula and Huixtla in Chiapas State on the Southern border (the main entrance point of undocumented migrants in Mexico, 1175 km. from Mexico City); and Guadalajara in Jalisco state (526 km. from Mexico City and the second largest city in the country). BCAM has been working in these areas for several years, providing STI tests and counselling; legal advice and training; psychological support for victims of exploitation and abuse; and promoting community mobilisation. The interviews in Tapachula and Huixtla were carried out in January 2017. I visited several bars and public venues and one brothel together with the BCAM team. In Mexico City, the interviews took place on two different days in February, at BCAM's service office and clinic in La Merced. Interviews in Guadalajara were carried out over four days in March: in bars, hotels, and apartments. Every participant received a brief explanation of the aims of the research and was promised to receive the Spanish version of the report. The participants offered their time and insights because they wanted to be heard and to share their experiences without the risk of being personally exposed by sensationalist journalism.

Findings

Background to Brigada Callejera de Apoyo a la Mujer, Elisa Martínez, AC

BCAM is a non-profit, non-partisan, and secular organisation that has been involved in community-building for more than 27 years with cis- and transgender sex workers, survivors of human trafficking, and other women in solidarity. It has specialised in human, civil, and labour rights of sex workers, HIV/AIDS and STI prevention through social marketing of condoms for specific target populations, and community mobilisation to address

While BCAM is committed to the principle of sex work as work, the organisation also analyses and strives towards the eradication of the structural causes of sex work, so that women ultimately have more options available to them to earn an income.

trafficking in persons and labour exploitation. BCAM carries out regular activities in three cities and provides technical assistance to the national network, Red Mexicana de Trabajo Sexual. Since March 2013, BCAM has been a member of the Global Alliance Against Traffic in Women (GAATW), as a means of contributing to a global resistance against all kinds of exploitation and abuses.

BCAM started out as a group of students doing actions in small groups (brigadas) on HIV/AIDS education and prevention on the streets (callejeras), directly with sex workers, indigenous people, and migrants. For BCAM it is very important to be in active solidarity with groups of women, mainly sex workers, who experience discrimination. The name, 'Elisa Martínez' honours the memory of the first sex worker they worked with, who died of AIDS. The name is a symbol of the importance of recognising the full humanity of all sex workers who died of AIDS, were killed, or have experienced discrimination for being women, for being sex workers, or for being HIV positive.

BCAM's mission is to contribute to the empowerment of discriminated people to take care of and stand for themselves and overcome the cultural obstacles that deter them from engaging in the fight against human trafficking and exploitation, as well as to contribute to the prevention of HIV/AIDS and other STIs. While BCAM is committed to the principle of sex work as work, the organisation also analyses and strives towards the eradication of the structural causes of sex work, so that women ultimately have more options available to them to earn an income.

At the onset of the AIDS epidemic, since the end of the 1980's, BCAM founders organised an initial group of women in the City, mainly around La Merced, where human rights defenders were the most exposed to many threats. There they committed to promote the use of condoms in order to prevent the transmission of HIV. At the same time, through that endeavour they witnessed the constant conflict between sex workers and the self-appointed 'managers' who exploited sex workers in exchange for protection. That is how they noticed several places where the compañeras [female companions, comrades; in this case—sex workers] were subjected to this scourge, so that way they got a first-hand knowledge of the realities of labour and sexual exploitation and abuse.

Silvia Anguiano, human rights defender with BCAM

Analysis of Trafficking

BCAM understands human trafficking as a very serious offence that harms the dignity and human rights of people. This specific criminal offence implies the recruitment and transportation of people, from one country to another, or within the same country,

with the purpose to exploit them, through the use of threats, deceit, force or violence.

For BCAM there is a crucial difference between consenting adult sexual transactions and trafficking in persons. Because of ambiguities in the Mexican law against trafficking, and the lack of training and awareness within law enforcement authorities and prosecutors, in day to day practice they criminalise sex workers, under the pretext of fighting trafficking.³¹

Trafficking in persons is a form of exploitation of human beings that harms them and may disable the full development potential of the person subjected to it, mostly women, for achieving a life of wellbeing and dignity, even in this year 2017.

Arlen Palestina Pandal, BCAM's legal counsellor

I can tell that for BCAM, trafficking is a crime in which the perpetrators threaten, forcefully or deceitfully retain and compel persons to do forced labour against their will. It is an unlawful industry that many times operates with knowledge of some authorities that show no real commitment to persecute this crime.

Krizna, transgender sex worker, Mexico City

The trafficking of persons with the aim to exploit them means subduing a person, adult or underage, against their will to exercise or do forced labour in inhuman conditions, arbitrary illegal shifts, and to move the persons from one city to another, or from one country to another, with the aim of sexual exploitation. Another variety of trafficking is with the aim of forcing people to distribute and sell illegal drugs.

Silvia Anguiano, human rights defender with BCAM

Although, as can be seen from the quotes above, Brigada members have an accurate understanding of human trafficking, in line with the Trafficking Protocol, their analysis of the particular manifestation of trafficking in the Mexican context extends to both the social, political, and economic factors which drive human trafficking, as well as the corruption which enables it to thrive.

The ones involved in human trafficking are: 1) The operator, who recruits the persons through deceit, offering them a well-paid job; 2) The contacts who receive and place the trafficked persons, and move them to a predetermined place; 3) The person subjected to traffic, they are

³¹ E Madrid, J Montejo and R I Madrid, *ABC de la trata de personas*, BCAM, Mexico, 2013, <http://es.calameo.com/read/000137394fe0094fddae8>.

vulnerabilised by the low salaries, the very limited health services available to the majority, the small economic growth, the bad quality of education, the inequalities, the marginalisations, so the people longing for a better life are too easy prey; and 4) The direct exploiters and abusers.

Silvia Anguiano, human rights defender with BCAM

The people involved in human trafficking are several mafias dedicated to trafficking and exploitation (padrotes, madrotas, and traffickers) with the aiding and abetting of some persons in the government, so in some cases the ones who seem to have more control in this crime are the police, prosecutors, administrative municipal judges, and even the mayors.

Krizna, transgender sex worker, México City

Challenges Experienced by Sex Workers in Mexico

Conflation of sex work and human trafficking

The conflation of human trafficking and sex work in the General Law on Human Trafficking described above, as well in similar laws promulgated at State level, has resulted in the anti-trafficking law being used as a premise to launch raids and prosecutions of consensual sex work.

It is not uncommon that anti-trafficking legal cases include objectionable or irregular evidence. Police and prosecution sometimes take sex workers' condoms as 'evidence' of trafficking, as BCAM has documented and publicly reported,³² and as demonstrated in the vignette below:

The pressure to show prosecutions and convictions that comes from the United States annual Trafficking in Persons Report, and an inefficient and corrupt legal system, has led to a number of irregularities, false accusations, and wrongful convictions of human trafficking meted out mainly against sex workers and migrants.

³² Brigada Callejera, 'Campaña ciudadana contra el uso del condón para fincar lenocinio o trata de personas', *Periodistas en Linea*, 6 February 2012, <http://www.periodistasenlinea.org/06-02-2012/28182>.

In Guadalajara there has been a constant persecution against sex workers, their clients, and the places that allow them to work. The police used to extort the clients by asking to see their ID while leaving a hotel and then threatening to tell their family where they were. To speak about trafficking and sexual exploitation, [it means that people are being] forced to do something, with violence or threats. Here women walk freely around, without have their every move controlled. Two years ago, the police came to my place and, as they could not find anything irregular, they just temporarily closed three rooms down, because they said ‘they had to show their boss they did the raid’. So, I had to pay a fine for ‘allowing prostitution to take place in the premises’. I would love to be able to provide condoms to our guests, but the risk is too high as they have closed down and pressed charges of human trafficking against at least three places, based on the presence of condoms.

Carlos, owner of a hotel used by sex workers in Guadalajara, Jalisco

BCAM has submitted a proposal to the Attorney-General of Mexico City to change their protocol in order to stop using condoms, as ‘evidence’ when investigating trafficking for sexual exploitation.³³ It should be noted that public opinion tends to support them in this matter.³⁴

As in other countries, the pressure to show prosecutions and convictions that comes from the United States annual *Trafficking in Persons* Report, and an inefficient and corrupt legal system, has led to a number of irregularities, false accusations, and wrongful convictions of human trafficking meted out mainly against sex workers and migrants. Some excerpts from my interviews illustrate these points:

I was born in Tapachula, Chiapas. I was unduly imprisoned for three and a half years. My present husband has one daughter that sometimes I took care of, besides my own children from a past marriage. We were falsely accused of forcing her into prostitution, and each of us received a sentence of 20 years. There were many irregularities in the case, for example, the sworn statement implicating us was made in the name of a deceased person. With so many evident irregularities, like the lack of a real investigation and fabricated statements, the State Judiciary

³³ ‘Memorándum y acuerdo para dejar de utilizar los condones como prueba de trata de personas’, BCAM, 13 April 2016, <http://brigadaac.mayfirst.org/Memorandum-y-acuerdo-para-dejar-de-utilizar-los-condones-como-prueba-de-trata-de-personas>.

³⁴ R Aranda, ‘Portación de condón’, *La Crónica*, 6 May 2016, <http://www.cronica.com.mx/notas/2016/958682.html>.

Branch of Chiapas decided to suspend the application of the sentence [an exceptional procedure only valid for minor offences], to avoid the recognition of their wrongdoings in the trial, but only for me; my husband is still in prison. So I am obliged to sign the registry of offenders every month, for the full 20 years of the sentence, so my freedom is not complete. I was rejected from several jobs because I have a criminal record.

Claudia, 38, victim of malpractice using the anti-trafficking law, Tapachula

I left Honduras 10 years ago to come to Mexico because my mother was receiving haemodialysis treatment, and so we could not afford the payments. The owner of the bar where I found a job said we had to give money supposedly to bribe Migration, Police and health authorities. I should have left there and then, but if you don't really know how things are here, and how to defend your rights, you have to endure terrible conditions. In a surprise police raid in 2014, only two waitresses were there, so they decided to brand the other one as the victim and I was left to be the perpetrator. The field prosecutor ordered the other woman to collect the cash, and ordered me to count it and they took photographs. They looted everything—the jukebox, the beer, the money. We were taken to another bar with some other waitresses. They ordered us to get undressed, and only men frisked us. The field prosecutor promised me that I would be released the next day and I can go back to my children, but that I had to sign some papers first, 'as just a formality', with no defence attorney present, nor consular official. The alleged victim was committed to a shelter, and she was threatened not to testify in my trial, or they would take her children away from her for 'being prostituted'. But she was a close friend and testified anyway. Even so, they sentenced me to three years (for immorality and labour exploitation); condoms were presented as evidence. I was released after just a few months because of a suspended sentence. They tried to deport me as I left the prison, even knowing beforehand that I have Mexican children. I am still being refused some jobs because of the criminal record.

Lenchita, 28, victim of legal malpractice and BCAM's health fieldworker in Tapachula

I was born in Honduras but have been living in Mexico for 14 years. I was accused of allegedly bringing people from Honduras to sell them in Mexico, even if I had not visited my homeland in many years. Then the police took me to a local bar and made me serve them beer and took some photographs of me with the beer. My cousin was supposedly

trafficked by me (with a couple of young women I had never seen before). She was taken by some of the State police agents to the State Capital, forcing her into prostitution in a bar for four months. They threatened to kill her if she testified in my trial. One year later I received a sentence of six years. I asked the judge why was I being sentenced without any evidence, and he told me to be grateful he did not give me a longer sentence—just because he could not find something real against me in my case file. So, some inmates and I did a hunger strike demanding that our cases be reviewed, and we were released after one more year. They have been refusing to give me a copy of the file for one year. Even if the authorities told me I was acquitted of any wrongdoing, my criminal record states I am guilty, so I have had troubles finding a job. I am out of prison, but never received an official exoneration document.

***Beata, 33, victim of malpractice using the anti-trafficking law
in Huixtla, Chiapas***

The interviews revealed that sex work is sometimes one of several income-generating activities for women over a lifetime and strict laws aimed at protecting women from human trafficking more often than not only constrict their choices further and create chances for police corruption and abuses:

I was born in Honduras. Because of the violence in my country I left for Mexico. I was deported once with three more compañeras. Migration police tried to force us to have sex with them, without a condom, but we refused. It is hard for an undocumented immigrant to get a formal job, so most of us end up as waiters and waitresses in bars. If you go out and have sex with the clients of the bar, after your shift, you can increase your income even four times, nobody forces you, but it is too tempting. The law in Chiapas forbids the waitresses to sit and drink with the clients (fichar). Even if you drink just juice or some soft drink, they can shut the place down if, during a surprise police raid, they find you sitting and drinking with the bar's clients, even in family restaurants. They say that this law is supposedly there to protect us from being forced to drink alcohol, even if we are just talking to a friend for a while. For more than three years I know BCAM, as they visit the bars to provide condoms, tests, and workshops on health and how to use the law. I find really useful the comics by BCAM, in order to educate my children on the things that happen in the world.

Rosario, 30, waitress in Tapachula

It is impossible to make any generalisations about either trafficking or the conditions in sex work, as these differ across regions and populations, as Raquel explained:

I was born in Nicaragua. In Tapachula, in the bars where I have worked, most of the compañeras are there of their own will, the majority of sex workers in Tapachula are migrants. In Tapachula, if someone has a padrote and gives him money, most probably it is because she wants to.

On the other hand, she stated,

In Oaxaca I have observed a lot of trafficking in persons, mainly underage persons recruited, transported, and forced to work, or to beg for the benefit of their manager. Oaxaca has a big indigenous and poor population and they are the majority of the victims of the traffickers and abusers. On many occasions I have tried to speak to sex workers in Oaxaca, even in the streets, and it is almost impossible—they are closely controlled and observed by their abusers, and have a quota of money to collect daily.

Raquel, 28, sex worker and BCAM's fieldworker and educator

This statement further highlights the unhelpfulness of concepts like 'position of vulnerability' in the national and international trafficking definitions. While migration status is often pointed as a vulnerability factor, in Raquel's experience, migrants are less 'vulnerable' to exploitation and trafficking than poor and indigenous Mexicans.

The criminalised status of sex work and the vagueness of the anti-trafficking law additionally create the conditions for law enforcement and the judiciary to arrest, detain, and abuse sex workers with impunity, fuelled by the endemic corruption in the country.

It is also important to note that even women who were initially trafficked into sex work through violence or deception may decide to remain in sex work, if they can work in good conditions and keep their earnings. While law enforcement, policy makers, and activists argue over legalistic concepts like consent, people's lived experiences and complex decision-making processes tell a different story, such as Estela's:

I was born in Mexico City. When I was 13 years old I used to do housework for some months, but my employer did not pay me. That is why I accepted to work for a lady who offered me a better salary. But she lied to me. I was violently forced to have sex with many men, never receiving any money. These women were part of a criminal gang of kidnappers and slaveholders in Texcoco. I managed to escape after more than two years of torture. After that, I was kept against my will

for a few months, with no payment, in a couple more places where I was offered to work. Then, a gay guy hired me to do sex work in his brothel, in Zamora, in good conditions, with a real income, and freedom to do what I want. I finally felt more confident about myself and I have been a sex worker since then. Now I do not pay any money to anyone for doing my work.

Estela, 60, sex worker in Mexico City

What all this points to is that, ultimately, there is no easy one-size-fits-all solution to trafficking. Vulnerability to human trafficking is influenced by many factors, including conflict, forced migration, economic need, and corruption, which the current anti-trafficking law is unable to address. The criminalised status of sex work and the vagueness of the anti-trafficking law additionally create the conditions for law enforcement and the judiciary to arrest, detain, and abuse sex workers with impunity, fuelled by the endemic corruption in the country.

Lack of Recognition of Sex Work as Work

State laws equivalent to the General Law on Human Trafficking, are a big obstacle to the recognition of the labour rights of sex workers, as well as the rights and obligations of the employers, when such a relationship exists. Prohibitionists assume that every person engaged willingly in a 'situation of prostitution' is suffering from 'false conscience', so they must be rescued through the prohibition of sex work and the penalisation of clients, organisers, and facilitators of prostitution. Another effect of the undue ban on sexual contracts, included in the anti-trafficking law is that it is an obstacle to sex workers securing their rights to establish formal working relationships with employers, contravening the spirit of ILO Convention 102 on access to Social Security.³⁵

BCAM lobbies for a reform of the General Law on Human Trafficking, and has worked on a draft law with the parliamentary advisers in the Senate;³⁶ however this was blocked in the Lower Chamber, under the influence of prohibitionist activists.³⁷

³⁵ ILO, *C102 - Social Security (Minimum Standards) Convention*, 1952.

³⁶ See: Mexican Senate, *Proceso de revisión y análisis de la ley general para prevenir, sancionar y erradicar los delitos en materia de trata de personas y para la protección y asistencia a las víctimas de estos delitos*, available at http://www.senado.gob.mx/comisiones/trata_personas/docs/info_reformas2.pdf.

³⁷ S Perdomo, 'Peligro aprobar tal cual la minuta del Senado en materia de trata de personas; advierte Julieta Fernández', *Enfoque Noticias*, 2 December 2016, <http://www.enfoquenoticias.com.mx/noticias/peligro-aprobar-tal-cual-la-minuta-del-senado-en-materia-de-trata-de-personas-advierte>.

I am convinced that no issue in the women's agenda should be dealt with from a victimist viewpoint, but from a rights perspective. Instead of being judgemental about people's activities and decisions, I align myself with a pro-regulationist position, in order to protect rights. My experience in the feminist movement began in labour unions; I have worked for many years around issues of women and labour, including also informal and non-salaried work, or housework.

Dora Patricia Mercado Castro, Secretary of State of Mexico City

Violence, Coercion and Exploitation by Gangs

The new war for territorial control of drug trafficking cartels and related gangs is violently expressed in the actions of their *sicarios* (hitmen), who terrorise citizens, including kidnapping women and forcing them into prostitution, and control parts of the sex industry.³⁸ Where gangs control the sex industry, exploitative practices are rife, including depriving sex workers of a large percentage of their incomes, forcing them to have sex with the gangsters, or violently forcing them to collaborate with the activities of the gang. Many people associated with the sex industry, including sex workers, dancers, waitresses, bar owners, managers, and clients have been killed.³⁹

I was born in the State of Puebla. When I was 15 years old I trained boxing. Suddenly, after the training session, a dark van intercepted us, and next I woke up in Sinaloa [1500 km. away, a stronghold of drug cartels]. They kept us in safe houses, with 10-15 women in a room, but the younger were only three in a room. They said that the more attractive of us should be separated. They injected us with some drug on a daily basis; we didn't have any control over our lives. If you are rebellious there, they torture you. There you saw how they raped and killed other women. They rented us by weeks, or months, always transported with armed guards to the ranches of the clients. All of the money was for the traffickers; once they beat me hard just for accepting a small silver chain from a client. They also threatened they would punish our younger sisters at home, if we did not obey. The only women over 20 there were the ones who dressed us up and put on our make-up and the ones who injected us. The first time I tried to escape they caught

³⁸ A Corchado, 'As Mexico's drug cartels fracture, violence and travel warnings soar', *Dallas Morning News*, 25 August 2017, <https://www.dallasnews.com/news/mexico/2017/08/25/mexicos-drug-cartels-fracture-violence-travel-warnings-soar>.

³⁹ K Linthicum, 'Mexico's bloody drug war is killing more people than ever', *Los Angeles Times*, 22 July 2017, <http://www.latimes.com/world/mexico-americas/la-fg-mexico-murders-20170721-story.html>.

me and beat me a lot. I was kept there for five years, until only three of us could run away, with some help by one of the women there. After fleeing from Sinaloa I lived with a padrote from Tenancingo, Tlaxcala. He was violent. After many years of constant violence, you lose the notion of what life and love are, of how anyone should treat you. I gradually recovered my self-awareness and could regain responsibility over my life's choices, but it was hard.

**Nadia, 31 years old, sex worker who was victim
of human trafficking, Mexico City**

The violence of criminal gangs is closely related to police corruption and, in the case of sex work, the stigma attached to it. All these circumstances allow not only criminal gangs to exploit or extort sex workers, but also family members, as related by Diana:

I was born in Tenancingo, Tlaxcala—the very famous pimp-town. First, the pimps tell you they love you, sometimes their own wives help them to recruit new women, they tell you: 'I will introduce you to my cousin so that you don't feel lonely'. They promise their wives that if they help them recruit, they will put them in charge of their children, instead of doing sex work to give them money. You do not go to the police if there is the threat that they'll take your children away. They traffic the women to other cities or to the USA. My own father held my three-year old son hostage, and I had to send him money weekly because he threatened me that I wouldn't see my boy again. In a recent visit to my hometown I recovered my son and we both fled from the town. Now I only do sex work for myself and to sustain my children.

Diana, 21, sex worker in Mexico City

Prohibitionist measures, with their intention of eradicating the sex industry, have the effect of reducing the options of sex workers to earn an income. In a prohibitionist environment, the cartels could represent sex workers' only opportunity to make a living, thus exposing them to the worst possible conditions of exploitation, abuse and danger for their lives and integrity, even subjecting them to trafficking.

I learnt in my years of work as director of the State Commission against AIDS in Jalisco that the police, local authorities, some hotel owners, and the pimps exploit sex workers if they can. When there are narco cartels fights, sex workers get frequently trapped in between. Sex workers need the most basic respect of their rights and their autonomy. Any law that somehow deals with sexual commerce must be based in the most effective promotion and recognition of the rights of sex workers and their personal security. I remember that in an abandoned

house in Guadalajara, a group of street youth were living as squatters. They begged for money and did other things to survive, and one adolescent woman used to practice sexual commerce. The police officer who arrested her instead of taking her immediately to some shelter or service provider for a real rescue, forced her to give him oral sex. When the information about her HIV positive status was unduly leaked, the reaction of the press was of deep concern for the health of the rapist policeman, not for the irregularly arrested underage victim of rape, living with HIV.

***Dr Patricia Campos López, Latin American Bureau Chief
at AIDS Healthcare Foundation (AHF), Guadalajara, Jalisco***

Mandatory Health Surveillance

Mandatory health surveillance for sex workers is regulated in most of the country through local laws. As the tests are included in the basic healthcare provision, it is illegal, but frequent, that control cards and tests are sold to the sex workers by

local communal health authorities. This situation is worse in places with high concentration of undocumented migrants, as in Tapachula.

Undocumented migrant sex workers experience additional discrimination and stigma and are often denied, illegally, even the most basic health services.

Advocating for equitable and voluntary access to health has been a core issue around which BCAM has organised. In Mexico City, BCAM and Red Mexicana de Trabajo Sexual successfully advocated against the abuses and exploitation around mandatory health control checks, resulting in the halting of the practice in 2000.

On the other hand, for undocumented migrant sex workers, the National Migration Institute (*Instituto Nacional de Migración*) accepts health control cards as a proof of residence in the country for migration regularisation purposes. Therefore, BCAM, besides providing advice to undocumented sex workers on the requirements for status regularisation, co-organised, with local, state, and federal authorities a special regularisation campaign, the first one in a sex work tolerance zone, in Huixtla, Chiapas.⁴⁰

⁴⁰ G Bravo, 'Realizan campaña de regularización migratoria en la zona de tolerancia de Huixtla, Chiapas', *Brayoprensa*, 12 March 2017, <http://brayoinfo.blogspot.mx/2017/03/realizan-campana-de-regularizacion.html>.

I was born in Nicaragua. When I met for the first time the crew of BCAM, four years ago, I identified myself with the group because they contribute to educating sex workers to defend their rights, and help them to prevent and stop the abuses. Thanks to the campaign of migratory regularisation of undocumented persons, regularised sex workers now are in much better position to negotiate better working conditions and to reject abuses.

Raquel, 28, BCAM's fieldworker and educator

Responding to the Challenges that Sex Workers Face

Brigada's approach to the challenges sex workers face is essentially threefold. Firstly, they provide comprehensive, person-centred legal, health, and psychosocial services to sex workers, in a way which respects their self-determination. Secondly, they support the self-organising and mobilisation of sex workers, among their own membership, and in alliances with organisations such as Red Mexicana de Trabajo Sexual. Together with RMTS they developed a protocol to address human trafficking for sexual exploitation and labour exploitation. Thirdly, they actively advocate for the creation of a legal and policy environment which respects sex workers as human beings and as workers.

As part of their comprehensive approach to support sex workers, Brigada is actively involved in providing comprehensive legal and psychosocial assistance to sex workers who are victims of exploitation and coercion, as well as people who are trafficked. BCAM trains sex workers as peer educators, to educate groups of sex workers about human trafficking and exploitation. The quotes below illustrate this approach:

BCAM promotes health and prevention of abuse to empower women sex workers around La Merced to recognise abuses, exploitation and trafficking, helping those who are subjected to abuses. BCAM counsels the persons who decide to press charges, and provides support to women who experience or have experienced criminal abuses.

Arlen Palestina Pandal, BCAM's legal counsellor

On the streets, by hearing and seeing what happens where sex work takes place, while providing support to persons who are victims of exploitation or even subjected to trafficking, we collaborated to rescue many women who participated in the sex industry against their will. So, if we have been able to find this out, why so many authorities seem unable to figure out where the abuse is taking place?

Rosa Icela Madrid, founding member of BCAM

Brigada Callejera begins by laying charges with the criminal prosecution authorities; if necessary, they highlight legal cases in the media, and provide legal advice and direct support to the victims. They develop information campaigns to disseminate the knowledge on how to prevent and root out human trafficking by means of books, brochures, workshops, and the media.

Krizna, transgender sex worker and BCAM field worker

Brigada Callejera does everything it can to help persons who are subjected to trafficking or other abuses. Nobody else cares about them as Brigada does. It provides what they need, from practical things, to legal or psychological counselling, they never stop helping until the person is safe.

Morti, 45, sex worker and BCAM field worker, Mexico City

Brigada Callejera joined efforts with the Mexican Network of Sex Work, so if they identify a person possibly subjected to exploitation or trafficking they provide legal advice and support, establish a helping and empowering relationship based on trust and respect for their autonomy, in order to help them quit the sex industry, press charges, or relocate to a different city. Brigada has a high impact programme of education using comic books against trafficking. The comics are based on life stories of real persons subjected to exploitation and trafficking. Compañeras contributed with their experiences, so that they can help prevent other women from being criminally abused.

Rosa Icela Madrid, founding member of BCAM

The sex workers I interviewed showed high appreciation for the opportunity to receive health services and legal information from BCAM, as well as connect with other colleagues to support each other and share experiences. Their feedback shows how they value this integrated approach:

We need more legal knowledge to be able to defend our rights, and also information and orientation to protect our health. New compañeras are sometimes threatened to pay money to persons who assume themselves as 'owners of the street'. But extortion is a crime, so we tell the newbies that we can use the law to protect ourselves. I got into sex work by myself as the salaries in regular jobs are not enough to live. I met BCAM six years ago, when they visited us in the streets, provided us with free health services and legal orientation.

Carla, 25, sex worker in Mexico City

I know BCAM for more than 10 years. I am happy that there is such a place where you can find free support and orientation about health and how to use the law to protect yourself.

Estela, 60, sex worker in México City

BCAM always provides the necessary support, that is why it is so important to take the workshops they provide for sex workers, so as we are ready and prepared to stop extortion attempts or to reject the claims of the ones who try to collect money from sex workers, or the exploiters. One constant activity in BCAM is to organise to help the exploited, trafficked or abused sex workers; that is why it is so important to attend the workshops where they explain to us our rights as sex workers and the ways to defend ourselves.

Morti, 45, sex worker and BCAM field worker, Mexico City

Whereas BCAM regularly provides support in genuine cases of trafficking, they also provide legal assistance in cases where the law is misapplied to victimise sex workers. In such cases, BCAM applies to receive the files of the legal case so that, with the help of pro-bono attorneys, they can investigate how the anti-trafficking law is used as a pretext to criminalise sex workers.⁴¹

BCAM analyses the legal matter as soon as possible in order to take the proper actions, legal or other, like removing the person from that environment if there is consensus in BCAM's team about the appropriateness of doing so. Each legal situation is analysed to find out which of the concerned authorities are to provide support, so we follow the case, and also counsel the person that suffered the abuse, adult or underage, to establish if there can be unexpected dangerous consequences for a family member if other actions are taken. BCAM, during the time I have been collaborating, never leaves behind, without support, the person that needs support to remove themselves from a circle of violence. It is necessary that the sex worker herself asks for our support.

Arlen Palestina Pandal, legal counsellor at BCAM

⁴¹ J Montejo, 'Elementos claves de la Sentencia 206/2016 del Consejo de la Judicatura Federal (CJF)', BCAM, 10 November 2017, <http://brigadaac.mayfirst.org/Elementos-claves-de-la-Sentencia-206-2016-del-Consejo-de-la-Judicatura-Federal-CJF>.

BCAM has a track record in providing personalised case management: the first step is to ensure the security of the affected persons, then accompanying them to file the criminal complaint, working with the media, if necessary, and providing psychological and medical support, as needed.

Krizna, transgender sex worker, Mexico City

BCAM provides knowledge, skills, and expertise to foster and support the autonomous organisation of sex workers, promoting their own empowerment to face abuses. As an example of this sharing and collaboration, BCAM distributes and informs about the protocol they elaborated with the Mexican Network of Sex Workers, which includes a series of concrete indicators to take into account in order to evaluate the degree of labour abuse, violence and coercion, including trafficking.

BCAM also implements a prevention campaign to educate sex workers about their rights and the need for self-organisation, through the publication of comic books against human trafficking, *Comics contra la Trata*. The comics show how trafficking operates in Mexico, making clear the differences between trafficking and sex work, and offering ways for sex workers to organise in order to defend and claim their due rights.⁴²

BCAM organises interactive reading sessions of the *Comics* and stimulates discussions on abuses, exploitation, violence and coercion, to open a safe space for sex workers to reflect on their experiences, to identify possible resources and strategies to free themselves and help *compañeras* from all forms of oppression.

Finally, Brigada engages continuously in advocacy for just laws and their application. BCAM partners with the media to shift the public perception of sex work and sex workers and to distribute correct information about human trafficking.⁴³ They also organise public seminars, presentations and discussions for students, decision makers, and the general public to put spotlight on the books and specialised research about sex workers and sex workers' rights.⁴⁴

⁴² J Montejó, 'La Trata de personas no es cuento. Cómicos contra la Trata: Disfruta, aprende y actúa', BCAM, <http://brigadaac.mayfirst.org/La-Trata-de-personas-no-es-cuento.-Comics-contra-la-Trata.-Disfruta-aprende-y-actua>.

⁴³ See, for example, E M Romero, J Montejó and R I Madrid, *Guía de seguridad contra la trata de personas y otros delitos*, BCAM, 2016, <https://es.calameo.com/read/0001373941aa9ecec90c1> and *Auto-protección frente a la trata de personas*, 2015, <http://es.calameo.com/read/000137394f8df2a1892e4>.

⁴⁴ I Grajales, 'Presenta Marta Lamas El fulgor de la noche', *Noticias Voz e Imagen de Chiapas*, 18 July 2017, <http://www.noticiasnvi.com/Articles/chiapas/2017/07/18/presenta-marta-lamasel-fulgor-de-la-noche>.

As noted above, Brigada has worked closely with progressive policymakers to lobby for the amendment of the General Law on Human Trafficking so that it recognises the rights of sex workers to choose their occupation. One of their most noteworthy achievements thus far has been the successful advocacy for sex workers to be included in the category of non-salaried workers.

Recognition as Non-Salaried Workers

Two recent successful legal cases in which Brigada has been involved show what can be achieved, through concerted self-organisation and community mobilisation of sex workers and their allies (lawyers, law makers, feminist activists, journalists, and human rights defenders). In both cases, the outcome was achieved through turning to *Juicios de Amparo*, the court established to uphold the rights enshrined in Mexico's Constitution through preserving the rights of people against unconstitutional actions by any authority.

In the first case, Brigada and Red Mexicana de Trabajo Sexual organised more than 50 sex workers in a protest on International Labour Day in 2012⁴⁵ to demand labour rights for sex workers as non-salaried workers. This was one of a number of coordinated efforts of different actors, which led to the ruling PJF 112/2013 Federal Action of Protection⁴⁶ which offers this recognition. As a result, this action has now opened new ways for strategic litigation to extend the same recognition nationwide. Recognising independent sex workers as non-salaried workers is a significant step forward to improving the national response towards human trafficking in Mexico, by differentiating between victims of trafficking for sexual purposes and sex workers.⁴⁷ Since the new law came into effect, extortion of sex workers has decreased sharply in Mexico City.⁴⁸ At the moment BCAM is lobbying for the same recognition in different city councils, such as Frenillo, Coahuila and Tuxtla Gutiérrez, Chiapas.

⁴⁵ Mujeres y la Sexta, 'Marchan el 1 de mayo trabajadoras sexuales de la Merced y Tlalpan', *Mujeres y la Sexta*, 3 May 2012, <https://mujeresylasextaorg.wordpress.com/2012/05/03/marchan-el-1-de-mayo-trabajadoras-sexuales-de-la-merced-y-tlalpan/>.

⁴⁶ VocesFeministas.com, 'Urge garantizar el acceso al Seguro Popular a las trabajadoras sexuales: Brigada Callejera', *VocesFeministas.com*, 26 July 2017, <https://vocesfeministas.com/2017/07/26/urge-garantizar-acceso-seguro-popular-trabajadoras-sexuales-brigada-callejera/>

⁴⁷ E M Romero, J Montejo and R I Madrid, 'Trabajadoras sexuales conquistan derechos laborales', *Debate Feminista*, vol. 50, 2014, pp. 137–159.

⁴⁸ BCAM, *Acreditación del trabajo sexual ¿ Licencias o credenciales de trabajadoras no asalariadas?*, BCAM, 2017, <https://es.calameo.com/read/0001373946f3b2fd88076>.

One big achievement for sex workers' working conditions in Mexico City was to be accredited by the City Government as non-salaried workers. For more than 20 years, with the support of the Brigada team, we fought against extortions of sex workers by the police. Now each time we see an attempted police raid, we show them our badge by the government, which accredits us to work in this and that street, during these hours.

Morti, 45 sex worker and BCAM field worker, Mexico City

Another ruling that contributes to the distinction of voluntary sex work from trafficking in persons is number 206/2016, issued by the Federal Judiciary Branch (CFJ),⁴⁹ which concerns Federal Protection Actions in criminal cases. In this ruling, the magistrates quoted remarks from the work of feminist anthropologist Marta Lamas, an important ally in defending the rights of sex workers and an honorary member of BCAM, as the basis to establish the difference between sex work and trafficking.

What sex workers need the most are legally established places to work, that are accepted by all of the actors involved: local authorities, neighbours, retailers, and the sex workers themselves. Unfortunately, there are still some setbacks in police culture, so some of them tend to not fully consider sex workers as regular people to be protected, but as easy prey for extortion and abuse. So the recognition and accreditation as non-salaried workers is a great tool for sex workers to increase their personal security and protect their labour rights, even if the Representatives Assembly has not reformed yet the local ordinance that classifies sex work as an administrative offence.

Dora Patricia Mercado Castro, Secretary of State of Mexico City

⁴⁹ BCAM, 'Resumen de la sentencia del juicio de amparo 206/2016 del Consejo de la Judicatura Federal (CJF) que refiere que la organización libre y voluntaria del trabajo sexual es diferente a la trata de personas', BCAM, 10 November 2017, <http://brigadaac.mayfirst.org/Resumen-de-la-sentencia-del-juicio-de-amparo-206-2016-del-Consejo-de-la-Judicatura-Federal-CJF-que-refiere-que-la-organizacion-libre-y-voluntaria-del-trabajo-sexual-es-diferente-a-la-trata-de-personas>.

Conclusion and Recommendations

In this chapter I tried to highlight some of the challenges that sex workers experience in Mexico, through their own words and lived realities, and the tremendous work that Brigada is doing to organise them to collectively resist and address these challenges. Although I tried to group these challenges into several categories, it is clear from the quotes provided that they cannot be neatly separated from one another. Stigma, the lack of recognition of sex work as work, the confusion created by the anti-trafficking law, the wide-reaching power of the cartels, and the corruption and impunity of police officers, exacerbated by the pressure from the US *Trafficking in Persons* report to show progress in the fight against human trafficking (typically by showing more arrests, prosecutions, and convictions), create a perfect storm in which different actors abuse, exploit, extort, and mistreat sex workers.

In this context, BCAM has been instrumental in providing health, legal, and psychosocial assistance to sex workers and victims of trafficking and educating them about their rights, always keeping their individual interests in mind. Despite the hostile environment in which it works, BCAM continues to engage with other activist movements and with the Mexican Federal and local governments to recognise sex work as work, and distinguish it from human trafficking, in order to ensure that both sex workers and victims of trafficking can enjoy the full scope of their human rights.

In consultation with BCAM, this report makes the following recommendations to all public, private and social actors in Mexico:

- Step up the prevention of human trafficking, especially in places where many young and indigenous women go missing, and where there is a high rate of femicides, or where sex workers work.
- Use the indicators of human trafficking developed by BCAM and the Red Mexicana de Trabajo Sexual to raise awareness of human trafficking in different towns, housing complexes, schools and enterprises.
- Improve the protection of potential victims of trafficking, such as children of sex workers, and sex workers themselves, who are especially vulnerable to kidnapping and abuse by drug cartels.
- Include sex workers as a special group in need of protection in the *Gender Violence against Women Alert*.
- Repeal the Civil Code provision that allows courts to strip sex workers of parental rights, as it is used by different actors (including sex workers' family members) to exploit and extort them by threatening to report them to the authorities.

- Reject legislative proposals that aim to criminalise the use of services of victims of human trafficking (even without knowledge that they are victims), as this would in practice criminalise the clients of all sex workers.

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