

## Catholic Voices Malta

### Position Paper on the Human trafficking reform - Consultation document

Date: 31<sup>st</sup> October 2019

---

#### Introduction

The reform speaks about placing “the victim of trafficking or the person subjected to prostitution at the centre of each decision being taken”. This is indeed a laudable approach however when evaluating the content of the reform being proposed, the reform lacks the acknowledgement that prostitution is intrinsically wrong because it violates the human dignity of the person involved. Prostitution is wrong not only when coerced (trafficked) but also when a prostitute is made to make a living from selling her body to sustain a decent living, exposing her to health risks, physical abuse and mistreatment. The question the legislator needs to ask is, is this an activity I desire for my own daughter. If not, why should it be desired for anyone else.

The Parliamentary Secretary in her introduction clearly affirms that “**We know** that people, especially women and girls, are trafficked and forced into prostitution. While we recognise the intersection between human trafficking and prostitution, we also understand the broader and distinct complexities related to prostitution”.

The reform cannot be linked to the economic demands of so-called operators in the sector or claims that their international employees and clients expect Malta to offer such services if it wants to attract say financial services, online gaming and the like. Women can never become “perks” for an industry.

Traditionally, the law has largely ‘understood’ prostitution based on some form of moral reflection on the sale of sex. However, prostitution involves the violation of human dignity, which leads to a call to action to criminalise the purchase of sex.

The reform states that it seeks to be guided by human rights principles. It is precisely the human right principle of human dignity that prostitution violates. Human rights theory and international human rights law, as well as Article 3 of the European Convention on Human Rights (ECHR), are grounded in an understanding that human dignity is inherent and inalienable in all persons. As the Universal Declaration on Human Rights and other international conventions recognize, the concept of inherent human dignity is the bedrock upon which human rights are founded.

People have human dignity simply because they are human. It has even been stated that one’s intrinsic value as a human being exists regardless of what one may think of one’s own worth. In other words, human dignity is inherent to being human and does not depend on what one thinks of oneself, what others think, or even what the authorities think. For this reason it is not sufficient that the reform addresses initiatives to support women that want to move out of prostitution, but it is equally important that authorities take effective measures to prevent prostitution from happening in the first place, even if a person may claim that they are doing this activity consciously, as happened recently in the case of the stripper ‘*l-Amerikana*’ who told Xarabank that she was entitled to choose who to perform for, and what she allows to be done to her. (1)

While in agreement with the reform on the decriminalisation of the prostitute, the proposed reform goes a step further as effectively it proposes to formalise into employment prostitution and

therefore making legal the state of the prostitute, i.e. that of being a victim. This comes out from several “mentions” in the report that are being quoted:

- **Removing stigma:** *Prostitutes continue to live their lives shrouded in stigma, and the laws of the country are not conducive to challenging that stigma. Indeed, prostitution laws in Malta continue to criminalise and punish those who need protection and support most. (page 1 para 4)*
- **Regularisation of prostitution:** *The Government Electoral Manifesto states that the government pledges to “launch a debate on the regularisation and decriminalisation of prostitution.” The Manifesto also states that the “main aim should be to protect vulnerable people from being exploited as sex workers and at the same time further enhance the fight against trafficking of persons.” (page 3 para 1)*
- **Create so called “ethical” recruitment standards:** *Government representatives have the opportunity to share their views on a myriad of subjects, ranging from support services to victims and vulnerable persons, investigation and enforcement, regulations promoting ethical recruitment, the judicial process, health, employment and education, immigration and other related themes. (page 3 para 2)*

If a prostitute is a victim, and for this reason we are proposing to decriminalise, the prostitute remains a victim even after we manage to remove the stigma, we regularise prostitution and create so called ethical standards of recruitment. If prostitutes are victims, they are victims whether they have been trafficked or whether they enter prostitution for other circumstances, even if these are purely economic. However, because we share the concern of the Parliamentary Secretary in her introduction when she states that “*We know that people, especially women and girls, are trafficked and forced into prostitution*”, we believe that the proposed reform falls short in achieving these aims as it turns a Nelson’s eye to the reality that prostitution is very rarely by choice and vastly likely by trafficking or social economic realities that equally the State is obliged to address, through education, social support and alternative employment rather than through the regularisation of prostitution that leaves them (or introduces them) to a victim’s state.

We note the Parliamentary Secretary’s comment when she states, “*I think we know how it happens*”. Our concerns however remain. Will the reform stop it happening? We believe the proposed legislative reform does not provide the certainty that we can effectively stop trafficking, when the reform will generate more demand for trafficking that does not start from our shores and therefore, we are unable to stop. If so, then let us not create the demand for more trafficking which we cannot stop.

The document also speaks about the efforts done this year when it states, “*This year’s national budget included measures specifically related to addressing and helping victims of human trafficking and prostitution. The Government allocated funds for the organisation of a public awareness campaign on human trafficking, and funding to support a project by civil society that aims to provide support services to prostitutes who are serving a prison sentence*”.

If these measures have happened indeed, they have not been very visible to the general public and possibly a better understanding of what has been done is indeed warranted.

## The Initiatives for the Proposed Reform

The document states that, *“The following areas have been identified as important and relevant to achieve the goal of fighting the trafficking of persons, protecting victims of trafficking and addressing legal and policy gaps related to prostitution. The basis of these priorities reflects **the Government’s understanding of the risk of human trafficking in a multicultural society, a growing economy and a dynamic labour market.** An emphasis on the prevention of any form of exploitation is being made alongside the government’s commitment to fight crime and ensure that perpetrators are brought to justice.*

While the message is indeed positive, the initiatives proposed do not tackle the core issue that drives prostitution – demand for prostitution.

Comments on the measures proposed:

### **1. Raising awareness and strengthening the prevention of human trafficking.**

While raising awareness on an issue is an important step, the document fails to provide enough information on what it seeks to achieve and how this will effectively reduce human trafficking.

### **2. Streamlining referral mechanisms:**

As the report affirms, identifying a person as a victim is one of the most delicate aspects when combating human trafficking. Authorities may have very limited information about a person or lack of information to initiate criminal proceedings against alleged traffickers. These obstacles must not deny the protection granted by the State to a potential victim.

However, the real issue is at what point will a person be classified as a victim. With the proposal of establishing “ethical recruitment” i.e. converting prostitution into a regular employment, a prostitute is moved from the realm of being a victim and classified as a legitimate worker. This is creating a false sense of regular employment when prostitution remains intrinsically degrading to the woman engaged in such an activity, exposing her to significant health risks, ill-treatment and subjected to degrading acts, and essentially because she is either coerced or left with no other “economic” option. This essentially implies that a prostitute is always a victim, as prostitution goes against a woman intrinsic human dignity. No amount of legalising will change this basic human fact.

The biggest issue with prostitution is “coercion”. Victims of foreign origin, for example, are brought into Malta through shady means and promises and then forced into prostitution under the threat of their own life if they talk or seek to escape.

The proposed system of a so called *“multi-disciplinary approach which determines whether a person is a victim of human trafficking”*, is doomed to fail and only scratch the surface of a criminal activity that will always be a step ahead of law enforcement.

It is indeed important to create easily accessible avenues where victims of human trafficking may seek assistance through the creation of an official referral mechanism. However trafficked women brought about under the guise of a regularised work permit system for a stripper “job” from third countries will always feel under the threat of her boss withdrawing her employment status if she refuses to engage also in prostitution activities.

**Unless prostitution is seen for what it is, the exploitation of women “whether wanting or not wanting” and therefore something that intrinsically is wrong, then the whole reform is actually a conduit to encourage more human trafficking as it will create more demand for such sexual**

**activities and pushing traffickers to increase the supply of women to the already prolific sex industry of Gentlemen's Clubs and Massage Parlours.**

### **3. Updating protection mechanisms**

It is indeed positive that the reform seeks to partially address the entrapment of the identified victims of human trafficking by offering to afford protection by a set of pre-defined rights which respect the concept of predictability which seem to include the ability to apply for residence documents and seek alternative legal employment or education.

**This system however may open a pandora's box of a new type of trafficking of human persons.**

**The system may create a new route for the trafficking of illegal immigrants, who would seek residency status in Malta by claiming that they have been trafficked for the purpose of prostitution. As the State cannot afford to provide residency status and jobs to an infinite number of individuals, controls will have to be put into effect to control the abuse of the system. Refusals will become part of the system, and traffickers of prostitutes will remind trafficked victims that they have no guarantee that if they go to the State, they will be afforded this protection, and could easily find themselves deported.**

### **4. Strengthening the investigation arm**

The document indeed affirms that *"Human trafficking is often regarded as one of the most complicated criminal activities to investigate. Perpetrators do their utmost to eliminate evidence, also by means of intimidatory tactics intended to stop their victims from disclosing any information to the authorities."*

The proposed efforts of the Executive to give adequate resources and training to law enforcement agencies to enhance its ability to collect and share intelligence on human trafficking, is indeed critical in whatever direction the reform goes. However, it is a fact that law enforcement is never sufficiently effective to eliminate a crime despite the increased successes in bringing traffickers to justice such measures will have.

Therefore, if the reform is serious about placing *"the victim of trafficking or the person subjected to prostitution at the centre of each decision being taken"* the reform needs to ignore the economic interests of the so called industry desirous of the legalisation of Gentlemen's Clubs, brothels and other similar activities. These so called "industries" are not stakeholders but creators for the demand of present illegal human trafficking.

### **5. Updating laws on human trafficking**

The reform clearly speaks about the need to "to shift the emphasis of anti-trafficking laws to the protection of victims". This may appear socially sound, however, it could also potentially be a dangerous notion.

While we agree with the decriminalising of the prostitute, prostitution needs to remain a criminal activity by shifting the punitive sanction from the prostitute to the trafficker and the consumer of such activity.

That the changes will ensure greater availability of professional support to victims, better the chances of securing convictions against perpetrators, ascertain that vulnerable persons are protected by law and that Court procedures avoid the re-traumatization of victims and with the judiciary given the tools to deliver justice in a timely manner, whilst safeguarding the identity and needs of the victim throughout the whole court proceedings, is all very positive. **However, the legislative changes should not stop here, and the changes should also include harsher penalties for operators of the establishments caught in the activity of human trafficking and the consumers who are collaborating with the traffickers as they engage in procuring a prostitute.**

## **6. Facilitating access to compensation and legal support to victims**

The measures proposed, including the provisions of legal support to the victims to claim civil damages, is a positive step.

## **7. Introducing regulation for “gentlemen’s clubs”, massage parlours and temporary work agencies**

Indeed, regulation is needed to address sectors that pose greater risks of human trafficking such as the situations of persons contracted to perform temporary low-skilled work and who are subjected to inhumane treatment at their place of work.

That a licensing regime is re-introduced for massage parlours to eliminate exploitative practices and safeguarding the interests of qualified massage therapists is also very important.

However, such notions of regulations cannot be extended to “Gentlemen’s Clubs” (strip clubs). The reform here is also proposing regulating these clubs to ensure that these are not used by criminals as a legitimate interface of human trafficking and sexual exploitation.

The reform is however very silent of what this regulation will look like. The notion of accepting such clubs, that offer “strip club” activities, ignores the “undignified human treatment” a woman is subjected to, to make a living. No woman should have to sell her body to make a living.

The notion that there may be women who choose such activity, to justify the creation of a status of regular employment, is a serious slippery slope. Legislators cannot weaken a whole system of protection for victims because of a possible exception. This loophole will be significantly abused by traffickers and used to give an aura of legitimacy to the activity of human trafficking, making it even more difficult for law enforcement agencies to detect.

## **8. Managing a multi-agency approach**

The adoption of a multi-agency approach that seeks to strike the right balance between the social welfare approach and the law enforcement approach is indeed important.

## **9. Collaborating with and sharing of best practices with international partners**

Positive.

## REFORM TO LAWS AND POLICIES RELATED TO PROSTITUTION

Proposal	Reaction
1. Safeguarding the human rights of persons involved in prostitution	We agree
2. Decriminalisation of prostitutes	We agree
<p>3. Entry into prostitution and exit from prostitution</p> <p>The State needs to create appropriate conditions to ensure that people are able to leave prostitution</p>	<p>The Document states that <i>“Research carried out in a number of countries showed that many persons involved in prostitution have stopped or tried to stop working as prostitutes at least once and then returned. Many enter and leave a number of times before exiting completely. The main reason for returning to prostitution is usually financial, but many also report wanting to move away from their relationships or families. Prostitutes who are transgender are likely to find it more difficult to find alternative forms of employment due to persistent discrimination against trans people.</i></p> <p><i>People may enter prostitution for a variety of reasons, but predominantly it is for financial reasons, to support children or families. Factors such as poverty, homelessness, history of abuse and peer pressure can be reasons for people entering prostitution. Some might enter prostitution to support their drug/substance use and others may be coerced into prostitution”.</i></p> <p>These assertions show that if we really want to protect the victim, it is not only important to offer them a way out, but create a society that does not encourage them to move in. This can only be achieved through preventive measures that discourage human trafficking, the need to resort to prostitution to sustain one’s (and her dependents) living; to pay for one’s substance addiction etc.</p> <p>It is for this reason that demand for prostitution needs to be curtailed and not encouraged, through:</p> <ul style="list-style-type: none"> <li>• Proper enforcement and closure of “unprofessional” message parlours, strip clubs, brothels and similar establishments.</li> <li>• Further criminalisation of traffickers, economic beneficiaries (example clubs) and also consumers of prostitution.</li> </ul>
4. Past criminal records	Agree

5. Public health and access to health services	Agree
6. Protection of minors	<p>We are indeed very concerned with the implications of this proposed reform. We understand that today under the White Slave Traffic (Suppression) Ordinance, anyone who induces a person under the age of 21 into prostitution is deemed to have committed a criminal offence. The reform effectively gives no further protection to minors, and rather exposes persons between the ages of 16 and 21 by withdrawing the protection that is being afforded to them today, as the age of consent has recently been lowered to 16 years.</p> <p><b>If we are serious in combatting prostitution, and we seriously consider prostitutes a victim, then any person who induces a woman into prostitution should be guilty of a criminal offence irrespective of the age of the person that is being induced i.e. victimised.</b></p>
7. Outreach and civic participation	Agreed that the people that really need to be heard in this reform is the victims.

Glaringly in the proposed reform there is no mention of:

- Heftier sanction for human traffickers
- Curbing the demand for prostitution, the proposed reform in fact will open the flood gates for so called legal prostitutes and then after making them victims, seeks ways of offering them a way out.
- Clamping down on the proliferation of illegal strip clubs, the operators of which are being deemed as stakeholders, in a reform that should deem them “at least” accomplices to human trafficking.
- Addressing Pimps.
- Addressing the demand-side for prostitution by criminalising the person who seeks or is interacting with a prostitute.

## Conclusion

We urge the legislator to rethink the orientation of the reform and advocate that our system should be closer to models that have proved to be successful in addressing human trafficking, reduce and reintegrate prostitutes in dignified employment and have full respect for the fundamental human rights principle of human dignity.

The dignity of a person goes beyond providing a way out of prostitution but by creating a culture of unacceptance of the objectification of a woman’s body, the provision of education and work opportunities that value the contribution of the person and provide a source of fulfilment in the

alternative work a former prostitute does, rather than continue facing degradation and humiliation to survive.

**Prostitutes should be decriminalised, but prostitution should remain a criminal activity, with heavier sanctions being placed on persons found guilty of trafficking human persons, operators of clubs and outlets that host trafficked persons, pimps and persons seeking the services of a prostitute. This clearly implies that strip clubs and similar operations should not be licenced and the concept of “ethical recruitment” withdrawn.**

Law enforcement in general is very weak, being a country very good in enacting legislation but very slow to enforce. Creating a seemingly acceptable regulatory regime that allows for prostitution in say strip clubs will distance further law enforcement from the victims held in such establishments that now present themselves as mainstream legitimate business operations. This goes completely against the declared purpose of the reform and we urge the Government to seriously reconsider this approach.



**Tonio Fenech**

Co-Ordinator

For more information please contact us on [info@catholicvoices.mt](mailto:info@catholicvoices.mt)

#### Reference

- (1) [https://www.maltatoday.com.mt/news/national/96883/kiss\\_my\\_ass\\_stripper\\_in\\_viral\\_vid\\_def\\_ends\\_eggpelting\\_stag\\_party\\_despite\\_controversy#.Xag6EXduLIU](https://www.maltatoday.com.mt/news/national/96883/kiss_my_ass_stripper_in_viral_vid_def_ends_eggpelting_stag_party_despite_controversy#.Xag6EXduLIU)