

Reform
on
Human Trafficking and Prostitution
Joint Submission to Government Public
Consultation Process
October 2019



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EXECUTIVE SUMMARY

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

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

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

1. Decriminalise the selling of sexual services.
2. Criminalise the buying of sexual services.
3. Create penalties for traffickers, pimps and johns that act as adequate deterrents.
4. Develop and enforce strict regulations for any venues where sexual services are supplied.

Giving effect to these changes requires a zero-tolerance approach by the police, along with specialist investigatory capacity deployed in conjunction with trained psychologists. We must do better to protect vulnerable people and prosecute offenders.

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

Trafficking and prostitution are forms of coercive violence.

Violence cannot be legalised or regulated, only outlawed.

NATIONAL STRATEGY AGAINST HUMAN TRAFFICKING

RAISING AWARENESS AND STRENGTHENING THE PREVENTION OF HUMAN TRAFFICKING

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

Emphasis should be placed on raising awareness across:

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

STREAMLINING REFERRAL MECHANISMS

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

Streamlined and effective referral mechanism requires:

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

UPDATING PROTECTION MECHANISMS

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

In order to adequately update protection mechanisms

1. A full complement of physical, psychological, financial, employment, compensatory and

voluntary repatriation services must be available and accessible to any alleged/suspected victim of human trafficking.

2. These services must be fully and sustainably funded by the Government.

STRENGTHENING THE INVESTIGATION ARM

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

To strengthen the investigation arms:

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

UPDATING LAWS ON HUMAN TRAFFICKING

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

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

Any updated human trafficking law must include:

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

vulnerabilities including age and disability; and

7. Assurance of procedural rights to access justice for victims, including rights within the criminal proceedings, access to civil claims and state-funded compensation.

FACILITATING ACCESS TO COMPENSATION AND LEGAL SUPPORT FOR VICTIMS

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

To provide effective access to legal support and compensation:

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

INTRODUCING REGULATION FOR 'GENTLEMEN'S CLUBS', MASSAGE PARLOURS AND TEMPORARY WORK AGENCIES.

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

This culture is perpetuated by societal acceptance of the strip clubs. There are nine strip clubs just in Paceville - a prominent location in close proximity to family entertainment venues (e.g. cinema, bowling alley, eateries) as well as ordinary bars and clubs. There are nine strip clubs in the whole of Sweden. This demonstrable acceptance of exploitative culture, concentrated in a place frequented by young and impressionable teenagers/young adults sends a diametrically opposed message to society about the Government's commitment to protecting vulnerable people.

Outlawing sexual and abusive services currently provided by these venues will however, change the dynamics/location of the industry. This can only be combated by highly trained specialists capable of following the industry.

With respect to massage parlours, we propose:

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

With respect to strip clubs, we propose:

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

With respect to temporary work agencies we propose:

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

d. perform functions and be paid in accordance with their contracts.

MANAGING A MULTI-AGENCY APPROACH

A multi-agency approach should:

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

COLLABORATING WITH AND SHARING OF BEST PRACTICE WITH INTERNATIONAL PARTNERS

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

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

REFORM TO LAW AND POLICIES RELATED TO PROSTITUTION

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

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

SAFEGUARDING THE HUMAN RIGHTS OF PERSONS INVOLVED IN PROSTITUTION

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

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

DECRIMINALISATION OF SELLING AND CRIMINALISATION OF BUYING SEX

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

We propose that:

1. The selling of sex is decriminalised; and
2. The buying of sex is criminalised.

ENTRY INTO PROSTITUTION AND EXIT FROM PROSTITUTION

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

In the case of transgender people and/or others who may find it more difficult to secure alternative employment, while Malta has the best [LGBTIQ laws](#) in Europe, the Government must ensure its provisions prevent any discrimination against any people identifying as LGBTIQ to ensure all people have equal access to meritorious-based employment.

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

PAST CRIMINAL RECORDS

When the selling of sex is decriminalised, we agree that all past criminal records of prostituted people should be expunged.

PUBLIC HEALTH AND ACCESS TO HEALTH SERVICES

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

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

PROTECTION OF MINORS

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

We strongly urge the Government to increase the penalties available for adults who traffick, or aid and abet the trafficking of minors.

OUTREACH AND CIVIC PARTICIPATION

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

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

In addition to codifying the decriminalisation of prostitution, we strongly urge the Government to criminalise the buying of sex and related activities. Pimping, soliciting and living off the earnings of prostitution/brothels is already illegal and contained in Chapter 9 of the Criminal Code (Art 248A et

seq). This should be extended to include the criminalisation of sex-buying in the legislation, as well as being included as an offence in a reform of the Criminal Code. This criminalisation must be replete with strong deterrent penalties for those found guilty of associated offences.

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

In addition, existing legislation supporting asylum seeker, migrants, social security, housing, health and education must be reviewed to ensure its provisions enable the level of holistic care required to safeguard survivors.

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

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

ENDORSEMENTS

This Submission and its attendant proposals are endorsed by: