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Special Issue-Sex Work

Editorial: Gains and Challenges in the Global Movement for Sex Workers' Rights

Sex Worker Resistance in the Neoliberal Creative City: An auto/ethnography

Latin American and Caribbean Sex Workers: Gains and challenges in the movement

The Philippine Sex Workers Collective: Struggling to be heard, not saved

Sex Work, Migration, and Human Trafficking in South Africa: From polarised arguments to potential partnerships

Butterfly: Resisting the harms of anti-trafficking policies and fostering peer-based organising in Canada

Unacceptable Forms of Work in the Thai Sex and Entertainment Industry

Of Raids and Returns: Sex work movement, police oppression, and the politics of the ordinary in Sonagachi, India

The 'Prioritizing Safety for Sex Workers Policy': A sex worker rights and anti-trafficking initiative

'The Problem of Prostitution': Repressive policies in the name of migration control, public order, and women's rights in France

'Sex Trafficking' as Epistemic Violence

Short articles

The New Virtual Crackdown on Sex Workers' Rights: Perspectives from the United States

Time to Turn Up the Volume

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ANTI-TRAFFICKING REVIEW

Special Issue

SEX WORK

Issue 12 April 2019

The *Anti-Trafficking Review* (ISSN 2286-7511) is published by the Global Alliance Against Traffic in Women (GAATW), a network of over 80 NGOs worldwide focused on advancing the human rights of migrants and trafficked persons.

The *Anti-Trafficking Review* promotes a human rights-based approach to anti-trafficking. It explores trafficking in its broader context including gender analyses and intersections with labour and migration. It offers an outlet and space for dialogue between academics, practitioners, trafficked persons and advocates seeking to communicate new ideas and findings to those working for and with trafficked persons.

The *Review* is primarily an e-journal, published biannually. The journal presents rigorously considered, peer-reviewed material in clear English. Each issue relates to an emerging or overlooked theme in the field of anti-trafficking.

Articles contained in the *Review* represent the views of the respective authors and not necessarily those of the editors, the Editorial Board, the GAATW network or its members. The editorial team reserves the right to edit all articles before publication.

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Editorial: Gains and Challenges in the Global Movement for Sex Workers' Rights

Annalee Lepp and Borislav Gerasimov

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Over the past two decades, there has been a growing body of excellent academic and community-based literature on sex workers' lives, work, and organising efforts, and on the harmful effects of anti-trafficking discourses, laws, and policies on diverse sex worker communities. Importantly, a significant portion of this work has been produced by sex workers and sex worker organisations.¹ When we decided to devote this Special Issue of *Anti-Trafficking Review* to the theme of sex work, we acknowledged this reality. However, we also thought that, given that the discourses, laws, and policies that directly impact sex workers globally are continually changing, the production of new evidence-based research and critical perspectives is constantly needed.

Sex Workers Organising for Change

While the history of sex worker activism can be traced to at least the nineteenth and early twentieth centuries, most of the literature focuses on the emergence and growth of the global sex worker rights movement beginning in the 1970s and 1980s.² Since then, sex workers (women, men, trans, and non-binary people) have organised to demand recognition of sexual labour as labour;

¹ See, as one of many examples: P G Maciotti and G G Geymonat, *Sex Workers Speak. Who listens?*, Beyond Trafficking and Slavery, 2016, https://cdn-prod.opendemocracy.net/media/documents/BTS_Sex_Workers_Speak.pdf.

² See, for example, G Gall, *Sex Worker Union Organising: An international study*, Palgrave MacMillan, New York, 2006; NSWP, *History*, <https://nswp.org/history>; K Kempadoo and J Doezema, eds., *Global Sex Workers: Rights, resistance, and redefinition*, Routledge, New York and London, 1998.

challenge stigma, discrimination, and all forms of violence, including by law enforcement; improve working conditions; lobby for full human, social, and labour rights; advocate for the decriminalisation of sex work; and provide peer-based support and services. Many sex worker organisations also organise and support migrant sex workers in an effort to address the specific challenges they confront, such as racism and xenophobia, precarity due to their im/migration status, lack of access to health and other services, vulnerability to exploitation and violence, and the risk of detention and deportation.

Since the 1990s, sex workers and sex worker organisations have also had to contend with the emergence, expansion, and strengthening of the global ‘anti-trafficking industry’ with its strong anti-sex work, criminal justice, and border control agendas.³ Sex worker organisations in Spain, Thailand, and India, for example, pointed out in a recent Global Alliance Against Traffic in Women report that trafficking was ‘an issue that was introduced [or indeed imposed] from outside the industry itself, propelled by a moralistic agenda, that organisations have felt obliged to understand, in order to counter the harmful effects of conceptually conflating trafficking and sex work.’⁴ In many countries, anti-trafficking legislation, policies, and interventions have targeted sex workers with highly detrimental impacts. This has taken the form of greater police surveillance of the sex industry, raids on sex work establishments, forced detention in rehabilitation centres, arrests and prosecutions of sex workers as traffickers, and deportations of migrant sex workers—all of which undermine and ignore sex workers’ agency as well as their legitimate demands for better working conditions and human, social, and labour rights.⁵ Further, the crucial role of sex worker organisations in promoting the rights, safety, and security of sex workers and addressing working conditions in the industry has largely gone unrecognised by national and international policymakers, donors, and some non-governmental organisations. The ideologies, assumptions, and agendas that fuel the anti-trafficking industry have also resulted in the exclusion

³ K Kempadoo, ‘Abolitionism, Criminal Justice, and Transnational Feminism: Twenty-first century perspectives on human trafficking’, in K Kempadoo, J Sanghera and B Pattaniak (eds.), *Trafficking and Prostitution Reconsidered: New perspectives on migration, sex work, and human rights*, 2nd edition, Paradigm, Boulder and London, 2012, pp. vii–xlii; see also: K Kempadoo, ‘The Modern-Day White (Wo)Man’s Burden: Trends in anti-trafficking and anti-slavery campaigns’, *Journal of Human Trafficking*, vol. 1, no. 1, 2015, pp. 8–20, <https://doi.org/10.1080/23322705.2015.1006120>.

⁴ M Stacey and B Gerasimov, ‘Introduction’, in Global Alliance Against Traffic in Women, *Sex Workers Organising for Change: Self-representation, community mobilisation and working conditions*, GAAATW, Bangkok, 2018, p. 30.

⁵ *Ibid.*; see also: Global Network of Sex Work Projects, *Policy Brief: The impact of anti-trafficking legislation and initiatives on sex workers*, NSWP, 2019, Edinburgh, <https://www.nswp.org/resource/policy-brief-the-impact-anti-trafficking-legislation-and-initiatives-sex-workers>.

and silencing of sex workers and sex worker organisations when it comes to the development of legislation and policies that directly affect their lives and work. Over the last ten years, this trend has certainly been evident in countries where governments have enacted laws that criminalise the purchase of sexual services in the name of gender equality, protecting the vulnerable, and preventing trafficking for sexual exploitation.

#20yrsFailingSexWorkers⁶

Twenty years ago, in 1999, Sweden became the first country in the world to criminalise the purchase—but not the sale—of sexual services, combining this with measures to support sex workers who wanted to exit the sex industry.⁷ Based on an ideological conceptualisation of prostitution as violence against women and an obstacle to gender equality, it was initially introduced with the aim of reducing prostitution by targeting men's demand for commercial sexual services. However, with the adoption of the UN Trafficking Protocol in 2000,⁸ and the last-minute insertion of Art. 9 (5) that calls on states to 'discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking',⁹ the Swedish model has since then been promoted as a way to prevent trafficking in the sex industry. Despite the lack

⁶ In March 2019, the International Committee on the Rights of Sex Workers in Europe chose this motto to mark twenty years since the introduction of Swedish model. See: <https://twitter.com/search?q=%2320yrsfailingsexworkers&src=typed>.

⁷ While proponents of the Swedish model point to the availability of exit services as a unique feature of the model, this is not true. Exit services can be provided under any legislative model. For example, in the Netherlands, where sex work is legal and regulated, the government allocated EUR 14,5 million (approx. USD 18 million at the time) for exit services between 2009 and mid-2011. According to the programme's evaluation, by 2013, 1,800 people had accessed the programme and 1,002 had left the sex industry (including 139 potential victims of trafficking). See: L Heuts and G Homburg, *Overzicht en Stand van Zaken Uitstapprogramma's voor Prostituees, Factsheet*, Regioplan, Amsterdam, 2013, https://wodc.nl/binaries/2404-volledige-tekst_tcm28-73359.pdf, p. 6. This programme was extended to July 2019, with the government providing EUR 3 million (approx. USD 4 million) per year, which is co-financed by municipalities and exit programmes are now available in two-thirds of all municipalities. See: M Timermans, M Kuin, and J van Leerdam, *Evaluatie Uitstapprogramma's Prostitutie. Deelrapport landelijke dekking en toekomstige financiële regeling*, Regioplan, Amsterdam, 2018, https://wodc.nl/binaries/2943a_Volledige_Tekst_tcm28-368322.pdf. We are not aware of similar evaluations of exit services in Sweden, although they may well exist.

⁸ 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).

⁹ *Ibid.*, Art. 9 (5).

of conclusive evidence that the model has managed to either reduce sex work or prevent trafficking in Sweden,¹⁰ it has been packaged as a mechanism to promote gender equality, protect the vulnerable, and prevent trafficking in the sex industry. As a result, sex purchase bans have since been adopted in Norway and Iceland (2009), Canada (2014), Northern Ireland (2015), France (2016), the Republic of Ireland (2017), and Israel (2018).

At the same time and over the same period, there has been mounting evidence that the Swedish model exacerbates the stigma against sex workers and forces them to engage in more dangerous activities, and increases the risk of HIV and STIs, and violence from clients and the police. This evidence has often been accompanied by support for the decriminalisation of sex work and has come from academics,¹¹ UN agencies,¹² human rights organisations,¹³ medical professionals,¹⁴ LGBTI+ organisations,¹⁵ anti-trafficking

¹⁰ A Jordan, *The Swedish Law to Criminalize Clients: A failed experiment in social engineering*, Center for Human Rights & Humanitarian Law, American University Washington College of Law, Washington, DC, 2012.

¹¹ British journalist, radical feminist, and avid promoter of the Swedish model Julie Bindel has devoted a book chapter to examining why ‘the majority of academics within the UK, US and elsewhere’ support the rights of sex workers and call for decriminalisation of sex work. J Bindel, *The Pimping of Prostitution: Abolishing the sex work myth*, Palgrave MacMillan, London, 2017, p. xxxiv.

¹² See, among others: J Levine, *Risks, Rights & Health*, UNDP and HIV/AIDS Group, New York, 2012; UNAIDS, *Guidance Note on HIV and Sex Work*, UNAIDS, Geneva, 2012; World Health Organisation, *Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations*, WHO, Geneva, 2014; B Harkins (ed.), *Thailand Migration Report 2019*, United Nations Thematic Working Group on Migration in Thailand, Bangkok, 2019.

¹³ Amnesty International, *Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers*, AI, 2016; Human Rights Watch, *World Report 2014*, New York, 2014; M C Hinayon, ‘Sex Work Should be Decriminalized’, *American Civil Liberties Union Southern California*, 14 October 2016, retrieved 15 March 2019, <https://www.aclusocal.org/en/news/sex-work-should-be-decriminalized>.

¹⁴ One of the many examples is the special issue of *The Lancet*, ‘HIV and Sex Workers’. See: P Das and R Horton, ‘Bringing sex workers to the centre of the HIV response’, *The Lancet*, vol. 385, issue 9962, 2015, pp. 3-4, [https://doi.org/10.1016/S0140-6736\(14\)61064-3](https://doi.org/10.1016/S0140-6736(14)61064-3).

¹⁵ See: ‘LGBTI Organisations from across the World Call for Decriminalisation of Sex Work’, Joint statement by the International Lesbian and Gay Association, The International Committee on the Rights of Sex Workers in Europe and the New Zealand Prostitutes’ Collective, Wellington, 23 March 2019, <https://ilga.org/sex-work-lgbti-organisations-call-for-decriminalisation/>; B Fedorko, *Sex Work Policy*, Transgender Europe, 2016; Lambda Legal, ‘LGBT Rights Organizations Join Amnesty International in Call to Decriminalize Sex Work’, *Lambda Legal Blog*, 20 August 2015, https://www.lambdalegal.org/blog/20150820_decriminalize-sex-work/; J Bindel, ‘A Queer Defence of the Sex Trade’, in Bindel, 2017, pp. 277-303.

organisations,¹⁶ and, of course, sex workers themselves.¹⁷ This begs the question, then, why is it that with such strong and even overwhelming support for the decriminalisation of sex work, backed by extensive evidence-based research, more and more governments are adopting the Swedish model? While this question requires a much more in-depth examination than the space in this Editorial allows, we propose that it is part of a larger global trend towards social conservatism, overreliance on punitive responses to address social and moral ‘problems’ which serve to bolster the conservative agendas of those holding political power,¹⁸ and what has come to be termed *post-truth politics* and its intensification, where ‘objective facts are less influential in shaping public opinion than appeals to emotion and personal belief.’¹⁹

Previous issues of the *Anti-Trafficking Review* have documented the simplistic images and narratives used to describe migrant and trafficked women in the sex industry, and the lack of evidence behind many anti-trafficking policies and interventions. In 2016, Andrijasevic and Mai noted that ‘[t]he stereotypical image of the victim is of a young, innocent, foreign woman tricked into prostitution abroad. She is battered and kept under continuous surveillance so that her only hope is police rescue.’²⁰ In 2017, Harkins observed that ‘evidence has not been prioritised within the anti-trafficking sector.’²¹ The use

¹⁶ GAATW, 2018; La Strada International, ‘LSI Opinion: Criminalisation of the clients of sex workers’, n.d., <http://lastradainternational.org/about-lsi/lasi-opinion/criminalising-the-clients-of-sex-workers>; Freedom Network USA, ‘Freedom Network USA supports Amnesty International’s call to Decriminalize Sex Work’, FNUSA, 26 May 2016, <https://freedomnetworkusa.org/freedom-network-usa-supports-amnesty-internationals-call-to-decriminalize-sex-work/>.

¹⁷ Global Network of Sex Work Projects, *Policy Brief: The Impact of ‘End Demand’ Legislation on Women Sex Workers*, NSWP, Edinburgh, 2018, <https://www.nswp.org/resource/policy-brief-the-impact-end-demand-legislation-women-sex-workers>; Global Network of Sex Work Projects, *NSWP Consensus Statement on Sex Work, Human Rights, and the Law*, NSWP, Edinburgh, 2013, <https://www.nswp.org/resource/nswp-consensus-statement-sex-work-human-rights-and-the-law>.

¹⁸ For more on what American sociologist Elizabeth Bernstein has termed ‘carceral feminism’ (i.e. feminists who align with punitive state bodies, such as police and prosecution), see: E Bernstein, *Brokered Subjects: Sex, trafficking & the politics of freedom*, University of Chicago Press, Chicago, 2018.

¹⁹ ‘Post-truth’, Oxford Dictionaries, <https://en.oxforddictionaries.com/definition/post-truth>.

²⁰ R Andrijasevic and N Mai, ‘Editorial: Trafficking (in) Representations: Understanding the recurring appeal of victimhood and slavery in neoliberal times’, *Anti-Trafficking Review*, issue 7, 2016, pp. 1—10, p. 4, <https://doi.org/10.14197/atr.20121771>.

²¹ B Harkins, ‘Constraints to a Robust Evidence Base for Anti-Trafficking Interventions’, *Anti-Trafficking Review*, issue 8, 2017, pp. 113—130, p. 130, <https://doi.org/10.14197/atr.20121787>.

of highly emotive images and stories of victims and the lack (or disregard) of evidence that aligns with the very definition of *post-truth politics* characterise the processes leading to the introduction of the Swedish model in several countries in the past few years.

In Northern Ireland, for example, Lord Morrow from the Democratic Unionist Party, the sponsor of the 2015 *Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act*, stated that, ‘I always said that additional research was unnecessary’,²² and a member of the Justice Committee concurred, ‘[s]ome of us do not need any research or evidence.’²³ Therefore, the Department of Justice research indicating that most sex workers in Northern Ireland were not trafficked and that the legislation would be hard to enforce and detrimental to sex workers was dismissed.²⁴ Instead, proponents of the law ‘relied heavily on the personal accounts of a small number of survivors of prostitution, who described the sex industry as inherently violent and supported the ban.’²⁵ In France, a survey conducted with 500 sex workers in 2015 prior to the implementation of the 2016 sex purchase ban showed that 98 per cent of respondents opposed the law and that around 7 per cent could have been potential victims of trafficking²⁶ but these findings were similarly ignored. Furthermore, while organisations and individuals supporting the law were involved throughout the process of its development, sex workers and other opponents’ testimonies were largely disregarded, and ‘MPs already knew they would not be convincing.’²⁷ In the Republic of Ireland, Ward argues that ‘by the time the Committee [tasked with developing a law on sex work]’s work began, the political debate was, in fact, all but over’ and that ‘oppositional views [were rendered] vulnerable to accusations of “pimp thinking”’: of being

²² M Morrow, ‘Briefing on Clause 6 of Human Trafficking Bill: Response to DOJ Research’, DUP, 2014, <http://www.mydup.com/publications/view/briefing-on-clause-6-of-human-trafficking-bill-response-to-doj-research>.

²³ As cited in: S Huschke and E Ward, ‘Stopping the Traffick? The problem of evidence and legislating for the “Swedish model” in Northern Ireland’, *Anti-Trafficking Review*, issue 8, 2017, pp. 16–33, p. 26, <https://doi.org/10.14197/atr.20121782>.

²⁴ *Ibid.*

²⁵ *Ibid.*, p. 31. For more on the process in Northern Ireland, see: G Ellison, ‘Criminalising the Payment for Sex in Northern Ireland: Sketching the contours of a moral panic’, *British Journal of Criminology*, vol. 57, issue 1, 2017, pp. 194-214, <https://doi.org/10.1093/bjc/azv107>; G Ellison, ‘Who Needs Evidence? Radical feminism, the Christian right and sex work research in Northern Ireland’, in S Armstrong, J Blaustein and H Alistair (eds.), *Reflexivity and Criminal Justice: Intersections of policy, practice and research*, Palgrave Macmillan, London, 2016.

²⁶ N Mai, *Sondage sur la Pénalisation de Clients en France*, Marseille, 2015, http://www.lames.cnrs.fr/IMG/pdf/RESUME_ETUDE_PENALISATION-2.pdf.

²⁷ See C Calderaro and C Giametta in this issue.

an apologist for pimps, brothel owners and the exploitation of women and children.²⁸

In Canada, scholars have documented how at the parliamentary hearings on Bill C-36 *The Protection of Communities and Exploited Persons Act* (PCEPA), which introduced the Swedish-style client criminalisation in 2014, more individuals and organisations supportive of PCEPA were invited to present testimony than those opposing it. Furthermore, while Committee members were generally fair and respectful to all witnesses, they were positively biased toward those in agreement with the proposed legislation and at times highly disrespectful to those in opposition to it.²⁹

After testifying before the Standing Committee on Justice and Human Rights in July 2014, for example, Kerry Porth wrote that ‘From the very first day, current and former sex workers who spoke out against Bill C-36 have been dismissed, ridiculed, subjected to hostile questioning, and heckled in what should be called the “Shame and Loathing Hearings” ... Remarkable Canadian academics ... , who have researched the sex industry in Canada for many years, were regarded as people who are trying to “make it easier for pimps and johns to operate openly in communities across Canada”, rather than as academics providing evidence-based comments to the committee about the dangerous effects of the bill ... Anti-prostitution campaigners, along with victims of human trafficking and the sexual exploitation of children and youth in commercial sex, told disturbing stories of violence and abuse ... [T]hose who supported the bill were lauded for their courage in coming forward.’³⁰

What research has shown is that the introduction of the sex purchase ban in all these countries (as well as anti-trafficking legislation more generally) was made possible largely through the forging of powerful alliances among ruling conservative parties, faith-based groups, and prostitution prohibitionist and

²⁸ E Ward, ‘The Irish Parliament and Prostitution Law Reform. A neo-abolitionist shoe-in?’, in E Ward and G Wylie (eds.), *Feminism, Prostitution and the State. The politics of neo-abolitionism*, Routledge, London and New York, 2017, pp. 86-87.

²⁹ G F Johnson, M Burns, and K Porth, ‘A Question of Respect: A qualitative text analysis of the Canadian Parliamentary Committee hearings on The Protection of Communities and Exploited Persons Act’, *Canadian Journal of Political Science*, vol. 50, issue 4, 2017, pp. 921-953, <https://doi.org/10.1017/S0008423917000294>.

³⁰ K Porth, ‘Justice Committee on Bill C-36 ignored sex workers’, Pivot Legal Society, 14 July 2014, http://www.pivotlegal.org/justice_committee_ignored_sex_workers. See also: K Porth, M Burns and G F Johnson, *Shouting into the Wind: Experiences of testifying against Bill C-36 The Protection of Communities and Exploited Persons Act*, Vancouver, May 2017, https://www.academia.edu/37590782/Shouting_Into_The_Wind_Experiences_of_Testifying_Against_Bill_C-36_The_Protection_of_Communities_and_Exploited_Persons_Act.

carceral feminists who rely on highly gendered and racialised understandings of sex work and trafficking.³¹ Despite this coordinated attack on sex workers' rights, the dismissal of extensive academic and community-based research on sex workers' lives and work, and the exclusion of sex worker perspectives in the realm of policy development in a *post-truth* environment, the global sex worker rights movement continues to grow and is making itself heard.

This Special Issue

The articles included in this Special Issue examine a range of topics related to sex work. These include explorations of sex worker organising and forms of creative resistance in various countries across Asia, Africa, Europe, and the Americas. While a number of authors highlight the achievements of the sex worker rights movement historically and/or contemporarily, they also identify some of the current challenges, many of which emanate from the implementation of misguided and punitive prostitution and anti-trafficking laws, as well as the broader backlash against human rights and evidence-based policies. Several of the authors are current or former sex workers while others are scholars affiliated with academic institutions. All are strong supporters of and advocates for sex workers' rights and the decriminalisation of sex work.

The first set of articles focuses on sex worker organising. Whether in Toronto, Bogota, Manila, or Cape Town, sex workers around the world are organising to tell their own stories, claim their human, social, and labour rights, resist stigma and punitive laws and policies, and provide mutual and peer-based support. The issue opens with an article by Alex Tigchelaar who reflects on a salient contradiction evident in many urban contexts: the celebration of the local histories of sex work to attract tourists to certain neighbourhoods and the persistent politics of exclusion, which takes the form of the criminalisation of sex work and the implementation of urban revitalisation and gentrification projects that displace sex workers from those very historic areas. Drawing on her experience organising a public exhibition called *The Viminal Space*, in collaboration with three sex worker organisations, at the 2017 Toronto Nuit

³¹ See: Ellison, 2016; Ward, 2017; A Lepp, “‘Collateral Damage’: Anti-trafficking campaigns, border security, and sex workers’ rights struggles in Canada”, in P Gentile, G Kinsman, and L P Rankin (eds.), *We Still Demand! Redefining resistance in sex and gender struggles*, University of British Columbia Press, Vancouver, 2017, pp. 222-249; and, more generally, Bernstein, 2018. In France, the ban was introduced under a socialist government but it was voted in by only 64 members, or a little over 10 per cent, of the National Assembly. See: A Chrisafis, ‘France passes law making it illegal to pay for sex’, *The Guardian*, 6 April 2016, <https://www.theguardian.com/world/2016/apr/06/france-passes-law-illegal-to-pay-for-sex-criminalise-customers>.

Blanche festival, Tigchelaar shows how sex workers can use the arts to draw attention to these ongoing contradictions in the politics of urban spaces. Importantly, she suggests ways in which sex workers can encourage those involved as producers and consumers of neoliberal urban revitalisation projects to connect these paradoxes to the laws that criminalise sex workers' labour.

Sex workers' creative and collective resistance through art and media is also the focus of the article by Amalia Cabezas. In challenging the notion that sex workers first organised in the Global North in the 1970s, she argues that the sex worker rights movement in Latin America and the Caribbean emerged organically and has its own independent and distinct history of organising for social recognition and labour rights and against violence and oppression. Cabezas begins by presenting two examples of sex worker mobilisation in Cuba and Mexico in the late nineteenth and early twentieth centuries. She continues by showcasing some of the movement's current political, judicial, and media initiatives and achievements in the Dominican Republic, Nicaragua, Colombia, and Argentina, as well as at the regional level. She concludes by warning that these successes are being threatened by prohibitionist and anti-trafficking ideologies, policies, and practices promoted by the region's powerful neighbour to the north.

Next, Sharmila Parmanand's article focuses on the confluence of factors that inhibit the ability of Filipino sex workers to organise, access resources, and build alliances with other organisations in the country. Based on interviews with members of the Philippines Sex Workers Collective, she explores how advocacy for sex workers' rights is nearly impossible and highly risky in this formerly colonised, deeply Catholic country in which powerful prostitution-prohibitionist discourses dominate at the state, policy-making, and civil society levels. Parmanand points out, for example, that there were no consultations with sex workers during the drafting of the *Anti-Prostitution Law*, formally proposed in 2010, which assumes that all sex workers are victims of trafficking. She also documents the disastrous impact that President Duterte's war on drugs has had on sex workers, with some of her interviewees having suffered harassment, arrest, jail time, and loss of partners due to police corruption and extrajudicial killings. She concludes by proposing a number of strategies that the Collective could adopt to expand its membership, enhance its visibility, and strengthen its advocacy (for example, through the production of evidence-based research and strategic uses of the media).

In their article, Ntokozo Yingwana, Rebecca Walker, and Alex Etchart argue that it is necessary to move away from the dominant 'sex workers as victims' and 'sex work versus trafficking' frameworks and to recognise sex worker rights organisations as legitimate stakeholders in anti-trafficking work. Drawing on interviews with sex workers and sex worker organisations in South Africa, the authors point out that sex workers can and do report cases of trafficking

in the sex industry, but the criminalisation of sex work creates the conditions in which they are often reluctant to do so or are forced into silence. Yingwana, Walker, and Etchart also propose a new model for understanding exploitation and trafficking, based on clear distinctions among migration/mobility, labour (including sex work), and coercive exploitation, and where these situational variables or experiences overlap. The authors suggest that this model can better address the needs of all migrants and sex workers and allow for potential cooperation and alliance-building among organisations working on sex worker rights, migrant rights, labour rights, and anti-trafficking.

Elene Lam and Annalee Lepp's article explores a number of the aforementioned themes—creative resistance, evidence-based research, laws and policies and their impacts, and alliance-building—through a case study of the work of Butterfly, a grassroots and peer-based organisation that is led by Asian and migrant sex workers in Toronto, Canada. The authors document how Butterfly, through various mediums, has sought to challenge the discourses and policies that directly impact Asian and migrant sex workers' lives and work in Canada. These efforts have involved initiatives to resist oppressive immigration, criminal, and municipal laws, to expose the harmful effects of anti-trafficking interventions, and to raise awareness about sex workers' experiences and needs. Lam and Lepp also point out that Butterfly contributes an important intersectional perspective to the sex worker rights movement, grounded in an understanding of the issues faced by Asian and migrant sex workers, including racism, classism, and xenophobia, and the need to build strong alliances among the sex worker, labour, migrant, and racial justice movements.

The next two articles examine sex work through a labour rights lens. Leo Bernardo Villar uses the Unacceptable Forms of Work (UFW) Framework, developed by the International Labour Organization to address 'non-standard' forms of employment, including casual and informal work, to analyse the working conditions in the sex and entertainment sector in Thailand. Based on interviews with sex workers, social service providers, and government officials, Villar demonstrates that all twelve indicators of UFW—related to income, health and safety, working time, and social protections, among others—are present in the sector. The author attributes this to the criminalisation and stigmatisation of sex work and insufficient labour oversight of entertainment venues. To reduce instances of UFW, Villar recommends the decriminalisation of sex work, the amendment of labour and social protection laws to be inclusive of sex workers, and their adequate implementation.

Unlike Villar, Simanti Dasgupta takes a community-based approach to examine sex workers' labour. Drawing on ethnographic work with Durbar Mahila Samanwaya Committee (DMSC) in Kolkata, India, she conceptualises anti-trafficking raids as a form of state violence. She also explores the significance of anti-trafficking raids in relation to the fact that the brothel is not only a place

of work, but also sex workers' home and a space to organise for labour rights. Through the use of *atyachar* (oppression), the Bengali word sex workers use to describe the violence of raids, Dasgupta argues that they experience the raids not as a spectacle, but as an *ordinary* form of violence in contrast to their *extraordinary* experience of return to the brothel to rebuild their lives. Their return signals both a reclamation of the ordinary and a subversion of the state's attempt to undermine DMSC's labour organising.

The final three thematic articles examine the introduction of recent laws and policies that directly affect sex workers in the United States and France. In her article, Alexandra Lutnick reflects on the process of developing the 'Prioritizing Safety for Sex Workers Policy' enacted by the San Francisco District Attorney's Office and the San Francisco Police Department in 2016. The policy guarantees that sex workers will not be arrested or prosecuted for involvement in illicit activities when they report violent crimes, including trafficking, committed against them. While not without its challenges, the creation and adoption of the policy was made possible through the forging of an alliance comprised of sex workers, anti-trafficking organisations, service providers, women's rights policy makers, and law enforcement. Their point of departure was the recognition that no one wants people in the sex industry to experience violence. The policy, then, provides a unique example of how stakeholders who may hold very different ideological positions on sex work can work together towards a common goal.

The San Francisco policy, however, is an exception. Most laws affecting sex workers are developed *without* their involvement. This trend is well-documented in the article by Charlene Calderaro and Calogero Giametta, who discuss the political debates that led to the adoption of the sex purchase ban in France in April 2016. They point out that the construction of prostitution as a 'social problem' and the adoption of the sex purchase law in France must be linked to broader political anxieties over immigration, security, and public order and to the alliance forged between mainstream feminists, radical left feminists, and traditional neo-abolitionist actors in the campaign against prostitution. Calderaro and Giametta also draw comparisons between the sex purchase ban and the 2004 ban on wearing the hijab in schools, both of which were enacted in the name of women's empowerment and gender equality but were, in fact, prompted by stereotypical and stigmatising representations of poor, immigrant, and Muslim communities. In both cases, there was very little or no consultation with those most affected by the legislation—veiled women and sex workers.

This exclusion of sex workers from policy development, and, increasingly, the closure of their online spaces for expression, is analysed in the final thematic article by Ben Chapman-Schmidt. He demonstrates how in US legal discourse, the term 'sex trafficking' refers not to human trafficking for sexual exploitation,

but to all sex work. Drawing on Gayatri Spivak's work, he argues that the propagation of the term by US institutions and prostitution prohibitionists, and the attempt to reframe all sex work as 'sex trafficking', represents a form of *epistemic violence* against sex workers, as it deprives them of the tools to express themselves and forces them to speak the language of their oppressors. In this analysis, the 2017 *Allow States and Victims to Fight Online Sex Trafficking Act* (FOSTA), which aims to end 'sex trafficking' on the internet, is the latest in a long series of examples of this form of violence. Chapman-Schmidt concludes by urging activists, academics, and journalists concerned with the wellbeing and rights of sex workers to stop using the term 'sex trafficking' in order to end the reproduction of epistemic violence against sex workers.

The implications of FOSTA are also explored—in practical terms—in the short article by Meghan Peterson, Bella Robinson, and Elena Shih. Drawing on an online survey conducted with 262 sex workers, they demonstrate how the law has led to increasing financial insecurity, exploitation, and unsafe practices among sex workers. The authors also suggest that FOSTA may affect sex workers outside the US, with at least two other countries introducing or debating similar legislation.

The other short article, by Nadia van der Linde, emphasises that, with the establishment of the Red Umbrella Fund in 2012, of which she is the coordinator, there have been some advances made in terms of funding the sex worker rights movement globally. However, with only USD 11 million in grants to support sex worker rights worldwide made by private foundations in 2013, much more donor support is needed. Van der Linde makes a passionate argument that self-identified social justice and all donors for that matter cannot 'stay neutral' on the issue of sex worker rights and need to commit to investing more funds in sex worker organisations and initiatives.

The issue concludes with Katrin Roots' review of the book, *Responding to Human Trafficking: Dispossession, Colonial Violence, and Resistance among Indigenous and Racialized Women* (2017), by Julie Kaye. Roots praises the book for its unique perspective on trafficking that shows how anti-trafficking frameworks reproduce structures of domination that naturalise settler colonialism in Canada. The author also points out that the book fills an important gap in anti-trafficking scholarship in Canada, where there is a notable lack of substantive empirical work.

Conclusion

Taken together, the articles in this Special Issue contribute to the ever-growing corpus of academic and community-based literature on sex work, sex worker organising, and the impact of repressive prostitution and anti-trafficking laws and policies on sex worker communities. In the face of mounting and incontrovertible evidence, all of the articles gesture toward the conclusion that, like the donors that Nadia van der Linde challenges, no one can claim ‘neutrality’ on the issue of sex workers’ rights anymore. In particular, given the intersectional diversity of sex workers—along the lines of gender, sexuality, racial, ethnic, and class background, im/migration status, etc.—and the differing working conditions in which sex workers labour, it is imperative that more cross-movement alliances be cultivated and forged. In other words, in light of the multiple and complex social and labour dimensions that need to be addressed, organisations that advocate for the rights of women, LGBTI+ people, formal and informal workers, migrants, and trafficked persons, as well as movements that work for social, economic, and racial justice need to join in the struggle for sex workers’ rights and the decriminalisation of sex work.

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**Thematic Articles:
Sex Work**

Sex Worker Resistance in the Neoliberal Creative City: An auto/ethnography

Alex Tigchelaar

Abstract

Sex workers are subjects of intrigue in urban and creative economies. Tours of active, deteriorating, or defunct red-light districts draw thousands of tourists every year in multiple municipalities around the world. When cities celebrate significant anniversaries in their histories, local sex worker narratives are often included in arts-based public offerings. When sex workers take up urban space in their day-to-day lives, however, they are criminalised. Urban developers often view sex workers as existing serviceably only as legend. A history of sex work will add allure to an up-and-coming neighbourhood, lending purpose to its reformation into a more appropriately productive space, but the material presence of sex workers in these neighbourhoods is seen as a threat to community wellbeing and property values. This paper considers how sex workers, continuously displaced from environments they have carved out as workspaces, may use the arts to draw attention to these ongoing contradictions. It investigates how sex workers may make visible the idiosyncratic state of providing vitality to a city's history while simultaneously being excluded from its living present. Most critically, it suggests ways in which sex workers may encourage those involved as producers and consumers of neoliberal urban revitalisation projects to connect these often fatal paradoxes to the laws that criminalise their labour.

Keywords: sex work, criminalisation, neoliberalism, creative space, Nuit Blanche

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How are ideas of ‘creativity’ produced, consumed, mutated and/or contested and resisted by different actors at different scales within specific urban contexts, producing multiple ways that ‘creativity’ is understood within cities, and what are the implications of this?

Thomas Borén and Craig Young¹

Introduction

In the fall of 2016, I met with the Russian collective Chto Delat (What is to be done?) to discuss a collaboration for Toronto’s Nuit Blanche in September 2017. Established in 2003, Chto Delat is a dynamic group of ‘artists, critics, philosophers, and writers from St. Petersburg, Moscow, and Nizhny Novgorod with the goal of merging political theory, art, and activism.’ The group describes itself as ‘an artistic cell and a community organiser for a variety of cultural activities intent on politicising “knowledge production.”’² Their work addresses current political struggles in Russia and their relationship to those in other countries. The collective’s members work with multiple media, including video, theatre, murals, public campaigns, and talks.

Launched in Paris in 2001, Nuit Blanche is now an annually and internationally staged free citywide arts festival. Running from dusk till dawn, events include sound, projection and light installations, dance and movement performances, and imagistic contributions by local and international artists. Chto Delat had been commissioned by Toronto’s Nuit Blanche to create an installation in collaboration with the American curator Nato Thompson, called ‘The Monument to One Hundred Years of Revolutions.’ The installation was to be a grouping of shipping containers ‘producing a small village... a veritable mass-shipped revolution that unpacks into a world.’³ Chto Delat would curate about half the containers featuring ‘a different moment in revolutionary history ranging from the Mexican Revolution, Yugoslavia and China to May ‘68, Cuba, and to Zapatista.’⁴ The others would be curated by local artist-activists. These containers would highlight Indigenous peoples, migrant workers, sex workers, queer advocacy, and activism around the African diaspora.

¹ T Borén and C Young, ‘Getting Creative with the “Creative City”? Towards new perspectives on creativity in urban policy’, *International Journal of Urban and Regional Research*, vol. 37, no. 5, 2013, pp. 1799-1815, p. 1804, <https://doi.org/10.1111/j.1468-2427.2012.01132.x>.

² Chto Delat, <http://chtodelat.org>.

³ N Thompson, ‘Now is a time to reflect’, *Creative Time*, n.d., <http://creativetime.org/summit/toronto-2017>.

⁴ No author, ‘Monument to the Century of Revolutions: Nuit Blanche Toronto’, *Just Seeds*, 2017, <https://justseeds.org/event/monument-to-the-century-of-revolutions-nuit-blanche-toronto>.

Nuit Blanche organisers requested that I meet with Chto Delat because, like them, I merge activism, art, and political theory. For the most part, my creative advocacy deals with sex work, its cultural and labour history, and its criminalisation. Art has transformed my life. So has sex work. More specifically, both as an activist and a worker, I have been transformed by the many creative and radical women I have met in the sex trades. Sex workers know very well what Thompson means when he argues that culture industries cannibalise the labours of artists and activists, churning out ‘a new substance for a voracious and growing nest of consumers around the world.’⁵

Sex worker participation in the world is defined both by the circumscribing laws on our own bodies and the many unnuanced representations that circulate about us in the media, legal, and arts industries. Sex workers have long argued that most people are more acquainted with mimetic representations of them than they are with real sex workers, and that these representations have more cultural and judicial authority than their own subjective experiences.⁶

Blockbuster arts festivals like Nuit Blanche serve as an apparatus for cities to promote their appeal on the global stage of tourism and cultural production, attracting thousands of people, both local and visiting. Toronto’s inaugural Nuit Blanche took place in 2006 and since then, the event has featured ‘more than 1,400 art installations created by over 4,900 artists and has generated more than \$311 million.’⁷ As cities frequently use their sex working histories as leverage to attract cultural tourism dollars but continue to criminalise sex workers in the living present,⁸ a widely-attended festival like Nuit Blanche could provide an ideal opportunity to educate average citizens about these types of extractive cultural practices, along with providing first-hand accounts

⁵ N Thompson, *Seeing Power: Art and activism in the twenty-first century*, Melville House, Brooklyn and London, 2015, p. 3.

⁶ A Tigchelaar, ‘Whorientalism’, Major Research Paper submitted to the Faculty of Studies in Comparative Literature and the Arts at Brock University, St. Catharines, Canada, 2016; J Doezema, *Sex Slaves and Discourse Masters: The construction of trafficking*, Zed Books, London, 2010; K Kampadoo, J Sanghera and B Pattanaik (eds.), *Trafficking and Prostitution Reconsidered*, Paradigm Publishers, Boulder and London, 2005.

⁷ ‘Nuit Blanche Toronto’, *Toronto.ca*, retrieved 21 January 2019, <https://www.toronto.ca/business-economy/partnerships-sponsorships-donations/sponsor/major-festivals-events/nuit-blanche-toronto>.

⁸ Cultural practices that profit off of sex worker outsider cachet simultaneously rely on the prohibition of its real presence. Montreal’s 375 celebrations involved several creative offerings that took on the city’s sex working history such as *Vice et Vertu* by Les 7 Doigts. This production not only detailed the city’s sex work history but was also hosted at La Société des Arts Technologique, which borders a formerly active sex work stroll. S Tétreault (Dir), *Vice et Vertu*, 2017, By Les 7 Doigts. Société des Arts Technologique, Montréal, Québec. Performance.

of sex workers' day-to-day lives, labour, and advocacy under the spectre of criminalisation. In this paper, I give an account of a multi-sex worker advocacy group effort to illuminate the embedded prejudices of appropriate/appropriated rights of abode and public space in the neoliberal city. The site chosen to do this intervention was one that has itself reproduced these prejudices: Nuit Blanche.

Right to the City vs. Right to Representation

Public arts programming is intended 'to offer widespread constructive social engagement, with participants communicating, collaborating, co-creating and mutually supporting one another.'⁹ Yet, when sex workers take up the spaces where these events are hosted in their everyday surroundings, they are viewed as undesirable and are criminalised in a variety of ways.¹⁰ A 2008 Nuit Blanche installation recreated a meta-red-light district on Toronto's Church Street, displacing real sex workers¹¹ so that performers could imitate them. This was done with the full support of the city, Nuit Blanche's corporate funders, and law enforcement, all of whom, it goes without saying, take a much less receptive approach to real sex workers in their various institutional interactions with them.

Nuit Blanche can pay people to co-opt sex worker spaces and pretend to be sex workers for cultural entertainment. Nuit Blanche can even pay actual sex workers to do art about sex work. Yet, hiring sex workers to perform their actual services remains a crime in Canada. Foregrounding these ongoing inconsistencies in the context of the current neoliberal economy should be a priority.

⁹ J Harvic, *Fair Play: Art, performance and neoliberalism*, Palgrave MacMillan, London, 2013, p. 1.

¹⁰ A J Pitts, 'Remembering Bedford: Impacts of criminalization on street-based sex workers', Major Research Paper submitted to the Faculty of Liberal Arts and Professional Studies at York University, Toronto, Canada, 2015.

¹¹ A Tigchelaar, 'The Creative Ass Class', in JF Prost (ed.), *Heteropolis: Adaptive actions*, Leonard and Bina Art Gallery, Montreal, 2014.

Canada's Sex Work Laws: Obscuring exclusions

In my meeting with Chto Delat, I outlined one of the most pressing concerns for sex workers in Canada: the ascension in 2014 of Bill C-36, now known as *The Protection of Communities and Exploited Persons Act (PCEPA)*. Though many people continue to believe sex work to be legal in Canada, it has never been practised fully unimpeded. Previously, sex workers were criminalised through laws that restricted their ability to work in groups and hire people to assist in their business, and in the spaces where they may conduct their business. *PCEPA* continues to criminalise sex workers' access to where and how they may conduct business, and the law now does so in the context of the outright criminalisation of their clients. Even though sex workers are immune to arrest and prosecution, it remains illegal to receive money for sexual services under the new law's 'material benefit' provision. Furthermore, when *PCEPA* was made public, clients were aligned by then Justice Minister Peter MacKay with 'perpetrators, perverts and pimps'.¹² They are now, in effect, construed as sex offenders simply for engaging the services of sex workers.

As a result, clients refuse to provide the type of information that workers request to verify their credibility.¹³ Hundreds of North American sex workers are subject to invasive and indiscriminate cross-country raids on their workplaces in the name of locating victims of trafficking.¹⁴ During such raids, Asian and migrant women report 'violations of their basic human rights', which include 'arbitrary arrests' along with 'false allegations, and false evidence being used to keep them detained'.¹⁵ While culture makers reap the rewards of producing art about sex workers,¹⁶ sex workers themselves remain endangered

¹² J M Davies, 'The Criminalization of Sexual Commerce in Canada: Context and concepts for critical analysis', *The Canadian Journal of Human Sexuality*, vol. 24, no. 2, 2015, pp. 78-91, p. 82, <https://doi.org/10.3138/cjhs.242-A9>.

¹³ Canadian Alliance for Sex Work Law Reform, *What Canada Can Learn from Sweden's Laws that Criminalize the Purchase of Sex?*, CASWLR, 2017.

¹⁴ See: A Woo, 'Sex-worker advocates call for end to B.C. police sting operations', *The Globe and Mail*, 6 July 2017, retrieved 23 December 2018, <https://www.theglobeandmail.com/news/british-columbia/sex-worker-advocates-call-for-end-to-bc-police-sting-operations/article35584381/>.

¹⁵ E Lam, *Behind the Rescue: How anti-trafficking investigations and policies harm migrant sex workers*, Butterfly Print, Toronto, 2018, p. 4.

¹⁶ A recent example of this would be the American television series *The Deuce*, created and written by David Simon. Simon has made a career in journalism and television writing about criminalised populations. Another popular series he created is *The Wire*, which focuses largely on racialised gangs in Baltimore. *The Deuce* (2015). Created by David Simon. Perf. James Franco, Maggie Gyllenhaal. HBO; *The Wire* (2002-2008). Created by David Simon. Perf. Dominic West, Wood Harris, Idris Elba. HBO.

by ideological and obfuscating legal policy. To describe this very particular space that we occupy, I devised the word ‘viminal’: victim if one does not agree to be criminalised by the state, criminal if one does not agree to be victimised by the state, ever in a liminal position.

The theme of Nuit Blanche in 2017 was ‘Many Possible Futures’. For sex workers around the world, one future goal central to so much of our collective activism is the decriminalisation of our labour. With a budget of CAD 3,000 (approx. USD 2,300), CAD 500 of which was allotted to me for my role as curator, I engaged sex worker groups from Sudbury, Montreal, Toronto, and Florida that represent a broad cross-section of advocacy practices.¹⁷ We would take over one of the shipping containers and illustrate, through art, performance, and direct action, the challenges we face under criminalisation. The project was called *The Viminal Space*.

The Activist Participants

The groups involved in *The Viminal Space* engage in outreach work in different geographical, cultural, and industry locations. They were specifically chosen to highlight the multiplicity of issues faced by sex workers under criminalisation, and to illustrate how these laws impact both our ‘presence’ and, by extension, our futures. Bringing these groups together to participate in the project was also intended to foreground and strengthen our global friendships and solidarity.

Stella, l’amie de Maimie has been doing outreach with sex workers in Montreal since 1995. At that time, ‘Public authorities were [...] debating if the opportunity was ripe to introduce and impose medical and mandatory HIV tests of sex workers.’ The organisation secured its funding through ‘the recommendation and approval from health officials’ to do HIV prevention outreach. They used it ‘to address the real needs of sex workers in the context of an HIV/AIDS pandemic.’¹⁸ Montreal sex workers were already organising, but now they had appropriate funds to do so. Making use of the ‘vector of disease’ model that is often employed to define sex workers and restrict their mobility, Stella, as it is more commonly known, acquired public health funding and launched what is now an award winning and internationally respected sex worker-led, sex worker-serviced organisation.

¹⁷ Street and in-call based outreach, legal aid, healthcare, government lobbying, and creative activism, such as theatre, art and magazine creation, and carceral and post-incarceration support.

¹⁸ Stella, website: <http://chezstella.org>.



Image 1: *The Viminal Space*. Image credit: Alex Tigchelaar, 2017.

Stella community engagement is both creative and practical in nature. For example, a project called 'Je "C" Prends Soins de Moi!' is a knapsack containing many useful items a Montreal street sex worker might need in their day-to-day work: gloves, socks, deodorant, baby wipes, nail clippers, moisturiser, and safer sex gear. It also includes vital information about Hepatitis C contraction.



Image 2: Contents of Je “C” Prends Soin de Moi! Image credit: Alex Tigchelaar, 2015.

At its core, all of Stella’s activist engagement recognises what sex workers need to work safely and comfortably, and the organisation supports them in this, be they working on the street, in massage parlours, for agencies, independently, or in strip clubs. Because of its long and highly imaginative record of outreach, Stella members were tasked with administering the ‘sex work library’ for *The Viminal Space*. They would be the ‘Stellibrarians’ and would give a visual and literary account of their twenty-two years of history, service, and activism.

SWOP Behind Bars was launched in April 2016 and offers services to sex workers who are imprisoned in the United States. Though many North American groups do prison outreach, SWOP Behind Bars does this exclusively, supplying ‘a monthly newsletter, books, study materials, and sex worker pen pals for incarcerated sex workers.’¹⁹ SWOP Behind Bars is also present when sex workers are released from prison. Executive director Alex Andrews is a previously incarcerated sex worker and her experience in the criminal justice system is invaluable to the smooth functioning of this support network. For example, when sending books to incarcerated American workers, SWOP Behind Bars advises them to remove dust jackets and personally distinguishing information, to be cautious about signing the book if they are the author because it may be perceived as more valuable and denied shelving in the library, and to make sure there is nothing written in it that could be perceived as a secret code. The well-intentioned citizen seeking outreach opportunities with marginalised communities may have little experience with such circumscribing rules. As SWOP Behind Bars states, whether or not sex work is ‘a symptom of poor economic conditions or volition it is always considered inherently immoral.’²⁰ This stigmatising qualification leaves many sex workers in a continuous state of penalty: as designated sex offenders in the United States, when they are released, post incarceration housing and labour choices are limited, obliging many to go back into sex work, which in turn recriminalises them.

For *The Viminal Space*, SWOP Behind Bars members proposed a letter writing campaign to incarcerated sex workers in the United States. They would set up a table with paper, pens, and postage, and have the details of imprisoned workers, who had requested pen pals,²¹ available to people so that they could choose to whom they would like to write. This face-to-face engagement with members of the organisation would also be helpful in generating more general discussions about incarceration, and would draw attention to the conditions of the most frequently imprisoned sex workers in the United States: those who are negatively racialised and transgender.

The Sex Work Advisory Network of Sudbury (SWANS) is a programme that began in 2012. SWANS provides outreach to sex workers in this northern Ontario city, many of whom are Indigenous and street-involved. SWANS partnered with its local community arts group, Myths and Mirrors, to create

¹⁹ SWOP Behind Bars, website: <http://swopbehindbars.org>

²⁰ *Ibid.*

²¹ In the United States, prisoners’ personal details are widely available to the general public on the Internet, paradoxically making SWOP Behind Bars’ outreach work easier than it would be in Canada, where details are not digitally disseminated.

Project ArmHer, a collective of women with lived experience in sex work, and their allies. Project ArmHer encourages sex workers to join creativity workshops and positions them directly as actors, artists, and writers. The group proposed bringing three short films they had created, followed by monologues performed by participants, as well as a wearable installation piece—a metal breastplate embossed by members of their community with words of empowerment. Also featured were their Body Maps—life-size outlines of their physical geographies in chosen positions painted by the workers themselves. Project ArmHer uses Indigenous methodologies in their work, linking body violence to land violence, and every aspect of working with them involved a slow process of complete consensus, with every member of the group having a say in what would be produced and how. This was a poignant reminder about consent in our communities and how it is often abused by those hired to ‘serve and protect’. Offerings by Project ArmHer such as the film *Land of My Body*²² reveal the coercive and silencing relationships of spatial and colonial power: ‘The assault that took place in the back of the police cruiser tells another story. It whispers to me when I’m about to call the police—don’t.’²³

We would present all of this work in an enclosed space that was eight by twenty feet (approx. 2,50 by 6 metres) for twelve straight hours. Many of us had not yet met in person. We were excited for this opportunity to network and support each other, but also had no idea what the night would bring.

What Can Sex Workers Teach Us about Neoliberalism and the Creative City?

When I use the term neoliberalism, I am referring specifically to definitions offered by David Harvey. He describes it as:

‘a theory of political economic practices that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade.’²⁴

²² This short film contains an excerpt from *Land of My Body* by Sarah Gartshore. Gartshore is a playwright who has worked intimately with the group. She wrote the script through experiential sharing with the group.

²³ *Land of My Body*, Dir. by SWANS, Perf, SWANS, 2016.

²⁴ D Harvey, *A Brief History of Neoliberalism*, Oxford University Press, Oxford, 2005, p. 2.

The role of the state in this economic model is to ensure the quality and reliability of its currency, ‘to create and preserve an institutional practice for such models’,²⁵ and to provide the appropriate military, legal practices, and police force to support this model. Neoliberalism views the individual through their economic viability, and places this viability in the hands of the individual, with little consideration for existing privileges and sociopolitical access.

When I use the term ‘the creative city’, I am referring to neoliberal constructs of metropolitan revitalisation forwarded by the urban studies theorist Richard Florida. His theories promote attracting populations involved in technology, arts, and culture as a means of developing a city’s appeal and by extension its economic power. Florida refers to the harbingers of this development model as ‘the creative class.’ Unsurprisingly, he never identifies sex workers as a vital segment of these populations,²⁶ despite the fact that a noticeable percentage of the ‘creative class’ does sex work concurrent to their art and cultural practices, and despite the fact that sex workers’ lives are frequently mined for creative potential by many members of this class. The harmful impact this has on sex working populations warrants critique; indeed, after fifteen years of implementing the creative city model on a global scale, Florida has himself declared his theories problematic, though primarily to the uncreative populations that end up servicing his creative class.²⁷ To sex workers, the spatial and social violence entrenched in Florida’s theories could not have been more obvious from the outset; the reality of what happens to them when their established workspaces (be they indoors or outdoors) become ‘creatively classed’ means nothing less than institutionalised forms of social expulsion. Sex workers know what happens when neighbourhoods become defined as ‘good’: the ‘bad’ populations are identified and targeted for removal. They know that ‘safety’ for the gentrifiers means danger to them.²⁸

²⁵ *Ibid.*

²⁶ In *Temporarily Yours: Intimacy, authenticity and the commerce of sex* (University of Chicago Press, Chicago, 2007) Elizabeth Bernstein argues that ‘the expanded presence of the white middle classes in gentrifying urban centers as both residents and tourists’ (p. 4) has made street-based sex work less welcome while paradoxically drawing members of these classes—including Florida’s creative class—to less visible and by extension safer indoor sex work. Over the past decade, enhanced digital surveillance of all categories of sex work has merged issues faced by all groups.

²⁷ R Florida, *The New Urban Crisis*, Basic Books, New York, 2017.

²⁸ S Schulman, *The Gentrification of the Mind*, University of California Press, Berkeley, 2012.

As Alison Bain argues, ‘The metaphor of the creative city is supposedly an effort to think about cities differently and to develop a framework for problem solving’.²⁹ In its peak form, ‘the creative city would foster urban innovation and self-reliance through interdisciplinary and holistic thinking and partnerships based on inclusivity, accountability, and justice’.³⁰ Resolutions would not be formulaic. They would be imaginative and daring. The problem is, in a neoliberal economic system where communities and individuals alike are evaluated based on their ability to advance financial productivity, individualistic meritocracy is gloried but rarely investigated through a critical intersectional lens. Answers have already been established through a premeditated system of appraisal that favours a positive financial outcome. The market decides if the idea is daring or creative.

In the spirit of thinking differently and problem solving in the neoliberal urban context, I propose an awareness and application of the creative city from a sex worker perspective. I contend that it is one that is socially progressive, risk-taking, and daringly original. Yet, because it exists in a state of ‘viminality’, it also troubles much radical critique of neoliberalist cultural production and the paradigm of ‘artpreneur.’ As Jen Harvie argues, the mobilisation of artists as resourceful and independent ‘artpreneurs’ is not entirely inaccurate. It defines, in positive terms, many qualities that ‘are socially valuable and highly desirable, not least because they are expedient, helping artists to survive and sometimes thrive even while formerly semi-stable sources of public support for arts practices erode.’³¹

The issue is not the description, rather the application; the expectations pinned on artists to show entrepreneurial pluck, ‘both indulge and inherently celebrate neoliberal capitalism.’³² These expectations are ones also faced by sex workers and sex work activists. We, too, are required ‘to model entrepreneurialism and to prioritize its values’ in ways that gives precedence to ‘self-interest individualism.’³³ In effect, we must: the only way that sex workers may work without criminalisation under *PCEPA* is through self-interest and individualism.

As a result of restrictive spatial and labour laws, sex workers are required to become intrepid and individualistic architects and users of the built environment. Applying Harvie’s critical analysis of the hierarchy of pop-ups,

²⁹ A Bain, ‘Creativ* suburbs: Cultural “popcorn” pioneering in multi-purpose spaces’ in T Edensor, D Leslie, S Millington and N M Rantisi (eds.), *Spaces of Vernacular Creativity: Rethinking the cultural economy*, Routledge, New York, 2009, p. 64.

³⁰ *Ibid.*

³¹ Harvie, p. 62.

³² *Ibid.*, pp. 62-63.

³³ *Ibid.*

I suggest that they are pop-up producers of the squatter variety. Pop-ups are short-term boutiques or galleries that take advantage of an empty retail space for a short-lived period of time so that pop-up producers do not have to worry about the financial burden of a long-term rental contract. Pop-ups may be licensed or informal, yet their sudden popularity over the past decade suggests spatial precarity that many new business owners face in neoliberal economies—the very same spatial precarity that criminalised sex workers have dealt with for centuries. Like squatters, and unlike licensed pop-up producers, when sex workers acquire space to live and work, ‘however peacefully [...] they risk being criminalised by legislation which is increasingly intolerant of such interstitial, often highly beneficial uses of space.’³⁴ Sex workers produce workspaces in the urban setting that reveal proscription-based considerations: Will there be a private entrance so that clients may slip in undetected by neighbours? Will there be parking so that clients may park quickly and discreetly? They are also intensely creative: Does the ceiling need to be retrofitted for suspension play rigging? Should soundproofing be installed and how can it be made to look pleasing? What kind of erotic intention will the space reflect? All of these considerations must be carefully measured, while in Canada, the worker must also be prepared for the possibility that she may be ejected from this well-crafted space at any time, even if she is diligently paying rent or a mortgage³⁵ and even if she qualifies, as so many sex workers do, as successful under neoliberal pecuniary standards.

Depending on the type of trade she does, a sex worker may also be able to tell you what public or restaurant washrooms in the area are available to those known to be sex workers,³⁶ what hotels have elevators that do not require key card entrance, and where one might find drop-in centres that offer safer sex gear and safer using kits.³⁷ All of this is done under the reproving scrutiny of the more Floridian assemblage of the creative class, one that may enthusiastically consume media and art about sex work, but pushes sex workers out of long-established work locations because they are deemed a nuisance. Sex workers must always think differently and problem solve when it comes to the built environment, again, in many cases, because of gentrifying creative city initiatives that reproduce sentiments of entitlement to the urban (but not *too* urban, which in Canada is code for too many negatively racialised and/or street-involved populations) living experience. Parkdale, Toronto, long home

³⁴ *Ibid.*, p. 126.

³⁵ If, for example, she leases or owns this space and rents it to other workers to help cover bills and provide a safe and cooperative working environment.

³⁶ This identification often leads to sex workers being banned from these locations.

³⁷ Tigchelaar, 2014.

to self-supporting communities of sex workers,³⁸ continues to experience ‘tensions between home-owners trying to shut down social services and the needs of new immigrants, sex trade workers, methadone clinic users, and various low-income residents.’³⁹

These disjunctures are perfect examples of the viminal space: sex workers may be able to check many boxes to qualify as ‘artpreneurs’ and they may even score high on Florida’s absurdly named Bohemian Index.⁴⁰ As gritty emblems of the urban environment, they are frequently exploited by cultural producers⁴¹ in multiple spaces of creation. Yet, simultaneously, they themselves are deliberately excluded from what is understood to be a more productive use of the urban space. Even if we view sex workers through Harvie’s more generous reading of ‘artpreneur’ discussed above, we may understand this designation is pertinent yet problematic. Harvie argues, ‘that because the “artpreneur” works privately for her own advantage, she models neoliberalism’ which ‘privileges the “liberty” of individuals to trade as they please and, in so doing, promotes private enterprise within apparently “free” or “open” markets over publicly regulated economies.’⁴²

When applied to sex working populations, it is evident that central to the case for decriminalisation is the right for sex workers to ‘trade as they please.’ Additionally, publicly regulated sex work economies often involve mandatory

³⁸ The very same ones who produced, for example, the award-winning short film *Prowling by Night* in 1990, a harbinger for the ongoing police violence and NIMBYism towards sex workers that continues in Parkdale to this day. *Prowling by Night*. (1990). Dir. Gwendolyn. Dis. ONF/NFB. Film.

³⁹ H McLean, ‘The Politics of Creative Performance in Public Space: Towards a critical geography of Toronto case studies’ in *Spaces of Vernacular Creativity*, p. 204.

⁴⁰ R Florida, ‘Bohemia and Economic Geography’, *Journal of Economic Geography*, vol. 2, issue 1, 2002, pp. 55-71, <https://doi.org/10.1093/jeg/2.1.55>.

⁴¹ Mammalian Diving Reflex’s *Diplomatic Immunities: The End* (2007), is a theatre piece that ‘offers a glimpse of Torontopia’s engagement with truly grassroots street culture’ in preparation for which ‘Mammalian Diving Reflex performers interviewed a sex worker from the Bloor and Lansdowne area in west end Toronto.’ Levin and Solga argue that this process turned interviewers ‘into cultural tourists and the sex worker in their crosshairs into a piece of ethnographic research they could then handily transport home to their audiences’ and that this sex worker ‘was a prop, not a player, in Mammalian Diving Reflex’s self-edifying excursion into the urban outlands’. See: L Levin and K Solga, ‘Building Utopia: Performance and the fantasy of urban renewal in contemporary Toronto’, *TDR: The Drama Review*, vol. 53, no. 3, 2009, p. 47, <https://doi.org/10.1162/dram.2009.53.3.37>.

⁴² Harvie, p. 63.

STI testing.⁴³ With widespread policies criminalising sex-based HIV/AIDS exposure in Canada, this creates proscriptive working opportunities, forcing sex workers into outlawed versions of their labour or risk being imprisoned for not revealing their HIV status.⁴⁴ Thus, defining these activities as harmfully modelling neoliberalism is problematic for these populations, ones who are criminalised for working together to enhance security, while at the same time being framed as a danger to the greater community and impeded from circulating freely amongst it.⁴⁵ Moreover, it is often their financial success, the touchstone of neoliberalist accomplishment, that draws some of the most intense ire. Their bodies, ‘one of the most significant resources determining an individual’s performance in the market’,⁴⁶ are prevented from flourishing in this market, despite the fact that their labour patterns adhere to it flawlessly.

Neoliberalism, as Julie A. Wilson demonstrates, promotes a negative atmosphere of living in individualistic competition with others.⁴⁷ This critique resonates differently with people who are required to individualise because of laws that prevent them from working and organising with others. The manner in which we, as sex workers, might address the issue of state-imposed self-enclosure could provide new critiques of and reflections on neoliberalism and urban spatial exclusion, ones that respect our views and experiences rather than occluding them. As Shawna Ferris argues, while ‘post-industrial capitalism’s utter devotion to the free market creates a potentially emancipatory

⁴³ E Jeffreys, J Fawkes and Z Stardust, ‘Mandatory Testing for HIV and Sexually Transmissible Infections among Sex Workers in Australia: A barrier to HIV and STI prevention’, *World Journal of AIDS*, no. 2, 2012, pp. 203-211, <https://doi.org/10.4236/wja.2012.23026>.

⁴⁴ ‘Due to no longer being regarded as a person who is protected under legal regimes, people who live in a negative relation to the law are under threat, they are over-policed and under-protected, surveilled in their communities, and they live in a context where information about them is collected, exposed, dispersed and mobilized to incapacitate their bodies and circumscribe their life chances and opportunities.’ See: A McClelland, “‘Lock this Whore up’: Information converging to circumscribe and incapacitate threats to public safety in the Canadian context of HIV criminalisation”, *European Journal of Risk Regulation*, forthcoming, 2019, pp. 1-17, p. 2.

⁴⁵ McClelland argues that, ‘When a person is marked as a criminal and a threat to public safety, a wide range of information is produced and proliferates about the person and their case, such as press releases, legal case documents, media articles and interviews, personal photographs, institutional directives, expert opinions, medical files, social media and bulletin board posts, police communications and interviews.’ *Ibid.*, p. 1.

⁴⁶ S Hoffman, ‘Tracing Contradictions of Neoliberal Governmentality in Tijuana’s Sex Trade’, *Anthropology Matters*, vol. 15, no. 1, 2014, pp. 63-90, p. 66.

⁴⁷ J A Wilson, *Neoliberalism*, Routledge, New York and London, 2018.

space for sex workers as producers, consumers, and investors in a deregulated consumer culture', with 'increasing calls for law and order and social control, this political space becomes dangerously fraught.'⁴⁸ Sex workers can teach average citizens a lot about community-building and economic endurance in neoliberalist models of self-enclosure and individualism. We have been forced to live, work, and organise under analogous paradigms for centuries.

Reframing Nuit Blanche as Nuit Business

I would argue that it is disingenuous, given the overwhelming amount of critical analysis available not just to scholars, but to activists and to the general public, to imagine that large scale public arts events like Nuit Blanche will unfailingly stand behind the ambitious, overarching vision of their theme, and abidingly support the communities they involve in it. Therefore, it was of little surprise to me that, during email exchanges closing in on the event, the organisers of Nuit Blanche requested that we not have the word 'sex' on our shipping container. This meant that the banners virtually every sex worker rights organisation has for demonstrations would not be permitted to hang on our container. No reasonable motive was given for this restriction, but as a sex worker, I am accustomed to this type of mutable policymaking. After all, the very laws that govern our actions in this country name us as 'exploited' regardless of how we personally identify. I made it clear to the organisers that, because of intense and repressive marginalisation, our banners often represented us. However, I was not ready to fight tooth and nail to have those with the word 'sex' on our container. I had already been looking at the creative aspects of our container with an eye to advantageous civilian engagement and potential funding-by-associative-prestige for the organisations. Henceforth, I truly began approaching Nuit Blanche as if it were an industry conference and I applied industry conference standards to my curatorial practice.

Conference goers, for example, can anticipate leaving with items that include business addresses and slogans on them, such as pens, key-chains, and mini-flashlights. These are designed as reminders of the businesses' objectives and services and are easy to pocket. We decided our best takeaway would be a tool of our trade—condoms—and that we would put messages on them about criminalisation that would generate thoughtful conversation. We made two, one that read, 'Using condoms as evidence of prostitution is a widespread police practice', and another that read, 'Condom use negotiation between sex workers and clients is a criminal act in Canada. Decriminalize sex work!' These messages made clear one of the day-to-day stresses of living in *The Viminal Space*.

⁴⁸ S Ferris, *Street Sex Work and Canadian Cities: Resisting a dangerous order*, University of Alberta Press, Edmonton, 2015, p. 3.



Image 3: Condoms as Evidence. Image credit: Stella member, 2017.

Revolution is Not a Safe Space

When I arrived on location at Nathan Phillips Square in Toronto, I immediately noticed three long banners hung on three stacked shipping containers that had been painted by a member of Chto Delat. These banners read, 'Revolution is Not a Safe Space.' This declaration brought to the fore the polarising and easily satirised arguments so many of us have been privy to in North American sex working communities about what qualifies as safe space, who is responsible for keeping the security operational, and what safety demands qualify as critical. The divide is as distinctly generational as it is in academic and queer communities.⁴⁹ Why should youth care that their elders were being shoved

⁴⁹ See: J Halbertstam, 'You Are Triggering me! The neo-liberal rhetoric of harm, danger and trauma', *Bully Bloggers*, 5 July 2014, retrieved 23 December 2018, <https://bullybloggers.wordpress.com/2014/07/05/you-are-triggering-me-the-neo-liberal-rhetoric-of-harm-danger-and-trauma>.



Image: 4 Revolution is not a Safe Space. Image credit: Alex Tigchelaar, 2017.

into police cars before they were born? And why should elders care that youth are being devoured by unpaid digital labour? Because revolution is not a safe space, we need to acknowledge that the fear that occupies this space often disguises itself as antagonistic bravado.

This ‘space acknowledgment’ felt especially meaningful from a group that knows all too well how risky public activism can be. In Russia, groups of grassroots activists are prevented from taking over public space since individual

protest is the only possible form of legal unauthorised protest. Groups of Russian activists, like groups of sex workers, are legislatively constituted as a danger to public wellbeing and prevented from collaborating for their own safety. Yet, this does not stop them from protesting in ways that may compromise their safety and spatial mobility.

Wilson argues that those from ‘historically oppressed and marginalized groups [...] suffer daily’, living ‘in an environment that professes to celebrate “diversity”, while in the context of their own lives, they are reminded again and again just how much they don’t belong or matter.’ In the academic context, she argues that it is no surprise that these communities ‘demand “safe spaces” and protection for themselves and their peers’, often making strong divides ‘between allies and enemies.’⁵⁰ This is something that all sex workers can understand. In public spaces, our safety is compromised by our mere presence. Work *about* our work is openly displayed in public space, occupying billboards and marquees without fear of recrimination. Creative work about sex work is normalised and consumed as such. Women who play sex workers in film, theatre, and television are often bestowed industry awards for their efforts. We, however, must be cautious when we present our own creative and activist work in public as our ‘inclusion within the law as sex workers is simultaneously an act of exclusion.’⁵¹ Openly identifying as a sex worker carries enormous stigma, and for those with tenuous migration status, the possibility of deportation.⁵² Active sex workers are also not permitted entry into the United States⁵³ and, if they are identified as such, are banned from entering for periods extending from five to ten years. While being knowledgeable about and accountable to the risks of our direct engagement, it was also important to establish a very sex worker-specific version of safe space for our container. Written into our contract was a clause that there would be no photographs inside our container and that *Nuit Blanche* would not be permitted to document us in this space either. This request was a form of advocacy in itself. It made organisers aware that dealing with criminalised populations in highly visible spaces meant forgoing the kind of visual documentation that helps establish their events as worth attending, and, by extension, funding. We would be in control of the economic instrumentalisation and wellbeing of

⁵⁰ Wilson, 2018, p. 14.

⁵¹ G Pratt, ‘Abandoned Women and Spaces of the Exception’, *Antipode*, vol. 37, 2006, pp. 1052-1078, p. 1059, <https://doi.org/10.1111/j.0066-4812.2005.00556.x>.

⁵² E Lam, ‘Bill C-36’s Negative Impact on Racialized and Migrant Sex Workers’, *Rabble*, 26 November 2014, retrieved 8 December 2017, <http://rabble.ca/news/2014/11/bill-c-36s-negative-impact-on-racialized-and-migrant-sex-workers>.

⁵³ Maggie’s, ‘Safer Border Crossing Tips for Sex Workers’, *Maggie’s*, n.d., http://maggiestoronto.ca/uploads/File/FINAL_USborderrights.htm.

our bodies by revealing yet another way in which cultural representation 'is a process that hides the apparatus of domination from the dominant themselves.'⁵⁴

Conclusion

The Viminal Space had line-ups until the early morning. SWOP Behind Bars mailed 325 letters to incarcerated sex workers from participants. The performances by Project ArmHer were deeply appreciated and the group was so inspired by the response that they added an additional three to the night. The condoms made by Stella generated many fruitful conversations about the contradictions between criminalising sex workers for not providing safe experiences while simultaneously depriving them of the right to do so. These, in turn, generated conversations about the many ways in which sex workers are deprived of basic labour rights while so many others profit off their cultural cachet.

It was a challenging evening. Twelve hours in a packed shipping container from dusk to dawn on a cold autumn night is a long shift, though this was made much easier by the fact that a patron booked us a hotel room close to the venue so that we might rest and freshen up. Our clients often support our activism, but of course, they must do so with some degree of caution for fear of being identified and branded sex offenders, unlike the many cultural and economic institutions keen to broadcast their associations with the creative class. Making sure people did not photograph us required vigilance as so many people are accustomed to the privilege of unfettered visibility and the freedom to be seen without being criminalised. But challenge can be stimulating: the act of requesting people not take photos prompted conversations about privacy and taken-for-granted social and digital mobility.


Borrowing from cabaret theatre scholar TL Cowan, McLean argues that, 'women artists can become entangled in exclusionary creative city initiatives by providing entrepreneurialized arts organisations with edgy feminist and queer artistic fare.'⁵⁵ But she also suggests that we can subvert these enterprises using tactics that challenge aggressive systems of privatisation, intolerant notions of citizenship, and colonisation.⁵⁶



⁵⁴ Schulman, p. 27.

⁵⁵ H McLean, 'Hos in the Garden: Staging and resisting neoliberal creativity', *Society and Space*, vol. 35, no. 1, 2017, pp. 38-56, p. 2, <https://doi.org/10.1177/0263775816654915>.

⁵⁶ *Ibid.*

After our communities across Canada had suffered a demoralising loss with the ascent of *PCEPA*, our involvement in events that themselves have troubled histories of displacement and misrepresentation remains vexed. But recognising that events like *Nuit Blanche* can be activated as spaces of political and entrepreneurial opportunity is critical to our voices being heard. These events offer us direct access to populations who are often armed with conflicted messages around sex work and human trafficking. They provide us the ability to discuss how these contradictions often fuel entitlement to residential and public spaces that do not include real sex workers. Direct contact with our fellow citizens is essential for more politicised knowledge production around the real impacts of the criminalisation of sex work, of spatial violence, and the multiple impacts of the neoliberal creative city model on sex workers. As businesspersons with legitimate concerns about our access to and visibility in public space, both exploited by neoliberal cultural economies and left out of them concurrently, we can find ways to instrumentalise these events to our benefit. And of course, in the end, we simply put all our banners up, sex and everything. Revolution, after all, is not a safe space.

Best installation of the night!   

#sexwork #nbTO17



Image 5: Best Installation of the Night! Image credit: Selene S, 2017. Used with permission from her Twitter feed.

I would like to thank the technical and security staff of Toronto's Nuit Blanche 2017 for their excellent care and attention.

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Latin American and Caribbean Sex Workers: Gains and challenges in the movement

Amalia L. Cabezas

Abstract

This article challenges the notion that the organised sex worker movement originated in the Global North. Beginning in Havana, Cuba at the end of the nineteenth century, sex workers in the Latin America and Caribbean (LAC) region have been organising for recognition and labour rights. This article focuses on some of the movement's advances, such as the election of a sex worker to public office in the Dominican Republic, the system where Nicaraguan sex workers act as court-appointed judicial facilitators, the networks of sex worker organisations throughout the region, and cutting-edge media strategies used to claim social and labour rights. Sex workers are using novel strategies designed to disrupt the hegemonic social order; contest the inequalities, discrimination, and injustices experienced by women in the sex trade; provoke critical reflection; and raise the visibility of sex work advocacy. New challenges to the movement include the abolitionist movement, the conflation of all forms of sex work with human trafficking, and practices that seek to 'rescue' consenting adults from the sex trade.

Keywords: sex work, sex worker movement, sex worker organisations, media, Latin America and the Caribbean

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Introduction

In February 2018, a Dominican newspaper reported the arrest of street-based sex workers and the response of Congresswoman Jacqueline Montero:

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SANTO DOMINGO, Dominican Republic. The deputy of the PRM (Partido Revolucionario Moderno—Modern Revolutionary Party), for San Cristóbal, Jacqueline Montero, denounced that last weekend's capture of dozens of female sex workers who worked in the surroundings of the *Basílica Nuestra Señora de Altagracia* (Our Lady of Altagracia) in Higüey, is another example of the discrimination and violation of rights that this sector experiences. 'In the Dominican Republic, there is no law that prohibits sex work, therefore, that detention was illegal', she said.¹

That a congresswoman would be involved in this type of exchange in such a deeply conservative Catholic nation is surprising. She spoke as an elected official of the PRM, a social democratic political party in the Dominican Republic. Montero, who is regularly interviewed by various media outlets, started her political career in 2010 as a city council member in Haina, a municipality outside the capital of Santo Domingo. In 2016, she was elected to the Chamber of Deputies, the lower house of the Dominican Congress. In the same newspaper interview, Montero added that, 'it is natural for sex workers to choose this area to offer their services, because it is a well-travelled area'. Montero's intimate knowledge of the public spaces of sex work, and of the applicable laws regulating the sex trade, emerges from her background as a former sex worker and as a leader in an organisation by and for sex workers. Indeed, newspaper accounts reveal that Montero is outspoken about her support for sex worker rights, and her background as a former sex worker positions her as an expert to openly advocate for the cessation of harassment, criminalisation, stigma, and violence targeting sex workers. In fact, Montero routinely demands that the state create jobs for single mothers. In the interview, she stated that 'the majority of the *compañeras* (comrades) that engage in sex work are single mothers who must support their children alone and face difficulties getting a job because of the discrimination they experience on a day-to-day basis. The state must guarantee their rights instead of mistreating them'.²

In Latin America and the Caribbean, there is a long tradition of sex workers advocating for social and labour rights. Montero is just the latest sex worker to enter the political arena to publicly address issues impacting those involved in the sex trade. High-profile sex workers, such as Claudia Colimoro of Mexico City and Gabriela Leite of Brazil, have openly challenged juridical structures

¹ All translation from Spanish into English by the author. A Nuñez, 'Diputada Jacqueline Montero Denuncia Discriminación Trabajadoras Sexuales', *Almomento.net*, 23 February 2018, retrieved 4 July 2018, <http://almomento.net/diputada-jacqueline-montero-denuncia-discriminacion-trabajadoras-sexuales>.

² *Ibid.*

and social mores and also ran for elected office in their respective countries.³ While some accounts attribute the political organisation of sex workers to the influence of the North American and European movements—referred to as the ‘first wave’ of sex worker organising⁴—Latin American and Caribbean sex workers have a long history of their own.⁵

This article documents the emergence of the sex worker movement in Latin America and the Caribbean in the nineteenth century, a history challenging the literature that suggests that sex workers first organised in the Global North in the 1970s.⁶ While the sex worker movement in the Global North has received the majority of English-language scholarly attention, I turn to Latin America and the Caribbean, an under-researched region in sex worker studies, to indicate the historical persistence of sex workers organising for social justice and change.

I begin with a discussion of the prostitute collective formed in Havana, Cuba, at the end of the nineteenth century, and then explore sex workers’ oppositional cultures of resistance in Mexico and Ecuador during the twentieth century. I also examine the network of sex worker organisations, linked to global advocacy organisations, which currently operate in the majority of countries of Latin America and the Caribbean. I then explore some of the cutting-edge media strategies and other initiatives crafted by sex workers in Spanish-speaking countries. The examples chosen indicate how sex workers challenge the hegemonic gender, sex, and labour regimes and present alternative visions. I argue that the current contiguous networks, pioneering juridical interventions, and sex worker radical media and other practices are solidifying the foundation of a transhemispheric movement. It is important to examine the advances of and challenges faced by this movement in order to understand its lessons for other parts of the world.

³ L Murray (Dir.), *A Kiss for Gabriela*, Miríade Filmes in association with Rattapallax, 2013; M Lamas, *El Fulgor de la Noche: El comercio sexual en las calles de la Ciudad de Mexico*, Editorial Oceano de Mexico, S.A. de C.V., Mexico, 2017; C Colimoro, ‘A Prostitute’s Election Campaign’ in G Keippers (ed.), *Compañeras: Voices from the Latin American women’s movement*, Latin America Bureau, London, 1992, pp. 92-96.

⁴ K Hardy, ‘Incorporating Sex Workers into the Argentine Labor Movement’, *International Labor and Working-Class History*, vol. 77, no. 1, 2010, pp. 89-108, <https://doi.org/10.1017/S0147547909990263>.

⁵ K Kempadoo, ‘Globalizing Sex Workers’ Rights’, *Canadian Woman Studies*, vol. 22, no. 3, 2003, pp. 143-150.

⁶ G Gall, *An Agency of Their Own: Sex worker union organizing*, John Hunt Publishing, London, 2012.

The examples of sex worker advocacy I have chosen to highlight in this article—radical uses of the media, organising, and juridical intervention—are not exhaustive but rather illustrative. They were selected because they represent novel strategies designed to disrupt the hegemonic social order, contest the inequalities, discrimination, and injustices experienced by cisgendered and trans women in the sex trade, provoke critical reflection, and raise the visibility of sex work advocacy.⁷

This article focuses on selected examples from Spanish-speaking countries in Latin America and the Caribbean. More research on organising efforts is needed, particularly ethnographies investigating the Dutch, French, and English-speaking countries in LAC. Likewise, more research on male sex workers and their incorporation into the movement is necessary. Finally, further analysis is required of the uses of social media for organising the diverse populations of sex workers in the region.

Historical Precursor—*La Cebolla* (The Onion)

Most accounts of the origins of the sex worker movement reference Global North precursors, such as the occupation of the Saint-Nizier Church by prostitutes in Lyon, France, in 1975, the establishment of the English Collective of Prostitutes in London during the same year, and the creation of Call Off Your Old Tired Ethics (COYOTE) in San Francisco in 1973. In the Americas, however, the conception of prostitution as a form of labour—and not sin, vice, or the depravity of ‘fallen women’—was first articulated by a Caribbean collective of prostitutes who sought to organise politically to demand their rights as workers. Indeed, sex workers in Latin America have a long history of organising, publicly challenging and resisting unjust regulations and policies.

An often-ignored forerunner of the global movement for sex worker rights began in Cuba. In the late nineteenth century, during a period of increased migration from European countries and the circulation of women in Latin America and the Caribbean, women worked in the brothels of Havana, which had been a popular destination for sex since the beginning of the Spanish Conquest. As historians have uncovered, migrant women travelled from Europe, the United States, the Canary Islands, Mexico, Panama, Spain, and Venezuela to Havana to eke out a living in the red-light district. Some of the matrons, or madams, were well-to-do, having earned large sums of money in

⁷ J Downing, *Radical Media: Rebellious communication and social movements*, 2nd Edition, Sage, London, 2000.

their youth.⁸ They invested their savings and established entertainment venues that offered prostitution, gambling, and dancing. As brothel owners, they made a decent living, and began to exercise their economic power by challenging the corrupt practices of the Spanish colonial administration.

In 1888, a group of Havana sex workers founded a newspaper to voice their anti-government views and called for the establishment of a political party led by sex workers. Financed by wealthy sex workers and edited by a Spanish immigrant anarchist, Victorino Reineri Jimeno, the newspaper was a medium for protest, countering discriminatory laws and unethical officials in the colonial government.⁹ *La Cebolla: Periódico ilustrado, órgano oficial del partido de su nombre* (*The Onion: Illustrated Newspaper, Official Organ of the Party with the Same Name*) was widely distributed throughout Havana and other Cuban provinces and openly advocated for the rights of prostitutes in cosmopolitan Havana. The name of the newspaper alluded to the formation of a sex worker political party. However, historians have not been able to uncover evidence of a political organisation attached to the journal.¹⁰ The newspaper was envisioned as a publication for and by prostitutes. The newspaper advocated for changes to the *Reglamento de Higiene Pública* (Public Hygiene Regulation), an administrative system that, in part, sought to reduce the incidences of sexually transmitted infections by registering sex workers and forcing them to carry identity cards and submit to gynaecological examinations. This imported system of state regulation of sex work initially came from France and England, but was later adopted throughout the Americas.¹¹

A series of articles published in *La Cebolla* in September 1888 ridiculed and protested government regulations imposed on brothel-based sex workers, including the high regulatory fees and mandatory medical check-ups. As historian María del Carmen Barcia Zequeira points out, sex workers defined themselves as a marginal and exploited class because they saw themselves as victims of continuous extortion at the hands of the authorities who sought to control their activities.¹² One unsigned letter stated:

⁸ M Barcia Zequeira, 'Entre el Poder y la Crisis: Las prostitutas se defienden' in L Campuzano (ed.), *Mujeres Latinoamericanas: Historia y cultura: Siglos XVI al XIX*, Havana, 1997, pp. 263-273.

⁹ M Beers, 'Murder in San Isidro: Crime and culture during the Second Cuban Republic', *Cuban Studies*, vol. 34, 2003, pp. 97-129.

¹⁰ Barcia Zequeira.

¹¹ For discussions of responses to regulationism in Latin America, see: S Caulfield, *In Defence of Honor: Gender, sexuality and nation in early 20th century Brazil*, Duke University Press, Durham, 2000; E J S Findlay, *Imposing Decency: The politics of sexuality and race in Puerto Rico, 1870-1920*, Duke University Press, Durham, 1999; and T Sippial, *Prostitution, Modernity, and the Making of the Cuban Republic, 1840-1920*, University of North Carolina Press, Chapel Hill, 2013.

¹² Barcia Zequeira.

The Mayor, who is so old and cranky that not even a fly dares to land on him, has decreed that we cannot exhibit ourselves in the doorways of our own establishments. [...] Is this fair? What country prohibits a businessman from showing the public his merchandise? The ‘horizontal’ of this city pay more contributions to the state than necessary. Yet, even though we contribute more than any other sector to bolster the revenues of the state with the sweat of our [...] brows, we are treated as if we were slaves, as if we were outlaws. In other words, we are considered citizens so as to meet our obligations but not to enjoy the rights of citizenship.¹³

The ‘horizontal’—the name used to denote sex workers in the paper—did not shy away from protesting the control of prostitutes’ lives by challenging an exploitative administrative system that was being paid for with all the regulations enacted over their bodies. Another article advocated for the formation of a professional guild of prostitutes that would back their demands and fight for the recognition of sexual services as a system of labour. Using humour and candour, sex workers publicly exposed their exploitation in print media, inspiring the creation of a new identity for prostitutes as labouring women.

Both the rebellious and demanding spectacle of so-called ‘public women’ who had no shame in identifying as prostitutes and the publication of *La Cebolla* were acts of defiance against a Spanish colonial administration that was already under attack by the Cuban independence movement. Government officials retaliated, banning the newspaper and incarcerating the editor. Nevertheless, the short-lived campaign highlighted the fact that sex workers were no longer politically powerless, invisible, and easily vilified. Thus, in Havana, at the end of the nineteenth century, women who made a living in the sex industry envisioned the formation of a political party that would demand their rights. This important intervention was the genesis of the current transnational social movement of sex working women in Latin America and the Caribbean. As I detail below, these organisations have been able to realise some of the achievements imagined by the women of *La Cebolla*.

¹³ Beers, p. 105.

Mexico

The case of Mexico offers an example of sex workers refusing to align themselves with labour politics. In the 1920s and 1930s, in the aftermath of the Mexican Revolution, during a period of rapid urbanisation and nation-building, sex workers saw the manifestation of political organising as an affront to their identities as decent people. In Mexico City, as historian Katherine Bliss' scholarship documents, women working in the sex trade insisted that they were part of communities and households for which they bore responsibility. Seeking to be regarded as *gente decente* (decent, honourable people), they affirmed their identities as providers for their families and, by extension, the nation. When radical labour unions sought to unionise them to improve working conditions in brothels and cabarets, they manifested their resolve by refusing to be controlled by labour organisers. Instead, they claimed a more flexible political subjectivity that did not inscribe them into permanent states of stigma and shame. Defying the discourse of 'vice' or even 'individual desperation', they emphasised their role and identity as 'conscientious parents and providers'.¹⁴ For them, sex work was an income-generating activity they undertook on a temporary basis to support their families, and thus was tied to reproductive labour. By proclaiming the right to live as *gente decente*, they challenged the structural conditions of gendered poverty that relegated them to the margins of society and the mores that pinned them as deviant women within hegemonic meanings of prostitution. While they did not want to be aligned with labour rights and unionisation, they nevertheless spoke out in opposition to the injustices they faced.

Paradoxically, sex workers in Mexico City also rejected the Department of Public Health's efforts to abolish sex trade businesses, such as cabarets, and to deregulate the red-light district. Instead, as Bliss establishes, 'while many women acknowledged that their work was undesirable, they insisted that they engaged in sex work because they were honourable daughters and mothers supporting deserving family members'. Sex workers also appealed to revolutionary fervour by maintaining that their work was in service of the nation and its families. They proclaimed that they "'threw themselves into the street" and participated in a profession that put them at risk of abuse, violence, and disease to protect their children, Mexico's future workers and leaders'.¹⁵ In effect, sex workers challenged their marginalisation, thus affirming their right to work and their normative social identity, while linking the domains of sexuality, social reproduction, nationhood, and economy.

¹⁴ K Bliss, 'A Right to Live as Gente Decente: Sex work, family life, and collective identity in early twentieth-century-Mexico', *Journal of Women's History*, vol. 15, no. 4, 2004, pp. 164-169, <https://doi.org/10.1353/jowh.2004.0005>.

¹⁵ *Ibid.*, p. 167.

Regional Networks of Organisations

In the 1980s, sex workers established grassroots organisations in various parts of Latin America. Women in Uruguay's sex trade were one of the first groups to organise in 1986. Shortly thereafter, Uruguayan sex workers obtained social security and health benefits for their occupation. In 1987, two Brazilian sex workers, Gabriela Leite and Lourdes Barreto, held Brazil's first national conference for sex workers.¹⁶ By 2007, sex workers from Davida, a Brazilian organisation that champions the rights of prostitutes, had launched the fashion line *Daspu* in Rio de Janeiro, which became the first fashion house created and managed by sex workers.¹⁷ Currently, there are several sex worker organisations throughout Brazil, including Rede Brasileira de Prostitutas (National Network of Prostitutes) and Federação Nacional das Trabalhadoras do Sexo (National Federation of Sex Workers).¹⁸

In the early 1980s, one of the first sex worker collectives was organised in El Oro province in Ecuador. On 22 June 1982, 300 brothel-based women united to form La Asociación Femenina de *Trabajadoras Sexuales* Autónomas (Association of Independent Female Sex Workers) and, in 1988, they went on strike in an effort to negotiate better treatment from brothel owners.¹⁹ Their success inspired the formation of other sex worker collectives throughout the country. By 1993, when sex workers convened Ecuador's first national conference, there were eleven community organisations of sex workers calling for improvements in working conditions, health, and security. According to Lourdes Torres, the president of the brothel-based sex workers' organisation *Asociación para la Defensa de la Mujer* (Association for the Defence of Women), Ecuador has at least one sex worker collective in every province of the country.²⁰

Ironically, during the 1980s, the HIV/AIDS pandemic made governments and supra-national health associations pay attention to the role that sex workers could play in preventing and eradicating the virus. According to Mzilikazi

¹⁶ A De Liso, 'How Brazil's Sex Workers Have Been Organized and Politically Effective for 30 Years', *The Conversation*, 15 December 2017, retrieved 12 August 2018, <https://theconversation.com/how-brazils-sex-workers-have-been-organised-and-politically-effective-for-30-years-88903>.

¹⁷ B Hagenbuch, 'Rio Prostitutes' Fashion Line Hits Street Catwalk', *Reuters*, 20 January 2007, <https://uk.reuters.com/article/oukoe-uk-brazil-fashion-prostitutes/rio-prostitutes-fashion-line-hits-street-catwalk-idUKN2035889120070120>.

¹⁸ A Piscitelli, 'Transnational Sisterhood? Brazilian feminisms facing prostitution', *Latin American Policy*, no. 5, 2014, pp. 221-235, p. 224, <https://doi.org/10.1111/lamp.12046>.

¹⁹ Kempadoo, 2003.

²⁰ Hardy; See also: J Van Meir, 'Sex Work and the Politics of Space: Case studies of sex workers in Argentina and Ecuador', *Social Sciences*, vol. 6, no. 2, 2017, pp. 1-40, <https://doi.org/10.3390/socsci6020042>.

Koné's research, the entry point into work with sex workers was around HIV prevention and empowerment. Sexual health was primary, and empowerment and organising came through that initial sexual health-centric model.²¹ Sex workers, however, continued to be targeted by state interventionist efforts to eliminate venereal diseases, but these problematic practices drew sex workers together and facilitated further organising.²² Regional gatherings, for example, resulted in the formation of various transnational networks. Currently, these networks are linked to similar actions in more developed countries and represent Latin America and the Caribbean's entry into the global stage of the struggle for sex workers' rights.

The transnational associations began in Costa Rica in 1997, when the Red de Mujeres Trabajadoras Sexuales de Latinoamérica y el Caribe (Network of Women Sex Workers in Latin America and the Caribbean—RedTraSex) was born as a transnational non-government association of sex worker groups in the region and has since built political influence.²³ RedTraSex is headquartered in Argentina, linking associations in fourteen countries: Argentina, Bolivia, Chile, Colombia, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, and Peru. Sociologist Jorgelina Loza explains that 'the central claim of the women that make up RedTraSex is their demand to be recognised by the nation states to which they belong as subjects of rights, that is, as workers who have the right to access decent working conditions and social benefits: housing, health, retirement and pensions'.²⁴ Through a feminist, rights-based approach, RedTraSex coordinates programmes to unite sex workers around issues that impact their lives, including advocating for improved access to medical care free of discrimination, anti-violence initiatives, safe working environments, sexual health, and mobilising in opposition to human trafficking.

RedTraSex has enhanced visibility, influence, and activism through a number of accomplishments. This is not an exhaustive list, but I highlight a few significant gains facilitated by cross-national collaboration. First, the connections produced by transnational ties within the region and internationally have fortified activists' image and legitimacy and created a platform to denounce

²¹ M Koné, *Sex Worker Political Development: From informal solidarities to formal organizing*, PhD Dissertation, University of California, Los Angeles, 2014.

²² M Koné, personal communication, 26 February 2019.

²³ M Koné, 'Transnational Sex Workers Organizing in Latin America: RedTraSex, Labour and human rights', *Social and Economic Studies*, vol. 65, no. 4, 2016, pp. 87-108.

²⁴ J Loza, 'Ideas Nacionales en la Escala Regional: La experiencia de acción colectiva transnacional de la RedTraSex en América Latina', *FLACSO/UBA-CONICET*, Argentina, retrieved 4 July 2012, <http://web.isanet.org/Web/Conferencias/FLACSO-ISA%20BuenosAires%202014/Archive/8886d0d9-3dd9-4693-9d10-aa1ac5c7320f.pdf>.

the normalised violence that sex workers routinely face. Samantha Carrillo, of the Organización Mujeres En Superación (Organisation for Women's Empowerment), reflected on their increasing political clout in Guatemala: 'we were a crazy trio thinking that someday we were going to have a house and that someday we were going to sit down with the officials to talk about us as sex workers'. She went on to add:

Every year, every day, every step we take, we are no longer a crazy trio. Today we are thirty-five female sex workers [who] day-to-day, work in preparation, arranging with the directors of health centres, talking with members of congress, with ministers, and talking about how we want to change not only the working conditions but also the conditions in health and also our rights.²⁵

Consuelo Raymundo, affiliated with Movimiento De Mujeres Orquideas del Mar (Women's Movement Orchids of the Sea), in El Salvador, echoed this sentiment when she stated, 'RedTraSex provides us greater visibility with government institutions. If we are alone nothing happens but when we are united in so many countries people tends [sic] to take us seriously'.²⁶ This level of respect would be difficult to achieve without the power and strength of a regional network.

Second, the organisations prioritise a model of governance that puts sex workers in charge of the direction of the movement. Thus, the leadership is comprised primarily of sex workers, even if they lack formal schooling.²⁷ Furthermore, cross-cultural and cross-national approaches have injected new tactics into the national landscape. As RedTraSex member Ángela Villón, representative of Peruvian sex worker organisation Miluska Vida y Dignidad (Miluska Life and Dignity), reported, 'to see how things work in other countries allows [us] to find models that we can adapt to our own reality'.²⁸ Even though members are confronted with language barriers, cultural and racial differences, technological difficulties in communication, and financial uncertainties, their advocacy strengths are shaping public and political spaces for people in the sex industry at the national and regional level.

²⁵ RedTraSex, *Historias de Trabajadoras Sexuales Empoderadas, 1997-2017*, RedTraSex, Buenos Aires, 2017.

²⁶ RedTraSex, *10 Years of Action (1997-2007): The experience of organizing the network of sex workers of Latin America and the Caribbean*, RedTraSex, Buenos Aires, 2007, p. 76.

²⁷ *Ibid.*

²⁸ *Ibid.*, p. 77.

RedTraSex engages in diverse forms and areas of advocacy designed to empower sex workers. These include communication campaigns, the development of awareness campaigns aimed at different national actors, and the formation and strengthening of community-based sex worker organisations. It also conducts research and develops position papers on key issues, such as sexual and reproductive rights, violence, labour rights, and the distinction between sex work and human trafficking.²⁹

A second regional network, Plataforma Latinoamericana de Personas que Ejercen el Trabajo Sexual (Latin American Platform of People Who Exercise Sex Work—PLAPERTS), is headquartered in Ecuador. Organisations from Brazil, Ecuador, Mexico, and Peru started this regional platform of the Global Network of Sex Work Projects (NSWP) in 2014. As in the case of RedTraSex, the platform's member organisations call for the recognition of sex work as a legitimate occupation, struggle to improve the working conditions of sex workers, and inform their members about their rights. There are also smaller regional organisations. In the Caribbean, the regional Caribbean Sex Worker Coalition (CSWC), formed in 2011, brings together sex workers from English-, Dutch-, and Spanish-speaking countries. CSWC is comprised of groups based in Antigua, Belize, Grenada, the Dominican Republic, Guyana, Jamaica, Suriname, and Trinidad and Tobago. It includes, among others, the Caribbean Regional Trans in Action (CRTA), an organisation supporting trans women in sex work. The majority of the member alliances work principally with cis-gendered and transgender women involved in sex work regardless of their sexual identity, though some also include male sex workers.

Both PLAPERTS and RedTraSex have created new paradigms for women working in the sex industry. These paradigms combine communality, collaboration, and new social and political subject positions. As workers, feminists, and citizens worthy of human rights protections, they are committed to mutual support and respect. The different collectives are also dedicated to the empowerment of sex workers and achieving legislative change in their respective countries, as detailed below.

The flourishing network of sex worker organisations that emerged since the 1980s also actively participates in civil society, primarily through the creation of non-governmental organisations and entry into the political sphere. Jacqueline Montero, for instance, in addition to serving as an elected representative in the Dominican Congress, also serves as the president of the

²⁹ ONUSIDA, 'La RedTraSex Presenta 20 Años de Logros en la Promoción de los Derechos Humanos de las Trabajadoras Sexuales en América Latina y el Caribe', ONUSIDALAC, <http://onusidalac.org/1/index.php/listado-completo-de-noticias/item/2293-la-redtralsex-presenta-20-anos-de-logros-en-la-promocion-de-los-derechos-humanos-de-las-trabajadoras-sexuales-en-america-latina-y-el-caribe>.

sex worker organisation Movimiento de Mujeres Unidas (Movement of United Women—MODEMU), a non-governmental organisation started by the Centro de *Orientación e Investigación Integral* (Integral Orientation and Research Center—COIN). COIN is a community-based organisation in Santo Domingo that supports sex workers as part of their agenda to provide safer sex education to vulnerable populations.³⁰ Founded in 1996, MODEMU was the only sex worker organisation in the country until 2016, when former members of MODEMU started a new group headed by Miriam Altagracia Gonzalez Gómez, a founding member of MODEMU. The Organización de Trabajadoras Sexuales (Organisation of Sex Workers—OTRASEX) works closely with RedTraSex, and has recently conducted research on police violence aimed at sex workers and held educational workshops with members of the armed forces. The existence of two sex worker organisations in such a small country is testament to the self-determination and heterogeneity of perspectives in the movement for social, labour, and political rights.

Other Radical Interventions By and For Sex Workers

Girasol's Judicial Mediators

The official acceptance of sex work as a type of labour is one of the central principles of the sex worker rights movement. In addition to the advocacy efforts of the networks in Latin America and the Caribbean, in individual countries, women engaged in sex work are fighting for alternative visions of justice. In Nicaragua, the sex worker organisation Girasoles de Nicaragua (Sunflowers of Nicaragua) has recently made headway in the struggle for awareness of their rights as precarious labourers, and positioned sex workers as an integral part of the justice system.

Founded in November 2007, Girasoles de Nicaragua currently boasts more than 2,300 members. The collective, in conjunction with the country's Supreme Court, created the first programme of sex worker judicial mediators. This conflict resolution model reduces caseloads in the courts and enhances communication between the justice system and sex workers. Nicaragua is the first country in the world that has trained sex workers to resolve conflicts within their jurisdiction; officially trained and accredited by the Supreme Court of Justice, eighteen sex workers assist the Administration of Justice as judicial

³⁰ K Kempadoo, 'COIN and MODEMU in the Dominican Republic', in K Kempadoo and J Doezema (eds.), *Global Sex Workers: Rights, resistance, and redefinition*, Routledge, New York, 1998, pp. 260-266; D Brennan, *What's Love Got to Do with It? Transnational desires and sex tourism in the Dominican Republic*, Duke University Press, Durham, 2004; A Cabezas, *Economies of Desire: Sex and tourism in Cuba and the Dominican Republic*, Temple University Press, Philadelphia, 2009.

facilitators, resolving conflicts related to sex work, and preventing and decreasing violence. In an interview, the President of the Supreme Court of Justice, Alba Luz Ramos, stated, ‘it is the best way to do it, because they [sex workers] sometimes feel discriminated against by the rest of the community.’³¹ As an example of the programme’s efficacy, María Elena Dávila, president of Girasoles, said in an interview that judicial facilitators were able to assist a 23-year-old co-worker who was stabbed by a client. The client went to jail, and the judicial facilitators monitored the process ‘to ensure that the police and forensic medicine do their job’.³² She went on to explain how the incorporation of sex worker advocates is a crucial step in the process, in that it helps to ensure that sex workers are not victimised by the police and the justice system.

In an interview in 2015, Dávila was asked how she felt about Nicaraguan sex workers participating as judicial facilitators. She replied:

We already feel recognised, but we do not have a document that says as of this day sex workers enjoy the same rights as the workers’ union. We will achieve it, because that is the challenge, but I cannot say whether today or tomorrow... Then we would be happier than we are now. That would be the final point, but each right [we gain] is leading to demand another.³³

Girasoles achieved this goal in 2017, when Nicaragua recognised sex work as a form of labour. It became the third country in Latin America, after Colombia and Guatemala, to have a sex workers’ union acknowledged by the Ministry of Labour. Currently, Girasoles is attached to the Confederación de Trabajadores por Cuenta Propia (Confederation of Self-Employed Workers), a union representing people who work in the informal economy, selling all kinds of inexpensive goods and services.

Garnering further media attention, the program of judicial facilitators was featured in a 2017 documentary film, *Girasoles de Nicaragua*, which premiered at international film festivals. Created by a feminist filmmaker, *Girasoles de Nicaragua* follows Nicaraguan sex workers as they champion

³¹ La Prensa, ‘Es mejor que trabajadoras sexuales medien sus conflictos’, *La Prensa*, 19 March 2015, <http://www.laprensa.com.ni/2015/03/19/nacionales/1801749-csj-es-mejor-que-trabajadoras-sexuales-medien-sus-conflictos>.

³² A Wallace, ‘Nicaragua: El primer país del mundo en entrenar a sus trabajadoras sexuales para resolver conflictos’, *BBC Mundo*, 10 June 2015, https://www.bbc.com/mundo/noticias/2015/06/150609_nicaragua_trabajadoras_sexuales_justicia_aw.

³³ L. García, ‘El Objetivo Es Que La Justicia Se Cumpla’, *El Nuevo Diario*, 5 May 2015, retrieved 4 July 2018, <https://www.elnuevodiario.com.ni/nacionales/359415-objetivo-es-que-justicia-se-cumpla>.

for fair treatment of sex workers and the inclusion of their voices in community-based conflict resolution.³⁴

The victories secured by sex worker activists working together for social acceptance and political visibility have been hard-won. The struggle to change the stigma against women living in poverty, and working-class single mothers, is compounded by the sexualisation of their labour. As the cases of Argentina and Columbia, detailed below, illustrate, public interventions and cultural resistance can challenge stigmatising moralities and humanise sexual labourers.

AMMAR

In 1994, a group of women engaged in Argentina's sex trade came together in the city of Buenos Aires with the objectives of organising to oppose police violence and arbitrary arrests and to fight for basic rights.³⁵ The Asociación de Mujeres Meretrices de Argentina (Association of Women Sex Workers of Argentina—AMMAR) was born in 1995 and has been at the forefront of efforts to organise women engaged in the sale of sexual services with a focus on advocacy and mutual help. AMMAR is integrated into the trade union umbrella confederation, the Central de Trabajadores Argentinos (Argentine Workers' Central Union), which represents the interests of informal sector workers.³⁶ In Argentina, the sale of sex is not criminalised at the federal level, but brothels and third parties that profit from sex work and advertisements are outlawed. The regulations date back to 1937, when they were first instituted to combat venereal diseases.³⁷

Recognised as a non-profit organisation, AMMAR has influenced public policy and built political alliances with other workers. In 2003, 2008, and 2010, AMMAR succeeded in having local laws repealed that criminalised sex workers and empowered police to arrest them and violate their rights. In 2018, they successfully fought for the repeal of a code in Buenos Aires that authorised fines and the arrest of sex workers, routinely applied to trans- and cis- women on the grounds of being 'scandalous'.³⁸

³⁴ F Jaugey (Dir.), *Girasoles de Nicaragua*, Camila Films, Managua, Nicaragua, 2017.

³⁵ C Varela, 'Del Tráfico de las Mujeres al Tráfico de las Políticas. Apuntes para una historia del movimiento anti-trata en la Argentina (1998-2008)', *PUBLICAR-En Antropología y Ciencias Sociales*, vol. 12, 2013, pp. 35-64.

³⁶ Hardy.

³⁷ D Guy, *Sex & Danger in Buenos Aires: Prostitution, family, and nation in Argentina*, University of Nebraska Press, Lincoln, 1991.

³⁸ AMMAR, 'Un Paso Más Para La Descriminalización Del Trabajo Sexual', AMMAR, 13 July 2018, retrieved 28 July 2018, <http://www.ammar.org.ar/Un-paso-mas-para-la.html>.



Image 1: An example of AMMAR’s campaign. The message on the wall reads: ‘86% of sex workers are mothers. We need a law that regulates our work.’ Image credit: AMMAR / Ogilvy.

At the intersection of popular culture and radical media, and on the heels of *La Cebolla*, AMMAR has cleverly utilised public spaces to drive home a political message. Borrowing from Banksy’s famous street stencils, the organisation started an innovative campaign in 2013, by adorning walls on various street corners in Buenos Aires with mural paintings. Depicting women on one side and their children on the other, the campaign stressed that 86 per cent of Argentine sex workers are mothers, bringing attention to the fact that sex workers are women with familial connections and obligations, and are integrated into communities as mothers and breadwinners.³⁹ The murals not only facilitated neighbourhood discussions and awareness, but this labour rights campaign also received widespread media attention, even winning an international prize from a public relations and communications magazine.⁴⁰

³⁹ EIKON, ‘La Campaña de las Trabajadoras Sexuales Que Les Valió Un Eikon’, *EIKON*, 17 October 2015, <https://premioeikon.com/la-campana-de-las-trabajadoras-sexuales-que-les-valio-un-eikon-2/>; R Radu, ‘Argentina’s Prostitutes—Mothers First Sex Workers Second’, *The Guardian*, 17 June 2013, <https://www.theguardian.com/world/2013/jun/17/argentina-prostitutes-advertising-campaign>.

⁴⁰ J Edwards, ‘These “On The Corner” Ads for Argentine Sex Workers Are Brilliantly Deceptive’, *Business Insider*, 10 June 2013, <https://www.businessinsider.com/ammars-corner-ads-for-argentina-prostitutes-2013-6>.

AMMAR produced another impactful intervention in the form of a public sphere performance in which activists randomly distributed fake invoices for sexual services rendered, complete with price details. The campaign also targeted journalists, opinion leaders, and politicians, among others.

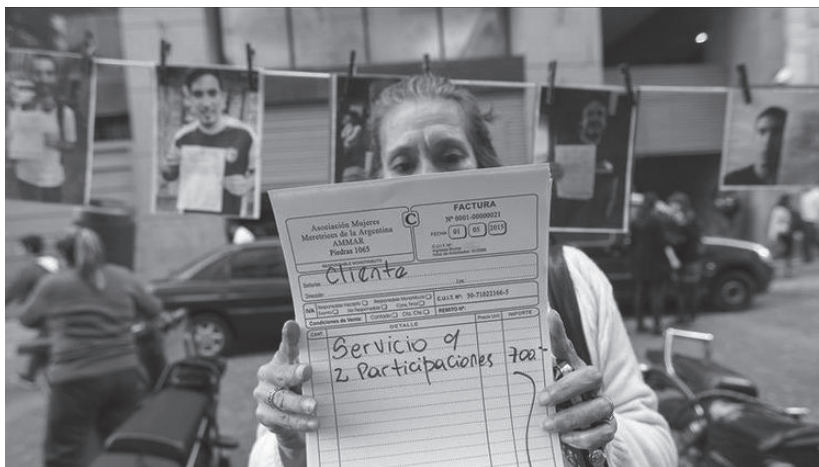


Image 2: Member of AMMAR shows a symbolic invoice for sexual services. Image credit: EFE/David Fernández.

The objective was to make evident that sexual services involve a financial transaction similar to other enterprises, with obligations and rights which, if decriminalised, would also have ramifications for public finances. Georgina Orellano, the general secretary of AMMAR, declared that their aim was to highlight the importance of autonomous sexual labour for adult women who voluntarily decide to engage in this work.⁴¹ AMMAR's ingenious initiative, designed to promote acceptance of sex workers and support for their rights, generated media attention and once more initiated public awareness and discussion.

La Esquina

In another part of Hispanic America, a group of mostly trans sex workers in Santa Fe, Colombia, near the capital of Bogotá, created a mural that later inspired a printed newspaper called *La Esquina* (The Corner) in 2018.

⁴¹ 'Argentina: Prostitutas Reparten Boletas en el Día del Trabajo', *El Comercio*, 2 May 2015, <https://elcomercio.pe/mundo/actualidad/argentina-prostitutas-reparten-boletas-dia-189679>.



Image 3: Monica Quiroz and Ángel López layout the pages of the second issue of *La Esquina*. Image credit: Nadège Mazars/Hans Lucas for the Guardian.

Staffed by trans sex workers, *La Esquina* is a media space where community members share information of community interest, such as how to avoid complications related to surgical procedures, how to get a job, how to make cheap meals, and how to take better care of their health.⁴² Funded by non-profit organisations, *La Esquina* has a mural edition that is laminated and pasted to walls on street corners where sex workers congregate to wait for their clients. It also has a regular print edition that is distributed to brothels and other businesses in areas patronised by sex workers.

La Esquina addresses the interests, needs, and empowerment of a disadvantaged community that is doubly discriminated against for being trans and sex workers. At the outset, surveys were used to determine what community members wanted to see and read; politics received a ‘clear thumbs down, while residents said they really wanted to hear about security, health, and events.’⁴³ For staff members such as Marcela, a 56-year-old trans woman with limited literacy

⁴² S Grattan, “‘Culture is power’: The Colombian sex workers who launched a newspaper”, *The Guardian*, 23 April 2018, <https://www.theguardian.com/global-development/2018/apr/23/colombia-sex-workers-newspaper-la-esquina-bogota>.

⁴³ *Ibid.*

skills, *La Esquina* offers the opportunity to visually communicate stories. Conveying her disdain for mainstream media that exclude trans issues ‘because they only look for us to tell the morbid thing that woke them up’,⁴⁴ she uses photography to document stories for the newspaper. In commenting on her work, the Colombian newspaper *Semana* stated that, ‘Marcela thinks in frames, in all those stories that are walking through the streets of Santa Fe and that hide in exposed skin and tattoos.’⁴⁵ Without *La Esquina*, those stories would not be told. Likewise, the section created by staff member Lorena, called ‘Gourmet at 10 lucas’ (lucas is the slang word for pesos), features low-cost recipes, with the explicit goal of introducing trans sex workers to different foods. For, as Lorena specifies, she knows well that they can spend entire nights without eating anything. The various features included in the paper share a common thread: they are deeply committed to contesting and transforming the daily violence, social exclusion, and invisibility experienced by trans sex workers. Writing about *La Esquina*, the British newspaper *The Guardian* opined, ‘in a neighbourhood where violence and murder usually steal the headlines, *La Esquina* is making an impact in [a] gentler way’.⁴⁶

By challenging transphobia, sharing mutual interests, and creating new venues for creative expression, *La Esquina* is a type of radical media that produces critical and transformative thinking in a marginal setting. It represents an invitation for the wider sex worker movement to think in terms of accessibility, diversity, and the creation of new literacies for its members.

Conclusion

Latin America and the Caribbean have a long history of sex worker organisations that have struggled for better working conditions free of institutional violence and oppression. The militancy and dedication of the sex worker movement in the region represents the continued demand for recognition—just as they did in the late nineteenth-century Havana. Instead of a corrupt colonial administration, they now face an equally powerful neo-colonial and neoliberal context that undermines their livelihoods and rights.

⁴⁴ *Semana*, ‘El periódico de las trabajadoras sexuales que salva vidas en el barrio Santa Fe’, *Semana*, 27 April 2018, <https://www.semana.com/nacion/articulo/periodico-la-esquina-hecho-por-trabajadoras-sexuales-trans-del-barrio-santa-fe/565218>.

⁴⁵ *Ibid.*

⁴⁶ Grattan.

⁴⁷ Amnesty International, *Sex Workers at Risk: A research summary on human rights abuses against sex workers*, Amnesty International, 2016; see also: Varela, 2013.

Ongoing issues for the Latin American and Caribbean sex worker movement include access to labour rights, the decriminalisation of the sex trade, institutional discrimination, state violence, and social stigma. These issues impact the global sex trade as well and will continue to facilitate dialogue and intellectual exchange between the different regions. However, sex workers in Latin America have a history of organising that is distinct from the genealogy of sex worker organising in the Global North; the former is ignored and the latter is usually inaccurately assumed to explain sex worker organising in Latin America and the Caribbean. The presence of unique forms of resistance, political advocacy, and commitment to social justice need further visibility. The Latin American and Caribbean sex workers are not the passive recipients and beneficiaries of feminist and worker ideologies from the Global North. Rather, they have long since developed a consciousness and praxis to confront their own issues.

One of the biggest setbacks in the last twenty years has been the neo-abolitionist movement and the conflation of all forms of sex work with human trafficking.⁴⁷ These new challenges include practices that seek to ‘rescue’ consenting adults from the sex trade, and policies that ignore their right to self-determination. Nonetheless, non-governmental organisations such as Amnesty International support policies that decriminalise sex work. In 2016, Amnesty International condemned human trafficking and at the same time released a model policy that summons countries to decriminalise the sex trade in order to better protect the health and human rights of sex workers.⁴⁸ Other organisations such as the World Health Organization, UNAIDS, the Global Alliance Against Traffic in Women, Human Rights Watch, Lambda Legal, the American Civil Liberties Union (ACLU), and Freedom Network USA concur with its position.⁴⁹

In 2008, Elena Reynaga, president of RedTraSex, spoke at the first plenary session of the International AIDS Conference dedicated to sex work. She asserted:

Female, male and transgender sex workers are dying because of a lack of health services, a lack of condoms, a lack of treatment, a lack of rights—NOT BECAUSE OF A LACK OF SEWING MACHINES! We don’t want to sew, we don’t want to knit, we don’t want to cook. We want better work conditions. So we demand the following:

⁴⁸ *Ibid.*

⁴⁹ E Albright and K D’Adamo, ‘Decreasing Human Trafficking through Sex Work Decriminalization’, *American Medical Association Journal of Ethics*, vol. 19, no. 1, 2017, pp. 122-126, <https://doi.org/10.1016/j.wsif.2009.05.012>.

Abolish all legislation that criminalises sex work. Investigate and condemn violence, abuse and the murder of sex workers. Oppose red-light districts that force us into ghettos and promoting violence and discrimination. Abolish mandatory HIV testing. Abolish the sanitary control card among sex workers. Promote voluntary, free and confidential testing including pre- and post-test counselling. Ensure universal access to prevention, testing, treatment and high-quality care. Provide access to healthcare among migrant and mobile sex workers. Provide access to friendly integral healthcare services, without stigma and without discrimination.⁵⁰

Reynaga's leadership, along with that of women such as Jacqueline Montero, can infuse public spaces where policy is created with subaltern knowledge of the conditions and solutions to realise the rights of sex workers. The exclusion of sex workers from public life is being defied on multiple fronts, and they are insisting that their voices be heard.

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⁵⁰ E Reynaga, 'Sex Work and Human Rights', Presentation at the first plenary session at the XVII International AIDS Conference in Mexico, 6 August 2008, retrieved 4 July 2018, <http://redtrsex.org/Sex-Work-and-Human-Rights>.

The Philippine Sex Workers Collective: Struggling to be heard, not saved

Sharmila Parmanand

Abstract

The Philippine Sex Workers Collective is an organisation of current and former sex workers who reject the criminalisation of sex work and the dominant portrayal of sex workers as victims. Based on my interviews with leaders of the Collective and fifty other sex workers in Metro Manila, I argue in this paper that a range of contextual constraints limits the ability of Filipino sex workers to effectively organise and lobby for their rights. For example, the Collective cannot legally register because of the criminalisation of sex work, and this impacts their ability to access funding and recruit members. The structural configuration of the Philippines' Inter-Agency Council Against Trafficking incentivises civil society organisations to adhere to a unified position on sex work as violence against women. The stigma against sex work in a predominantly Catholic country is another constraint. Recently, President Rodrigo Duterte's war on drugs has been weaponised by some members of the police to harass sex workers. Finally, I reflect on strategies the Collective could adopt to navigate the limited space they have for representation, such as crucial partnerships, outreach work, and legal remedies.

Keywords: sex work, anti-trafficking, Philippines, war on drugs

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Introduction

I used to work for a leading anti-trafficking nonprofit in the Philippines. I was disturbed by the absence of sex workers in discussions about trafficking for sexual exploitation and the privileged discursive position of trafficking survivors and anti-prostitution women's organisations. The experiences of

survivors were important but not fully representative of the lived realities of all individuals who engage in sex work. During the course of my work, I encountered some women who had been rescued from prostitution who were resentful of the disruption to their work and the moral judgment they felt in their interactions with their ‘rescuers’. I began to doubt the dominant anti-trafficking narrative that all women in prostitution were unable to make informed decisions for themselves. That is why in 2015, I reached out to the Philippine Sex Workers Collective through a message on their Facebook page. The Collective is a loose alliance of sex workers around the Philippines that advocates for sex workers’ rights.

In my first message, I explained my background and desire to learn more about the organisation. ‘Tex’, one of the founders, responded with scepticism and reminded me about the police raids on commercial sex establishments and the outing of sex workers in news media, especially in the period following the enactment of the *Anti-Trafficking in Persons Act* of 2003 (ATIP law). Despite this initial hesitation, my online message exchanges with the Collective continued for a year. In their replies, the leaders of the Collective assured me that they, too, agree that women who are in sex work but wish to leave should have access to meaningful alternatives. However, they believe that the criminalisation of sex work, or even of buying sex, is a form of injustice against sex workers and their families who depend on this form of work.

I met ‘Tex’ and the other leaders in person in August 2016. After several meetings and a three-part video interview I conducted with them for an online platform,¹ I worked more closely with them on a voluntary basis, for example on grant applications and media engagements. As a result of this work, I decided to focus my PhD research on the impact of anti-trafficking interventions on sex workers.

In this paper, I discuss the confluence of factors that limit the Collective’s ability to organise and lobby. After a brief overview of the history and current work of the Collective, I examine the difficult environment in which it operates: the confusing mix of laws on sex work, which renders sex workers more vulnerable to abuse, and the structure of the Philippine anti-trafficking ecosystem and the relationships among donors, civil society organisations, and the state, which, together, create a powerful anti-sex work lobby. I also review the Philippine Commission on Women’s (PCW) proposed *Anti-*

¹ Pampublico, ‘Pampublico x Sex Workers Collective: An Interview with Sharmila Parmanand’, *Pampublico*, 23 November 2016, retrieved 10 June 2018, <https://www.pampublico.com/pampublico-x-sex-work/pampublico-x-sex-workers-collective-an-interview-with-sharmila-parmanand>.

Prostitution Law,² which repeals punitive laws against sex workers and imposes criminal penalties only on buyers and persons facilitating transactions. Following this, I discuss other barriers the Collective encounters, including social stigma in a predominantly Catholic country, and police abuse, which has worsened under President Rodrigo Duterte's violent war on drugs. Finally, I conclude with broader reflections on the question of advocating for rights in a precarious context and the future of the sex worker movement in the Philippines.

I draw on private correspondence, interviews, and conversations with leaders of the Collective between August 2015 and September 2018. I also use qualitative data from life history interviews I conducted with fifty adult street- or establishment-based sex workers in Metro Manila from July 2017 to July 2018 for my PhD research. The sex workers I interviewed were all directly or indirectly affected by anti-trafficking interventions such as raids and rescue operations. I focused on these groups because they are often characterised as most vulnerable within the sex work hierarchy.³ They are more publicly visible and experience a higher risk of exploitation by third parties such as managers and the police. They usually earn less than escorts or call girls, whose clientele are wealthier, and who are likely to be more educated and possess greater social capital.

The Philippine Sex Workers Collective

Women Hookers Organizing for their Rights and Empowerment (WHORE), established in 1989, was the first sex worker-led organisation in the Philippines. WHORE publicly demanded for sex work to be recognised as work,⁴ and was condemned for that by the Catholic Church. Mainstream feminists also strongly disagreed with WHORE's position.⁵ 'Like ants battling elephants',⁶ the organisation retreated and focused on grassroots organising. Male sex workers

² Philippine Commission on Women, *Enacting the Anti-Prostitution Law: Amending Articles 202 and 341 of the Revised Penal Code*, Policy Brief No. 9, retrieved 10 June 2018, <http://www.pcw.gov.ph/wpla/enacting-anti-prostitution-law-amending-articles-202-and-341-revised-penal-code-rpc>.

³ R Weitzer, 'Sociology of Sex Work', *Annual Review of Sociology*, vol. 35, 2009, pp. 213-234, <https://doi.org/10.1146/annurev-soc-070308-120025>.

⁴ A Dumlaog, '500K Filipinos engage in prostitution', *Philstar*, 11 February 2013, <https://www.philstar.com/nation/2013/02/11/907592/500k-filipinos-engage-prostitution>.

⁵ K Quitasol, 'Legalizing sex trade will not end exploitation', *Bulatlat*, 11 February 2013, <http://bulatlat.com/main/2013/02/11/%E2%80%98legalizing-sex-trade-will-not-end-exploitation%E2%80%99>.

⁶ Interview, 'Tex', Cubao, Metro Manila, Philippines, 10 September 2016.

formed Red Nobles, transgender sex workers established Shawushka, female students who paid for their studies through sex work formed Deviant Daughters, and their male counterparts created Deviant Dudes. In 2013, these different sex worker groups together formed the Philippine Sex Workers Collective, originally intended as the advocacy arm of WHORE.⁷

The Collective believes that ‘truth claims’ about sex work as violence against women, the ‘evil nature’ of men who purchase sex, and the supposed exploitative relationships between sex workers and third parties⁸ need to be contrasted with women’s own accounts of their experiences in sex work and viewed in the context of the alternatives available to them. In my interviews, leaders of the Collective recognised that the choice to enter sex work is often circumscribed by poverty and a sense of obligation to one’s family, but they disagreed with further restricting choices available to women in these situations. For poor Filipinas, alternatives to sex work, which are encouraged and regulated by the state rather than banned, include working overseas as domestic workers. Migrant work, however, may involve going into debt to pay recruitment and placement fees, and very real risks of physical and sexual abuse from foreign employers.⁹ Many of the Collective’s members were former domestic workers, factory workers, salesgirls, and seamstresses. Several were abused by their employers or had to spend long periods of time away from their families while barely earning a living wage in these jobs.

The criminal status of sex work in the Philippines precludes the Collective from legally registering as an organisation and sex workers from unionising. In my conversations with the Collective about the organisation’s plans, they stressed that their inability to legally register significantly restricts their work. Funding sources are limited, which places a huge demand on their members, many of whom come from low-income backgrounds and support children and elderly relatives, to perform activist labour for free and to pay out of pocket for small operating expenses. This has led to a relatively high turnover of leaders within the organisation and hampered recruitment efforts and

⁷ WHORE, *Here to Win*, 6 May 2013, retrieved 10 June 2018, <https://whorific.wordpress.com>.

⁸ The term ‘third parties’ describes anyone seen as facilitating sex work. See: Global Network of Sex Work Projects, *Criminalisation of Third Parties and its Impact on Sex Workers’ Human Rights*, Edinburgh, 2016, p. 3, <https://www.nswp.org/sites/nswp.org/files/Criminalisation%20of%20third%20parties%20statement%2C%20NSWP%20-%20May%202016.pdf>.

⁹ Over 275,000 Filipino women were hired as overseas ‘household service workers’ in 2016, based on official deployment figures provided by the Philippine Overseas Employment Agency, retrieved 15 February 2019, <http://www.poea.gov.ph/ofwstat/compendium/2015-2016%20OES%201.pdf>.

member retention. In a vicious cycle, the limited capacity of leaders to install robust financial and administrative systems locks them out of the few available funding opportunities.

Nevertheless, the Collective engages in advocacy and outreach work on selected platforms and for a smaller and carefully chosen audience. There are risks attached to fully revealing their identities in public. At our first meeting in 2016, three leaders of the Collective disclosed that they had recently attended town hall meetings and local government consultations where they revealed their work and then experienced police harassment and threats of arrest on the streets days later. Since then, they have become more careful about revealing their background when law enforcement officials are present.

Sex Workers as Victims or Criminals in Philippine Law

There is a tension in the laws regulating sex work in the Philippines. The *Revised Penal Code*, enacted in 1930, criminalises the sale of sex and defines prostitutes as ‘women who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct.’¹⁰ It imposes fines or imprisonment on offenders. There is also a prohibition against ‘immoral doctrines, obscene publications and exhibitions, and indecent shows’, which can be used to shut down entertainment establishments and file charges against owners and sex workers.¹¹ However, the ATIP law defines ‘taking advantage of the vulnerability of a person... for the purpose of exploitation’, including for prostitution, as trafficking.¹² More explicitly, the Magna Carta of Women names prostitution as an act of violence against women from which they should be protected, which casts prostitutes as victims.¹³ This legal tension mirrors how sex workers are viewed in Philippine society: they are either ‘bad women’ with loose morals who break up families or victims who need to be pitied and saved.

¹⁰ Article 202, *Revised Penal Code* of the Philippines.

¹¹ Article 201, *Revised Penal Code* of the Philippines.

¹² Section 3, *Philippine Anti-Trafficking in Persons Act* of 2003. There is a subtle difference between the wording in Philippine law, which defines trafficking as ‘the exploitation or the prostitution of others’ and the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, which refers to ‘the exploitation of the prostitution of others’.

¹³ The Magna Carta of Women, passed in 2008, is a comprehensive framework of rights for Filipino women based on the Philippines’ commitments under the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW). It is seen as the decisive authority on women’s rights and entitlements.

This confusion over whether sex workers should continue to be treated as criminals is also reflected in local government legislation and policies. For example, a Quezon City ordinance mandates that sex workers are victims and it is their clients and third parties, who should be penalised, but the local police still regularly arrest sex workers.¹⁴ In practice, while no local government explicitly recognises sex work as legitimate employment, many local, municipal, and city ordinances require HIV education and condom availability for and STI testing and treatment of sex workers operating in licensed entertainment establishments.¹⁵ These policies are easier to implement in the case of establishment-based sex workers, but less so for freelance or street-based ones.

It is not surprising that corrupt police officers take advantage of this legal limbo. In my interviews, sex workers reported having been subjected to raids where police officers used anti-trafficking as a cover to extort money from them, their clients, and owners of commercial sex establishments. Allegations against police officers conducting indiscriminate and fake raids for extortion were referenced in the US Department of State's *Trafficking in Persons Report* in 2010, 2017, and 2018 and in a UN research report on sex work in the Philippines and neighbouring countries.¹⁶

Exclusion of Sex Workers from Policy Formulation

The 2003 *Anti-Trafficking in Persons Act* led to the creation of the Inter-Agency Council Against Trafficking (IACAT), which is tasked with overseeing and monitoring the implementation of the ATIP law. The structural configuration of the IACAT is unique in the Philippines: its members include government agencies such as the Department of Justice, the Department of Social Welfare and Development, the Department of Foreign Affairs, the Department of Labor and Employment, the PCW, the police, and three non-government organisations (NGOs), one each from among the sectors representing women, children, and overseas Filipino workers. NGO representatives hold three-year membership terms and are chosen by the government agency members. This hybrid model integrates selected NGOs within government anti-trafficking

¹⁴ Interview, sex workers in Quezon City, Philippines, 30 June 2018.

¹⁵ J Godwin, *Sex Work and the Law in Asia and the Pacific*, UNDP, Bangkok, 2012, pp. 148-151, <http://www.undp.org/content/dam/undp/library/hiv/aids/English/HIV-2012-SexWorkAndLaw.pdf>.

¹⁶ *Ibid.*, p. 151. The section on the Philippines in the US Department of State's *Trafficking in Persons Report* can be retrieved at <https://www.state.gov/documents/organization/282803.pdf>.

structures. It also gives them institutional credibility in the eyes of donors. However, NGO dependence on votes from government agencies to secure IACAT appointments makes it difficult for them to openly disagree with the stated position of government agencies, such as the PCW, on prostitution. Powerful and well-funded prohibitionist organisations, such as the International Justice Mission (IJM) and the Coalition Against Trafficking in Women-Asia Pacific (CATW-AP), have also held seats in IACAT. Finally, the United States is the biggest external source of funding for anti-trafficking programmes and projects in the country. The US government requires foreign-based grantees of federal funds for anti-HIV/AIDS or anti-trafficking programmes to adopt an organisation-wide policy opposing the legalisation and practice of prostitution.¹⁷

The *Anti-Prostitution Law*, formally proposed in 2010,¹⁸ reflects the common thinking in feminist and anti-trafficking circles that women in prostitution cannot have made a legitimate choice because poverty and unemployment have severely restricted their agency.¹⁹ The agency that has been lost in prostitution can only be reclaimed when the women are ‘rehabilitated’ and able to lead ‘normal lives’.²⁰ The country’s colonial history also influences the dominant conversation about prostitution, where it is constructed as part of a legacy of racism and imperialism,²¹ with a common focal point being the colonial dynamics of the sex industry that emerged around the former US military base in Subic. However, this deterministic notion of prostitution obscures various individual histories and experiences.²² Framing prostitution as something that is ‘done to women’ erases stories of sex worker organising

¹⁷ USAID, *Standard Provisions for Non-U.S. Nongovernmental Organizations*, 2017, pp. 70-72, retrieved 26 August 2018, <https://pai.org/wp-content/uploads/2017/02/Standard-Provision-March-2-2017.pdf>.

¹⁸ Fifteenth Congress of the Republic of the Philippines, ‘An Act Addressing The System of Prostitution, Imposing Penalties on Its Perpetrators, Providing Protective Measures and Support Services for Its Victims, Repealing For The Purpose Articles 202 and 341 of the Penal Code’, 2010, retrieved 20 December 2018, <https://www.senate.gov.ph/lisdata/100208564!.pdf>.

¹⁹ J Tigno, ‘Agency by Proxy: Women and the human trafficking discourse in the Philippines’ in M Ford, L Lyons, W van Schendel (eds.), *Labour Migration and Human Trafficking in Southeast Asia: Critical perspectives*, Routledge, London and New York, 2012, pp. 23-41.

²⁰ M Roces, ‘Prostitution, Women’s Movements and the Victim Narrative in the Philippines’, *Women’s Studies International Forum*, vol. 32, no. 4, 2009, pp. 270-280, <https://psycnet.apa.org/doi/10.1016/j.wsif.2009.05.012>.

²¹ E Ofreneo and R Ofreneo, ‘Prostitution in the Philippines’ in L Lim (ed.), *The Economic and Social Bases of Prostitution in Southeast Asia*, International Labour Office, Geneva, 1998, pp. 100-130.

²² K Kempadoo, ‘Women of Color and the Global Sex Trade: Transnational Feminist Perspectives’, *Meridians*, vol. 1, no. 1, 2001, pp. 28-51.

and resistance, such as the participation of sex workers in protesting the closure of the US base in 1986, which received little to no coverage in Philippine media.²³

The Collective was not represented or consulted in any official conversations about anti-trafficking efforts and prostitution, nor were they involved in the development of the relevant laws. Trafficking survivors are regularly given a platform by the anti-trafficking and women's rights groups to speak about the harms of prostitution, to the exclusion of sex workers who do not identify as victims.

In a telling contrast, the campaign for the passage of the *Domestic Workers Act* in 2012, led by anti-trafficking and women's rights organisations, involved rigorous consultation and coordination with domestic worker groups. The Samahan at Ugnayan ng Manggagawang Pantahanan sa Pilipinas (SUMAPI), an organisation led by domestic workers, was part of the technical working group convened to lobby for the passage of the law.²⁴ There are also stark differences in the language of the *Domestic Workers Act* and the PCW's policy brief on the *Anti-Prostitution Law*. While domestic work is recognised as vulnerable work, all stakeholders agreed to uphold women's choice to engage in it and sought to enact legislation that would prevent abuses.²⁵ In comparison, sex work was largely conflated with trafficking: 'More often than not, women and children trapped into prostitution are poor, uneducated, and sometimes sexually abused. They have been trafficked—recruited, usually through deception, force or intimidation, and forced and kept into [*sic*] prostitution through threats or actual acts of violence, until such time when

²³ New York Times, 'Bar Girls Run Off Strikers at U.S. Base In Philippines', *Orlando Sentinel*, 31 March 1986, retrieved 20 December 2018, http://articles.orlandosentinel.com/1986-03-31/news/0210170032_1_bar-girls-subic-bay-pickets.

²⁴ International Labour Organisation, *Philippine Campaign on Decent Work for Domestic Workers*, Narrative Report, 2009, retrieved 10 June 2018, http://www.ilo.org/wcmsp5/groups/public/—asia/—ro-bangkok/documents/publication/wcms_120013.pdf.

²⁵ The PCW states that women domestic workers are vulnerable to exploitation, and physical and sexual abuse, exacerbated by their being mostly migrants from poorer provinces and their lack of education or economic opportunities, and notes that the *Domestic Workers Act* may help address these issues. See: PCW, *Women's Empowerment, Development, and Gender Equality Plan 2013-2016*, PCW, 2014, p. 9, https://pcw.gov.ph/sites/default/files/documents/resources/womens_edge_plan.pdf.

the victims start believing that there is no other life for them outside of prostitution.²⁶ Sex workers are thus presumed to be incapable of providing consent, and the logical conclusion is that it is in their best interest to exit the trade.²⁷

In theory, legally conferring a ‘victim’ status on sex workers may shield them from some abuse by the police and reduce the stigma against them. It counters current popular conceptions of sex workers as immoral and deserving of sexual violence. However, it also enables interventions, such as rescue and rehabilitation, which often entails traumatic encounters between sex workers and law enforcement.²⁸ Further, sex workers who prefer to remain in their occupation are invisible and receive no support or protection. For example, ten of the women I interviewed were taken to a shelter for victims or some type of ‘processing facility’, where they were met by social workers who encouraged them to enter more labour-intensive, low-wage jobs such as factory or domestic work, or baking and selling handicrafts. The social workers made it very clear that their assistance was conditional on completely exiting sex work. My interviewees said that, under these terms, they returned to sex work instead because they were forced to choose and did not think the alternatives on offer were sustainable.²⁹ Finally, sex workers who refer clients to fellow sex workers, which is an effective way to meet trustworthy clients, may be considered criminals under this proposed law.

²⁶ Philippine Commission on Women, *Enacting an Anti-Prostitution Law: Addressing the System of Prostitution in the Philippines, Imposing Penalties on Perpetrators, and Providing Protective Measures and Support Services for Victims; Repealing Articles 202 and 341 of the Revised Penal Code*, retrieved 10 June 2018, <http://pcw.gov.ph/sites/default/files/documents/efiles/webmaster/anti-prostitution-policy-brief.pdf>.

²⁷ *Ibid.*

²⁸ Forty of the sex workers I interviewed referred to their experience of raids as traumatic and unhelpful. In most of the cases, it was unclear if they were being arrested or ‘rescued’. Most were released after they paid a fine and did not receive any further assistance from the state.

²⁹ Interview, sex workers in Quezon City, Philippines, 30 June 2018. Their experiences are echoed by sex workers in other countries, see Global Network of Sex Work Projects, *Sex Workers Demonstrate Economic and Social Empowerment*, Edinburgh, 2016, pp. 2-3, which criticises rehabilitation measures that do not allow sex workers to exit on their own terms, <https://www.nswp.org/sites/nswp.org/files/SUSO%20Asia%20Pacific%20Briefing.pdf>.

The experiences of the sex workers I interviewed, including those who were not affiliated with the Collective, are ignored in the *Anti-Prostitution Law*. Most of my interviewees experienced abuses by members of the police rather than their clients or third parties. Many were either single mothers or had been single parents for a significant period in their lives, and the relatively higher hourly rates they earned in sex work and the flexible hours had played a role in their decision to choose sex work over other jobs. As one said, ‘I want to be able to watch my children grow up. I want to be able to stay home with them when they are sick. But my rescuers would rather have me work in factories from sunrise to sundown or raise other people’s children away from my own family for far less money.’³⁰ Another said, ‘I was a domestic worker for a family in Saudi Arabia. They took my passport. I was not allowed to leave the house or to make phone calls. I could only eat their leftovers. I woke up very early and went to sleep very late because there was too much work. I got shouted at in a language I did not understand. Is this the alternative you have for me?’ After her contract ended, she went back to the Philippines and became a sex worker, where ‘even (my) worst clients seemed like angels in comparison to my bosses in Saudi [Arabia]’.³¹ People who want to help women should wage a war on poverty and not prostitution, she added. My interviewees also regularly brought up ‘endo’, a common labour practice in the Philippines, as a barrier to stable work. This practice involves companies providing workers temporary employment for less than six months, and then terminating their contracts to avoid having to regularise the employees and cover the benefits associated with regularisation. An interviewee who worked as a salesclerk, said ‘The work was hard enough as it was, the pay was so low, and then they fired me after six months and all my work went to waste because I didn’t get regularised. They were willing to rehire me after another six months and discard me again after!’³²

Leaders of the Collective noted in our conversations that perhaps the different approaches to sex work and domestic work are a result of deep-seated moral beliefs about sex, especially objections to women having sex with strangers. They also suggested that the relative respectability of domestic work may be tied to the well-documented large amounts of remittances domestic workers send back to their families. Sex workers, too, make significant contributions to their families and the economy but the clandestine nature of their work precludes a public recognition of their contributions.

³⁰ Interview, sex workers in Recto, Metro Manila, Philippines, 22 February 2018.

³¹ *Ibid.*

³² Interview, sex workers in Kabayan Hotel, Metro Manila, Philippines, 3 January 2018.

Stigma and Social Distancing by Potential Allies and Recruits

The Catholic Church in the Philippines is more politically active than in many Catholic-identifying countries, as seen in its strong influence on the electability of politicians, its ability to block legislation on access to contraception until 2013, the absence of laws on LGBT rights, the abundance of faith-based civil society organisations, and the dominance of Catholic schools in the private education system. This situation affects the Collective's ability to find allies. The Collective initiated discussions with the Philippine offices of the International Labour Organization, Amnesty International, and UNAIDS, asking them to publicly declare agreement with their institutional position that sex work is work and should be decriminalised, and to provide support for the creation of a sex workers' union in the Philippines. However, these discussions have yet to produce results. It is entirely possible that the Collective's limited human resources have also prevented them from consistently following up on these discussions. According to 'Tex', who has also been involved in LGBT advocacy in the Philippines, some gay and trans members of the Collective have made overtures to prominent LGBT organisations but were explicitly told that any public alliance with sex workers would be too politically costly for the LGBT community. He also said, 'The LGBT movement refused to include us in their push for an anti-discrimination law. We wanted to explore the possibility of including "type of work" as a protected category in their proposed law.'³³

Many of my interviewees, including leaders of the Collective, hide their engagement in sex work from their families for fear of judgment and condemnation. Instead, they represent their work as performing in clubs or waitressing. A few of them have come out to their families, and this coincided with their willingness to take on more public roles in the Collective. There was often a dissonance in how my interviewees characterised their work: they spoke of it with regret because it could be a source of shame and disappointment for their families, but also with pride because they thought of it as honest work that allowed them to improve their families' quality of life, which they pointed out was morally superior to the corruption of police officers and religious leaders. This tension may be partially explained by the pervasive Catholic morality that regulates relationships and gender roles in the Philippines. Spanish colonisers imposed sexual norms through subtle coercion such as the aggressive promotion of icons like the Virgin Mary who is still idealised as a model of female behaviour. Women who openly defy moral prescriptions about sex outside marriage, let alone with strangers, face a significant degree

³³ Electronic correspondence with 'Tex', 14 September 2018.

of social opprobrium. This has led to women in the Philippines being predominantly judged (and judging themselves) as ‘good’ or ‘bad’ based on their sexual behaviour.³⁴ These sexual norms are increasingly transgressed in private spaces but are still publicly maintained. This has also led to women engaging in practices of ‘social distancing’ such as explicitly demeaning sex workers.³⁵ My interview data also supports Matthews’ argument that a strict economic focus when assessing types of sex work in the Philippines is insufficient and that socio-moral values are just as relevant in affecting a range of possible social stigmas and self-identities associated with each type of sex work, usually based on the extent to which sex workers ‘present themselves as providing sex as their primary service.’³⁶ Street-based sex workers transact in the public domain and are more upfront about their work, while escorts are more subtle and discreet. This may have implications for how sex workers engage with each other and their communities. For example, some interviewees spoke wistfully of fellow sex workers who have transformed from good friends to complete strangers after the latter transitioned to other jobs or higher-end forms of sex work.

Leaders of the Collective shared that they were wary of publicly sparring with feminists who openly condemned sex work. Not enough sex workers are willing to publicly fight for rights at this stage in their political journey. Without the numbers or the cultural capital to engage with an anti-trafficking movement that is led by middle and upper class feminists, technocrats, and nuns, the Collective has resolved that the way forward is to slowly and somewhat quietly invest in organisational development and in consolidating their base.

War on Drugs

After being elected president in 2016, Rodrigo Duterte began a violent ‘war on drugs’ that has led to at least 5,000 ‘drug suspects’ being killed by the police since July 2016.³⁷ Duterte has made several pronouncements to the effect of encouraging the police to aggressively pursue and even murder suspected

³⁴ C Brewer, *Shamanism, Catholicism, and Gender Relations in Colonial Philippines, 1521-1685*, Ashgate, London, 2004, pp. 39-58.

³⁵ S Chant and C McIlwaine, *Women of a Lesser Cost: Female labour, foreign exchange, and Philippine development*, Pluto Press, London, 1995, p. 153.

³⁶ P Matthews, ‘Cam Models, Sex Work, and Job Immobility in the Philippines’, *Feminist Economics*, vol. 23, no. 3, 2017, pp. 160-183, <https://doi.org/10.1080/13545701.2017.1293835>.

³⁷ C Gonzales, ‘PDEA: Almost 5,000 killed in Duterte’s war on drugs as of Oct. 2018’, *Inquirer.net*, 27 November 2018, <https://newsinfo.inquirer.net/1057464/pdea-almost-5000-killed-in-dutertes-war-on-drugs-as-of-oct-2018>.

drug users and sellers.³⁸ Most of the people killed in the drug war have been from low-income communities.³⁹

Five sex workers I interviewed had lost their partners to these extra-judicial killings. One said, ‘The police raided our house and demanded that we produce names of drug sellers, but we didn’t know anyone! I was jailed for six months but they took my husband back to our house and killed him there.’⁴⁰ Two of them entered sex work after their partners were killed in order to support their children. The other three had to engage in sex work more frequently after their partners’ deaths.

References to the connection between illegal drug use and the commercial sex industry predate Duterte’s war on drugs. This link has been used not only by groups that seek to preserve the criminal status of sex work, but also by prostitution prohibitionists to demonstrate the vulnerability and lack of consent of sex workers.⁴¹ According to ‘Tex’, ‘Sex workers are therefore prime suspects not just as users but as people who work with drug dealers. This is not hard to believe for the police and the public. They already think we sell our bodies, so why not drugs? A student sex worker was killed in Baguio. They were reported to be dealing drugs. Their fellow sex workers, who are too scared to challenge the police, have said this is patently false. Their family does not want to pursue the case because they don’t want to publicise that their child was a sex worker.’ He added, ‘Given the stigma against sex workers and given that anyone can just be reported as a drug user or dealer, anyone with an axe to grind against sex workers could just report them to the police. I have heard of sex workers being interrogated about drugs after wives of their clients, who blame sex workers for the break-up of their families, have reported them to the police.’⁴²

³⁸ Human Rights Watch, ‘License to Kill’: Philippine police killings in Duterte’s ‘War on Drugs’, HRW, March 2017, retrieved 10 June 2018, https://www.hrw.org/sites/default/files/report_pdf/philippines0317_insert.pdf.

³⁹ C David *et al.*, ‘Building a dataset of publicly available information on killings associated with the antidrug campaign’, *The Drug Archive*, 2017, retrieved 29 August 2018, <https://drugarchive.ph/post/14-antidrug-dataset-public-info-killings>.

⁴⁰ Interview, sex workers in Kabayan Hotel, Metro Manila, Philippines, 3 January 2018.

⁴¹ J Enriquez, ‘Why punish prostitutes and not customers and pimps?’, *Rappler*, 12 March 2015, retrieved 28 August 2018, <https://www.rappler.com/thought-leaders/86244-enriquez-prostitution-violence-against-women>.

⁴² Electronic correspondence with ‘Tex’, 14 September 2018.

There are also credible allegations of drugs being planted on individuals and their property to justify criminal charges or police violence.⁴³ This climate of fear extends to sex workers. Based on my interviews, it seems that corrupt police officers have taken advantage of the war on drugs to weaponise the common association of sex work with drug use. According to almost half of the women I interviewed, police officers have threatened to plant drugs on them if they did not pay bribes or give in to sexual demands. One interviewee was taken to a precinct, where her phone was confiscated and she was threatened with drug charges. She was made to dance for the police officers and then taken by one of them to the toilet where he raped her. ‘I couldn’t defend myself’, she said. ‘Nobody cares about poor drug addicts dying. They care even less about poor supposedly drug-addicted prostitutes!’⁴⁴ Another interviewee noted that, ‘In the past, I could try to guilt or shame arresting officers—I would ask them if they were proud of themselves for taking away money for my child’s milk. Or I would taunt them for targeting us but having no courage to go after the real criminals. Some of them would leave us alone after. But things have changed now. We do not fight back. We are too scared.’⁴⁵ Some of their regular clients have also not contacted them as often as in the past: ‘They are afraid of getting shot or subjected to extortion because many of the anti-drug raids happen in bars and brothels.’⁴⁶

Some of the sex workers’ coping strategies include attempting to be less visible when soliciting clients even if it reduced their earnings and forced them to operate in less secure areas, and increasingly relying on third parties who offer protection based on links with the police. ‘This system pits us against each other. Some girls on our street pay bribes to the police, but my friends and I don’t. They see us as trouble-makers because our resistance means that our street could be raided. They turned my friend in. They also told my clients I had a vaginal infection’, shared one interviewee.⁴⁷ ‘Tex’ added, ‘The drug war has changed the way sex workers operate. Those who can afford to do so and understand technology have moved online. If sex workers are less likely to work in groups and you are less likely to see them face to face, this makes organising them much more difficult.’⁴⁸ Incidentally, the drug war was also cited by several interviewees as a reason for hesitating to speak to me: ‘We were worried you were working with the police. Are you sure you aren’t being

⁴³ Human Rights Watch, *Police Deceit in Drug War Killings*, HRW, 2 March 2017, <https://www.hrw.org/news/2017/03/02/philippines-police-deceit-drug-war-killings>.

⁴⁴ Interview, sex workers in Recto, Metro Manila, Philippines, 22 February 2018.

⁴⁵ *Ibid.*

⁴⁶ Interview, sex workers in Quezon City, Philippines, 30 June 2018.

⁴⁷ *Ibid.*

⁴⁸ Electronic correspondence with ‘Tex’, 14 September 2018.

followed?⁴⁹ Some sex workers do not disclose their status as drug users to state health care providers for fear of their private information being transmitted to the police. A few who are HIV positive have been forced to disclose their status to police officers (and risk further exposure and stigmatisation) for fear of being killed if they fail mandatory drug tests because of the substances in their HIV medication. The Collective issued a call for solidarity with drug users four months into Duterte's term.⁵⁰ However, the increased precarity of sex workers in the war on drugs has been absent from its critiques and the Collective worries about raising the issue because of the risk of being misrepresented as arguing in favour of drugs in the very simplistic and emotionally charged public conversations about illegal drugs.

In early 2016, the Collective aimed to launch a public campaign for sex worker rights and had reached out to sympathetic local politicians and rights organisations for support. However, after Duterte's election, the priority of most rights groups shifted towards criticising the war on drugs and fighting for basic freedoms such as the right to life and due process.⁵¹ The Collective also worries that Duterte's unprecedented masculinist rhetoric and behaviour, especially his strategy of using physical objectification and sexual humiliation against female opponents, has created an environment that is dangerous for aggressive sex worker rights advocacy. The Collective's focus in 2018 shifted from broader rights advocacy to helping sex workers with basic survival: providing them with information about and limited assistance against police abuse and reducing the vulnerability of sex workers to HIV amidst a spike in infection rates in the Philippines.

Conclusion

The sex worker rights movement in the Philippines is operating under a politically constrained context and with limited resources and allies. As it stands, the Collective must take safety concerns into account when deciding to engage in advocacy work: when there are opportunities for representation, which arise

⁴⁹ Interview, sex workers in Pasay, Metro Manila, Philippines, 3 January 2018.

⁵⁰ Global Network of Sex Projects, *Philippine Sex Workers Collective Call for Solidarity with Drug Users*, NSWP, 22 November 2016, retrieved 29 August 2018, <http://www.nswp.org/news/philippine-sex-workers-collective-call-solidarity-drug-users>.

⁵¹ L Stansfield, *Human Rights Advocacy in a Context of Extreme Securitisation: Amnesty International and the 'War on Drugs' in the Philippines (July 2016-May 2017)*, Master of Arts in Conflict Studies and Human Rights, Utrecht University, Utrecht, 2017, retrieved 26 September 2018, <https://dspace.library.uu.nl/handle/1874/353553>.

almost exclusively in the HIV sector, they attend semi-public consultations and meetings. They work closely with organisations in this sector, including Actions for Health Initiatives, Inc., Positive Action Foundation Philippines, Inc., and Pinoy Plus Association. These organisations use their relatively higher visibility to highlight the effects of criminalisation and stigma on sex workers' access to health and safety, and to raise the issue of Filipino workers engaging in various forms of illicit sex work overseas, which has generally been invisible in official discourse on labour migration. Members of the Collective also conduct informal human rights training for sex workers. They are peer educators, outreach workers, and community organisers. Even if they receive abusive and threatening messages, and their Facebook page is regularly reported as inappropriate and taken down, they maintain a reasonably active presence on Facebook and Twitter. The core members consult with sex workers in their own communities and with colleagues in the HIV+ community who also work with sex workers. They prioritise female street-based sex workers in their outreach efforts. They usually give out their contact information and take note of sex workers' problems and requests, but often lack the resources to provide legal or financial assistance.

While aggressive lobbying for the decriminalisation of sex work may not be feasible at this time, there are a few strategies the Collective can adopt to expand their membership and increase their visibility based on practices that have worked for sex workers in similarly difficult conditions. The Association of Hungarian Sex Workers (SZEXE) documented police abuse against sex workers and initiated legal actions against the police, and, in some cases, successfully challenged arbitrary fining and detention practices.⁵² The Collective could persuade legal aid organisations to take on cases of police abuse, which is likely to garner media attention in the wave of scrutiny of the war on drugs. Such cases could deter future abuse and serve to highlight the dangers of an anti-trafficking policy that increases the exposure of sex workers to police harassment and violence. There are also many potential allies in the media and academic community that can be tapped. The Collective is working with volunteer writers and editors to produce a book of Filipino sex workers' stories and an accompanying interactive website. With a well-thought-out advocacy strategy that includes media interviews, book launches, and university tours, the Collective could build a strong public counter-narrative to the story commonly told about sex work by the anti-trafficking sector. Finally, the

⁵² A Dziuban and L Stevenson, *Nothing About Us Without Us! Ten years of sex workers' rights activism and advocacy in Europe*, International Committee on the Rights of Sex Workers in Europe, Edinburg, 2015, pp. 11-12, retrieved 18 December 2018, https://www.sexworkeurope.org/sites/default/files/userfiles/files/ICRSE_10years%20report_April2016_photo_%282%29.pdf.

Collective has also intensified their collaboration with younger academics, such as myself, who are interested in exploring the issue of sex work in the Philippines. Given the absence of data on the effects of anti-trafficking interventions on sex workers' lives, the Collective can work with researchers to address this gap and build a stronger evidence base for their advocacy.

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Sex Work, Migration, and Human Trafficking in South Africa: From polarised arguments to potential partnerships

Ntokozo Yingwana, Rebecca Walker, and Alex Etchart

Abstract

In South Africa, the conflation of sex work with human trafficking means that migrant/mobile sex workers are often framed as victims of trafficking while arguments for the decriminalisation of sex work are discounted due to claims about the risks of increased trafficking. This is despite the lack of clear evidence that trafficking, including in the sex industry, is a widespread problem. Sex worker organisations have called for an evidence-based approach whereby migration, sex work, and trafficking are distinguished and the debate moves beyond the polarised divisions over sex work. This paper takes up this argument by drawing on research with sex workers and a sex worker organisation in South Africa, as well as reflections shared at two *Sex Workers' Anti-trafficking Research Symposiums*. In so doing, the authors propose the further development of a Sex Work, Exploitation, and Migration/Mobility Model that takes into consideration the complexities of the quotidian experiences of migration and selling sex. This, we suggest, could enable a more effective and productive partnership between sex worker organisations and other stakeholder groups, including anti-trafficking and labour rights organisations, trade unions, and others to protect the rights and well-being of all those involved in sex work.

Keywords: sex work, human trafficking, migration, South Africa, decriminalisation

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Introduction

Discussions about sex work in South Africa remain polarised and highly influenced by concerns about human trafficking. In particular, claims that decriminalisation of sex work would lead to an increase in the trafficking of women and children into the sex industry have prevented the consideration of a rights-based approach to sex work. In addition, much of the evidence-based research indicating the importance of decriminalisation to ensure access to healthcare, protection from violence, and a reduction in discrimination and stigma against sex workers has been eclipsed by a moral panic about ‘sex trafficking’. This is despite the lack of evidence to suggest that there are high levels of trafficking into the sex industry in South Africa.¹

Recognising that the policy on sex work remains largely entangled with the trafficking discourse, this paper argues for a different approach. We assert that there is a need to acknowledge the complexities of and contradictions in the everyday experiences of migration and selling sex in order to show how sex workers can be central to the fight against human trafficking. We argue that this would enable different potential partners—including anti-trafficking, migrant rights, and labour rights organisations and trade unions—to recognise sex worker organisations as allies, and engage with them in an effort to strengthen workers’ rights and improve protections in unregulated labour sectors. While such partnerships remain uneasy due to the exclusion of sex workers from discussions of labour rights and women’s economic empowerment, there is a clear need for such engagement and for considering how these partners can move forward.

This argument is supported by the findings of a research project conducted in South Africa as part of a seven-country study published in 2018 by the Global Alliance Against Traffic in Women (GAATW). The study investigated how sex worker rights organisations deal with abuse and exploitation (including human trafficking) in the sex industry.² One of the authors of this article conducted the research in South Africa. This paper presents key findings of that research, alongside reflections shared at two *Sex Workers’ Anti-trafficking*

¹ C Gould, ‘Moral Panic, Human Trafficking and the 2010 Soccer World Cup’, *Agenda*, vol. 24, no. 85, 2010, pp. 31-44, <https://doi.org/10.1080/10130950.2010.9676321>; C Gould 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; D Peters and Z Wasserman, “What Happened to the Evidence?” - *A Critical Analysis of the South African Law Reform Commission’s Report on ‘Adult Prostitution (Project 107)’ and Law Reform Options for South Africa*, Asijiki Coalition, Cape Town, 2018.

² Global Alliance Against Traffic in Women, *Sex Workers Organising for Change: Self-representation, community mobilisation, and working conditions*, GAATW, Bangkok, 2018.

Research Symposiums, which were held in Cape Town and Johannesburg in May and July 2018 as follow-ups to the GAATW study. We conclude by proposing the further development and implementation of the Sex Work, Exploitation, and Migration/Mobility Model as a way of helping to distinguish between migrant/mobile sex work and human trafficking for sexual exploitation, as well as, crucially, identifying where there may be overlap.

Sex Work, Human Trafficking and the Legal Approach in South Africa

In South Africa, under the *Sexual Offences Act 23* of 1957 (last amended in 2007), all aspects of sex work are criminalised, which includes the buying, selling, and third party facilitation of commercial sex acts.³ A growing body of research indicates how criminal responses to sex work and sex workers—the majority of whom are internal and cross-border migrants—result in an increase in sex workers’ vulnerabilities to rights violations.⁴ This includes gender-based violence (GBV), interpersonal violence, behavioural violence (exploitation by brothel owners and pimps, attacks from clients, and abuse by the police or members of the public), and structural violence (discrimination within and challenges accessing healthcare, legal support, education, etc.).⁵ These

³ Republic of South Africa (RSA), *Criminal Law (Sexual Offences and Related Matters) Amendment Act, No. 32*, 2007.

⁴ See, for example: M Richter and W Delva, ‘*Maybe it will be better once this World Cup has passed*’ - Research findings regarding the impact of the 2010 Soccer World Cup on Sex Work in South Africa, United Nations Population Fund (UNFPA), Pretoria, 2011.

⁵ J Coetzee, R Jewkes and G E Gray, ‘Cross-Sectional Study of Female Sex Workers in Soweto, South Africa: Factors associated with HIV infection’, *Public Library Of Science (PloS) ONE*, vol. 12, no. 10, 2017, pp. 1-21, <https://doi.org/10.1371/journal.pone.0184775>; R Walker and E Oliveira, ‘Contested Spaces: Exploring the intersections of migration, sex work and trafficking in South Africa’, *Graduate Journal of Social Sciences*, vol. 11, issue 2, 2015, pp. 129-153; L Connelly, L Jarvis-King and G Ahearne, ‘Editorial—Blurred Lines: The contested nature of sex work in a changing social landscape’, *Graduate Journal of Social Science*, vol. 11, issue 2, 2015, pp. 4-20; F Scorgie, *et al.*, ‘“We are Despised in the Hospitals”: Sex workers’ experiences of accessing health care in four African countries’, *Culture, Health & Sexuality*, vol. 15, no. 4, 2013, pp. 450- 465, <https://doi.org/10.1080/13691058.2012.763187>; Gould and Fick, 2008; A Scheibe *et al.*, ‘Sex Work and South Africa’s Health System: Addressing the needs of the underserved’, *South African Health Review*, vol. 19, 2016, pp. 165–178; M Richter and J Vearey, ‘Migration and Sex Work in South Africa: Key concerns for gender and health’ in J Gideon (ed.), *Gender and Health Handbook*, Edward Elgar Publishing, London, 2016, pp. 268-282; D Evans and R Walker, *The Policing of Sex Work in South Africa: A research report on the human rights challenges across two South African Provinces*, Sonke Gender Justice and SWEAT, 2018.

vulnerabilities and risks are experienced by persons selling sex globally, particularly in criminalised contexts.⁶

Despite the many risks associated with selling sex, research also shows that, in the context of high levels of poverty and unemployment, sex work remains a viable livelihood strategy.⁷ Studies indicate that sex workers with a primary school education are able to earn nearly six times more than the typical income earned in more formal employment (such as domestic work), and women selling sex are normally heads of households supporting an average of four persons.⁸ Although able to support families and generate income, individuals selling sex are not recognised as legitimate workers who contribute to the economy. Rather, they are framed as deviants, criminals, or (at best) victims, thus simplifying and often misrepresenting their complex lived realities.⁹ Various sex worker rights organisations, civil society groups, and academics have therefore called for the decriminalisation of sex work. They argue that, under this legal model, sex workers would be able to access basic human rights, healthcare, and social support, while being able to work safely. This call is backed by a number of international organisations, including Amnesty International, Open Society Foundations, and the International HIV/AIDS Alliance.¹⁰

However, recommendations made by a recent report by the South African Law Reform Commission (SALRC) on the country's legislative reform process on the regulation of sex work rejected the decriminalisation model.¹¹ Instead, the SALRC suggested either the continuation of the criminalisation of all aspects of sex work, or the adoption of partial criminalisation (the so-called 'Swedish

⁶ Hands Off!, *Sex Work & Violence in Southern Africa. A participatory research in Botswana, Mozambique, Namibia, South Africa and Zimbabwe*, Aidsfonds, Amsterdam, 2018; T Sanders, *Sex Work: A risky business*, Cullompton, Willan Publishing, London, 2005.

⁷ Joint United Nations Programme on HIV and AIDS (UNAIDS), *UNAIDS guidance note on HIV and sex work*, UNAIDS, Geneva, 2012.

⁸ 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, <https://doi.org/10.7196/samj.6170>.

⁹ Walker and Oliveira, 2016.

¹⁰ Amnesty International, *Explanatory Note on Amnesty International's Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers* (POL 30/4062/2016), AI, London, 2017; Open Society Foundations, *10 Reasons to Decriminalize Sex Work*, OSF, New York, n.d.; International HIV/AIDS Alliance, *Policy Position on Decriminalisation and HIV*, IHAA, East Sussex, 2015.

¹¹ 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.

Model”).¹² This was based on a number of key claims about sex work, and the assumed connections among sex work and human trafficking, (illegal) migration, and the exploitation of children in the sex industry.¹³ Similar claims were also made in reports used to inform the development of *The Prevention and Combating of Trafficking in Persons Act*, which was implemented in 2015.¹⁴ While there is little robust and reliable research that can support these claims, there has been a growing body of empirical work, which documents the significant harms experienced by sex workers under criminalisation, and as a result of certain anti-trafficking measures.¹⁵ The 2018 GAATW research, and the follow-up *Sex Workers’ Anti-trafficking Research Symposiums*, as discussed below, supported these findings.

Methodology

For the GAATW study, the South African researcher conducted fieldwork in Johannesburg and Capetown.¹⁶ These two cities were selected because of their central roles in South Africa’s sex work, migration, and trafficking historical landscapes and debates.¹⁷ In each city, a focus group was facilitated with service users of the Sex Worker Education and Advocacy Task Force (SWEAT), who were predominantly members of Sisonke, South Africa’s national sex worker movement, and either current or former sex workers.

¹² Peters and Z Wasserman, 2018.

¹³ Z Wasserman, ‘South African Law Reform Commission’s Report on “Adult Prostitution” - Overview and Critiques’, Asijiki Coalition Annual General Meeting Presentation on 14 September 2018.

¹⁴ C Gould, M Richter, and I Palmary, ‘Of Nigerians, Albinos, Satanists, and Anecdotes’, *South African Crime Quarterly*, no. 32, 2010, pp. 37–44, <https://doi.org/10.17159/2413-3108/2010/v0i32a883>; R Walker and T Galvin, ‘Labels, Victims and Insecurity: An exploration of the lived realities of migrant women who sell sex in South Africa’, *Third World Thematics: A TWQ Journal*, vol. 3, no. 2, pp. 277–292; R Walker and A Hüncke, ‘Sex Work, Human Trafficking and Complex Realities in South Africa’, *Trafficking, Smuggling and Human Labour in Southern Africa* (Special Issue), vol. 2, no. 2, 2016, pp. 127–140.

¹⁵ S Manoeck, ‘*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, retrieved 2 July 2017, <http://www.sweat.org.za/wp-content/uploads/2016/02/Stop-Harrasing-Us-Tackle-Real-Crime.pdf>; D Evans and R Walker, 2018; E Bonthuys, ‘The 2010 Football World Cup and the Regulation of Sex Work in South Africa’, *Journal of Southern African Studies*, vol. 38, no. 1, 2012, pp. 12–29; Walker and Oliveira, 2015.

¹⁶ For more details on the methodology, see GAATW, 2018, pp. 210–211.

¹⁷ 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; H Trotter, *Sugar Girls & Seamen: A journey into the world of dockside prostitution in South Africa*, Jacana Media, Auckland Park, 2008.

There were 21 focus group participants in total—fourteen in Johannesburg, and seven in Cape Town—and two interviews with individual sex workers (also 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 the Cape Town respondents were mainly street-based sex workers. All were over 18 years of age. In addition, eleven interviews were conducted with representatives of partner and allied organisations. Six initial interviews were conducted with Sisonke and SWEAT; two with Sisonke peer educators in Johannesburg, and one each with the SWEAT director, the SWEAT Helpline coordinator, the SWEAT Human Rights and Lobbying officer, and the coordinator of the Asijiki Coalition for the Decriminalisation of Sex Work (who are all based in the same Cape Town office). Four interviews were conducted with representatives of allied organisations: the Women’s Legal Centre (WLC), Sonke Gender Justice, Sediba Hope Medical Centre, and the South African National Human Trafficking Resource Helpline. The focus groups and interviews were conducted in English, *isiZulu*, or *isiXhosa* (local languages). Respondents were encouraged to engage in the language they are most comfortable with, so the interviews and focus groups often toggled between the three. In focus groups, participants also assisted each other with translations where needed. The initial findings of this country study were shared with SWEAT and Sisonke to ensure there was no misrepresentation. During this review process, the National Coordinator of Sisonke gave additional insights, which were also included in the final report.

The research findings were supported by reflections shared at the follow-up *Sex Workers’ Anti-trafficking Research Symposiums*, co-hosted by SWEAT, Sisonke, and GAATW. The Cape Town symposium was held at the SWEAT/Sisonke office on 31 May 2018, and the Johannesburg symposium at the Tshwaranang Legal Advocacy Centre (TLAC) on 6 July 2018. The first symposium drew almost 20 participants, while just under 40 attended the second. Those in attendance at both symposiums included sex workers (Sisonke peer educators and members), researchers (from the African Centre for Migration and Society at the University of the Witwatersrand, Johannesburg), government officials (from the Department of Social Development and the Office of the Premier of Gauteng Province), members of civil society organisations (such as the South African National AIDS Council and Sonke Gender Justice), an anti-trafficking organisation (A21’s South African National Human Trafficking Resource Helpline), and a children’s rights organisation (Molo Shongololo).

Understanding Trafficking in a Context of Rights Violations

The key findings from GAATW's South African study and the reflections shared at both research symposiums affirmed that the conflation of sex work and human trafficking creates challenges when trying to address trafficking in the sex industry. This conflation not only makes it difficult to effectively identify and deal with such cases, but also causes tensions and distrust between sex worker rights and anti-trafficking activists.

The country findings indicated that, even though the sex worker respondents were not necessarily aware of national or international legislation on human trafficking, the majority understood it as some form of coercion 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'.¹⁸ In addition, the sex worker respondents also tended to speak about human trafficking interchangeably with the labour exploitation they experienced at the hands of brothel owners/managers in the form of overwork, little or no pay, restricted movement, and extortion through hefty fines. The sex worker respondents also agreed that, even though trafficking does occur in the sex industry, it is not as prevalent as other forms of human rights violations they face. Nevertheless, during the Johannesburg focus group, some sex workers began recalling trafficking cases they had come across in the course of their work.¹⁹

Thulisile Khoza—a former Sisonke peer educator in KwaZulu-Natal (KZN)—described a case that started in 2012 when she and her colleagues helped police identify 38 young women and girls (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 the investigation and trial, the case received a great deal 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. However, the media did not mention the Sisonke sex worker peer educators who had been instrumental in unearthing the case. Khoza described how Sisonke came across the trafficked women:

¹⁸ N Yingwana, 'South Africa', in GAATW, 2018, p. 216.

¹⁹ Four participants from the Johannesburg focus group shared cases that could explicitly be identified as human trafficking. *Ibid.*, pp. 216–217, 221–222.

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 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; 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 ten years), living on the earnings of sex work, and dealing in cocaine. In November 2016, the three men were each sentenced; the main accused received 35 years in prison, while his two accomplices each received 25.²⁰

The sex worker respondents also reported occasionally coming across young women working in the industry that they believed were under the age of 18, but they mostly expressed feeling helpless to do much about it. They shared that the young people tended to maintain that they are selling sex by choice, and that they taunted the older sex workers, accusing them of being jealous because they could not attract as many clients as when they were younger. If the older sex workers tried to raise their concerns with their brothel owners/managers or pimps, they were simply told that the sex industry needed the girls for business, and were threatened with eviction if they pursued the matter further. Not wanting to risk their livelihoods (through evictions or police raids), they were forced into silence.

²⁰ *Ibid.*, pp. 221–222.

These stories shared by sex workers further illustrate the extent to which criminalisation creates the conditions in which concerned sex workers are reluctant to report such cases to the police. However, these circumstances have not deterred sex worker rights groups and organisations from attempting to address situations of exploitation and human trafficking in the industry.

Nuanced Discussions on Sex work and Trafficking

The stories that emerged from the GAATW study were also reflected on at both *Sex Workers' Anti-trafficking Research Symposiums*. The research symposiums had two purposes. The first was to provide a platform on which GAATW's South African research findings could be presented and discussed with the attending sex workers, academics, activists, representatives of anti-trafficking NGOs, and government officials. The second purpose was to facilitate a more nuanced discussion about trafficking and, more specifically, 'to analyse the difference between trafficking and sexual exploitation within the sex work industry'.²¹ Such a discussion would take into consideration the continuum of varying degrees of choice and coercion that sex workers may experience when entering sex work. It would also acknowledge that, in certain instances, a sex worker who might have initially been tricked or coerced into the industry might later decide to continue working in it.

For example, three sex workers who participated in the Johannesburg focus group as part of the GAATW study reported having 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 working in the industry.²² These accounts are consistent with Joanna Busza's caution against the dangers of oversimplifying the anti-trafficking discourse in sex work:

[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...²³

²¹ N Sonandi and M Remba, *Report on the Sex Workers' Anti-trafficking Research Symposium*, Cape Town, 2018.

²² Yingwana, pp. 216–217.

²³ 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, 2004, pp. 231–249, <https://doi.org/10.2307/4065357>.

This clearly demonstrates the need to consider a more nuanced model of understanding human trafficking in the sex industry—one that takes into consideration sex workers’ lived realities. What is needed is a model that makes a clear distinction between human trafficking and sex work, while also recognising the situations where they may overlap.

Why the Sex work, Exploitation and Migration/Mobility Model?

As the Durban case study discussed above illustrates, sex worker rights groups such as SWEAT and Sisonke can play an integral role in addressing human trafficking in the sex industry, given that they and their service users/members are often best positioned to identify such cases. However, this is not without its difficulties. In both the GAATW country study and the follow-up research symposiums, SWEAT/Sisonke staff expressed some frustration with the lack of trust and cooperation anti-trafficking organisations and government officials often exhibited when working with them on suspected trafficking cases. They argued that this distrust not only made it difficult to effectively identify and deal with cases of trafficking, but it also resulted in tensions between sex worker rights and anti-trafficking activists.

The notion that supporting sex workers’ access to human rights somehow automatically makes a person pro-trafficking, or that fighting human trafficking means you are anti-sex work, is fundamentally flawed. Sex worker rights activists also oppose human trafficking, as the crime violates sex workers’ human rights, too. In the same vein, some anti-trafficking activists do engage with sex workers as they recognise that this contributes to combating human trafficking in the sex industry. However, this has not been the experience of SWEAT staff. 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 deal with trafficking. However, the ideological differences on sex work that existed among the Coalition member organisations at times manifested in blatant hostility against SWEAT. SWEAT’s former director Sally-Jean Shackleton explained:

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.²⁴

²⁴ Yingwana, 2018, p. 218.

Shackleton added that anti-trafficking stakeholders tend to take a ‘rescue approach’ instead of being person-centred, and that they also often work from an anti-sex work ideological standpoint. As a result, in November 2012, 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*, which would guide them in coordinating appropriate and sensitive interventions in addressing exploitation in the sex industry, including, but not limited to, human trafficking. This draft protocol proposes that the initial assessment take a two-pronged approach—individual and situational—which takes into consideration the presumed trafficked person’s immediate safety and health needs in relation to their socio-economic environment, so as to arrive at an appropriate and individualised response.

Even though it was never finalised, SWEAT and Sisonke have adopted some of the draft protocol’s elements when coordinating certain interventions. Yet the fact that the protocol remained in draft form for all these years indicates the need for stronger partnerships with anti-trafficking organisations and other stakeholders when designing, implementing, and funding such interventions. In particular, labour organisations, trade unions, and migrant rights groups could play a central role in helping to address cases of exploitation and trafficking in sex work. The draft protocol was discussed at the two symposiums and led to the development of the Sex Work, Exploitation, and Migration/Mobility Model. We argue here that the model helps to shift the sex work, migration, and human trafficking discourse in South Africa to a more productive and inclusive space, as explored below.

Developing the Sex Work, Exploitation and Migration/Mobility Model

The Sex Work, Exploitation, and Migration/Mobility Model is based on the ‘polymorphous paradigm’ approach to understanding sex workers’ lived experiences.²⁵ Unlike the ‘oppression model’, the paradigm is evidence-based, and recognises sex workers’ varied experiences. As Ronald Weitzer explains:

‘[p]olymorphism is sensitive to complexities and to the structural conditions shaping the uneven distribution of workers’ agency and subordination. Victimization, exploitation, choice, job satisfaction, self-esteem, and other factors differ between types of sex work, geographical locations, and other structural conditions.’²⁶

²⁵ R Weitzer, ‘Sex Trafficking and the Sex Industry: The need for evidence-based theory and legislation’, *Journal of Criminal Law and Criminology*, vol. 101, issue 4, 2013, pp. 1337–1370.

²⁶ *Ibid.*, p. 1338.

In addition, the proposed model also draws inspiration from Hila Shamir’s argument for the adoption of a labour paradigm when dealing with human trafficking.²⁷ However, under the current criminalisation regime, it would be difficult to effectively apply a labour approach to trafficking that targets the exploitative structures within the sex industry; hence, our concurrent call for the decriminalisation of sex work. The proposed model, therefore, aims to complicate understandings of sex work, migration, labour, and human trafficking in order to try and capture the varied daily experiences of people selling sex. This is illustrated in the Venn diagram below.²⁸

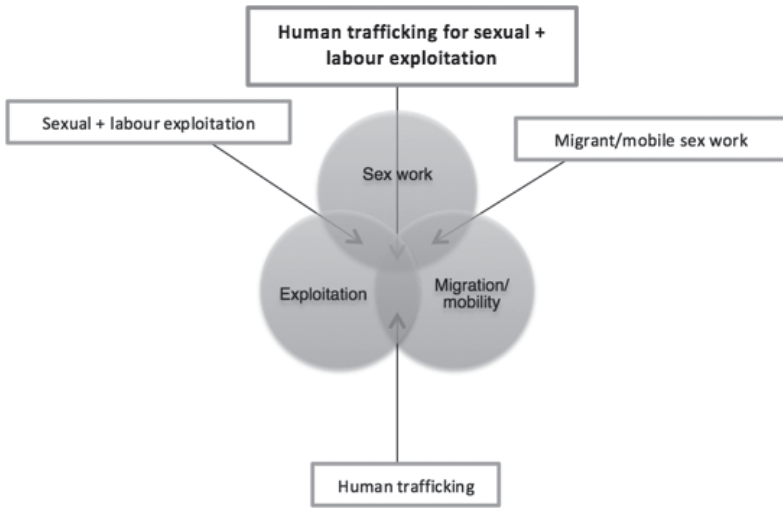


Image 1: Visual representation of the Sex work, Exploitation and Migration/Mobility Model.

²⁷ H Shamir, ‘A Labor Paradigm for Human Trafficking’, *UCLA Law Review*, vol. 60, no. 1, 2012, pp. 76–136.

²⁸ This Venn diagram was developed in personal conversations with Alex Etchart, who is the co-director of the Sex Worker’s Opera, and one of the co-authors of this paper.

The above model was originally derived from the Coercion—Migration—Sex Work (CO-MI-SE) Model developed by the Sex Worker’s Opera²⁹ while workshopping with feminist, LGBTQ+, and diasporic groups in order to deconstruct and complexify the assumptions embedded in the overuse of the word ‘trafficking’, and the violences that are carried out as a result. For instance, under the UK’s ‘hostile environment [towards migrants]’, trafficking policy and legislation is often used to humiliate, arrest, and forcibly deport migrant sex workers who are all assumed to be ‘victims’.³⁰

The distinct spaces in both the CO-MI-SE model and the Sex Work, Exploitation, and Migration/Mobility Model allow us to explore specific convergences. For instance, exploring where migration meets sex work with no exploitation, opens conversations around the causes of migration (such as conflict, poverty, and the search for better livelihoods), the challenges associated with irregular migration, and the subsequent lack of documentation, and resultant barriers in accessing services.³¹ For while sex work is recognised as a highly mobile industry, migrant sex workers are rarely discussed or included in discussions regarding migrant rights and vulnerabilities.³²

Exploring where sex work meets exploitation without migration allows us to investigate the spectrum of rights violations within sex work from coercion and controlling partners to bad working conditions and fines at workplaces. This approach then does not connect the exploitation and rights violations innately to migration and movement. Finally, exploring where migration meets exploitation without sex work allows us to acknowledge that migrants are sometimes forced into different types of labour,³³ yet the common responses to these incidents are not to criminalise the respective industries, but rather to

²⁹ The Sex Worker’s Opera is a sex worker-led multimedia project, which presents over 100 stories from 18 countries across six continents on stage, in workshops with NGOs, and online. The project is ongoing, with stories still being added as text, video or audio interviews from individuals and grassroots groups from places such as Argentina, India, Taiwan or Ukraine. Retrieved 14 January 2019, <http://www.sexworkersopera.com/about>.

³⁰ English Collective of Prostitutes (ECP), *Statement: The Soho raids – what really happened*, ECP, January 2014, retrieved 14 January 2019, <http://prostitutescollective.net/2014/01/the-soho-raids-what-really-happened>.

³¹ R King, N Mai, and M Dalipaj, *Exploding the Migration Myths. Analysis and recommendations for the European Union, the UK and Albania*, Oxfam and Fabian Society, London, 2003; see also the *SEXHUM: Migration, Sex Work and Trafficking* project, retrieved 14 January 2019, <https://sexualhumanitarianism.wordpress.com>.

³² Walker and Oliveira, 2015, pp. 129–153.

³³ See, for example: J Boyle, ‘Death in a cold, strange land’, *BBC News*, 24 March 2006, retrieved 14 January 2019, http://news.bbc.co.uk/2/hi/uk_news/england/4582470.stm#map.

improve labour laws, practices, and structures. Such situations would include migrants who indebted themselves to dubious third parties, in order to be smuggled into a destination country, while holding little information about the work they will be forced to do upon arrival to pay off that debt.³⁴

Therefore, taking the membranes connecting the intersections of both models' Venn diagrams as blurry spectra in and of themselves allows us to engage in critical conversations about intention and consent in migrant/mobile labour. Building on the CO-MI-SE model, we argue that the Sex Work, Exploitation, and Migration/Mobility Model offers an accessible way of understanding the definition of 'trafficking in persons' adopted in the United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (the UN Trafficking Protocol).³⁵ In particular, it offers governments and civil society actors a way to better distinguish between migrant/mobile sex work and human trafficking for the purpose of sexual exploitation, as well as to recognise where there may be overlaps.

Applying the Sex Work, Exploitation, and Migration/Mobility Model

When applying the Sex Work, Exploitation, and Migration/Mobility Model, we consider sex work, migration/mobility (movement), and exploitation (violence) as three circles overlapping with each other to form a triangle. Where the overlapping circles meet, four distinct possible conditions exist. Where sex work overlaps with some form of movement, it is a situation of migrant/mobile sex work. In this instance, a sex worker might be selling sex away from their home, or while in transit, as in the case of sex workers operating along long-distance truck routes. Should the selling of sex overlap with violence or exploitation, we could be dealing with sexual and/or labour exploitation in sex work. A possible scenario under these conditions could be a brothel manager extracting exuberant rent from their staff, or forcing them to service clients they are uncomfortable with. Finally, when migration/mobility overlaps with exploitation or violence, we could be encountering a case of human trafficking. However, it is important to note that, based on the proposed model, this form of trafficking currently sits outside of commercial sex. So

³⁴ See, for example: J O'Connell Davidson, 'Troubling Freedom: Migration, debt, and modern slavery', *Migration Studies*, vol. 1, no. 2, 2013, pp. 176–195, <https://doi.org/10.1093/migration/mns002>.

³⁵ 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, Art. 3.

only when all three circles intersect in the centre do we find a clear case of human trafficking for the purpose of sexual and labour exploitation in sex work.

During both *Sex Workers' Anti-trafficking Research Symposiums*, participants were asked to consider the model's application to specific scenarios of possible sexual exploitation cases in sex work.³⁶ In groups, the symposiums' attendees were encouraged to collaboratively discuss and design appropriate, sensitive, and innovative interventions, if at all needed, to the cases provided. For example, one of the groups at the Cape Town research symposium was asked to develop an appropriate response to the case of an adult consenting woman sex worker whose intimate partner is also her pimp. The couple decides to move to Johannesburg in the hope of improving their business. However, shortly after arriving in the city, their relationship starts to deteriorate; the partner starts imposing clients onto her she is uncomfortable servicing, taking most of her earnings, and being violent.

The symposium attendees agreed that, although at first sight, this might come across as a classic case of trafficking for the purpose of sexual exploitation, the case was complicated and a standard anti-trafficking intervention might not be the appropriate approach to take in this instance. First, the woman willingly travelled to Johannesburg to engage in sex work; she was not forced, deceived, or coerced to migrate or to sell sex. Second, since she is in an intimate relationship with her pimp, it is difficult to know if she would want assistance or not as she may not wish to leave him or have him arrested for domestic abuse. While this was unclear, what was certain was that, if she wanted assistance, this would not be in the form of 'rescue' as a trafficked person. After some discussion, the group decided that she would first have to be consulted as to whether she wanted to be assisted, and if so, how. This would need to be done sensitively in the form of a confidential interview and person-centred assessment by (possibly) one of the SWEAT/Sisonke counsellors. The symposium attendees insisted that only after this consultation could an appropriate response be designed and implemented.

This discussion around one possible case is illustrative of Busza's argument about the varying degrees of choice and coercion that sex workers may experience in the industry.³⁷ Furthermore, it also highlights the importance of recognising the intersections—and the distinctions—among migration, sex work, and trafficking. For where anti-trafficking measures push for the rescue

³⁶ Sonandi and Remba.

³⁷ Busza.

of all those involved in the sex industry, regardless of agency or choice, the human rights of people who sell sex are not only violated, but the space for their voices and for them to challenge the misrepresentations of their lives and work is also reduced.

The participants were also asked to identify possible stakeholders, potential referral networks, and essential resources that could be mobilised in the finalisation and implementation of the draft *Counter Sexual Exploitation in Sex Work Protocol*, which would guide them in coordinating such responses. As a rights-based response tool, the draft protocol aims to address exploitation in the sex industry in its entirety, but without perpetuating the conflation of sex work and human trafficking. The model and the protocol are currently being workshopped and further developed in collaboration with SWEAT, Sisonke, civil society partners (including anti-trafficking organisations), and government officials who attended the anti-trafficking research symposiums, and also in consultation with one of the co-authors of this paper who conceptualised the CO-MI-SE model.³⁸

Conclusion

The conflation of sex work and human trafficking undermines the calls for decriminalisation of sex work and estranges crucial actors in the fight against trafficking. While recognising that human trafficking can and does occur in South Africa's sex industry, we suggest that the Sex Work, Exploitation, and Migration/Mobility Model can improve the understanding of and responses to human trafficking. First, the model enables sex workers and sex worker rights groups, such as SWEAT and Sisonke, to be recognised as legitimate stakeholders in anti-trafficking work. Second, the model can help in identifying and addressing more common—even if less sensationalistic—human rights violations in sex work, such as long working hours, non-payment of wages, and violence perpetuated by clients, intimate partners, employers, and police. In addition, support of sex workers in addressing these workplace issues would also empower them to report and intervene more often in cases of human trafficking and exploitation. Such an approach, we suggest, is particularly relevant for sex workers like *Nonhle Zulu* who might not know the official definitions of trafficking, but are trying to improve their working conditions, and better understand the anti-trafficking policies that tend to impact their lives.

³⁸ Alex Etchart.

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Butterfly: Resisting the harms of anti-trafficking policies and fostering peer-based organising in Canada

Elene Lam and Annalee Lepp

Abstract

Drawing on knowledge gleaned from over four years of community organising and from the ongoing compilation of the experiences of Asian and migrant sex workers in Canada, this article presents a case study of the work of Butterfly, a migrant sex worker-led and sex worker-focused organisation. It explores how Butterfly, through various mediums, has sought to challenge the discourses, laws, and policies that negatively impact Asian and migrant sex workers. It also highlights how the organisation, through its peer-based model and activities and its radical centring of the voices and experiences of Asian and migrant sex workers, is able to more effectively address their everyday realities and struggles. In this way, Butterfly offers a grassroots alternative to the often detrimental prohibitionist and anti-trafficking interventions undertaken by governments, law enforcement, and social service organisations.

Keywords: migrant sex work, racial profiling, human trafficking, peer-based organising, Canada

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Introduction

Established in 2014, Butterfly (Asian and Migrant Sex Workers Support Network) is a grassroots organisation that works directly with, and is led by, Asian and migrant sex workers in Toronto and other Canadian cities. Since its inception, Butterfly has filled a significant gap in the realm of sex worker organising in Canada, especially by enabling migrant sex workers to create a

strong and empowering mutual support network, to build capacity and foster leadership, and to advocate for their legal, labour, and social rights.¹ This is especially important because they face various and significant obstacles, including language barriers, im/migration status, social marginalisation, and exclusionary practices that inhibit them from accessing and participating in the sex worker rights movement in Canada.² Thus, Butterfly contributes an important intersectional perspective to the sex worker movement, which is grounded in an understanding of the issues faced by Asian and migrant sex workers, including racism, classism, and xenophobia, and the need to build strong alliances among the sex worker, labour, migrant, and racial justice movements.

Drawing on the grassroots knowledge gleaned from over four years of community organising and from the ongoing compilation of the stories of Asian and migrant sex workers' experiences, this article presents a case study of the work of Butterfly. It documents how the organisation has sought to challenge the discourses and policies that directly and negatively impact Asian and migrant sex workers in the Canadian context. These efforts have involved initiatives to resist oppressive immigration, criminal, and municipal laws and policies, to expose the harmful effects of anti-trafficking interventions, and to raise broad awareness about Asian and migrant sex workers' experiences and needs, including among social service organisations. The article also highlights how Butterfly, through its peer-based model and activities, is able to more effectively address the everyday realities and struggles of Asian and migrant sex workers, thereby offering a radical grassroots alternative to the often detrimental government- and social service organisation-sponsored prohibitionist and anti-trafficking interventions.

¹ The other sex worker organisation in Canada that works specifically with newcomer, migrant, and immigrant women (cisgender, trans, and gender-diverse) engaged in indoor sex work is Supporting Women's Alternatives Network (SWAN) in Vancouver, British Columbia. See <http://swanvancouver.ca>.

² E Lam, 'The Birth of Butterfly: Bringing migrant sex workers' voices into the sex workers' rights movement', *Research for Sex Work*, issue 15, 2016, pp. 1-4, <http://www.nswp.org/resource/the-birth-butterfly-bringing-migrant-sex-workers-voices-the-sex-workers-rights-movement>; E Lam and C Gallant, 'Migrant Sex Workers' Justice: Building alliances across movements' in E M Durisin, E van der Meulen and C Bruckert (eds.), *Red Light Labour: Sex work regulation, agency, and resistance*, University of British Columbia Press, Vancouver, 2018, pp. 293-304.

Sex Work and Trafficking in Canada

In December 2014, the then Conservative government enacted the *Protection of Communities and Exploited Persons Act* (PCEPA),³ the ‘made in Canada’ end demand regime. Previously conceived as a ‘public nuisance’, prostitution was redefined under PCEPA as ‘sexual exploitation’, where all sex workers are deemed to be victims. The laws criminalise clients and third parties, communication in specific public places, working with others, and advertising sexual services, with the main objective being to eradicate prostitution.⁴ Three years after the laws were enacted, based on sex workers’ reports across the country, the Canadian Alliance for Sex Work Law Reform confirmed PCEPA’s endangering effects, with Indigenous, transgender, racialised, and im/migrant sex workers as the most negatively impacted. The laws have continued and intensified the displacement and isolation of sex workers; increased targeted violence, stigma, and discrimination against them; and enhanced police profiling and surveillance.⁵

Canada’s *Immigration and Refugee Protection Act* (2002) criminalises human trafficking and people smuggling, and anti-trafficking provisions were introduced into the *Criminal Code* in 2005. In 2012, the same Conservative

³ 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>.

⁴ 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: Department of Justice Canada, ‘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.

⁵ Canadian Alliance for Sex Work Law Reform, *Safety, Dignity, Equality: Recommendations for sex work law reform in Canada*, March 2017, p. 7. Over the course of their historical development within a white settler colony, Canada’s prostitution laws and their implementation were and continue to be especially harmful to Indigenous, racialised, and migrant sex workers. See, for example: N Sayers, ‘Canada’s Anti-Prostitution Laws: A method for social control’, *kwetoday*, 28 December 2013, <https://kwetoday.com/2013/12/28/canadas-anti-prostitution-laws-a-method-for-social-control>; 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; R Maynard, ‘Do Black Sex Workers’ Lives Matter? Whitewashed anti-slavery, racial justice, and abolition’, in Durisin, van der Meulen and Bruckert, pp. 281-292; B Belak and D Bennett, *Evaluating Canada’s Sex Work Laws: The case for repeal*, Pivot Legal Society, Vancouver, 2016, http://www.pivotlegal.org/evaluating_canada_s_sex_work_laws_the_case_for_repeal.

government, as both an anti-trafficking protection and an anti-sex work border control measure, closed down the temporary exotic dancers' visa (which had been available since the 1960s) and barred all sex work-related businesses from accessing the temporary foreign worker programme. Furthermore, any migrant workers who are issued open work permits (including international students, refugee claimants, or individuals under sponsorship) are now restricted from working in the commercial sex sector.⁶ In the latter case, migrants risk having their work permits and immigration status revoked and being deported if they work in sex-related businesses, including legally-operating and licensed massage and body rub parlours, strip clubs, and escort agencies.⁷

At the more local level, while, in theory, municipal bylaws cannot directly prohibit the sale of sexual services, they have also been used as a repressive mechanism to target, regulate, investigate, and shut down businesses perceived to be potential venues for trafficking and, in particular, establishments where Asian im/migrant women work.⁸ In December 2013, the Toronto City Council, in 'condemning the horrific crime of human trafficking', passed a motion entitled 'Initiatives to Address Human Trafficking' that approved 'the review of licensing by-laws concerning trades and businesses that are known to be destinations for human trafficking.'⁹ It also called for a report to be compiled that would address human trafficking and 'a strategy to more vigorously prosecute charges related to municipal by-law infractions by the adult

⁶ Government of Canada, Immigration and Refugee Protection Act, *Immigration and Refugee Protection Regulations*, SOR/2002-227 s. 183(1)(b.1). See also E M Durisin and R Heynen, 'Producing the "Trafficked Woman": Canadian newspaper reporting on Eastern European exotic dancers during the 1990s', *Atlantis: Critical Studies in Gender, Culture and Social Justice*, vol. 37, no. 2, 2015/2016, pp. 8-24; T Law, 'Cashing in on Cachet? Ethnicity and gender in the strip club', *Canadian Journal of Women and the Law*, vol. 24, no. 1, 2012, pp. 147-152, <https://doi.org/10.3138/cjwl.24.1.135>; T Law, 'Licensed or Licitious?: Examining the regulatory discussions of stripping in Ontario', *Canadian Journal of Law and Society*, vol. 30, no. 1, 2015, pp. 31-50, <https://doi.org/10.1017/cls.2014.25>.

⁷ Canadian Alliance for Sex Work Law Reform, 'Sex Workers Speak Out: Migrant sex workers live under constant police threat', *Ricochet*, 23 September 2016, <https://ricochet.media/en/1421/migrant-sex-workers-live-under-constant-police-threat>.

⁸ T Santini and E Lam, 'Upholding and Promoting Human Rights, Justice and Access for Migrant Sex Workers. Part 2 – Laws affecting migrant sex workers. Municipal law and migrant sex workers' rights', October 2017, https://docs.wixstatic.com/ugd/5bd754_c5dcee7f55114caf82ba5ddee244fb68.pdf; Canadian Women's Foundation, 'No More': *Ending sex-trafficking in Canada. Report of the National Task Force on Sex Trafficking of Women and Girls in Canada*, Toronto, 2014, p. 66.

⁹ City of Toronto, 'EX 36.13 Initiatives to Address Human Trafficking', *End Trafficking TO*, 16-18 December 2013, <https://www.toronto.ca/city-government/accountability-operations-customer-service/long-term-vision-plans-and-strategies/end-trafficking-to>.

entertainment, body-rub, and holistic licence classes.¹⁰ In October 2017, a report submitted to the Toronto City Council sounded the alarm that 25 per cent of the 410 holistic centres in Toronto ‘appeared to be offering services outside their licensing parameters and conditions. These centres advertised with sexually explicit photographs and had suggestive descriptions of services such as erotic massage ... [T]hese centres could potentially pose an array of health, safety and community issues, including the risk of human trafficking.’¹¹ As Butterfly’s research on this sector found, the number of by-law inspections of holistic centres in Toronto increased by 212 per cent (from 569 in 2013 to 1,780 in 2016) and those of holistic practitioners¹² by 323 per cent (from 611 in 2013 to 2,585 in 2016), which together constituted about 20 per cent of all bylaw investigations in the city.¹³ The majority of workers being targeted, whether they provide sexual services or not, are racialised and especially Asian women (migrants, refugees, or citizens) who speak little or no English.

As sex worker rights activists and their allies have consistently argued, human trafficking—in conjunction with national security, moral values, and protection of the vulnerable—has been deployed to legitimise the criminalisation of sex work, stringent migration policies, heightened border surveillance, racial profiling, and repressive enforcement raids and investigations of indoor sex work and other establishments.¹⁴ Despite the intensified focus on domestic

¹⁰ C Howorun, ‘25 per cent of Toronto holistic centres offer sexual services: report’, *CityNews*, 26 October 2017, <https://toronto.citynews.ca/2017/10/26/25-per-cent-toronto-holistic-centres-offer-sexual-services-report>. According to Santini and Lam, ‘common municipal offences include touching prohibited body areas (e.g. breasts, genitals), being undressed in the workplace, locking/unlocking the door to the room in which the services are performed, or being open to the public beyond legally permitted hours of operation.’ Santini and Lam, p. 3.

¹¹ City of Toronto, Auditor General, ‘A Review of the Municipal Licensing and Standards Division’s Management of Business Licenses – Part Two: Licensed Holistic Centres’, 24 October 2017, <https://www.toronto.ca/city-government/accountability-operations-customer-service/accountability-officers/auditor-general/reports/auditor-generals-reports/a-review-of-municipal-licensing-and-standards-divisions-management-of-business-licences-part-two-licensed-holistic-centres>.

¹² Holistic practitioners provide services such as reiki, aromatherapy, and massage therapy in spas, wellness centres, or massage parlours.

¹³ E Lam, *Survey of Toronto Holistic Practitioners’ Experiences with Bylaw Enforcement and Police*, Butterfly, Toronto, 2018, p. 13.

¹⁴ See, for example, K Kempadoo and N McFadyen (eds.), *Challenging Trafficking in Canada: Policy brief*, Centre for Feminist Research, York University, Toronto, July 2017; R Maynard, ‘Fighting Wrongs with Wrongs? How Canadian anti-trafficking crusades have failed sex workers, migrants, and Indigenous communities’, *Atlantis: Critical Studies in Gender, Culture and Social Justice*, vol. 37, no. 2, 2015, pp. 40-56; A Lepp, ‘Canada’, in Global Alliance Against Traffic in Women, *Sex Workers Organising for Change: Self-representation, community mobilisation, and working conditions*, GAATW, Bangkok, 2018, pp. 150-195; J Kaye, *Responding to Human Trafficking: Dispossession, colonial violence, and resistance among Indigenous and racialized women*, University of Toronto Press, Toronto, 2017.

trafficking in Canada over the last decade, especially as it affects Indigenous women and girls as well as minors, Asian and migrant sex workers have been consistent targets of anti-trafficking campaigns and interventions conducted by Canadian law enforcement and non-governmental organisations since the 1990s.¹⁵ In the current anti-sex work, anti-migration, and racist environment, in which federal, provincial, and municipal governments are investing millions of dollars in anti-trafficking enforcement and other efforts,¹⁶ Asian and migrant sex workers continue to be marginalised and silenced. This has resulted in the ongoing erasure of the diversity and complexity of their experiences and in the perpetuation of the notion that they are particularly ‘at risk’ of being trafficked.

Migrant Sex Workers, Holistic Practitioners, and Anti-Trafficking Interventions

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 with no legal status) and who mainly work at apartments, hotels, escort agencies, massage parlours, and holistic centres in Toronto and other cities. Like other workers who participate in transnational flows of labour, Asian and migrant sex workers make the decision to work in the sex industry in Canada for a variety of reasons: to meet their basic needs, to attain economic security and advancement, to move away from oppressive circumstances (e.g. low-wage work in other sectors, domestic violence, etc.), to support their families and finance the education of their children, to achieve self-actualisation, and/or to pursue their dreams. As Laura Agustín has argued, migrants ‘make decisions to change their lives by traveling abroad to work, weighing their options, talking with friends and family, taking advantage of opportunities offered, and continuing to exercise judgement along the way’; many are also ‘actively engaged in using social networks to travel.’¹⁷ Asian and migrant sex

¹⁵ A Lepp, ‘“Collateral Damage”: Anti-trafficking campaigns, border security, and sex workers’ rights struggles in Canada’, in P Gentile, G Kinsman, and L P Rankin (eds.), *We Still Demand! Redefining resistance in sex and gender struggles*, University of British Columbia Press, Vancouver, 2017, pp. 222-249.

¹⁶ Government of Canada, *National Action Plan to Combat Human Trafficking*, Her Majesty the Queen in Right of Canada, Ottawa, 2012, p. 10; T Grant, ‘Ontario unveils \$72-million plan to fight human trafficking’, *The Globe and Mail*, 30 June 2016, <https://www.theglobeandmail.com/news/national/canada-continues-to-be-a-source-for-sex-trafficking-annual-report/article30700484>.

¹⁷ L Agustín, ‘Migrants in the Mistress’s House: Other voices in the “trafficking” debate’, *Social Politics: International Studies in Gender, State and Society*, vol. 12, no. 1, 2005, pp. 97-98, <https://doi.org/10.1093/sp/jxi003>.

workers' decisions may also be shaped by other factors, such as their inability to find other work due to their im/migration status and language barriers as well as racism and discrimination in the labour market, or because the educational credentials or work experiences they obtained outside of Canada are not recognised in the country. As a result, the sex industry may be the best or one of the few labour options available to members of racialised and marginalised communities.

As in other under-regulated informal labour sectors, Asian and migrant sex workers may face various issues in their workplaces, including substandard or exploitative working conditions. For example, as Butterfly has found through its work, managers may take advantage of migrant sex workers' social isolation or precarious/undocumented status by, for instance, holding their passports, not paying them, imposing unreasonable charges, or pressuring them to work long hours. Their precarious immigration status compounded by the stigmatisation and criminalisation of sex work, racial profiling and discrimination, as well as surveillance and over-policing contribute to their vulnerability to various forms of violence, oppression, and exploitation at the hands of other actors, such as intimate partners, clients, police, and other law enforcement agencies.

Since the 1990s, as noted above, Asian and migrant sex workers have been a consistent focus of anti-trafficking interventions in Canada. The imposed label of being 'at risk' of trafficking is premised on longstanding racialised and gendered assumptions about Asian and migrant sex workers as passive and powerless, as controlled and exploited by foreign traffickers and transnational crime rings, as unable to grasp their victimised situation or speak for themselves, and as in need of rescue.¹⁸ Such assumptions have significantly shaped the lists of indicators and 'red flags' developed by Canadian law enforcement agencies and social service organisations, which are used in human trafficking awareness and training programmes and are meant to assist in identifying potential 'victims.' As SWAN Vancouver has pointed out, 'it is not always the red flag itself that indicates risk but *who* it is applied to. For example, when a number of non-White, and especially Asian, sex workers who speak

¹⁸ Lam and Gallant, p. 296. See also LA Jeffrey, 'Canada and Migrant Sex Work: Challenging the "foreign" in foreign policy', *Canadian Foreign Policy Journal*, vol. 12, no. 1, 2005, pp. 33-48, <https://doi.org/10.1080/11926422.2005.9673387>; K Kempadoo, 'The Modern-Day White (Wo)Man's Burden: Trends in anti-trafficking and anti-slavery campaigns', *Journal of Human Trafficking*, vol. 1, no. 1, 2015, pp. 8-20, <https://doi.org/10.1080/23322705.2015.1006120>.

accented English work together, this work situation may be perceived as a case of trafficking whereas the same conclusion may not be drawn from a group of White, Canadian-born sex workers.¹⁹

In addition to the ‘red flags’ being ‘vague’ and ‘overbroad’,²⁰ they are also used as a pretext for increasing the social surveillance and law enforcement investigations of Asian and migrant sex workers and their workplaces. Since 2015, for example, law enforcement agencies across Canada, often in collaboration with social service organisations, have participated in seven waves of what is known as Operation Northern Spotlight.²¹ During these operations, the typical scenario is that ‘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.²² According to the Canadian Alliance for Sex Work Law Reform, ‘by casting a wide net, police involved in Operation Northern Spotlight have approached, detained, and harassed numerous sex workers where there has been no evidence of coercion, exploitation, or human trafficking.’²³ In addition, Operation Northern Spotlight has generated the intensified racial profiling, surveillance, and targeting of Asian sex workers, including those who are permanent residents or Canadian citizens.

¹⁹ SWAN Vancouver compiled a list of ‘red flags’ included in popular human trafficking toolkits. In addition to ‘indoor sex venue mainly has women of the same nationality working there’, other indicators include ‘distrust/fear of authority’, ‘fear of revealing immigration status’, ‘does not speak English/French and/or experiences language barriers’, ‘allowing others to speak on one’s behalf, even when directly addressed’, ‘working excessively long hours’, ‘no access to medical care’, and ‘fee for transport and living quarters arranged for in country of destination.’ See: SWAN Vancouver, *Im/migrant Sex Workers, Myths and Misconceptions: Realities of the anti-trafficked*, SWAN Vancouver Society, Vancouver, 2015, pp. 15-16, <http://swanvancouver.ca/wp-content/uploads/2014/01/Realities-of-the-Anti-Trafficked.pdf>.

²⁰ Canada, House of Commons, Standing Committee on Justice and Human Rights, *Moving Forward in the Fight Against Human Trafficking in Canada*, 42nd Parliament, 1st Session, Ottawa, 2018, p. 37, <http://www.ourcommons.ca/Content/Committee/421/JUST/Reports/RP10243099/justrp24/justrp24-e.pdf>.

²¹ Royal Canadian Mounted Police, ‘Operation Northern Spotlight VII: Canadian Police Services continue to work together to stop human trafficking’, 24 October 2018, <http://www.rcmp-grc.gc.ca/en/news/2018/operation-northern-spotlight-vii-canadian-police-services-continue-work-together-stop>.

²² SWAN Vancouver, ‘Open Letter to BC Law Enforcement Calling for Non-Participation in Operation Northern Spotlight’, 6 July 2017, <http://swanvancouver.ca/operation-northern-spotlight>.

²³ Canadian Alliance for Sex Work Law Reform, ‘Sex Workers Rights Groups Oppose Police Operation Northern Spotlight. Press Release’, 9 October 2018, <http://www.spoc.ca/ONS%20press%20release.pdf>.

Behind the Rescue

Through its organising work and the compilation of first-person narratives, Butterfly has documented the effects of such law enforcement operations on Asian and migrant sex workers. For example, the testimonies of eighteen sex workers with varied immigration statuses²⁴ who contacted the organisation between May 2015 and August 2016 are revealing. Many of the women indicated that the first question law enforcement asked upon entering, usually without warning, their apartments, hotel rooms, or indoor workplaces was whether they were being coerced; as Sun recounted, one of the police officers who rushed into her apartment asked: ‘Are you under the control of anyone? Is anyone forcing you to do this? Who is your boss?’²⁵ When they responded that they were working voluntarily, the anti-trafficking intervention quickly turned into protracted investigations into their immigration status and whether they were working illegally in the sex industry; this meant that Canada Border Services Agency (CBSA) was immediately contacted and became directly involved.

All of the eighteen women who supplied testimonies were arrested, interrogated, and detained for up to three months in police stations, immigration centres, or prisons. As they recounted, police and CBSA officers used threats, intimidation, false information, and fabrication of evidence to extract information from them or to force them to admit to working illegally in Canada. If the women collaborated with or were in any way assisted or supported by co-workers, friends, and acquaintances (such as supplying accommodation, helping with money transfers or advertising, or using a friend’s credit card to book a hotel room), law enforcement read these activities as evidence of involvement in trafficking or organised crime. These suspicions would trigger broader criminal and immigration investigations, including surveillance of their online footprint, which focused on members of the women’s social networks, and authorities used such associations as evidence of an ‘ongoing risk’ and as justification for continuing to hold them in detention as a protective measure.²⁶

²⁴ According to Butterfly, ‘three of these individuals had working permits under sponsorship, one had a student visa and working permit and eight had valid visitor visas. The other six had lost their official permission to be in Canada, through the loss of refugee status or sponsorship’. E Lam, *Behind the Rescue: How anti-trafficking investigations and policies harm migrant sex workers*, Butterfly, Toronto, April 2018, p. 4, https://docs.wixstatic.com/ugd/5bd754_bbd71c0235c740e3a7d444956d95236b.pdf.

²⁵ ‘Sun’s Story’, *Ibid.*, p. 7.

²⁶ ‘Victimization Created by Anti-Trafficking Investigations: Anti-trafficking as anti-sex work & anti-migration enforcement’, *Ibid.*, p. 27.

While in detention, the women who could not speak English and who had no access to interpretation, indicated that they felt very isolated and afraid. They also described their experiences of degrading, cruel, and inhumane treatment at the hands of authorities, which included being restrained, not being permitted to contact friends or family, not being allowed to sleep, and being strip searched. Mi indicated that ‘I was locked with chains and weights, on my wrists, waist and legs ... I felt like I was being treated as a murder suspect. They did not allow me to make a phone call or contact other people.’²⁷ Cookie shared that, while in detention for thirty-five days, much of which was spent in solitary confinement because authorities feared that she might commit suicide, ‘I was strip searched five times. Throughout this entire process, I felt like less of a person, and I lost a part of my humanity.’²⁸ None of the women was told how long they would be detained. Chen Chen indicated that ‘I have written a letter to my son, but I cannot give it to him. Please give it to him after I die. I really cannot survive here; it is so horrible. No one can talk to me. I don’t know how long I need to stay here. I believe I will die here.’²⁹ In five cases, the women also reported that their personal property—identity documents, valuables like jewellery, and their money (CAD 50,000, or approx. USD 32,000, in one case)—had been seized by law enforcement officers and never returned.³⁰ All of the eighteen women were eventually deported.

Between October 2015 and August 2017, Butterfly, in collaboration with a number of other organisations, also conducted a survey of 61 registered Asian holistic practitioners³¹ working in Toronto who, as noted above, have become the target of increased municipal inspections, conducted by bylaw enforcement officers in collaboration with local police, over the last three years. These inspections are allegedly designed to promote workplace health and safety, but they are also a response to suspicions that holistic centres in Toronto offer sexual services and might be sites of human trafficking. Survey respondents did identify a range of workplace issues, including robbery or theft (36 per cent), physical or sexual assault at the hands of clients or others (19.7 per cent), and non-payment by clients or managers (23 per cent). The research, however, ‘did not uncover any instances of forced labour or trafficking.’³² Furthermore, the vast majority (93.1 per cent) of respondents indicated that they had not lodged complaints to police for these infractions,

²⁷ ‘Mi’s Story’, *Ibid.*, pp. 14, 29.

²⁸ ‘Cookie’s Story’, *Ibid.*, p. 22.

²⁹ ‘Extracts From Stories of Other Migrant Sex Workers’, *Ibid.*, p. 24.

³⁰ ‘Victimization Created by Anti-Trafficking Investigations’, *Ibid.*, pp. 30-31.

³¹ The survey respondents ranged in age between 24 and 64 years and had lived in Canada for between one and ten years. Lam, *Survey on Toronto Holistic Practitioners*, p. 9.

³² *Ibid.*, p. 19.

maintaining that they feared that doing so would trigger more inspections, cause the loss of clients or business, and/or would result in them being arrested, charged, fined, or discriminated against by law enforcement. Some also reported that they had had negative and unhelpful experiences with police when lodging such complaints.³³ These responses are not surprising given that the majority of respondents (65.5 per cent) indicated that their primary workplace concern was the number and frequency of bylaw inspections and/or police raids given that half of them ‘had been arrested, issued a ticket, or received a fine.’³⁴ Of equal significance, 34.3 per cent reported being abused, harassed, and intimidated by bylaw enforcement and police officers during the often protracted inspections. These actions tended to involve threatening questions about their immigration status, unwarranted searches of their personal items, and, at times, highly stigmatising and dehumanising treatment. For example, in order to determine if they were providing erotic services, three respondents shared that they ‘were asked to remove their robes or pull up their dresses to show their clothing and underwear, and two indicated that the officers took pictures of them in this state.’³⁵

Butterfly members are often asked if Asian holistic practitioners in Toronto are providing sex services. In response, they point out that it should not matter if they are sex workers or not but what does matter is that they are experiencing abuse and humiliation at the hands of bylaw officers and local police. They add that it is important to challenge the perception that, if the workers are engaging in sex work, then ‘what law enforcement is doing is okay’.³⁶ Furthermore, as of April 2018, according to Butterfly and the Coalition Against Abuse By Bylaw Enforcement, ‘the city has dedicated \$682,000 of its annual budget to employ five additional bylaw enforcement officers to conduct these inspections’, with a ‘specific mandate of targeting 410 holistic centres and 25 body rub parlors’, meaning ‘victimization and humiliation will only escalate.’³⁷

³³ *Ibid.*, pp. 10–11.

³⁴ *Ibid.*, p. 10, 16.

³⁵ *Ibid.*, p. 16.

³⁶ M Ramsawakh, ‘We Need to Stop Confusing Sex Work with Human Trafficking’, *Medium*, 29 August 2018, <https://medium.com/shareyournuance/we-need-to-stop-confusing-sex-work-with-human-trafficking-6ba7897fd3cd>.

³⁷ Butterfly, ‘Toronto’s Bylaw Officers are Leading a Racist Attack on Spa Workers’, *Medium*, 23 April 2018, <https://medium.com/@Butterflysw/torontos-bylaw-officers-are-leading-a-racist-attack-on-spa-workers-385bb33f6fff>; Coalition Against Abuse By Bylaw Enforcement, ‘Protect the Human Rights of Holistic Practitioners – Stop Abuse by Bylaw Enforcement’, *Change.org*, 2018, <https://www.change.org/p/coalition-against-abuse-by-bylaw-enforcement-protect-the-human-rights-of-holistic-practitioners-stop-abuse-by-bylaw-enforcement>.

Peer-Based Community Organising

Butterfly recognises that Asian and migrant sex workers are experts of their own lives and seeks to empower them by offering a range of multi-language resources and information. For example, it maintains a 24/7 hotline in English, Mandarin, and Cantonese, provides crisis and counselling support, and engages in outreach work in venues where Asian and migrant sex workers work. The organisation has also created important opportunities for migrant sex workers' often silenced voices to be heard. In May 2015, Butterfly organised a community art project, entitled 'Butterfly Voices', which enabled Asian and migrant sex workers in Toronto and beyond to engage in 'the empowering acts of first-person storytelling and art making' and to share their perspectives on their work, lives, and experiences.³⁸ In turn, this project was exhibited at public venues in 2015 and 2016 in an effort to challenge stereotypical assumptions about Asian and migrant sex workers, to foster understanding of the diversity and complexities of their lives, and to cultivate greater respect for their agency.³⁹

Core to Butterfly's philosophy and approach is to build a grassroots and peer-based organisational network through which Asian and migrant sex workers can reduce their social isolation, build community, and foster resilience. Rather than relying on the so-called protection of law enforcement or solely on outside service organisations, a peer-based model provides an important alternative, which allows Asian and migrant sex workers to build capacity, exchange knowledge, and create a network of mutual support. For example, they are able to share approaches to deal with bad bosses or clients, develop their own safety plans to avoid dangerous and abusive situations, devise strategies to use their collective bargaining power to negotiate better working conditions, reduce exploitation and violence, change workplaces or find a place to work, and secure clients and advertise within a criminalised environment.⁴⁰

Butterfly has also produced accessible and multi-language publications and hosts workshops and trainings where Asian and migrant sex workers can gain an understanding of Canada's criminal, immigration, and municipal laws, and, depending on their im/migration status, how the laws may affect them and what their rights are. They also learn about and share strategies to minimise

³⁸ E Lam (ed.), *Journey of Butterflies 2016*, April 2016, p. 8, https://docs.wixstatic.com/ugd/5bd754_6d9ddaec30e947efbef4e94b7e7ee828.pdf.

³⁹ For further information on this project, see Butterfly, 'Butterfly Voices: Collecting stories of migrant sex workers around the world', 2015, https://docs.wixstatic.com/ugd/5bd754_f89a2fdcd4d648239f1a8992cb5cf82d.pdf; 'Migrant Sex Workers Art: Butterfly Voices', *YouTube*, 17 December 2016, <https://youtu.be/Z6g8xxUpCaw>.

⁴⁰ Lepp, 2018, p. 62.

the harms and risks that they experience when they interact with authorities, be they city inspectors, municipal, provincial, or federal police officers, or immigration and CBSA officials.⁴¹ Through organising and fostering leadership in the migrant sex worker and other social justice movements, according to Butterfly, Asian and migrant sex workers are also better positioned to engage in advocacy work, challenge oppressive immigration and legal policies, and fight for safety, dignity, and justice.

By listening to and documenting the experiences of Asian and migrant sex workers, Butterfly's research offers further concrete evidence of the multiple harms of anti-trafficking investigations on these communities and exposes the manifold ways in which police, immigration, and bylaw enforcement officers abuse their power and violate the workers' human rights. As Butterfly has argued, racial profiling, intensified surveillance, and discriminatory treatment, as well as the persistent risk of arrest, detention, and deportation, contribute to the further marginalisation and isolation of sex workers and increase their mistrust of law enforcement, which in turn heightens their vulnerability to exploitation and violence. As the Canadian Alliance for Sex Work Law Reform reported in October 2018, 'In a survey of Asian sex workers in Toronto and Vancouver, 95 per cent indicated that they never seek help from law enforcement—even if they are experiencing violence, abuse, harassment or exploitation.'⁴² Of equal significance, in early 2018, the Toronto City Council passed a motion to prohibit the members of the five largest professional holistic associations (representing 2,200 practitioners) from obtaining new licenses, a decision which disproportionately threatens the livelihoods of Asian im/migrant women, and especially those with limited English language skills.⁴³

⁴¹ See, for example, E Lam and T Santini, 'Upholding and Promoting Human Rights, Justice, and Access for Migrant Sex Workers: Part 3—Legal information for migrant sex workers', October 2017, https://docs.wixstatic.com/ugd/5bd754_506c23f7470e459f802c842381a1b1eb.pdf; Butterfly, 'Who is Who? Identifying law enforcers', July 2017, https://docs.wixstatic.com/ugd/5bd754_748f9f3d7c9a4139b999f5b4a26b9f7a.pdf.

⁴² Canadian Alliance for Sex Work Law Reform, 'Sex Workers Rights Groups Oppose Police Operation Northern Spotlight. Press Release', 9 October 2018, <http://www.spoc.ca/ONS%20press%20release.pdf>.

⁴³ Butterfly, 'Toronto's Bylaw Officers Are Leading a Racist Attack on Spa Workers'. In March 2019, the Toronto City Council embarked on a series of public consultations and stakeholder meetings as part of its review of the bylaws governing body rub parlours and holistic practitioners. According to Butterfly, the intent behind the review is to ban or drastically reduce the number of licenses for holistic practitioners as an anti-trafficking measure, a move that is supported by prohibitionist groups in Toronto. Butterfly and its allies are lobbying the city council to adopt an evidence-based and labour rights approach, which includes ensuring the meaningful participation of the workers who will be directly affected.

Butterfly constitutes one of the few sources of social and personal support for Asian and migrant sex workers, including those with precarious or no citizenship status who find themselves in forced labour situations or who are swept up in anti-trafficking investigations. For example, the organisation reported, with reference to the eighteen migrant sex workers discussed above, that it

sent 300 letters, emails, and phone messages to find social support for one of the women. Most of the social services organizations refused because she had not been officially identified as a trafficking victim and she was not a resident. Some service providers were also reluctant to offer support because they did not want to get involved in ‘organized crime’ when they found out the migrant sex worker was connected with other migrant sex workers.⁴⁴

In addition to engaging in outreach work in hotels, massage parlours, holistic centres, and other establishments and to offering medical, emotional, personal, and emergency support to Asian and migrant sex workers, Butterfly members also provide them with various forms of direct assistance when, for example, they are arrested, detained, and deported:

We work quickly to find lawyers, access information regarding the case, advocate for workers every step of the way, and contact their friends and family. We visit and have phone calls with workers who are detained, as well as help them buy plane tickets to go back home [to minimize their time in detention], help them pack, and gather their personal items and valuables to bring to the airport or detention centre. We also accompany sex workers to court proceedings to provide support for them in the courtroom, represent them in detention review, help them find bond persons, and assist in finding community resources, such as shelter and social services. When sex workers are deported, we continue to support them even after deportation, helping them with housing, finances, coping with personal issues [including being traumatized during arrest and detention], and providing long-distance English classes when they return to their countries of origin.⁴⁵

Butterfly is also committed to enhancing the social services that are available to Asian and migrant sex workers, especially given that, from its perspective, an increasing number of programmes are transforming themselves into prohibitionist-inspired anti-trafficking and sex worker exiting programmes.

⁴⁴ Lam, *Behind the Rescue*, p. 31.

⁴⁵ Lam, *Journey of Butterflies 2016*, p. 7.

Working in collaboration with a number of Toronto-based organisations (the Chinese Canadian National Council Toronto Chapter, the Chinese and Southeast Asian Legal Clinic, and St. Stephen's Community House), with the support of legal expert Tara Santini, and with the direct and meaningful participation of migrant sex workers, Butterfly has created a series of training materials and an online webinar specifically tailored for service providers and frontline workers.⁴⁶ Taught from a sex worker, migrant, and labour rights perspective, the purposes of this training is to assist service providers to better understand the experiences and needs of migrant sex workers and how to protect and defend their labour and human rights.⁴⁷ In addition, this educational work is designed to encourage service providers and frontline workers to develop a more critical perspective on mainstream anti-trafficking discourses and campaigns, including the tendency to conflate sex work, migration, and trafficking, and to understand their harmful effects on marginalised sex workers. Most concretely, service providers are also challenged to 'recognize that [their] own subjective values and ideologies associated with sex work and human trafficking may prevent [them] from understanding migrant sex workers' lived experiences, and from providing them with appropriate services and support.'⁴⁸ This reflective work is important so that frontline workers can incorporate human rights-based, person-centred, and non-judgemental approaches into their professional and service provision practices. As of 27 March 2018, over 350 service providers working in the legal, social work, sex work, and health sectors in Canada and other parts of the world have participated in the training either in-person or online, and over 1,200 individuals have accessed the training materials.

Finally, policy advocacy and alliance building with the full participation of Asian and migrant sex workers is also central to Butterfly's work. Whether preparing a submission to the House of Commons Standing Committee on Justice and Human Rights on Canada's federal human trafficking policy⁴⁹ or

⁴⁶ See, for example, T Santini and E Lam, 'Upholding and Promoting Human Rights, Justice and Access for Migrant Sex Workers. Part 1: Guide for service providers', October 2017; E Lam and V Wong, 'Supporting the Human Rights of Migrant Sex Workers: Legal training for services providers and front-line workers', *YouTube*, 22 January 2018, <https://youtu.be/9PHfcSNjZV0>. All of the training materials are available at <https://www.butterflysw.org/legal-information-for-services-prov>.

⁴⁷ Santini and Lam, 'Part 1: Guide for Service Providers', p. 3.

⁴⁸ T Santini and E Lam, 'Upholding and Promoting Human Rights, Justice and Access for Migrant Sex Workers. Part 4: Q & A for service providers', October 2017, p. 8.

⁴⁹ Butterfly, 'How Migrant Workers are Harmed by Anti-Trafficking Initiatives and Policies', Brief to the House of Commons Standing Committee on Justice and Human Rights, Human Trafficking in Canada, June 2018, <https://www.ourcommons.ca/Committees/en/JUST/StudyActivity?studyActivityId=9749514>.

appearing before the Municipal and Standards Committee of the City of Toronto on the issues of the over-policing of Asian holistic practitioners,⁵⁰ it is essential that Asian and migrant sex workers are mobilised and supported in political lobbying and social justice work. Butterfly also works to build the migrant sex worker movement by fostering coalitions and alliances with a number of social justice groups, such as the Workers Action Centre, a Toronto-based organisation fighting for fair and dignified work, especially for people in low-wage and unstable employment; the Migrant Workers Alliance for Change, a coalition of national migrant worker groups and their allies; as well as the FCJ Refugee Centre, the Chinese Canadian National Council Toronto Chapter, and other legal clinics. In order to strengthen the fight for Asian and migrant sex workers' rights, dignity, and justice, the organisation necessarily seeks to build connections among sex worker, labour, anti-racist, and migrant rights movements in Toronto and beyond.

Conclusion

As Elene Lam and Chanelle Gallant have argued, in recent decades,

sex workers have been pushing hard to have their voices heard in the media, in the academy, and in community spaces ... However, because of isolation, racism, language differences, and anti-immigrant xenophobia, migrant sex workers' voices are still missing from these conversations – both within the broader society and within the sex workers movement itself. This absence is exploited by anti-sex work prohibitionists who advocate for anti-trafficking measures that often work against the rights of sex workers and migrants.⁵¹

In its work, Butterfly has sought to radically centre the voices and experiences of Asian and migrant sex workers in Canada and to provide them with a multitude of relevant, accessible, and safe legal, social, and emergency supports so that they can better negotiate the conditions of their labour and their lives as both sex workers and as im/migrants. The organisation has also worked,

⁵⁰ Butterfly: Asian and Migrant Sex Workers Network, Maggie's: The Toronto Sex Workers Action Project, the Canadian Alliance for Sex Work Law Reform, the Canadian HIV/AIDS Legal Network, the Migrant Sex Work Project, Andrea Sterling, and Professor Emily van der Meulen, 'Submission to the City of Toronto, Licensing and Standards Committee, Regarding Pending Review of the Body-Rub By-Law', 10 April 2018; AIDSLAW, 'Racism and Prejudice Have No Place in City Hall – A Message to Toronto City Council', Canadian HIV/AIDS Legal Network, 1 May 2018, <http://www.aidslaw.ca/site/racism-and-prejudice-have-no-place-in-city-hall-a-message-to-toronto-city-council>.

⁵¹ Lam and Gallant, p. 293.

through various mediums, to expose the racist, anti-sex work, and anti-migration logics of the anti-trafficking machinery. By mobilising Asian and migrant sex workers, Butterfly presents a meaningful and effective peer-based alternative to the punitive anti-trafficking law enforcement and rescue models. It focuses on prioritising connection, mutual support, and leadership, so that Asian and migrant sex workers can address the real issues they are experiencing, assist in actual cases of exploitation, abuse, and trafficking, increase their power and control over their work situations, and enhance their safety. Butterfly has also contributed a critical intersectional perspective to the sex worker movement and to other social movements committed to gender, labour, migrant, and racial justice.

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Unacceptable Forms of Work in the Thai Sex and Entertainment Industry

Leo Bernardo Villar

Abstract

This article examines the working conditions in sex and entertainment work in Thailand using the Unacceptable Forms of Work (UFW) Framework of the International Labour Organization. Criminalisation of sex work and insufficient oversight of labour conditions increase the vulnerability of sex workers to police harassment; prevent sex workers from accessing legal and social protections; and contribute to the decent work deficit in the sector. Protecting the human rights of sex workers and ensuring decent work in the Thai sex and entertainment industry necessarily involves the decriminalisation of sex work; amending labour and social protection laws, policies, and systems to be inclusive of sex workers; and ensuring implementation. Throughout the process of policy change, the involvement of sex workers, their employers, and civil society organisations is crucial.

Keywords: sex work, working conditions, unacceptable forms of work, ILO, Thailand

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Introduction

Currently, most debates on sex work are linked to morality and traditional gender and sexual norms, rather than public health and human rights. The pervasive stigma against sex work has been shaped and is maintained by national legislation and policies that are informed by dominant cultural and religious norms, and has often been exacerbated by the conflation of sex work

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and trafficking.¹ Despite legitimate concerns about the sexual exploitation of children, forced labour, and human trafficking, Thai laws that aim to prevent and punish such criminal acts are often discriminatorily enforced to penalise and harass sex workers and fail to achieve their goals of ensuring individuals are not exploited.²

In Thailand, migrant sex workers are often treated as victims of trafficking regardless of their decision to enter sex work.³ Pushed by international pressure—particularly by the US State Department’s *Trafficking in Persons Report* (TIP Report)—to act against human trafficking, Thai police have used trafficking to justify raids on entertainment establishments to arrest and detain sex workers, either as criminals under the Penal Code (1956, amended 2003) and the *Prevention and Suppression of Prostitution Act* (1996), or as victims of trafficking under the *Prevention and Suppression of Human Trafficking Act* (2008, amended 2015).⁴ In this environment, migrant sex workers—many of whom do not wish to be ‘rescued’—become more vulnerable to rights abuses. They may end up in poorer working conditions and situations where they have little leverage over their employers.⁵ Such misguided anti-trafficking responses compound the structural barriers to decent work that sex workers already face. While anti-trafficking raids are portrayed as ‘rescue operations’, for sex workers, raids regularly result in lost livelihoods, reduced access to support structures, and deportation back to situations of poverty.⁶

Article 6 of the *Convention on the Elimination of All Forms of Discrimination against Women*, 1979 (CEDAW) provides that ‘States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.’⁷ Although this

¹ EMPOWER, *Moving Toward Decent Sex Work*, EMPOWER University Press, Chiang Mai, 2016; EMPOWER, *Sex Workers and the Thai Entertainment Industry*, EMPOWER Foundation submission to the Committee on the Elimination of Discrimination Against Women, Sixty-seventh Session, 3-21 July 2017, retrieved 13 March 2018, <http://www.nswp.org/resource/empower-thailand-cedaw-shadow-report>; Global Alliance Against Traffic in Women, *Sex Workers Organizing for Change: Self-representation, community mobilisation, and working conditions*, GAATW, Bangkok, 2018.

² EMPOWER, 2016.

³ EMPOWER, 2017.

⁴ EMPOWER, *Hit & Run: The impact of anti trafficking policy and practice on sex worker’s human rights in Thailand*, EMPOWER Foundation, Chiang Mai, 2012.

⁵ EMPOWER, 2012.

⁶ *Ibid.*; See also: Global Alliance Against Traffic in Women, *Collateral Damage: The impact of anti-trafficking measures on human rights around the world*, GAATW, Bangkok, 2007.

⁷ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, Article 6.

terminology allows for a broad interpretation and implementation,⁸ CEDAW can serve as foundation for the promotion of the rights of women sex workers and their freedoms. In the combined sixth and seventh periodic reports of Thailand in 2017, the CEDAW Committee expressed their concerns over the exploitation of sex workers and presented Thailand with recommendations, including a review of the *Prevention and Suppression of Prostitution Act* with an aim to decriminalise women in sex work and to ensure the full application of labour laws in all legally operating entertainment enterprises.⁹ However, the Thai government has yet to act on the Committee's recommendations.¹⁰

This paper is based on the findings of an upcoming International Labour Organization (ILO) study, *Employed or Exploited? Exploring when sex work becomes an unacceptable form of work in Thailand*.¹¹ It draws on site surveys and interviews with 107 respondents including 73 women, men, and transgender sex workers; 24 employers of sex workers; seven public health officials; and three representatives of civil society organisations that work to support sex workers.¹² Sex worker respondents included Thai nationals, migrants from neighbouring countries, and stateless members of ethnic minorities. Data collection was done in five locations: Bangkok, Chonburi (Pattaya), Chiang Mai, Sa Kaeo, and Udonthani from December 2014 to May 2015.

Building on this primary data and a desk review of relevant literature and national policies on sex work in Thailand, this paper identifies the lack of decent work conditions in the Thai sex and entertainment sector within the twelve Dimensions of ILO's Unacceptable Forms of Work (UFW) Framework.¹³ The UFW Framework was developed to address labour issues in informal work sectors,¹⁴ especially where marginalised populations predominate—including, but not only, sex work and domestic work. Therefore,

⁸ International Women's Rights Action Watch Asia Pacific and Global Network of Sex Work Projects, *Framework on Rights of Sex Workers & CEDAW*, IWRAW-AP, Kuala Lumpur, 2017.

⁹ Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined sixth and seventh periodic reports of Thailand*, adopted by the Committee at its sixty-seventh session 3-21 July 2017, retrieved 14 August 2018, https://www.fidh.org/IMG/pdf/cedaw_c_tha_co_6-7_25136_e.pdf.

¹⁰ GAATW, 2018.

¹¹ At the time of writing this paper, the study remains unpublished. I obtained access to the data in my role as a consultant with the ILO. Further information about the study can be requested from the ILO.

¹² The identities of the respondents quoted in this paper have been anonymised to protect their safety and privacy. Sex worker respondents are identified by their gender and the kind of entertainment place in which they work.

¹³ J Fudge and D McCann (eds.), *Unacceptable Forms of Work: A global and comparative study*, International Labour Office, Geneva, 2015.

¹⁴ *Ibid.*, p. 48.

it is important to note that the aim of this paper is not to identify sex work as an unacceptable form of work. Rather, it argues that indications of unacceptable forms of work and the increased vulnerability of sex workers to exploitation occur as a result of the criminalisation of sex work in Thailand and insufficient oversight of labour conditions. Addressing these issues in the sex and entertainment industry requires the decriminalisation of sex work and meaningful recognition of the human and labour rights of sex workers.

The Sex and Entertainment Sector in Thailand

Since the 1950s, Thailand has become well known for its sex and entertainment sector when American soldiers began to use parts of the country as a rest and recreation centre during the Viet Nam War. In the 1980s and 1990s, an increase in foreign investment boosted tourism in Thailand along with the entertainment sector.¹⁵ As a result of this expansion, many entertainment venues were established in major tourist destinations including Bangkok, Pattaya, Phuket, and Chiang Mai; this was followed by the influx of Thai and migrant entertainment workers.¹⁶ Sex workers are often legally employed as entertainers in venues, including karaoke bars, beer bars, a-go-go bars, and massage parlours¹⁷ where providing sexual services occurs supplementary to entertainment work.¹⁸ As one respondent said:

‘It’s a kind of supplementary work here. The bar doesn’t force all employees to go with clients. It’s just a karaoke bar here. The [sex] work sort of hides itself between the employee and the client.’ – Man sex worker, karaoke bar

Although many brothels have transformed into karaoke or beer bars, some brothels still exist in Thai-Lao border areas where many Lao migrant entertainment workers are found.¹⁹

While it may be surmised that the concentration of entertainment venues in major cities like Bangkok and Pattaya indicates a substantial international clientele for sex and entertainment workers, a larger segment of the

¹⁵ L. L. Lim, *The Sex Sector: The economic and social bases of prostitution in Southeast Asia*, International Labour Office, Geneva, 1998, p. 214.

¹⁶ *Ibid.*; GAATW, 2018.

¹⁷ In Thailand, massage parlours are considered to be entertainment establishments under the *Entertainment Places Act 1966*, and are distinct from spas which are seen to provide health-related services.

¹⁸ ILO, *Employed or Exploited? Exploring when sex work becomes an unacceptable form of work in Thailand*, ILO, forthcoming.

¹⁹ *Ibid.*

entertainment sector serves local clients.²⁰ According to Lim, there are several conditions within Thai society that support a high local demand for sex and entertainment services, including the social acceptance of men buying sexual services, the increased disposable income of middle- to upper-class Thais, and the development of intra-Thai tourism, which arguably tends to promote the sex sector.²¹

The Unacceptable Forms of Work Framework

The Unacceptable Forms of Work model provides a comprehensive framework for addressing ‘non-standard’ forms of employment, including casual and informal work.²² Since sex work is often situated outside the formal labour market—beyond the scope of the International Labour Standards—the UFW Framework serves as a model with which to identify and analyse unacceptability in the world of sex work. The UFW model contains twelve dimensions of unacceptability and indicators designed to be responsive to the socio-economic contexts of countries at different levels of development: forced labour; health and safety; income; security; working time; voice mechanisms; child labour; social protection; equality, human rights, and dignity; legal protection; family and community life; and work organisation.²³

The Twelve Dimensions of Unacceptability in the Thai Entertainment Sector

Forced labour

Only three of the 73 sex worker respondents who work in entertainment places reported experiencing forced labour indicators. Two Thai women sex workers—one based in Bangkok, and another in a border province—mentioned a lack of freedom to exit work premises. A stateless sex worker based in Chiang Mai also mentioned being coerced into providing services to clients.

These isolated cases of coercion and lack of freedom of movement highlight the need to enhance and adapt the implementation of labour inspections in order to ensure that entertainment establishments abide by the regulations

²⁰ P Guest, A Prohmmo, J Bryant, S Janyam, D Phuengsamran, *Survey of Sexual and Reproductive Health of Sex Workers in Thailand*, Institute for Population and Social Research, Mahidol University, Nakhon Pathom, 2007.

²¹ Lim. See also: B Anderson and J O’Connell Davidson, *Is Trafficking in Human Beings Demand-driven? A multi-country pilot study*, IOM, Geneva, 2003, pp. 17-18.

²² ILO, 2015 p. 48.

²³ *Ibid.*

set forth in Thai labour laws. Aside from these cases, sex worker respondents did not report being deceived, coerced, or threatened to entertain clients. As one respondent stated:

‘Going out with clients [is] up to us. If we want money, we can go with them, if not, then don’t. No coercion.’ – Woman sex worker, beer bar

Health and safety

For sex workers, the challenges to occupational safety and health (OSH) are inherent in the physical nature of their work and compounded by unsafe workplaces and the lack of access to responsive services. Thus, a worker should ideally benefit from a national policy and programme on periodical reviews of occupational safety and health in working environments.²⁴

Although the *Entertainment Places Act* (1966, amended 2003) requires entertainment venues to acquire operating licenses from local police, it does not offer meaningful health and safety protections to entertainment workers.²⁵ Public health officials admit that the Ministry of Public Health’s auditing units only focus on the structure and facilities of businesses, not the occupational safety and health of workers:

‘[Auditing units] don’t look at people [i.e., they only audit the physical environment of the workplace], and there aren’t any sex workers reporting or filing complaints about work-related injuries. This is not within social security coverage. There are no complaints because they are invisible. Whatever problems they encounter don’t get addressed and that’s the end of it. If they go to the police, they would be asked [about their workplace] and get arrested, because what they do is against the law. The law does not provide for them.’
– Public health official

As a result of this lack of oversight, many sex workers experience substandard working and living conditions. Most sex workers (60 out of 73) had OSH-related complaints, including the lack of adequate toilets, dirty work environments, loud noises, lack of privacy in shared sleeping quarters, absence of smoke ventilators, fire exits, and escapes, and iron bar fixtures on doors and windows in some workplaces. Two respondents described conditions as follows:

²⁴ ILO, 2015, p. 85.

²⁵ R Arora, ‘Female Migration and Labor in Thailand: When law and society continue to exclude you’, *UCLA Journal of International Law & Foreign Affairs*, vol. 21, no. 1, 2017, pp. 70-97.

‘We do have separate toilet facilities [for employees], but there’s only one. So sometimes we have to use the toilets for customers.’ – Man sex worker, a-go-go bar

‘I sleep on a sofa... No rooms. Just the place where we work.’ – Woman sex worker, massage parlour

Access to HIV prevention and treatment as well as sexual and reproductive healthcare is also vital to sex workers. The study found that sex workers are less willing to get tested and access treatment due to community-based clinics losing staff and services as a result of the centralisation of health services into provincial hospitals. Sex workers often feel uncomfortable seeking care in large state-run hospitals due to the high volume of patients, longer waiting times, and a generally less welcoming atmosphere. Healthcare providers may have biased perceptions against sex work and end up discriminating against them. Furthermore, police often use the possession of condoms as evidence against sex workers,²⁶ thus discouraging them from using condoms and increasing their vulnerability to HIV infections.²⁷

While Thai sex workers can more easily access health services through Thailand’s universal health care system, which includes STI screening every three months, migrant workers who are not able to enrol in available health insurance schemes and whose employers do not provide these services are forced to visit private doctors or clinics.²⁸ According to Barmania, many undocumented migrant sex workers, particularly in border areas, have to pay for HIV testing and treatment themselves.²⁹ Therefore, discriminatory health systems, the lack of access to health information, and the lack of affordable healthcare discourage sex workers, including migrants, from seeking and accessing health services and contribute to the indications of UFW in the sector.

²⁶ EMPOWER, 2016.

²⁷ NSWP, *The Impact of Criminalisation on Sex Workers’ Vulnerability to HIV and Violence*, Policy Brief, 2017, retrieved 3 January 2019, <http://www.nswp.org/resource/the-impact-criminalisation-sex-workers-vulnerability-hiv-and-violence>.

²⁸ S Barmania, ‘Thailand’s Migrant Sex Workers Struggle to Access Health Care’, *The Lancet*, vol. 382, 2013, pp. 493-4, [https://doi.org/10.1016/S0140-6736\(13\)61681-5](https://doi.org/10.1016/S0140-6736(13)61681-5).

²⁹ *Ibid.*

Income

Sex work often provides higher incomes than other job options generally available to migrants or women of lower socio-economic status. While income estimates vary across different sources,³⁰ sex workers earn a monthly total income above the monthly minimum wage (approx. THB 10,000 or USD 300), due to additional income sources, including tips, drink shares,³¹ off fees, and bar fines.³² With this additional income added to their basic monthly salaries, sex workers can potentially earn a minimum total monthly income of THB 15,000 (approx. USD 450). Some sex workers can earn significantly more, up to THB 60,000 (approx. USD 1,800).³³

The ILO study found that, while sex workers may earn a total income above the minimum wage, there are no official standards on wage setting across different entertainment establishments. As a result, basic monthly salaries vary depending on venue. For instance, star dancers in Bangkok receive more than THB 10,000 in basic monthly salary, but other workers receive less.

The income sex workers earn is offset by the many unfair wage deductions imposed by employers and managers. These include, for example, if workers take additional days off or a sick leave, fail to undergo mandatory health checks, or do not take an ‘off’ client to a place designated by the establishment. These deductions can range from THB 100 to 2,000 depending on the penalty incurred.³⁴ One respondent described the fines for lateness:

³⁰ In the 1998 ILO report, the average monthly income of women sex workers was THB 20,000 (Lim, 1998, p. 153), while according to a 2017 interview with Liz Hilton of EMPOWER, sex workers can earn two to ten times the daily minimum wage (GAATW, 2018, p. 49).

³¹ Drink shares are an amount that workers get from what clients pay for drinks in the establishment.

³² Off fees are the payment that a sex worker directly receives from a client when outside their place of work. Going out with clients does not always involve sex. Some ‘off’ outings include just providing companionship as a friend, sleeping together without sex, or just going out for a walk. Bar fines are fees paid by the client to the employer in order to take a sex worker outside of the venue.

³³ According to the public health officials interviewed for this study, migrant sex workers in the lower end establishments along the Thai–Lao border can earn as much as THB 50,000–60,000 per month if they have sex with up to ten clients per day.

³⁴ Section 76 of the *Labour Protection Act* prohibits employers from making any deductions from basic pay, overtime pay, holiday pay, and holiday overtime pay except for payment of income tax, labour union contributions, debts the employee owes to savings cooperatives, and employee contributions with respect to the Employee Welfare Fund. See: *Labour Protection Act*, B.E. 2541 [1998], available at https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=49727.

‘If you come to work later than 7 p.m., it’s a 100 baht fine, and if later than 8 p.m., it’s a 500 baht [fine] for Monday through Thursday, and a 700 baht [fine] for Friday through Sunday.’ – Man sex worker, massage parlour

Security

Job security in the UFW model includes indicators such as day labour, casual and zero-hour contracts, and termination of employment without valid reason or without procedural protections.

Few respondents had to submit a written job application, and none reported being given any formal employment contract.³⁵ Employees of certain types of venues, in particular traditional massage parlours, reported that they had no discussion or agreement about going out with clients during hiring but could be expected to later on. In venues where no explicit agreements were made about providing sex services to clients, services were arranged either by the owner/manager discreetly within the establishment, or between the sex worker and the client without the owner/manager’s involvement. Managers who have no direct involvement in transactions for sex services can deny this aspect of the business. In some bars, workers may be subject to zero-hour contracts where they are only expected to sell a minimum number of drinks but are not fully recognised as employees. Two respondents described the arrangements as follows:

‘There was no [formal] agreement. It was voluntary. [When] you work in this kind of job, you know what you’re getting into.’ – Woman sex worker, coyote bar

‘No [formal] agreement with the employer. I had a rough idea of what [the work] would be, and I was willing to do it... but I didn’t know all the details like the drink share, off fee, or pay deduction rate, and only found out later. But nothing I could do about it, so OK.’ – Transgender sex worker, a-go-go bar

The lack of job security for many entertainment workers can be attributed to insufficient oversight of labour conditions. As a result, employment practices for entertainment workers are unregulated and labour inspections overlook and fail to protect them from unfair employment termination.

³⁵ The terms of work (i.e. job description, wage, etc.) were either agreed upon verbally or not discussed at all. None of the respondents was asked to sign a contract.

Working time

Excessive working hours, insufficient weekly and daily rest, lack of paid holiday leave, and night work are some of the common experiences of sex workers in terms of working time. Most venues where sex services are available have late operating hours, typically opening from early to late afternoon and closing from around midnight to 2 or 3 a.m. Sex workers did not report many complaints regarding working hours. The most common complaint was the insufficient number of days off as some had only two days a month off, and many had none.

In general, sex workers have no paid holiday leave³⁶ and most establishments arbitrarily set an employee's weekly day off. Some allow workers to choose their own days off within certain restrictions and conditions; for example, they cannot have days off on weekends, or take consecutive days off. Taking more days off (including sick leave)³⁷ than allowed usually incurs steep wage deductions. Workers in a-go-go and beer bars who have two to four days off a month are subject to higher wage deductions than workers in other venues if they take extra days off—up to THB 500-700 per day. In other venues, sex workers may have up to one day off per week, subject to wage deductions of THB 300-500 for each additional day. In venues that do not allow any free days, employees pay penalties that could range between THB 100 and 1,000 per day.³⁸ One respondent described the deductions as follows:

‘Taking Friday and Saturday off is not allowed, nor during the 25th and the 5th days of the month. If you take a day off [during that time], the deduction is 700-1,000 baht. And if that day is a Friday or Saturday and the last or first day of the month, the rate is 1,000 baht. If you come late to work, it's 2 baht per minute, and if you go out with a customer [during regular working hours], it's 400 baht.’ – Woman sex worker, karaoke bar

³⁶ Section 30 of the *Labour Protection Act* states that an employee who has worked continuously for one year shall be entitled to an annual holiday of not less than six working days. Section 56 states that employers shall pay an employee their basic pay equal to the basic pay of a working day during (1) weekly holidays, except for employees who receive wages calculated on a daily, hourly, or piece rate basis; (2) traditional holidays; and (3) annual holidays. See: *Labour Protection Act*, B.E. 2541 [1998].

³⁷ Section 57 states that employers shall pay an employee their basic pay during a sick leave equal to the basic pay of a working day for the duration of the sick leave, but not exceeding 30 working days per year. *Ibid.*

³⁸ Section 28 states that employees are entitled to at least one day off per week as a weekly holiday and the interval between each weekly holiday shall be no longer than six days. An employer and employee may agree in advance to fix which day will be the weekly holiday. *Ibid.*

As such, many sex worker respondents desired a weekly day off without wage deductions to be a regular part of their work.

Women continue to suffer from unfair treatment and wage discrimination even in sex work. Women and transgender sex workers across all venues face stricter rules and are often subject to wage deductions for additional days off. Most men sex workers, however, were allowed up to four or five days off per month and fewer were subject to wage deductions for taking additional days off (and when deductions were charged it was often at a lower rate).

While excessive hours and lack of sufficient days off may amount to a forced labour offence, determining whether overtime is indicative of forced labour can be complex.³⁹ Regardless, the working hours of sex workers highlight the need for the Thai government to improve comprehensive oversight and implementation of labour laws in entertainment venues, especially to ensure access to days off and sick leave without wage deductions.

Representation and voice mechanisms

Sex workers in Thailand currently do not have a form of workers' organisation or association. There is no legislation that officially restricts sex workers from unionising and at least one sex worker group has explored the possibility of becoming part of a union.⁴⁰ The *Labour Relations Act* (1975, amended 2001) limits the ability of migrant workers to participate in unions.⁴¹

The criminalisation of sex work and the stigma surrounding it create an environment where sex workers' voices are gravely unrepresented in decision-making processes throughout the chain of governance—from legislation, national and sub-national policies, and implementation that affect sex workers. Nevertheless, some sex workers have joined the activities of or have become a member of an NGO supporting sex workers such as EMPOWER, SWING, Sisters, or Mplus.⁴²

³⁹ ILO, 2012.

⁴⁰ Interview with Liz Hilton from EMPOWER.

⁴¹ *Labour Relations Act* (1975, amended 2001), Section 101(2).

⁴² EMPOWER is an organisation in Chiang Mai by and for women sex workers that provides lessons on literacy, foreign languages, and other skills that sex workers choose to learn. It also manages the Can Do Bar, which is the organisation's model entertainment venue for safe and fair sex work. SWING, or Service Workers in Group, works with sex workers of all genders and nationalities. It provides a variety of health services to sex workers through three peer-led drop-in centres based in tourist spots. Sisters Foundation is a transgender rights organisation in Pattaya. It provides health services to transgender sex workers and works closely with local police to end police violence against transgender women. MPlus is an organisation in Chiang Mai that provides HIV prevention, treatment, and care services to men who have sex with men, and men and transgender sex workers. It advocates for HIV awareness and an end to discrimination against people living with HIV and sex workers.

Child labour

None of the respondents in the study was underage, but a few sex workers said they started with sex work before the age of 18. Public health officials and sex worker organisation respondents stated that young sex workers are less common than they used to be due to the strict laws against child labour and sexual exploitation of children in Thailand.

However, there is anecdotal evidence of teenagers or secondary school students seeking customers in public areas (often parks) and/or through online chat forums and social media. Female vocational school and college students (who may or may not be older than 18) working on a freelance basis through establishments, such as karaoke bars, massage parlours, and beauty salons, were also mentioned. Schoolboys have also been said to advertise and communicate online with clients for sex in internet shops.

Despite some young people below the age of 18 providing sexual services with or without knowledge of the health and safety risks that come with sex work, there is often more to these cases than the sexual exploitation of children. Poverty, lack of access to education, and general lack of opportunities for social and economic mobility are among the factors that lead young people into sex work. NGO respondents said that many young people in sex work have experienced domestic violence, school bullying, child abuse, and sexual abuse from their peers and family members prior to doing sex work.⁴³

Whether these young people work on their own or have older persons serve as intermediaries, Thai law prohibits procuring sex with minors. In cases where sex worker organisations encounter young sex workers, these children are given counselling on the health and safety risks of sex work and are referred to child protection organisations.⁴⁴

Social protection

Thai sex workers are not explicitly excluded from social protection laws but they are often deterred from accessing social security by fears of facing arrest, public shaming, and deportation.⁴⁵ These deterrents, and more broadly the criminalisation of sex work and insufficient oversight of labour conditions, prevent sex workers from reporting employer non-compliance with social protection laws, as well as limit them from accessing benefits, including pensions and insurance. Sex workers who are not formally employed cannot enrol in social security schemes. Only managers, cashiers, and the few who

⁴³ ILO, forthcoming.

⁴⁴ *Ibid.*

⁴⁵ EMPOWER, 2016.

have employee status (as entertainment workers) are enrolled in the Thai social security programme, but often shoulder both employee and employer's contributions.⁴⁶

Stateless and migrant sex workers, especially those with irregular status, are often unable to access social security mechanisms that regular migrants in formal job sectors have. Though health insurance coverage has been extended to migrant workers since 2001, barriers, such as requiring migrants to pay large fees and limited translation of information regarding benefits, severely limit migrants from fully enjoying their health insurance.⁴⁷ Migrant sex workers, on the other hand, are unable to enrol in the health insurance scheme since sex work is not recognised as legitimate employment.

Equality, human rights, and dignity

Despite perceived tolerance of sex work in Thai society, sex workers of all genders continue to face deep societal stigma. For example, media reports about sex workers are often stereotypical and derogatory, portraying them as potential criminals and carriers of disease, particularly of HIV.⁴⁸ The Thai media has routinely published reports using sensationalised photos and headlines that state the number of women rescued in raids.⁴⁹

Transgender sex workers experience compounded stigma and discrimination. Transgender women are often portrayed negatively as sex workers and petty criminals.⁵⁰ There are reports of transgender women (not always sex workers) facing random drug tests and arbitrary arrests for presumption of sex work while walking in shopping malls or on the streets in Pattaya.⁵¹ Many transgender sex workers feel bad about contributing to the continued association of transgender identity with sex work, which has negatively affected the community.⁵² Moreover, stigma affects the work of transgender sex workers, too:

⁴⁶ ILO, forthcoming.

⁴⁷ International Organization for Migration and World Health Organization, *Financing Healthcare for Migrants: A case study from Thailand*, IOM and WHO, Bangkok, 2009; V Tangcharoensathien, A A Thwin and W Patcharanarumol, 'Implementing Health Insurance for Migrants, Thailand', *Bulletin of the World Health Organization* 2017, vol. 95, 2017, pp. 146-151, <http://dx.doi.org/10.2471/BLT.16.179606>.

⁴⁸ EMPOWER, 2017; GAATW, 2018.

⁴⁹ EMPOWER, 2016.

⁵⁰ A Quan (ed.), *A Tool for Change: Working with the media on sexual orientation, gender identity, expression, and sex characteristics in Thailand*, Burapha University, Saen Suk, 2017.

⁵¹ C Yangharoenchai, 'Law cops out on transgender rights in Pattaya', *Bangkok Post*, 20 August 2017, retrieved 13 March 2018, <https://www.bangkokpost.com/news/special-reports/1309607/law-cops-out-on-transgender-rights>.

⁵² L B Villar, *Sisters, Boyfriends, and the Big City: Trans entertainers and sex workers in globalized Thailand*, Master's Thesis, Chulalongkorn University, Bangkok, 2017.

‘[The client] knew that I was transgender. [He was taking me ‘off’] and I was going with him, but it seemed a woman was jealous. She ran to tell him that I was *kathoey*.⁵³ So the guy was embarrassed; so he pushed me away.’ – Transgender sex worker, general bar

The study also found that workers may lose their jobs if found to be HIV positive or pregnant, which disregards ILO recommendations No. 200⁵⁴ and 183⁵⁵ respectively. Discrimination against people living with HIV is also prevalent in sex work since sex workers are one of the groups that bear the brunt of stigma against HIV.⁵⁶

Stateless ethnic minorities and migrants are also subject to discrimination and exploitation in their working life.⁵⁷ Due to a range of barriers including the criminalisation of sex work and the high costs associated with regular migration, migrant workers rely on brokers/intermediaries, which increases their risk of exploitation, harassment, and abuse by their employers, clients, and law enforcement officials.⁵⁸

Sex workers of all genders experience various forms of abuse, violence, and harassment from clients. For example, two respondents noted:

‘You can protect yourself to a degree, but sometimes you can’t keep yourself safe. So you just have to do it, because if you don’t you get hurt. Sometimes you see what clients are doing, and even you know that is illegal, you have to stay put.’ – Transgender sex worker, coyote bar

‘I called out to my friends. Called out to the cleaning woman that he was going to do something to me, and I was able to get out.’ – Woman sex worker, massage parlour

⁵³ *Kathoey*, commonly translated as ‘ladyboy’ in English, refers to transgender women.

⁵⁴ ILO, *HIV and AIDS Recommendation, 2010 (No.200)*, 17 June 2010, Article 11.

⁵⁵ ILO, *Maternity Protection Convention, 2000 (No.183)*, 15 June 2000, Article 8.

⁵⁶ National AIDS Committee, *Thailand AIDS Response Progress Report*, NAC, Bangkok, 2015.

⁵⁷ B Harkins and A Ali, ‘Evidences or Attitudes? Assessing the foundations of Thailand’s labour migration policies’, Paper presented at the International Seminar on Mixed Migration in Southeast and East Asia, Bangkok, 2017.

⁵⁸ C B N Chin, *Cosmopolitan Sex Workers: Women and migration in a Global City*, Oxford University Press, Oxford, 2013; R S Parreñas, *Illicit Flirtations: Labor, migration, and sex trafficking in Tokyo*, Stanford University Press, Palo Alto, 2011. See also: B Harkins, ‘Social Protection for Migrant Workers in Thailand’ and C Natali, E Mcdougall and S Stubbington, ‘International Migration Policy in Thailand’, in J W Huguét (ed.), *Thailand Migration Report 2014*, United Nations Thematic Working Group on Migration in Thailand, Bangkok, 2014.

Compounding these experiences are violence at the hands of police and other law enforcement officials and the military, ranging from frequent violent raids and random drug tests, to arbitrary arrests, extortion, and demands for bribes or protection money.⁵⁹ Therefore, sex workers do not report their experiences of violence from clients to law enforcement, or even less life-threatening crimes, including being robbed or mugged by local gangs.⁶⁰

Legal protection

Sex workers are unable to formally access legal protection.⁶¹ Despite some sex workers being legally employed as entertainers, many of them, including migrants, are deterred from reporting exploitative conditions and accessing legal protection due to the criminalisation of sex work:

‘Are we safe? Well, I’m at risk of [being arrested by] police. I’m a foreigner here, not a Thai national. I don’t have a work permit. I have to be alert. If there are cops around, then I go somewhere else.’
– Transgender sex worker, general bar

Instead of protecting workers, labour inspection systems that should identify abuses in work conditions and terms of employment are often used to arrest sex workers.⁶² This is especially concerning for migrant sex workers who enter Thailand through irregular channels and are often misidentified as victims of trafficking. Despite provisions that afford many migrant workers in other sectors legal status, freedom to travel, and more opportunities, these processes are not available to most migrant sex workers⁶³ who do not maintain a ‘legitimate’ job with an employer willing to support their application:

‘If [sex workers] come in legally, I don’t think there will be many problems, but when they come in illegally, they are definitely vulnerable... Many [violations], like safety issues, food. Whatever is given to them by the owner, that’s all they will have to eat.’ – Public health official

‘The situation now⁶⁴ is that migrants are seen as illegal. So when they work in sex work, they are [seen as] doubly illegal [from the perspective] of human trafficking and foreign migrant labour. This

⁵⁹ EMPOWER, 2012.

⁶⁰ EMPOWER, 2016.

⁶¹ Arora, 2017; EMPOWER, 2016; EMPOWER, 2017.

⁶² EMPOWER, 2012, 2016, and 2017.

⁶³ B Harkins, D Lindgren, and T Suravoranon (eds.), *Risks and Rewards: Outcomes of labour migration in South-East Asia*, International Labour Organization and International Organization for Migration, 2017.

⁶⁴ This refers to 2014 to 2015 when the interviews were conducted.

means whenever a migrant is found in sex work, he or she is automatically considered a human trafficking victim, while in fact, s/he may work voluntarily. As long as foreign migrants working in Thailand are considered illegal, they will have to hide [from authorities] and this puts them at a disadvantage and the employers have an advantage.’ – Director, NGO

Inadequate regulation of labour practices and lack of accessible information on legal rights also increase the risk of sex workers to exploitative work conditions and prevent them from reporting labour law violations.

Family and community life

Instead of having paid maternity leave, sex workers who become pregnant are likely to have their employment terminated. Although remedies, such as being placed in a cashier position, exist in some establishments, they are rare. According to EMPOWER Foundation, 80 per cent of women sex workers are also mothers who provide and care for their children.⁶⁵ Similar to previous sections, the inaccessibility of maternity protection for women sex workers points to the lack of oversight of basic labour rights.

Sex workers in the study did not feel that sex work impacted their life or their family in significant ways. Many said they would continue to engage in sex work until they had enough savings to set up a business, they or their children finished their education, or until they had a chance to go abroad. This illustrates how many sex workers see their work as a means to attain a better personal, family, and community life—far from the narrative of sex workers being victims of trafficking and exploitation.

However, the misidentification of sex workers as victims of trafficking by anti-trafficking law enforcement has a detrimental effect on their families.⁶⁶ Migrant sex workers and their families are often the most affected by anti-trafficking raids, as migrants are more likely to be presumed to be trafficked and are often unaware of their rights and do not understand the purpose of interviews conducted by police.⁶⁷ In these ‘rescue operations’, even migrant sex workers who appear over 18 and can produce identification documents are charged under the *Prostitution Act*, the *Immigration Act*, or the *Alien Employment Act*. Those who are unable to provide proof of age are disbelieved.⁶⁸

⁶⁵ EMPOWER Foundation, S Okeyre and L Hilton, ‘When is sex work “decent work”?’; *Open Democracy*, 9 April 2018, retrieved 20 April 2019, <https://www.opendemocracy.net/beyondslavery/empower-foundation-sam-okyere-liz-hilton/what-would-make-sex-work-decent-work>.

⁶⁶ EMPOWER, 2017; GAATW, 2018.

⁶⁷ EMPOWER, 2016.

⁶⁸ EMPOWER, 2012.

Being identified as a victim of trafficking often results in deportation. Lengthy legal processes prior to deportation take their toll on detained migrant workers. These individuals are likely to return home without money and are possibly still in debt from using brokers to facilitate their initial migration. As a result, they often return to work in Thailand or another country, including in sex work.⁶⁹

Work organisation

Lack of influence over working hours and processes, excessive workloads, and intense physical and mental demands were less important concerns for sex worker respondents. However, meeting monthly drink and ‘off’ quotas to avoid wage deductions often put intense pressure on sex workers. Many entertainment venues set a quota for the number of customers that employees must go out with each month. In both Bangkok and Pattaya, employees who failed to meet the quota were punished by a THB 1,000 (approx. USD 30) wage deduction. However, some bars allow substitution between drink quotas and ‘off’ quotas:

‘Most bar hostesses have a 7,000-baht monthly salary, and [have to] make about 80 drinks or eight off deals. If you don’t get ‘off’ deals, you can substitute 15 drinks per one off.’ – Woman sex worker, beer bar

Many sex workers said they had regular customers who help them fill the minimum ‘off’ quota:

‘I have regular customers and won’t go out with just anybody. Each of us has our own patrons, and not just gay [clients]. They are women, men, gay men, *katboeys*.’ – Man sex worker, beer bar

Regardless, abusive experiences with some clients take a toll on sex workers’ physical and mental well-being, which underscores the importance of sufficient rest days and mental health support for sex workers.

⁶⁹ GAATW, 2007.

Conclusion

Looking at the Thai sex and entertainment sector through the lens of the twelve dimensions of the UFW Framework, this paper has attempted to present signposts that alert us to the indicators of unacceptable forms of work, including forced labour, in the sex industry that need to be addressed. These signposts are often interrelated and need to be addressed as such. For example, the societal discrimination and negative media portrayal of sex workers (under equality, human rights, and dignity) is inextricably linked to the lack of access to legal protection, health services, and social security; the lack of representation and voice mechanisms intersect with the inability of sex workers to claim social security benefits, have maternity leave, have sufficient days off, protect themselves from unfair employment termination, have adequate working and living conditions, and so on.

Crossing the different themes in this paper have been the impact of criminalisation and the need to improve comprehensive and effective oversight of labour laws in the Thai sex and entertainment sector. Criminalisation of sex work and insufficient oversight have enabled the expansion of unsafe and unfair working environments that increase the risk of sex workers—especially migrants—to exploitation, forced labour, and other human rights abuses. Migrants often risk more by engaging in sex work than their Thai counterparts, as they face not only police arrests and abuse from clients and employers, but also misidentification as victims of trafficking, deportation, loss of income and livelihood, etc.

In this context, the decriminalisation of sex work—which would involve updating labour laws and policies to definitively include sex workers into labour and social protection mechanisms, and increasing sex workers' access to free or affordable health care systems—is a crucial first step to protect the human rights of sex workers. In addition to these policy changes, government oversight must be better equipped at identifying and addressing the specific labour rights issues of sex workers, including migrants. Improving oversight of labour laws would require ensuring that labour and health inspection systems listen to, record, and address sex workers' complaints, including those of hostesses, entertainers, and massage workers.

With the aim of supporting sex workers' voices within policy and human rights discussions, this paper presented the different labour and human rights issues that women, men, and transgender sex workers in Thailand face in the context of criminalisation. Listening to these voices elucidates the reality of sex workers and the indicators of unacceptable forms of work in the entertainment and sex industry. This paper challenges the common myths and misconceptions regarding sex work, often tied to the moral and gender politics that also influence many anti-trafficking interventions. As the lived

experiences of sex workers differ from dominant portrayals of sex work as inextricably linked to trafficking, the lack of decent work conditions in the sex sector, as a result of criminalisation and insufficient oversight of labour laws, highlights a crucial labour issue that bears addressing.

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Of Raids and Returns: Sex work movement, police oppression, and the politics of the ordinary in Sonagachi, India

Simanti Dasgupta

Abstract

Drawing on ethnographic work with Durbar Mahila Samanwaya Committee (DMSC), a grassroots sex worker organisation in Sonagachi, the iconic red-light district in Kolkata, India, this paper explores the politics of the detritus generated by raids as a form of state violence. While the current literature mainly focuses on its institutional ramifications, this article explores the significance of the raid in its immediate relation to the brothel as a home and a space to collectivise for labour rights. Drawing on *atyachar* (oppression), the Bengali word sex workers use to depict the violence of raids, I argue that they experience the raid not as a spectacle, but as an *ordinary* form of violence in contrast to their *extraordinary* experience of return to rebuild their lives. Return signals both a reclamation of the detritus as well as subversion of the state's attempt to undermine DMSC's labour movement.

Keywords: sex work, law, labour, raids, police violence, India

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That morning, the phone rang earlier than usual. It was around 6:30, and I was barely waking up from the fatigue of witnessing a police raid that occurred the previous evening in Sonagachi, the iconic red-light district in Kolkata that is my current fieldwork site. I answered the phone and recognised Nita-di's voice on the other end. I was glad to hear from her as she was one of the women in that brothel who managed to escape. We had been out of touch overnight, and I had hoped that she was safe. 'How are you and where are you?', I immediately wanted to know. 'I am ok, don't worry', she said, 'I was able to escape since I saw the police vans turn the corner of our street from my window. It was quick, but I managed.' 'But where are you now?', I asked her. She evaded the question and requested I meet her that afternoon at a tea stall,

saying, 'I have something that I need you to do for me. If you can, deliver the gift I have for my granddaughter.' For the past few days, Nita-di had been talking about her granddaughter's birthday and how she had been saving up money to buy her a present, 'a tiny pair of gold earrings', she had told me. Her daughter, who I eventually learnt was (unofficially) adopted, had moved out of Sonagachi mainly to distance herself from the stigma of prostitution that her mother carried. Nita-di's relationship with her adoptive daughter had been estranged for years, but she still yearned for connection with her and was trying hard to cling to the grandchild.

We met at the designated footpath tea stall that afternoon. Nita-di looked fatigued and restless. As we sat down on the rickety wooden bench, she asked me how I was doing. Though this was not my first time witnessing a police raid, I was truly shaken at the spectacle of the violence and was still wrestling with its remarkable brutality. She put her hand assuringly on mine and said, 'It makes sense that you are shaken; you are not used to such things, but, as you know, the raids are only one of the many things we endure in Sonagachi', raising her index finger for emphasis. 'We withstand so much every day that often I do not even know what will happen tomorrow, where I will be, where I will sleep. I thought the raids went down after we formed DMSC but (it) seems like the police oppression is on the rise again.' Before leaving, I asked when I would see her again. She responded, 'When it gets quieter, I will return to my *ghar* (home).' That evening I took the gift to Nita-di's daughter's house, but she refused to accept it. I called Nita-di with the update. She only said, 'When I return, I will try again'.

In this article, I draw on my ethnographic research with Durbar Mahila Samanwaya Committee (DMSC), a grassroots sex worker organisation in Sonagachi established in 1995 at the peak of the HIV/AIDS epidemic. Since 2010, my research has involved sites such as DMSC offices and clinics, brothels, police stations, state offices, and local hospitals. Here, I specifically concentrate on a raid that occurred in June 2014 at *NandaRanir Bari*, as a paradigmatic example. All the names used here (except Purnima-di's¹) are pseudonyms, and I have scrambled the biographies of sex workers to protect their anonymity. The first section, titled 'What is a Raid?', emphasises the disjuncture between the raid as an institutional surveillance device and the sex workers' lived experience of it. Next, 'The Human Trace' presents the unfolding of the raid one afternoon followed by my visit to *NandaRanir Bari* the next day where I describe the trail of destruction—broken locks, strewn clothes—and recount the lives of the women summoned by the detritus. To draw out the implication the raid has for the sex workers who have been apprehended as

¹ Purnima-di, a veteran and retired sex worker, was my primary informant in the field. She was keen that I use her real name so that 'the work that I have done lives on'.

presumed minors, I present an exchange with officials at the Child Welfare Committee, and how the state uses the anti-trafficking narrative and the protection of children to disregard the labour movement in Sonagachi. The following section, ‘Broken Pieces’, focuses on Nita-di’s return to *NandaRanir Bari*, and how she silently struggles to put her life and livelihood together, both materially and metaphorically. Through a focus on the subversive act of return, I critique the existing notion that red-light districts like Sonagachi lie at the end of the human wasteland, a place to escape from rather than return to.² Nita-di, who was in fact trafficked and has built her home and livelihood in Sonagachi, and even returns to it, urges us to extend our thinking about the aftermath of the raid as it unfolds in the immediacy of the brothel.

What is a Raid?

Nita-di’s³ story is not unique. Her experience overlaps with that of several sex workers I have come to know since 2011. Raids have emerged as an important subject of analysis since the surge in the global anti-trafficking narrative in the early 2000s.⁴ The connotation of the raid as an anti-trafficking instrument varies widely, depending on one’s position on the question of sex work. Radical feminists consider ‘prostitution’ as *the* paradigmatic example of patriarchal violence⁵ and, with the rise of ‘carceral feminism’,⁶ the raid is seen

² K Millar, ‘The Precarious Present: Wageless labor and disrupted life in Rio de Janeiro, Brazil’, *Cultural Anthropology*, vol. 29, no. 1, 2014, pp. 32-53, <https://doi.org/10.14506/ca29.1.04>.

³ At DMSC, most of the women, including myself, refer to each other as *Didi* or an abbreviated *-di* after the name. Though *Didi* indicates older sister, at DMSC, this can be interpreted both as a mark of kinship and sisterhood, irrespective of age.

⁴ A T Gallagher, *The International Law of Human Trafficking*, Cambridge University Press, New York, 2012; J Chuang, ‘Rescuing Trafficking from Ideological Capture: Prostitution reform and anti-trafficking law and policy’, *University of Pennsylvania Law Review*, vol. 158, 2010, pp. 1656-1728; J Chuang, ‘Exploitation Creep and Unmaking the Human Trafficking Law’, *The American Journal of International Law*, vol. 108, no 4, 2014, pp. 609-649, <https://doi.org/10.5305/amerjintellaw.108.4.0609>.

⁵ C MacKinnon, ‘Feminism, Marxism, Method and the State: An agenda for theory’, *Signs*, vol. 7, no. 3, 1982, pp. 515-544; C Pateman, ‘Defending Prostitution: Charges against Ericsson’, *Ethics*, vol. 93, no. 3, 1983, pp. 561-565; K Barry, *The Prostitution of Sexuality: The global exploitation of women*, New York University Press, New York, 1995; S Jeffreys, *The Industrial Vagina: The political economy of the global sex trade*, Routledge, New York, 2009; A Dworkin, ‘Prostitution and Male Supremacy’, *Michigan Journal of Gender and Law*, vol. 1, issue 1, 1993, pp. 1-12.

⁶ E Bernstein, ‘Carceral Politics as Gender Justice? The “traffic in women” and neoliberal circuits of crime, sex, and rights’, *Theory and Society*, vol. 41, issue 3, 2012, pp. 233-259, <https://doi.org/10.1007/s11186-012-9165-9>.

as a tool of the criminal justice system that advocates punitive measures for traffickers and the rescue and rehabilitation of ‘victims’. Feminists who support sex workers’ rights distinguish consent from coercion;⁷ hence, they see the raid as a punitive device that threatens the livelihood of sex workers.⁸ Selected public health literature conceives the raid as a form of human rights violation against sex workers that drives the commerce out of sight and severely threatens sex workers’ access to health care, especially as it relates to HIV/AIDS prevention. In 2014, *The Lancet* published a series of articles, titled ‘HIV and Sex Workers’, which sought to ‘...investigate the complex issues faced by sex workers worldwide, and call[ed] for the decriminalisation of sex work, in the global effort to tackle the HIV/AIDS epidemic.’⁹ In the realm of human rights, based upon evidence drawn from UN agencies, such as the World Health Organization, UNAIDS, and the UN Special Rapporteur on the Right to Health, Amnesty International also proposed the decriminalisation of sex work to ensure access to health care, human rights, and justice.¹⁰

The Indian legal system poses a particular conundrum: The Immoral Traffic (Prevention) Act does not declare prostitution as illegal or recognise sex work as a legitimate form of labour. On the ground, however, this ambiguity is insignificant; the state, especially the police, routinely label sex workers as a group as either ‘criminals’ or ‘victims’. Thus, in an effort to establish sex work as a legitimate form of labour and delink it from trafficking, DMSC established the Self-Regulatory Board (SRB) in 1997 to closely monitor the recruitment of minors and/or unwilling women into sex work in Sonagachi. The SRB is also critical in establishing DMSC’s commitment to anti-trafficking work.

⁷ K Kempadoo, ‘Introduction: Globalizing Sex Workers’ Rights’ in K Kempadoo and J Doezema (eds.), *Global Sex Workers: Rights, resistance and redefinition*, Routledge, New York, 1998, pp. 1-27; J Doezema, *Sex Slaves and Discourse Masters: The construction of trafficking*, Zed Books, New York, 2010; T Zheng (ed.), *Sex Trafficking, Human Rights and Social Justice (Routledge Research in Human Rights)*, Routledge, New York, 2010; S Dewey and P Kelly, *Policing Pleasure: Sex work, policy and state in global perspective*, NYU Press, New York, 2011.

⁸ M Ditmore and J Thukral, ‘Accountability and the Use of Raids to Fight Trafficking’, *Anti-Trafficking Review*, issue 1, 2012, pp. 134-148, <https://doi.org/10.14197/atr.201218>; A Hill, ‘How to Stage a Raid: Police, media and the master narrative of trafficking’, *Anti-Trafficking Review*, issue 7, 2016, pp. 39—55, <https://doi.org/10.14197/atr.20121773>; V Magar, ‘Rescue and Rehabilitation: A critical analysis of sex workers’ anti-trafficking response in India’, *Signs*, vol. 37, no. 3, 2012, pp. 621-23, <https://doi.org/10.1086/662698>.

⁹ ‘HIV and Sex Work’, *The Lancet*, 23 July 2014, retrieved 3 July 2017, <http://www.thelancet.com/series/HIV-and-sex-workers>.

¹⁰ Amnesty International, *Decision on State Obligations to Respect, Protect and Fulfill the Human Rights of Sex Workers*, 2016, retrieved 3 July 2018, <https://www.amnesty.org/en/policy-on-state-obligations-to-respect-protect-and-fulfill-the-human-rights-of-sex-workers>.

Critics of the raid-rescue-rehabilitation paradigm primarily examine the institutional aftermath, which includes the arbitrary construction of ‘victims’, the carceral conditions of shelters, rescue driven by market humanitarianism, etc.¹¹ This article aligns with this body of work; however, I shift the focus to the *material trace* of the raid in the brothel to ask what this detritus means in terms of the everyday labour and livelihood of those who inhabit that space as *ghar* (home). Ethnographically, I interweave the trace in its instant material destruction, the lives of the sex workers conjured by the detritus the next day, and finally, the return of (some) sex workers who managed to escape. I particularly emphasise materiality, first to mark the violent pathways through which the state generates the detritus. Second, I argue that, for the sex workers, the detritus is not something they abandon but return to, as one would to ordinary everyday things, to reclaim and rebuild their lives and livelihood. Sex workers specifically used *atyachar* (oppression) to describe the violence of raids. As one of them once rhetorically posed, ‘After all, what is a raid? It is only *arek rokomer atyachar* (another form of oppression)’. Another sex worker noted, ‘It (raid) may happen today, tomorrow or the day after, who knows?’ Others who were present nodded in agreement. Nita-di, too, had once observed rather ironically, ‘If there is anything reliable in our lives, it is *atyachar*.’ Raids as *atyachar* thus signify a specific manifestation of violence—unpredictable but inevitable. More importantly, the women experienced the raid not as a spectacle but as an ordinary practice of the state to violently reinforce their marginalisation.

What struck me when I started my fieldwork was that I did not observe any obvious trepidation about raids amongst the women. Instead, the dominant narrative was that of escape and return. Compared to the ordinariness of the raid, the return was especially seen as extraordinary. As a way to strategise, the women would regularly instruct one another that, ‘All you have to do is to wait for things to quieten, for the police suspicion to abate, before you return.

¹¹ E Shih, ‘Freedom Markets: Consumption and commerce across human-trafficking rescue in Thailand’, *positions*, vol. 25, no. 4, 2017, pp. 769-794, <https://doi.org/10.1215/10679847-4188410>; V Ramachandran ‘Critical Reflections on Raid and Rescue Operations in New Delhi’, *Open Democracy*, 25 November 2017, retrieved 2 November 2018, <https://www.opendemocracy.net/beyondslavery/vibhuti-ramachandran/critical-reflections-on-raid-and-rescue-operations-in-new-delhi>; M Ditmore, ‘The Use of Raids to Fight Trafficking in Persons’, *Sex Workers Project*, Urban Justice Center, New York, 2009; 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; M Seshu, A Pai, L Murthy and VAMP, *Raided: How anti-trafficking strategies increase sex workers vulnerability to exploitative practices*, SANGRAM, Sangli, 2018; K Walters, ‘Violence of Rescue and (Mis)calculation of Rehabilitation’, *Economic and Political Weekly*, vol. 51, issue 44-45, 2016, pp. 55-61.

Make sure you have some condoms in your bag to work and eat when you are away.’ Here, it is important to note two interrelated issues. First, like other work-home convergent spaces, the brothel as *ghar* challenges the separation between the private and the public, but the state uses tropes of immorality and criminality to justify the assault on brothels. Second, considering that DMSC’s labour collectivisation is primarily brothel-based, the disruption of that space also signifies disruption of the labour movement. Therefore, while returning after a raid is not new in Sonagachi, since the foundation of DMSC, return is mobilised as a political act of reclaiming one’s *ghar* and subverting the state. In weaving the ethnography with the postcolonial feminist framework,¹² we may then ask, how does one come to inhabit a place that is continually violated but is also the space for labour collectivisation?

The Human Trace

In June 2014, the police arrived in the late evening to raid *NandaRanir Bari*, one of the prominent brothels in Sonagachi. Even if the police had a warrant, they did not produce it or feel the need to do so. The raid was troubling mainly in its familiarity—sudden and swift. As the day was winding down, I was sitting with members of the SRB in the DMSC office, discussing some of the complicated cases the members had to deliberate. A sudden commotion rolled down the street, and, as I looked out, police jeeps and vans moved in to block the entrance to the brothel. Customary refrains poured in from the DMSC

¹² J D’Cunha, ‘Prostitution: The contemporary feminist discourse’ in M Thappan (ed.), *Embodiment: Essays on gender and identity*, Oxford University Press, New Delhi, 1997, pp. 230-251; C T Mohanty, ‘Under Western Eyes: Feminist scholarship and colonial discourses’, *Feminist Review*, vol. 30, issue 1, 1988, pp. 65-88, <https://doi.org/10.1057/fr.1989.1>; R Sunder Rajan, *The Scandal of the State: Women, law and citizenship in postcolonial India*, Duke University Press, Durham, 2003; A Ahmed and M Seshu, ‘We Have the Right Not to be “Rescued”...: When anti-trafficking programs undermine the health and well-being of sex workers’, *Anti-Trafficking Review*, issue 1, 2012, pp. 149-164, <https://doi.org/10.14197/atr.201219>; P Kotiswaran, *Dangerous Sex and Invisible Labor: Sex work and law in India*, Princeton University Press, Princeton, 2011; S P Shah, ‘Sex Work in the Global Economy’, *New Labor Forum*, vol. 12, issue 1, 2003, pp. 74-81, <https://doi.org/10.1080/714035885>; P Govindan, ‘Rethinking Emancipation: The rhetorics of slavery and politics of freedom in anti-trafficking work in India’, *Interventions: International journal of postcolonial studies*, vol. 15, issue 4, 2013, pp. 511-29, <https://doi.org/10.1080/1369801X.2013.849421>; S P Shah, *Street Corner Secrets: Sex, work and migration in the city of Mumbai*, Duke University Press, Durham, NC, 2014; S Basu, *The Trouble with Marriage: Feminists confront law and violence in India*, University of California Press, Berkeley, 2015; S Ghosh, *The Gendered Proletariat: Sex work, workers’ movement, and agency*, Oxford University Press, New Delhi, 2017.

members as we rushed down the stairs to go to *NandaRanir Bari*: ‘Minors? Or women who they (the police) think look like minors?’; ‘Somebody tipped them (police) off?’; ‘Do they have the papers (warrant)?’ Constables in *khaki* uniforms had cordoned off the house, warding off curious onlookers who had gathered around. Purnima-di, who was the director of the Board at that time, hollered at the crowd to give her way; she was trying to reach the police officer who was supervising the raid, someone she had interacted with previously in *Lalbazaar*, the police headquarters in Kolkata. The officer told Purnima-di that she had ‘reliable’ information that there are *nabalikas* (minors) in this brothel. In response, Purnima-di deferentially explained that she was familiar with all the women, and, to her knowledge, there were ‘no girls below 18. They all have been presented at the SRB and have the DMSC card since they are all members.’ In her habitual patronising tone, the police officer said, ‘Come to *Lalbazaar* tomorrow; we’ll see.’ As the other DMSC members shouted in protest, ‘Let us in; we know the women in there’, the officer turned annoyed to Purnima-di: ‘Control your women. We are trying to do something important here.’ The raid continued while we stood helplessly as mere auditory witnesses to doors being broken, screams of help, and heavy boots on the stairs. Finally, a handful of women were dragged out and driven away in police vans.

The next morning, I accompanied Purnima-di to *NandaRanir Bari*. I had witnessed raids over the course of my fieldwork, but this was the first time I returned to the site the day after. The trace of violence was evident everywhere: broken locks, damaged furniture, clothes and belongings strewn on the floor, splattered food, and spilled drinks. As we continued, Purnima-di pointed to a specific bed in one of the rooms with the cracked box drawer underneath pulled out. She explained that during the raid, the police alleged that there was a minor hiding in the box drawer. Purnima-di knew the woman, Mina, well and had introduced me to her two summers ago. Unlike many other A-category¹³ sex workers, Mina was a member of DMSC. Though I never saw her attending meetings or participating in any public demonstrations, she took an active interest in the work of the organisation. I recalled that on previous visits, our customary first stop was Mina’s room. However, that day, I heard Purnima-di wearily muttering to herself, ‘She is not a minor by any chance. She is at least 25. I told *Barababu* (the local police chief) but he would not listen.’

¹³ Sex workers in Sonagachi informally rank themselves into A, B, and C categories based on their earning scale, A being the highest paid.

The detritus summoned the lives of the disappeared women. I recalled some of my conversations with Mina in this very room; I was especially struck by her financial planning. When she learnt about my rather weak financial acumen, she was concerned about my future and offered me the details of her own diverse investment portfolio in land, real estate, and export fisheries. Mina's earnings, per customer, ranged between INR 3,500 and 5,000 (approximately, USD 55-77), 'depending on the service I provide. They are all tailored to customer needs, so my earning varies.' Mina is acutely aware that the window she has during which to earn a higher wage is short, that is, between ages 18-30, '...so I want to make the best of it. I have carefully organised my life since I came to Sonagachi. I have built a house outside my village where I will live upstairs once I leave this work. My fisheries business is going well. And *Didi*, did you know that the prawn that you eat in the US may be from my fishery?' As I was reflecting on our plausibly interconnected worlds of fish, labour, and research, Mina's possessions lay abandoned on the floor in utter neglect. Like her finances, she always kept her room meticulously organised, so the sight of disorder signalled, perhaps, an irreversible change in Mina's life. Will Mina return? I posed the question to Purnima-di, to which she poignantly responded, 'We will go the CWC (Child Welfare Committee) after this and see what we can do to release her. They should not have taken her at all; she is not a minor.' As we stepped out into the veranda to go visit the other rooms, Purnima-di rhetorically observed, 'Who knows if this *polisi atyachar* (police oppression) will ever end?' *Atyachar*, as I noted earlier, appears in routine conversations in Sonagachi, and is not necessarily limited to describe the experience of raids but the ordinary struggles to earn a livelihood especially in relation to state violence.

On any other day, as a shared space, the veranda would be difficult to navigate, with the sex workers walking up and down, tending to their everyday chores, chatting, laughing, and hollering. That day, it was uncannily silent. We arrived at Nita-di's room. Nita-di had lived in this brothel for almost two decades and had managed to purchase her room along with another one, which she ran as a *malkin* (brothel-owner) on an *adhiya*¹⁴ basis. Like Mina's, her room was in complete chaos. I tried to imagine Nita-di fleeing: the door of the wooden *almirah* was still open; perhaps in the rush to take her granddaughter's gift with her, she forgot to close it. Or the police may have left it that way the night before. The vegetables from the cooking area had rolled all over the room, and the green chilies, mashed by heavy boots, had filled the room with a caustic drift. The emptiness spoke piercingly about the lives of the women who occupied these spaces, and the human trace was unmistakable in what was left behind by the violence. We saw Sunil, the cook for *NandaRanir Bari*, at the

¹⁴ An arrangement where the income is equally split between the sex worker and the *malkin*.

doorway as we were leaving. He asked me to come back: ‘When the *Didis* return, I will cook a good meal for all of us.’ Purnima-di replied, ‘Let me know once they are back’, with a mirthless smile, indicating her acute awareness of both the difficulty and the necessity of the return. Sunil nodded in agreement, and we crossed the street to get some lunch at the local eatery. Sunil’s plan for a future communal meal, and Purnima-di’s request to update her, indicated that both of them were rather accustomed to this kind of displacement and expected normalcy to return as soon as the *Didis* did.

We spent the afternoon at a meeting with the CWC officers, inquiring about the women who were picked up by the police the previous night. Purnima-di specifically wanted to know how many held in custody were being considered ‘minors’. ‘Mina is certainly not a minor’, Purnima-di insisted. ‘Sir, the SRB has documents to prove that *NandaRanir Bari* did not have minors. We have their bone scan results; they are above 18.’ Hearing Purnima-di mention *NandaRanir Bari* seemed to irritate one of the officers. He quickly retorted by saying, ‘This specific brothel, this *NandaRanir Bari*, is a notorious place! They say that they have A-category women, but they are in fact all minors who have been trafficked. We have to rescue children from this terrible situation. It is our job.’ Such deflections that emphasise the immorality of the brothel over the grassroots labour movement, and ignore DMSC’s anti-trafficking work, were rather common across state actors. Especially, the male state officials took pride in never having visited Sonagachi as a way to assert their moral rectitude and the larger politics of respectability. Therefore, the obliterability of the brothel needs to be located within the dominant narrative of not just criminality but immorality as well.

We did not make much progress that day in terms of determining where the women were being held and on what charges. This visit to the CWC was not an exception. Typically, Purnima-di and other sex workers refrained from making further demands on the CWC, as they seldom were able to procure information related to the ‘minors’. As one sex worker put it, ‘We cannot tell the police or the CWC people how terrible they make us feel as *chhotolok* (of lower socioeconomic strata); they will oppress us even more. If we knew this was the first time and the last time, maybe we would have. But we know this is forever.’ The sex workers often challenged the state-construction of the brothel as a purely public space inhabited by ‘fallen’ women who reject monogamy. Though their voices were mostly inaudible to the state, nonetheless, it is through collectivisations like Durbar, for the first time in India, that we hear the voices of the sex workers themselves claiming rights.¹⁵

¹⁵ Ghosh, 2017.

Purnima-di looked dejected, as she had been diligently directing the SRB's work to prevent trafficking in Sonagachi. I asked her if she expected some of the women to return. Her response was slow and thoughtful: 'All these women, who are not minors, who have not been trafficked, are taken away constantly. This is our home; this is not just a brothel as that man at the CWC said. So much is at stake, their things, their livelihood, DMSC, everything is here; they have to return.' Unlike some of the literature on raids that emphasises the loss of access to health programmes, these two days offered me little evidence that this would be a primary concern for those who escaped. I still asked Purnima-di, 'What will happen to their ICTC?'¹⁶ The question seemed rather misplaced to her, but she patiently responded, 'Well, I am sure those who escaped took condoms with them; they usually have them in their handbags. That's all they need for now to do some work, fill their stomachs, till they can return.' Purnima-di was primarily concerned about Mina and others who were being held by the state, most likely at homes (shelters), and understandably so. The carceral nature of the homes was palpable on my visits to some of them with Purnima-di in the past, and the existing literature offers extensive evidence of rights violation of the detained women.¹⁷

The Broken Pieces

Nita-di returned to *NandaRanir Bari* as quietly as she had left. I happened to run into her a month after the raid at the local sweetmeat shop where she had come to buy some as an offering for her daily household *puja* (worship). She asked me how I was doing. After we exchanged pleasantries, she invited me to lunch the next day. I arrived around 2 pm at *NandaRanir Bari* and on the way to Nita-di's room, I passed Mina's room. The door was locked with a large padlock hanging on the latch; most likely, a new sex worker was now renting that room. I knocked on Nita-di's door. She answered with her characteristic warmth and asked me to take a seat, as she 'had to add the *phoron* (spice) to the *daal*, (lentils).' I settled on the mat on the floor and noticed that the room looked emptier but more orderly than what I had seen the last time. Nita-di had to discard the 'broken pieces to be able to go on.' The bed was ripped at the headboard, the *almirah* had drawers sticking out on broken grooves, and the kitchen area had fewer utensils than before. This was the second time she had successfully returned. 'I am fortunate', she observed. 'My room is still here, though everything else is gone.'

¹⁶ Integrated Counselling and Testing Centres offer the routine HIV/AIDS testing in Songachi.

¹⁷ A T Gallagher and E Pearson, 'The High Cost of Freedom: A legal and policy analysis of shelter detention for victims of trafficking', *Human Rights Quarterly*, vol. 32, 2010, pp. 73-114.

Despite the disquieting arc of violence, Nita-di's space had somewhat returned to the comfort that was familiar to me. I perceived this in Nita-di as well, as she settled near the kerosene stove to complete her cooking. 'I want you to know that I came to your room the day after the raid', I said in the spirit of disclosure and as a way to commence from where we left off. 'It made me very sad to see your things scattered on the floor. I recognised most of them, but, even if I wanted to, I could not put them back because of police orders.' 'I know. Sunil told me', she said in a neutral tone. Then, after a brief pause, Nita-di resumed,

'It must have affected you because things like this do not happen outside Sonagachi. But this is what we are used to. Police oppression will not go away, so we will have to find ways to escape but then also find ways to return. This is my home and this is the only place I could ever call home. It is only here I have some way to earn money to survive. I am not educated like you, so all I have is my *gatar* (body) to sell. But do I like it? Did I even want to get into *line-er kaaj* (sex work)? But here, at least I have been able to feed myself and take care of my daughter. So, this is all I know, like, you know, your home? And why don't the police just let us be in our homes? Who asked them to rescue us?'

Nita-di raised an important question about the validity of raid-as-rescue, as a larger humanitarian effort to 'save' women. Scholars have long critiqued this teleological narrative, which has led sex workers to defy their saviours and reject homes/shelters either by trying to escape or rebel.¹⁸ However, Nita-di's return and her reclamation of the brothel as home, and the right to inhabit it, shed light on the implications of the raid. The forced displacement endured by Nita-di and others like her signals a well-established narrative that the raid is both a juridical and a moral tool for controlling female transactional sexuality.

Nita-di's biography elucidates her travails further. She was married at seventeen. Her family was struggling to feed all the eight children, and, when a marriage proposal appeared, surprisingly without a demand for dowry, she was married off to a man who was in his 40s and 'suspected of some kind of mental illness.' The marriage had been difficult from the beginning since her husband, too, had very little means of income as a daily farm labourer. She, having worked on the farm before, joined her husband to boost the family income, but still they struggled to keep afloat. 'One day my husband said that we should go to Kolkata', Nita-di had once recounted to me.

¹⁸ Walters, 2016.

‘There are more jobs there since they are building a lot of houses in the city. So I thought he must know better, and we came to Kolkata. We came to Sealdah (one of the major railway stations in the city), and, then, after getting off a bus, I found myself here. I had heard of Sonagachi but did not know that this is where it was, but something did not seem right. The women were all standing outside wearing a lot of makeup. But I slowly understood that my husband had already talked to a man whom we met at the tea stall and had arranged for me to be here in *NandaRanir Bari*. “You will make a very fine catch and we will never have to worry about money again”, he had told me.’

Nita-di’s voice had deepened as she struggled to manage that fine line between betrayal and survival. ‘I agreed to sell my body’, she told me in the end. Nita-di was long estranged from her husband. However, she adhered to the Hindu signs of marriage. Every day, she religiously applied *sindur* (vermillion) in the parting of her hair after taking a shower alongside the red *tip*, round mark on the forehead, and also wore the *s(n)akha* (shell bangles) and the *pala* (ideally, a pair of coral bangles but which are mostly made of lac).

Her account deeply resonated with several other women who arrived in Sonagachi through a similar path, and their experiences of escape and return. As Nita-di’s story of return unfolded rather quietly, a modicum of agency was palpable in her as well as in the others who returned. While we were finishing our lunch, Kamala-di, another sex worker who had escaped and managed to return, came to the door. ‘Didi’, she said to me, ‘We don’t want to leave; who wants to leave their home? And when they rescue us, they send us to these awful homes, teach us how to use sewing machines. Now, how much money can I earn by sewing clothes, when I can earn way more here in one sitting? But at the end, we will try to return because we have to fight for rights.’ Yet, as the women worked to collect their lives and put the broken pieces together, they seldom discussed the raid and the disruptions it caused. They only mentioned it sporadically and somewhat indifferently, as though raids were ordinary occurrences.

Despite the state’s claim to induct rescued women into vocational training in order for them to leave sex work, and the red-light district for that matter, most sex workers perceived this apparent benevolence as an incursion on their already well-established livelihood. Likewise, though the sex market in Sonagachi is informally organised, nonetheless, over time, the women develop a keen understanding of its underlying principles to maximise their incomes. One such aspect is the ‘repeat’ customer. Sex workers have shared with me details about how they invest—mainly affectively—in a few select customers for a reliable income. Sometimes, the ‘repeat’ customer *becomes* a lover, offering the women the much-desired need for emotional security, and even simulated

domesticity. The other aspect that becomes apparent in the conversation between Nita-di and Kamala-di above is the collective experience of displacement and return, a duality that is rooted in a bond of kinship and labour collectivisation facilitated by the brothel as their shared home.

Conclusion

The arc of the raid I present here is based on the experiences of the sex workers. These experiences are certainly different, as is the outcome; that is, while one woman surreptitiously returns and the other one is forcibly displaced by the state, together, they nonetheless deepen our understanding of the aftermath of the raid beyond its institutional ramifications. The material trace of the violence, as I emphasised through the detritus, offers another way to think about lives that are upended. At the same time, the detritus reminds us of those lives displaced and how that detritus itself becomes the anchor when sex workers like Nita-di return as an act of defying the state. Beyond the raid-rescue-rehabilitation paradigm, a focus on the brothel as a space of violence and of return signals a disconnect between the sex worker rights movement and state initiatives to curb trafficking. This disconnect is explored globally in the many studies produced by sex workers and sex worker organisations, the 2017 Amnesty International policy¹⁹ and the 2018 report by the Global Alliance Against Traffic in Women²⁰ and has resulted in calls to decriminalise sex work. Through the use of ethnographic material, this article shows how this disconnect works on the ground and the repercussions it has for the lives and livelihoods of sex workers.

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¹⁹ Amnesty International, 2016.

²⁰ Global Alliance Against Traffic in Women, *Sex Workers Organising for Change: Self-representation, community mobilization and working conditions*, GAATW, Bangkok, 2018.

The ‘Prioritizing Safety for Sex Workers Policy’: A sex worker rights and anti-trafficking initiative

Alexandra Lutnick

Abstract

This article presents a case study of how sex worker and anti-trafficking organisations and activists in San Francisco, California, worked together to develop and pass the ‘Prioritizing Safety for Sex Workers Policy’. This policy, as enacted by the San Francisco District Attorney’s Office and the San Francisco Police Department, creates a legal environment where people can come forward and report to law enforcement when they are a victim of or witness to an array of violent crimes while engaged in sex work, and not be arrested or prosecuted for their involvement in that criminalised behaviour or for any misdemeanour drug offences. The article details how the groups came together and the challenges they faced while developing the policy. The work was fuelled by the recognition that no one wants people in the sex industry to experience violence. That is true whether selling sex is their choice, influenced by their life circumstances, or something they are being forced or coerced to do. The Prioritizing Safety for Sex Workers Policy is a unique example of the way in which sex workers, people who have experienced trafficking, service providers, activists, women’s rights policymakers, the police department, and the District Attorney’s office came together around a common goal.

Keywords: sex work, human trafficking, policy, coalitions, violence, crime victim

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Introduction

This article is a case study of how sex worker organisations and activists worked with anti-trafficking organisations to create the ‘Prioritizing Safety for Sex Workers Policy’ in San Francisco, California. Issued as a policy by the San Francisco District Attorney’s Office,¹ and as a Department Bulletin² by the San Francisco Police Department,³ this complementary policy creates a legal environment where people can come forward and report to law enforcement when they are a victim of or witness to violent crime while engaged in sex work, and not be arrested or prosecuted for their involvement in that criminalised behaviour or for any misdemeanour drug offences. The policy broadly defines violent crime to include sexual assault, human trafficking, stalking, robbery, assault, kidnapping, threats, blackmail, extortion, burglary, and others. It also holds police officers accountable if and/or when they are the ones perpetrating physical or sexual violence against sex workers, and defines officer misconduct against sex workers to include retaliation, coercion, or coercive intimate acts. The policy applies to youth and adults engaged in sex work, to those who are choosing to do sex work, those who are doing it because of life circumstances, and those whose experiences are characterised as trafficking. Information gathered from a victim or witness of a violent crime who is engaged in sex work, or other forms of sex trade, will not be used in any manner to investigate and prosecute that person during the course of the investigation or in the future.

The material for this case study was collected through my role as a participant in the group working on this effort. Since the early 2000s, I have been involved in sex worker rights activism in San Francisco, including addressing exploitation of adults and youth engaged in sex work and providing direct services to these communities. Some of those people identify as sex workers, some as victims and/or survivors of trafficking, and yet others—with all these terms or none of them. I also have my own lived experience of engaging in sex work and, since 2004, I have been conducting research focused on the experiences of people involved in sex trades. Much of the data we used to justify the need for

¹ G Gascón, *Prioritizing Safety for Sex Workers*, Office of the District Attorney, City and County of San Francisco, 2017, <https://sfgov.org/dosw/sites/default/files/DA%20Prioritizing%20Safety%20for%20Sex%20worker%20Policy.pdf>.

² A Department Bulletin is a type of policy within the San Francisco Police Department that is issued by the Chief of Police.

³ W Scott, *Prioritizing Safety for Sex Workers*, Department Bulletin, 2017, <https://sfgov.org/dosw/sites/default/files/department%20bulletin%2017-249.pdf>.

the ‘Prioritizing Safety for Sex Workers Policy’ was from studies I have participated in over the years.⁴

Sex Workers’ Rights in San Francisco

Sex workers in San Francisco have a long history of being involved in local politics. In fact, the term ‘sex work’ was coined in San Francisco by Carol Leigh in the late 1970s.⁵ Even prior to the creation of the term, there was significant organising around the rights of people in the sex trade in the city. In 1972, Margo St. James founded the group Whores, Housewives, and Others (WHO), which led to the establishment of Call Off Your Old Tired Ethics (COYOTE) in 1973. COYOTE was established to provide services to prostitutes, to increase awareness about the abuses people working in the sex industry experience, and to educate people that selling sex is legitimate work that would benefit from occupational health and safety standards.⁶ St. James also engaged in national and international advocacy by cofounding the National Task Force on Prostitution in 1979 as well as the International Committee for Prostitutes’ Rights in 1985.⁷ Another key group is the US PROStitutes Collective founded in 1982. US PROS, a multiracial network of current and former sex workers, campaigns for the decriminalisation of sex work and for justice, protection, and resources so that no one is forced into prostitution through poverty.

⁴ See D Cohan *et al.*, ‘Sex Worker Health: San Francisco style’, *Sexually Transmitted Infections*, vol. 82, no. 5, 2006, pp. 418–422, <https://doi.org/10.1136/sti.2006.020628>; A Lutnick, *Domestic Minor Sex Trafficking: Beyond victims and villains*, Columbia University Press, New York, 2016; A Lutnick and D Cohan, ‘Criminalization, Legalization or Decriminalization of Sex Work: What female sex workers in San Francisco, USA say’, *Reproductive Health Matters*, vol. 17, no. 34, 2009, pp. 38–46, [https://doi.org/10.1016/S0968-8080\(09\)34469-9](https://doi.org/10.1016/S0968-8080(09)34469-9); A Lutnick and M Kandel, *Engaging Unheard Communities: Finding common ground to address violence against sex workers*, Presented at the 2016 Statewide Domestic Violence Conference, Shifting the Lens: Transforming our approach to domestic violence, Berkeley, CA; A Lutnick *et al.*, ‘Examining the Associations between Sex Trade Involvement, Rape and Symptomatology of Sexual Abuse Trauma’, *Journal of Interpersonal Violence*, vol. 30, no. 11, 2015, pp. 1847–1863, <https://doi.org/10.1177/0886260514549051>.

⁵ C Leigh, ‘Inventing sex work’, in J Nagel (ed.), *Whores and Other Feminists*, Routledge, New York, 1997, pp. 226–231.

⁶ A Lutnick, ‘COYOTE’, in M H Ditmore (ed.), *Encyclopedia of the History of Prostitution*, Greenwood Publishing Group, Santa Barbara, CA, 2006.

⁷ A Lutnick, ‘Margo St. James’, in M H Ditmore (ed.), *Encyclopedia of the History of Prostitution*, Greenwood Publishing Group, Santa Barbara, CA, 2006.

Sex worker advocacy and political engagement continued in the 1990s. The Exotic Dancers' Alliance (EDA) was founded in 1993. EDA's work focused on labour organising in adult entertainment theatres, including helping individuals receive redress from adult entertainment theatres, and providing one-on-one and group consults.⁸ In 1993, the San Francisco Board of Supervisors called for the establishment of a Task Force on Prostitution. The Task Force was charged with investigating prostitution in the city, surveying social and legal responses, as well as making recommendations about social and legal reforms which would best respond to San Francisco's needs while using city resources more efficiently. After meeting for eighteen months, the Task Force issued its final report in 1996. The Task Force determined that the city's responses to prostitution were ineffective and harmful. The report noted that sex workers were afraid to call the police when they were victims of crime for fear of arrest. Responding to the harms of criminalisation and the fact that, if someone had an arrest record, it was extremely difficult for them to find legal employment, the Task Force recommended that San Francisco decriminalise prostitution and funnel the money that would be spent on enforcement into services for 'needy constituencies'.⁹

Around the same time, in the early 1990s, the anti-trafficking, prostitution abolitionist organisation, the Standing Against Global Exploitation (SAGE) Project, Inc., was founded by the late Norma Hotaling. Ms Hotaling described herself as a survivor of commercial sexual exploitation and heroin addiction, and sought to end the commercial sex industry. As an organisation, SAGE felt strongly about referring to involvement in the sex industry as 'human trafficking', and not 'prostitution' or 'sex work'.¹⁰ Initially, the organisation referred to people involved in sex work as 'prostituted women' and, over time, began using the term 'trafficking victims or survivors'. SAGE's work included the creation of the 'First Offender Prostitution Program (FOPP)', also referred to as the 'John School.' This programme was created in collaboration with the San Francisco Police Department (SFPD) and the San Francisco District Attorney's (SFDA) Office. FOPP's intent was to target men soliciting sex and divert non-violent, first time offenders to a daylong education programme in hopes that they would not reoffend. This 'end demand'-oriented programme has been replicated throughout the United States despite

⁸ A Lutnick, 'The St. James Infirmary: A history', *Sexuality and Culture*, vol. 10, issue 2, 2006, pp. 56–75, <https://doi.org/10.1007/s12119-006-1015-3>.

⁹ Board of Supervisors of the City and County of San Francisco, *San Francisco Task Force on Prostitution: Final Report*, 1996, <https://archive.org/details/sanfranciscotask19sanf/page/n3>.

¹⁰ Lutnick, 2016.

findings that it lacked an evidence-based curriculum, did not meet the National Institute of Justice's criteria of programmes to reduce recidivism, did not result in lower self-report scores about the likelihood of soliciting in the future, and the costs of the programme exceeded the fee revenues.¹¹

Two key events occurred in 1999. Nearly three decades after the establishment of COYOTE, and three years after the publication of the Task Force on Prostitution's final report, the St. James Infirmary (SJI) was founded in San Francisco. SJI is the nation's first and only peer-led occupational safety and health clinic for former and current sex workers of all genders, and their family members. SJI was founded by COYOTE, EDA, and the San Francisco Department of Public Health, specifically the STD Prevention and Control Department.¹² Also in 1999, US PROS organised a public hearing at City Hall at which many sex workers testified and which led to a historic Board of Supervisors resolution, titled 'Mitigating Violence against Prostitutes'. The work of both SJI and US PROS continues. More recently, in 2013, US PROS spearheaded a state-wide campaign and won the repeal of a discriminatory regulation which had excluded sex workers from state compensation for rape and other violence.

Catalyst for a New Policy

In recent years, as the sex industry has come under greater scrutiny and suppression as a result of anti-trafficking policies, sex worker rights organisations and activists have maintained a seat at the table in San Francisco. February 2014 brought the unlikely start of a collective effort of sex worker and anti-trafficking organisations and activists working towards developing the 'Prioritizing Safety for Sex Workers Policy', when sex worker rights activists protested an end demand event held at the San Francisco Public Library. An organiser for the event mentioned to someone that they did not realise was a sex worker that they might be interested in the event because it would include a presentation by a researcher. The organiser went on to say that they did not want sex workers to attend because they felt they would be disruptive. That sex worker understandably told other sex worker community members about the event and suggested that they could have the greatest impact if they showed up with tape on their mouths and designated only a few people to make

¹¹ M Shively, *et al.*, *Final Report of the Evaluation of the First Offender Prostitution Program*, Office of Research and Evaluation, National Institute of Justice, Washington, DC, 2008; San Francisco Budget Analyst, *Management Audit of the San Francisco First Offender Prostitution Program*, Board of Supervisors of the City and County of San Francisco, 2009.

¹² A Lutnick, 'The St. James Infirmary: A history?.'

comments. Members of the Sex Worker Outreach Project (SWOP) and Bay Area Sex Worker Advocacy Network (BAYSWAN) organised the protest. The protest had the intended effect and led the San Francisco Department on the Status of Women (DOSW), the group that staffs the San Francisco Mayor's Task Force on Anti-Human Trafficking, to recognise the importance of including sex workers in conversations about anti-trafficking efforts. They realised that, when advocates and legislators claim that abolishing the sex industry will eliminate human trafficking, there will be collateral consequences for all people who are selling sex, regardless of whether it is by choice, circumstances, or coercion.

While the DOSW and sex worker organisations began meeting, it was announced in March 2014 that San Francisco County had become one of the first of five counties in the US to receive funding from Demand Abolition's Cities Empowered Against Sexual Exploitation (CEASE) programme. Under the umbrella of Swanee Hunt's non-profit, Hunt Alternatives, Demand Abolition's strategy was, and continues to be, to fund a collaborative group of law enforcement officials and social service providers that would focus on reducing the number of people buying sex by about 20 per cent. The ideology behind Demand Abolition's work is that commercial sex is inherently harmful to all involved, and by targeting the 'demand' side, they hope to see the sex industry eradicated. As part of the CEASE Network, counties receiving funding are expected to launch public media campaigns communicating Demand Abolition's philosophy.

In San Francisco, the collaborative group that received the funding from the CEASE Program was the DOSW, SAGE, the San Francisco District Attorney's Office (SFDA), and the San Francisco Police Department (SFPD). After receiving the funding, the coordinator for CEASE's work in the city began meeting with all key community groups and representatives, including sex workers. It was important that the DOSW was already meeting with sex worker groups because it made it much easier to link the coordinator to key community members and organisations. Sex worker and non-sex worker organisations and activists alike shared the concern that end demand approaches to the sex industry always bring collateral consequences. Those formative meetings involved sex worker rights activists, survivors of trafficking, and organisations working with sex workers, LGBTQ youth, and people experiencing trafficking.¹³ Conversations focused on the dangers people would face when

¹³ It needs to be noted that these groups are not mutually exclusive. For example, an LGBTQ youth organisation is likely also to be working with people involved in sex work, and young people who identify their experiences as trafficking. Similarly, sex worker organisations also provide services to people who are experiencing trafficking.

20 per cent of their client base was eliminated and not replaced by viable alternatives. The groups also shared their concerns about other safety consequences when clients are targeted. These included the reality that such a strategy often pushes the sex trades even further out of sight, with clients wanting to rush negotiations and screening, and forces the person selling sex into more isolated areas, all in an attempt to avoid law enforcement detection. All of these factors resulted in people selling sex experiencing increased rates of violence and abuse. Although San Francisco County was awarded USD 80,000 to participate in the national initiative that eventually became CEASE, after these conversations, the San Francisco collaborative group withdrew from the grant and gave the money back.¹⁴ This decision was also influenced by Demand Abolition's requirement that grant recipients pledge that the sex industry is inherently harmful. Minouche Kandel of the DOSW shared that, 'We are trying to be very clear that there's a distinction between sex work engagement by adults and sex trafficking. ... We were trying to be nuanced in how we approach this'.¹⁵

While exploring areas of shared goals during the following meetings, the group recognised that we were all united in wanting to reduce the violence experienced by people who sell sex. Whether someone's involvement in sex work is because of choice, circumstances, or coercion, they are unfortunately targets of perpetrators who know that, because prostitution is criminalised, their victims are much less likely to report the crime. Similarly, people experiencing trafficking in the sex industry are told by those exploiting them that the police will not believe them, and instead they will be arrested because they are engaged in criminalised activities. With a common goal identified, the group began to discuss how best to reduce violence against sex workers and invited more agencies to participate in the meetings.

Many groups were involved in the work on the Safety Policy. These included sex worker rights activists, survivors of trafficking, community-based researchers, legal rights and human rights organisations, as well as organisations working with sex workers, LGBTQ youth, people experiencing trafficking, and other members of the Sex Work and Trafficking Policy Impact Committee

¹⁴ S Levin, 'Oakland City Council takes stand against sex workers', *East Bay Express*, 4 November 2015, retrieved 7 January 2019, <https://www.eastbayexpress.com/oakland/oakland-city-council-takes-stand-against-sex-workers/Content?oid=4563294>.

¹⁵ *Ibid.*

of the Mayor's Task Force on Anti-Human Trafficking.¹⁶ The main purpose of the committee was to flag how trafficking policies might negatively impact sex workers and other vulnerable community members. Figuring out the relationship of the working group (those agencies working on the policy) to the Mayor's Task Force on Anti-Human Trafficking, and even naming the committee proved challenging. The group ruminated on the committee name for over a year. The Department on the Status of Women does not state an official position on either decriminalisation or abolition of sex work. As such, it was not willing to coordinate a committee which included 'Sex Worker Rights' in the name. Some members thought that having a sex worker-focused committee as an official part of a human trafficking task force created unique opportunities to centre sex workers' voices at a table from which they are generally excluded. Given the prior negative experiences with trafficking initiatives that caused harm to sex workers, others were concerned about the implications of being associated with an anti-trafficking task force. Ultimately, members agreed that the working group would function as a committee of the larger task force and that participating agencies and individuals did not have to become formal members of the task force.

The groups working on the project had been providing direct services to and conducting research with sex workers, people experiencing exploitation in the sex industry, and youth involved in the sex trades. Consequently, we were able to pull from our work to help inform our efforts. Likewise, many of us also had lived experiences selling sex. Both the personal and professional knowledge we collectively shared was crucial to getting the Safety Policy developed and authorised. Although historically SAGE has objected to the term 'sex work', after the death of its founder, subsequent executive directors were more open to finding common ground and engaged in meetings with sex worker organisations, such as St. James Infirmary, to explore harm reduction initiatives they could collaboratively address. SAGE closed in the fall of 2014, so its involvement in the policy's development did not continue through to its enactment. Although agencies definitely exist in San Francisco that would be opposed to the terms sex work or sex workers, those groups were not part of this process.

¹⁶ The key organisations and individuals included Asian Pacific Islander Legal Outreach, Bay Area Sex Worker Advocacy Network (BAYSWAN), the Department on the Status of Women (DOSW), the Human Rights Commission, LYRIC, the Public Defender's Office, San Francisco Women Against Rape (SFWAR), Sex Workers Outreach Project (SWOP), Standing Against Global Exploitation (SAGE), St. James Infirmary (SJI), US PROStitutes Collective, and researcher alexandra lutnick.

Evidence of the Need for the Policy

At the first meeting with the SFPD and SFDA in August 2014, working group members came prepared with data reflecting over ten years of research done in San Francisco on the experiences of people who sell sex. We shared findings that showed the unfortunate reality that people involved in sex work face high rates of violence from a variety of sources. For example, St. James Infirmary's intake data showed that among 783 sex workers, 36 per cent reported sex work-related violence, with trans women at significantly higher risk of work violence, including violence perpetrated by customers and police officers.¹⁷ A study conducted by SJI and the University of California, San Francisco found that among 247 cisgender women involved in sex work, 32 per cent reported physical attack and 29 per cent reported sexual assault while doing sex work. That study also examined experiences with police officers and found that 14 per cent of the women reported having been threatened with arrest unless they had sex with a police officer, 21 per cent had police officers pay them for sex, 2 per cent had been arrested after having sex with a police officer, and 36 per cent reported verbal, emotional, physical, or sexual abuse by law enforcement.¹⁸ Qualitative interviews conducted for that study revealed the women's perceptions of and experiences with the police. One woman shared her perspective on what would happen if she went to the police for help: 'When you're prostituting and something happens to you, the police don't really want to help you. Because you're already committing a crime to them. So it is like why should they help the criminal?' Another woman described what occurred the first time she was arrested:

The first arrest really sucked. I was young. I just wasn't really bright at 20. I didn't know much about my rights or if I could fight back. A female cop and two other cops came into my tiny studio apartment with the guy that came in as a supposed date. He totally felt me up. It was insane. And then he called me some names. So I thought that kind of sucked too. But I really didn't know, like I really thought that he had the right to feel me up. You were doing something wrong so he had the right to squeeze you and stick his finger up there. Because you were doing something wrong.¹⁹

A study conducted by RTI International found that among 322 cisgender women who use methamphetamine, 61 per cent had traded sex in the past six months. Of those women, 77 per cent had been raped as adults, and 49 per cent reported physical assault in the past six months (most often inflicted by

¹⁷ D Cohan *et al.*

¹⁸ Lutnick and Cohan.

¹⁹ Lutnick and Kandel.

acquaintances and clients). In that study, women who traded sex were 1.9 times more likely to be physically assaulted by people other than intimate partners, and 2.7 times more likely to be raped by people other than intimate partners.²⁰ We also shared the findings from research that focused on young people (under the age of 18) who trade sex. In that study, interviews with case managers in San Francisco, Chicago, and New York City revealed that young people reported that they had been physically and sexually assaulted by police. A case manager in San Francisco shared the story about how, during a prostitution bust, a police officer sexually abused her client:

[S]he got in his car and he said that he didn't have money and that they were going to drive to the gas station for him to be able to use an ATM, get some gas and get some money. And one of the things that she said was that he let her fondle him on the entire drive. She said it was at least a solid five minutes and she, one of the things she asked me, she said, "I don't understand, if he's an undercover cop and I'm a minor, isn't he not supposed to," you know, "let me do that?"... [T]hat's something that I do hear commonly, is that the officers seem to take definite advantage and become yet another exploiter.²¹

These research findings, coupled with input from direct service providers and people with lived experience, helped the SFPD and SFDA better understand that most sex workers, and people experiencing exploitation in the sex industry, do not go to the police when they have been victimised. The policy we were asking for would be the first step towards creating a social and legal environment where people can seek help when they are victims or witnesses of violence.

At one of the meetings, representatives from the police department asked what it would take to build trust with the sex worker community. The group's response was that the first step would be to stop arresting us. Although many in the group would prefer full decriminalisation, we felt an immediate and achievable goal would be to end the criminalisation of sex workers who are victims of violent crimes. Both the SFDA and SFPD expressed concerns about the prevalence of violence being perpetrated against sex workers in San Francisco and saw the proposed policy as an effort towards curbing violence by ensuring that victims feel safe to report crimes, regardless of their involvement in the sex industry. They recognised that sex workers and people exploited in sex work are subject to violence and sexual assault, and when many of these crimes go unreported, law enforcement investigators are unable to hold

²⁰ Lutnick *et al.*

²¹ Lutnick, 2016, p. 40.

perpetrators accountable. Similarly, the two departments understood that, in San Francisco, a sanctuary city, when individuals do not report violent crimes for fear of arrest, deportation, or prosecution, the entire community suffers. Although both departments recognised the need for the proposed policy, getting the policy enacted proved more challenging than we anticipated during these early meetings.

Enacting the Policy

For the ‘Prioritizing Safety for Sex Workers Policy’ to include protection from both arrest and prosecution, the SFDA and SFPD would each need to write their own policies. This is because neither group has the authority to develop and implement policies for the other. The SFDA’s Office was immediately on board, worked with our group to draft the language of the policy, and enacted it within six months. Its policy states that, if a sex worker is a victim of a violent crime, they will not face charges for prostitution or minor drug offences.²²

Obtaining the support of the San Francisco Police Department was considerably more challenging. It took almost three years for the SFPD to finalise and enact its Bulletin. In part, this was a result of key staff turnover in the department. Each time the captain of the Special Victims Unit changed, or the chief of the SFPD changed, we had to start all over again. We would reintroduce the research findings, share the draft language, and then wait for things to start moving again. The meetings with SFPD representatives also created additional tensions. During one meeting, when a community member asked what the difference was between assault and battery, a lieutenant demonstrated what battery was by grabbing a staff member from one of the non-profits present without warning or permission.

We also experienced significant pushback from the SFPD because we wanted language included about holding law enforcement officers accountable if they were the ones who perpetrated violence. The police agreed to sign the policy if we removed the clause that read:

Violence, harassment, coercion or retaliation committed by any law enforcement officer against sex workers is not tolerated and will be investigated, which may result in disciplinary or criminal action. During the course of an investigation or potential arrest, law enforcement may not engage in any type of sexual act with a sex worker.

²² Gascón.

For our group, this clause was non-negotiable. We threatened to take the policy to the San Francisco Board of Supervisors because they would have the authority to enact it. We also attended a Police Commission hearing to voice our complaints and went to the press about the challenges we were experiencing trying to get the policy passed.²³

Fortunately, in December 2017, the SFPD released the *Prioritizing Safety for Sex Workers Bulletin*²⁴ complete with the language holding law enforcement officers accountable if they are the perpetrators of violence. We were now able to go public with the two policies. The SFDA's policy is active indefinitely. The SFPD Bulletin is active for three years and will then be up for renewal. Efforts are underway to develop the required training programme for the SFPD on sex work and crimes against sex workers. This training is being developed by agencies that work with sex workers and people experiencing exploitation in the sex industry. Outreach to sex worker communities is currently underway to ensure that people know about this resource.

Discussion

Some level of interaction with law enforcement is needed to benefit from the 'Prioritizing Safety for Sex Workers Policy'. The group of service providers, activists, and people with lived experiences who helped develop the policy know that this is a key limitation. A significant amount of research highlights the ways in which police are sometimes the most frequent perpetrators of violence against sex workers,²⁵ with some viewing the police as just another occupational hazard.²⁶ Most crimes against sex workers go unpunished, as

²³ J O Lamb, 'SFPD and Sex-worker Advocates at Odds Over Sanctuary-like Policy', *San Francisco Examiner*, 19 July 2017, retrieved 7 January 2019, <http://www.sfoxaminer.com/sfpd-sex-worker-advocates-odds-sanctuary-like-policy/>.

²⁴ Scott.

²⁵ J Hay, 'Police Abuse of Prostitutes in San Francisco', *Gauntlet Magazine*, vol. 1, no. 7, 1994; F Gragg *et al.*, *New York Prevalence Study of Commercially Sexually Exploited Children*, WESTAT, Rockville, Md., 2007; J Iman *et al.*, *Girls Do What They Have to Do to Survive: Illuminating methods used by girls in the sex trade and street economy to fight back and Heal*, Young Women's Empowerment Project, Chicago, 2009; Lutnick, 2016; S Simon and R Thomas, *Eight Working Papers/Case Studies: Examining the intersections of sex work law, policy, rights and health*, Sexual Health and Rights Project, Open Society Institute, New York, 2006; J Thukral and M Ditmore, *Revolving Door: An analysis of street-based prostitution in New York City*, Urban Justice Center, Sex Workers Project, New York, 2003; CA Torres and N Paz, *Bad Encounter Line: A participatory action research project*, Young Women's Empowerment Project, Chicago, 2012.

²⁶ Hay.

most sex workers do not go to the police when they have been victimised.²⁷ This begs the question of why we would create a policy that positions law enforcement as the first responders.

Many of the groups working on the policy believe that an anti-criminalisation framework is what would truly address the rights and safety of people involved in sex work. Recognising that the decriminalisation of prostitution would take (and has taken) longer to achieve than the Safety Policy, we felt that the policy could be a small but important harm reduction initiative. Not all groups involved in developing and implementing the policy would advocate for the decriminalisation of sex work. This is where addressing the shared concern about violence was used strategically to create a policy that will hopefully mitigate some of the harms people engaged in sex work experience. Not all sex workers want to involve the police when they are victims or witnesses of violent crimes. Some, however, do. For those who do, this policy will hopefully facilitate a process that allows them to seek the legal recourses they desire. Likewise, for some in the community, and all those working on the policy, it was hugely important and considered a win that the SFPD Bulletin explicitly stated that law enforcement officers will be held accountable if they are the perpetrators of violence against sex workers.

An aspect that is likely unique to San Francisco is that the groups working on the policy had no concerns about using the term sex work, but many of the sex worker organisations and activists struggled with the anti-trafficking framework that was included. In part, this was because most of those people do not use the language of trafficking to speak about abuses and exploitation that sex workers experience and know that limiting the discussion only to the violence people may experience reifies the rhetoric of victimhood. It can also be attributed to the reality that many anti-trafficking initiatives and policies have resulted in severe collateral consequences for people engaged in sex work. Those who struggled with this ultimately decided that they wanted to take advantage of this collaborative opportunity to try to make changes from the inside, while still pushing for a framework that affirms the human rights of people involved in sex work.

²⁷ K Shannon, T Kerr, and S Allinott, 'Social and Structural Violence and Power Relations in Mitigating HIV Risk of Drug-using Women in Survival Sex Work', *Social Science & Medicine*, vol. 66, no. 4, 2008, pp. 911-921, <https://doi.org/10.1016/j.socscimed.2007.11.008>; J Thukral and M Dittmore; KM Blankenship and S Koester, 'Criminal Law, Policing Policy, and HIV Risk in Female Street Sex Workers and Injection Drug Users', *Journal of Law, Medicine & Ethics*, vol. 30, no. 4, 2002, pp. 548-559, <https://doi.org/10.1111/j.1748-720X.2002.tb00425.x>.

Our work in San Francisco immediately inspired the introduction of Assembly Bill 2243—Sex Worker Immunity (Laure Friedman, D-Glendale). This California bill allows sex workers who were engaged in an act of prostitution to come forward and file a complaint if they are the victim of a violent crime that occurred during the course of the act, or provide testimony as a witness to such a crime, without fear of being prosecuted for the act of prostitution. It created Evidence Code section 1162, which prohibits evidence of their, or their client's, criminal liability when they are the victim or witness of that crime. AB 2243 received unanimous bipartisan support, with law enforcement and prosecutors lending their support, and was signed by the Governor of California in June 2018. The law is not as strong as the Safety Policy and the SFPD Bulletin implemented in San Francisco, where people are guaranteed they will not be arrested. The bill did not address arrest due to concerns that it might not have enough support to pass if that language were included. In February 2019, California State Senator Scott Wiener introduced Senate Bill 233 that, if passed, will amend the penal code so that people will be granted immunity from arrest.²⁸ If that bill does not pass, counties throughout California will want their police departments to issue their own policies, stating that people will not be arrested for prostitution or drug offenses if they come forward to report that they were the victim of, or witness to, a violent crime while selling sex.

Future work is needed to assess the implementation and impact of the 'Prioritizing Safety for Sex Workers Policy'. Anecdotally, the SFPD shared that, shortly after their Bulletin was issued, it was used to help support a sex worker who had been violently knifed by a client.²⁹ That person did not want a bystander to call 911, and even when the bystander did call, the woman continued to refuse to share details with law enforcement officers for fear that her involvement in sex work would be used against her. It was only when an SFPD officer showed her a copy of the Bulletin that she felt supported enough to provide them with information that led to the arrest of the perpetrator. It is unknown whether the Safety Policy has had a negative impact on the communities of people it was created to better support.

Conclusion

The 'Prioritizing Safety for Sex Workers Policy' as enacted in San Francisco is a unique example of the way in which sex workers, people who have experienced trafficking, service providers, activists, women's rights policy makers, the Police Department, and the District Attorney's Office came together around a

²⁸ Personal communication, S. Wiener.

²⁹ Personal communication, A. Flores.

common goal. The work recognises that the criminalisation of prostitution has created an environment where people feel they cannot file a report when they are the victim of, or witness to, a crime. This is echoed in the SFPD Bulletin, which states that, 'The criminalization of sex work is one of the primary barriers to reporting violence to law enforcement'.³⁰ The hope is that this policy will reduce the harms experienced by people in the sex industry, send a clear message that violence against sex workers and people in the sex industry will be treated seriously under the law, and will serve as a model that can be used in other jurisdictions.

In comparison to other locations, San Francisco may be uniquely situated to do this type of collaborative work that is informed by the framework of sex workers' rights. Some of the reasons include the long history of sex worker activism, including sex workers and peer-based organisations being involved in local politics and partnering with municipal agencies. The relationships that have been built and maintained over the years have fostered a more collaborative and inclusive environment than seen almost anywhere else in the United States. It is still highly possible that the policy could be replicated elsewhere, especially if the focus is on addressing violence.

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³⁰ Scott.

‘The Problem of Prostitution’: Repressive policies in the name of migration control, public order, and women’s rights in France

Charlène Calderaro and Calogero Giametta

Abstract

This article focuses on the political debates that led to the adoption of the sex purchase ban (commonly referred to as the Swedish or Nordic model) in France in April 2016. It examines the convergence of French mainstream feminists and traditional neo-abolitionist actors in the fight against prostitution, and its impact on sex workers’ rights and wellbeing. We argue that there is continuity between the effects produced by the ban on soliciting enacted in 2003 and those created by the law penalising clients passed in 2016. In discussing the current repression of sex work in France, we highlight how the construction of the ‘problem of prostitution’ should be seen in light of broader political anxieties over sexism in poor neighbourhoods and immigration control, which justify the national priorities of security and public order.

Keywords: sex work, migration, Swedish model, France, women’s rights, public order

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Contextualising France's 'Problem of Prostitution'

Since the end of the Second World War, France has engaged in combating human trafficking and prostitution, especially following the ratification of the UN *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* in 1960. In France, as in many other countries, political debates and policies have consistently conflated human trafficking with prostitution.¹ With the strengthening of Europe's borders in the 1990s, migrants have increasingly been forced to rely on third parties to access the Schengen area.² During this time, migrant sex workers became much more visible in French cities, smaller towns and villages, subjecting them to heightened state scrutiny.³ In this sense, renewed political attention to the 'problem of prostitution'⁴ was to be expected. As Lilian Mathieu points out, the time when the French political class deemed dealing with prostitution 'unworthy' of the National Assembly's concerns was over.⁵ In the past two decades, in fact, there has been a steady increase in the number of parliamentary reports, legislative initiatives, and public debates on the topic.

The question of how to deal with prostitution emerged in the national political arena in 2003 through the implementation of a law on domestic security, *Loi pour la sécurité intérieure* (LSI), introduced by Nicolas Sarkozy, the then Minister of the Interior. This law was included in a broader series of measures concerning public order and security and it directly targeted sex workers. It extended the penalty for soliciting from a fine (*contravention*) to an offense (*délit*); it also broadened the acts that would be subject to penalties from 'active soliciting' to include 'passive soliciting'. As a result of

¹ R Andrijasevic and N Mai, 'Editorial: Trafficking (in) representations: Understanding the recurring appeal of victimhood and slavery in neoliberal times', *Anti-Trafficking Review*, issue 7, 2016, pp. 1–10, <https://doi.org/10.14197/atr.20121771>.

² F Guillemaut, 'Femmes Africaines, migration et le travail du sexe', *Sociétés*, vol. 1, no. 99, 2008, pp. 91-106, <https://doi.org/10.3917/soc.099.0091>.

³ C Deschamps, 'La figure de l'étrangère dans la prostitution', *Autrepart*, vol. 2, no. 42, 2007, pp. 39-52, <https://doi.org/10.3917/autr.042.0039>.

⁴ The phrase 'problem of prostitution' here points to the process through which French public institutions have constructed prostitution as a social problem to be urgently addressed. The use of this terminology allows us to reference the sociology of social problems, which since the 1970s has analysed the factors and actors who decide that a particular social activity or phenomenon is to be understood and treated as a problem. See M Spector and J I Kitsuse, *Constructing Social Problems*, Cummings, Menlo Park, 1977; J Gusfield, *The Culture of Public Problems: Drinking-driving and the symbolic order*, University of Chicago Press, Chicago, 1981.

⁵ L Mathieu, 'Genèse et logiques des politiques de prostitution en France', *Actes de la recherche en sciences sociales*, vol. 3, no. 198, 2013, pp. 5-20.

these shifts, a new article in the Penal Code (art. 225-10-1) was introduced. It is noteworthy that the soliciting offense had been previously scrapped from the Penal Code in 1994.

The question of how to deal with prostitution re-emerged in 2011 when two MPs—Danielle Bousquet and Guy Geoffroy—produced a detailed report on prostitution in France and presented it to the National Assembly for parliamentary debate. This report was grounded in a repressive stance on sex work⁶ that articulated the ‘fight against the prostitution system’ as a women’s rights issue. What distinguished the Bousquet-Geoffroy report from previous reports was its women’s rights angle, in that the authors suggested that sex workers should not be penalised but the onus should be placed on clients, as they must account for the fact that their demand for paid sexual services fostered exploitation and trafficking. Across the political spectrum, the vast majority of French politicians welcomed the proposal of creating an offense in the Penal Code that focused on individuals who paid for sexual services, which was finally approved in April 2016 (law n° 2016-444). Although one of the law’s stated objectives was to give women in particular the opportunity to leave sex work, recent research shows that client penalisation has been even more detrimental to sex workers than the previous anti-soliciting measures,⁷ which had already resulted in the deterioration of sex workers’ living and working conditions.⁸

⁶ For an analysis of the categories used in the literature to define sex work policy regimes, see: P Östergren, ‘From Zero-tolerance to Full Integration. Rethinking prostitution policies’, *Demand AT Working paper*, 2017b, p. 13, retrieved 5 November 2018, <http://www.demandat.eu/publications/zero-tolerance-full-integration-rethinking-prostitution-policies>.

⁷ H Le Bail and C Giametta, *Que pensent les travailleurs.se.s du sexe de la loi prostitution?*, Médecins du Monde, Paris, 2018.

⁸ These findings are consistent with research carried out in other countries. See, for example: Amnesty International, *Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers*, AI, 2016; S K Chu and R Glass, ‘Sex Work Law Reform in Canada: Considering problems with the Nordic Model’, *Alberta Law Review*, vol. 51, no. 1, 2013, pp. 101-124, <http://dx.doi.org/10.29173/alr59>; C Holmström and M Skilbrei, ‘The Swedish Sex Purchase Act: Where does it stand?’, *Oslo Law Review*, vol. 4, no. 2, 2017, pp. 82-104, <https://doi.org/10.18261/issn.2387-3299-2017-02-02>; J Levy and P Jacobsson, ‘Swedish Abolitionist Discourse and Law: Effects on the dynamics of Swedish sex work and on the lives of Sweden’s sex workers’, *Criminology and Criminal Justice*, vol. 5, no. 14, 2014, pp. 593-607, <https://doi.org/10.1177/1748895814528926>; P Östergren ‘Sweden’ in S Jahnsen, and H Wagenaar (eds.), *Assessing Prostitution Policies in Europe*, Routledge, London and New York, 2017; UNAIDS, *Guidance Note on HIV and Sex Work*, UNAIDS, 2009.

This article aims to shed light on the particular development of repressive policies on sex work in France. Whilst highlighting the specificities of the French context, it argues that the construction of prostitution as a social problem ought to be seen in light of broader political anxieties over sexism in poor neighbourhoods (*quartiers populaires*) and immigration control. The analysis draws on two main datasets: ongoing research on humanitarian interventions addressing migrant sex workers (Giametta) and interviews with institutional, mainstream feminists and other neo-abolitionist groups⁹ (Calderaro) that supported the repressive prostitution policies in France. The former data came out of the *Sexual Humanitarianism* research project (2016-2020), which explores the relationship among migration, sex work, and trafficking in the global sex industry.¹⁰ Focusing on the law and current political debates, Giametta provides an analysis of humanitarian discourses and securitisation practices targeting sex workers in France. This analysis is further supported by the ethnographic data emerging from interviews with 25 street- and internet-based migrant sex workers (trans-, cis-women, and men) and ten key informants, such as community health outreach workers, social workers, and immigration lawyers, in Paris and Marseille conducted between January 2016 and March 2018. The latter emerges from the fieldwork Calderaro conducted for a Master's thesis on the repressive sex work policies in France. In the winter of 2018, she conducted 15 interviews with the aim of understanding the role of different actors involved in the drafting of the 2016 law. Four different categories of actors were interviewed: two key MPs in charge of developing the law and members of the special committee to the National Assembly; members of public institutions, such as the office for gender equality at the Paris City Hall, the Parisian watchdog on violence against women (*Observatoire Parisien des Violences faites aux Femmes*), and two offices for gender equality in Saint-Denis and Bagnolet in the Seine-Saint-Denis area; neo-abolitionist activists, including two members of the *Mouvement du Nid* and the president of *Fondation Scelles*; and sex workers, activists, and staff of

⁹ As H Wagenaar *et al.* describe, 'neo-abolitionism' is the term used 'to indicate the current dominant movement to eradicate or suppress prostitution in society by applying criminal law to clients and third parties...its expression in public policy—client criminalisation and use of law as a pedagogical tool—was designed in Sweden'. See: H Wagenaar *et al.*, *Designing Prostitution Policy: Intention and reality in regulating the sex trade*, Policy Press, Bristol and Chicago, 2017, pp. 11-12. Generally speaking, neo-abolitionist actors view sex workers as victims of the patriarchal social order.

¹⁰ The research project is titled 'Sexual Humanitarianism: Migration, Sex Work and Trafficking' SEXHUM (ERC CoG 682451). It is a four-year project (2016-2020) funded by the European Research Council. SEXHUM is directed by Nicola Mai and based at Kingston University, London (Department of Criminology and Sociology) and at Aix-Marseille University (LAMES – Mediterranean Laboratory of Sociology). See: <https://sexualhumanitarianism.wordpress.com>.

community health organisations that defend sex workers' rights. They were all asked about their involvement in the consultation and decision-making processes prior to the enactment of the 2016 law.

Sexual Politics, Public Order, and National Security

Although the end-demand model has not delivered the promised results of eliminating prostitution and trafficking in Sweden, it is still presented as *the* solution to the problems of prostitution and gender inequality. The elected official in charge of gender equality at Paris City Hall (*Mairie de Paris*), H el ene Bidard, told us that: 'in hindsight, its success was really to do with the organisations stressing the link between violence against women and prostitution'. According to the neo-abolitionist paradigm, sex workers are no longer delinquents, but rather victims. In the Swedish context, the law was promoted as part of a wider set of laws called *Kvinnofrid*, or Violence Against Women Act (*Kvinnofrid* is translated as 'peace or serenity for women').¹¹

Alongside the gendered dimension of the debate on prostitution emanating from Swedish institutions, anthropologist Don Kulick examined how the discourse of sexuality, or how one deals with sexuality in one's private life, tells us something about the values of the larger society. In the 1994 EU referendum, Sweden voted to join the European Union by a narrow margin, as fears circulated in the country that, by accessing the EU, the country 'would be flooded by tens of thousands of foreign prostitutes clamoring at the gates, and it would be infected by a liberal view of prostitution that was said to be spreading throughout Europe'.¹² Since then, Swedish parliamentarians in Brussels have lobbied for what came to be known as the 'Swedish model' for the abolition of prostitution, with the goal of exporting the distinctive image of Sweden as gender-equality-paradise to other member states. Today, at the EU level, it is worth mentioning the strengthened links that have emerged between Swedish and French mainstream feminists as a result of the activities of the European Women's Lobby.¹³ Yet, in order to understand

¹¹ D Kulick, 'Sex in the New Europe: The criminalization of clients and Swedish fear of penetration', *Anthropological Theory*, vol. 3, no. 2, 2003, pp. 199-218, <https://doi.org/10.1177/1463499603003002005>.

¹² D Kulick, 'Four Hundred Thousand Swedish Perverts', *GLQ*, vol. 11, no. 2, 2005, pp. 205-235, p. 221.

¹³ The European Women's Lobby, founded in 1990, is an umbrella organisation of women's NGOs across the European Union with a secretariat based in Brussels. It includes the French Coordination for the European Women's Lobby (CLEF) and the Swedish Women's Lobby. This NGO takes a neo-abolitionist approach to prostitution.

France's particular road to the adoption of the end-demand approach, we need to analyse other factors that go beyond politicians' moral concerns about gender inequality and trafficking.

Sexuality, national values and racial issues

In the early 2000s, there was a shift in how gender and sexuality were discussed in the French political sphere, as they started to be explicitly linked to racial questions.¹⁴ At that time, the media focused its attention on acts of sexual violence in the Parisian *banlieues* (suburbs) committed by young men of North African origin¹⁵—the number of newspaper articles on this subject increased tenfold from 2000 to 2001.¹⁶ This view of sexual violence as endemic to certain geographical areas cannot be understood, Myriam Ticktin argues, without considering the debates about immigration and national security, and the intensifying Islamophobia in the country.¹⁷

Two noteworthy discourses co-existed in France in the early 2000s. The first focused on the fight against sexism *through* racism, mobilising 'the colonial archive that codes race/class through sexuality'¹⁸ (i.e. the migrant or racial Other seen as a sexual deviant). The second was the institutionalised discourse of violence against women emanating from the UN since the 1990s that allowed for the increased visibility of issues related to gender and sexual violence (i.e. female genital mutilation, domestic violence, sati, honour killings, etc.). At that time, the bans on passive soliciting and the hijab, as well as the focus on sexual violence in the *banlieues*, 'turn[ed] in some important ways on a discourse about the protection of women from violence and oppression—whether or not this rhetoric actually holds in practice.'¹⁹ The moral economy behind the debates and implementation of laws controlling sexuality created a panic that focused on migrants and racialised non-migrants living in France.

¹⁴ E Fassin, 'The Rise and Fall of Sexual Politics in the Public Sphere: A transatlantic contrast', *Public Culture*, vol. 18, no. 1, 2006, pp. 79–92, <https://doi.org/10.1215/08992363-18-1-79>; E Macé and N Guénif Souilamas, *Les Féministes et le Garçon Arabe*, Aubes, Paris, 2004.

¹⁵ C Hamel, 'De la racialisation du sexisme au sexisme identitaire', *Migrations Société*, vol. 17, no. 99-100, 2005, pp. 91-104.

¹⁶ L Mucchielli, *Le Scandale des 'Tournantes': Dériver médiatiques, contre-enquête sociologique*, La Découverte, Paris, 2005.

¹⁷ M Ticktin, 'Sexual Violence as the Language of Border Control: Where French feminist and anti-immigrant rhetoric meet', *Signs*, vol. 33, no. 4, 2008, pp. 863-889, <https://doi.org/10.1086/528851>.

¹⁸ A L Stoler, *Race and the Education of Desire: Foucault's history of sexuality and the colonial order of things*, Duke University Press, Durham, 1995.

¹⁹ Ticktin, p. 873.

This context created significant animosity and division among feminists in France,²⁰ and resulted in the consolidation of what American sociologist Elisabeth Bernstein has termed ‘carceral feminism’, a type of feminism that relies heavily on state forms of power, such as law enforcement and legal institutions, to fight patriarchy.²¹ The convergence of a certain type of hegemonic feminism with the state and its anti-immigration policies has created an anti-trafficking politics in France that can be termed ‘femonationalist’.²² This term, coined by Sara Farris, points to how prominent feminists and female bureaucrats—Farris names them ‘femocrats’—have promoted laws and attitudes stigmatising the Muslim population in France, thus strengthening anti-Islam positions in the name of women’s rights.

From a femonationalist standpoint, the problem of misogyny and patriarchal domination is all too often relegated to specific (poor) areas in French cities where many racialised people live. In the recent debates on the prohibition of sex work, poor and working-class clients of sex workers are pathologised as ‘bad’ sexual subjects who have no place in the civilised space of the Republic—this is the moral argument vis-à-vis French citizenship ideals. At the same time, clients are often racialised as ‘regressive’ sexual subjects who do not know how to treat a woman with respect and who are very likely to exploit (their) women by buying sex from them, pimping or trafficking them—this is the racist argument targeting minorities and migrants. In mainstream media, people who live in *quartiers populaires* (working class neighbourhoods) are stigmatised for their sexist attitudes towards women and gay men, with both groups construed as in need of rescue. This type of rescue discourse has impacted the way in which the government has simultaneously adopted repressive policies to both de-veil Muslim women and abolish prostitution—in the name of gender equality and women’s empowerment. In one of our interviews, Yves Charpenel from the neo-abolitionist group *Fondation Scelles*, when discussing prostitution in the poorest Parisian neighbourhoods, said: ‘these women are used by their own communities, generally these are ethnic minorities in the *banlieues*, they’re often raped in gangbangs (*tournantes*), they’re socially declassed, becoming completely silent and invisible, and they can be

²⁰ J W Scott, *The Politics of the Veil*, Princeton University Press, Princeton, 2007; N Dot-Pouillard, ‘Les recompositions politiques du mouvement féministe français au regard du *hijab*’, *SociologieS* (Online), 2017, available at <http://journals.openedition.org/sociologies/246>.

²¹ E Bernstein, ‘The Sexual Politics of the New Abolitionism’, *Differences*, vol. 18, no. 3, 2007, pp. 128–143, <https://doi.org/10.1215/10407391-2007-013>.

²² S Farris, ‘Femonationalism and the “Regular” Army of Labor Called Migrant Women’, *History of the Present*, vol. 2, no. 2, 2012, pp. 184–199, <https://doi.org/10.5406/historypresent.2.2.0184>.

sold to the gangs in the nearby *banlieues* (interview, February 2018). The convergence of political anxieties over public order, security, and women's freedom has had the effect of radicalising French mainstream feminists' stance on the abolition of prostitution and, with it, the phenomenon of trafficking. The heightened visibility of migrants in the sex work sector—particularly in the streets and public spaces—has exacerbated these concerns.

Migration control: public order and national security

The presence of migrant sex workers throughout France has been seen as a public nuisance. Some cities, such as Lyon, started to apply anti-soliciting laws in the city centre even before LSI, the 2003 law on domestic security. As elsewhere in Europe, city centres and gentrified areas had to be 'safeguarded' and anti-soliciting ordinances started to be enacted throughout the country at a municipal level as early as 2002.²³ Maintaining public order via the penalisation of soliciting became a matter of national security under then-interior minister Nicolas Sarkozy. This occurred because migrant sex workers were seen as connected to trafficking networks; they embodied a form of transnational criminality taking root in France. Under the LSI (and the implementation of the UN Trafficking Protocol), migrant sex workers who were arrested for soliciting were given the opportunity to access anti-trafficking mechanisms and receive temporary residence permits on the condition that they reported their pimps and/or traffickers.

The control of migrant numbers is central to securitisation in France. Europe's so-called 'refugee crisis', the terrorist attacks of 2015 in France and Belgium and the two-year state of emergency that followed, and the subsequent anti-terrorist law implemented in 2017 by President Macron's government, triggered an increase in identity checks, raids, and further stigmatisation of Islam, all of which target racialised people and migrants in the country. These extraordinary police and administrative measures have been justified as part of the conventional *modus operandi* under the *état d'urgence*.²⁴ Migrants have been increasingly depicted as predators and subjected to shockingly high levels of police control. As our ethnographic research indicated, the government's gender equality agenda emanating from institutional feminists has not challenged the racist logics of its security measures; on the contrary, it has legitimated carceral practices as a way of advancing the abolition of prostitution.

²³ Mathieu, 2013.

²⁴ D Fassin, 'Short Cuts', *London Review of Books*, vol. 38, no. 5, 2016, p. 23.

New Alliances and the Redefinition of the ‘Problem of Prostitution’

Emerging alliances among diverse actors have influenced the politicisation of the ‘problem of prostitution’, as well as its place on the institutional agenda in France.²⁵ The alliance of neo-abolitionist organisations, institutional feminists, and mainstream feminist movements has redefined prostitution through the neo-abolitionist paradigm, conflating it with violence against women.²⁶ Further, anti-neoliberal and anti-globalisation discourses have been widely mobilised to redefine prostitution as a political issue at both national and international levels.²⁷

The convergence of neo-abolitionists, feminists, and public institutions

The first alliance we want to point to is the one among neo-abolitionist actors themselves, that is, feminist advocacy groups and traditional neo-abolitionist organisations. The neo-abolitionists we refer to include organisations that fall under the legal category of ‘public benefit organisations’ (*associations reconnues d’utilité publique*), i.e. organisations with a public interest objective that can benefit from public funds, gifts, and bequests. We refer to these actors as ‘moral entrepreneurs’,²⁸ thereby emphasising their moral stance and the Catholic tradition from which their politics emanate.²⁹ Among these organisations, the *Mouvement du Nid* and *Fondation Scelles* have played a central role. In fact, together with feminist organisations, they established *Abolition 2012*, a collective of all neo-abolitionists who favour the eradication of prostitution in France. When asked about the links between the *Mouvement du Nid* and *Fondation Scelles*, Yves Charpenel, president of the latter, stated:

²⁵ For more on the placing of social problems on the agenda and on the distinction between institutional and political agendas, see: R Cobb and C Elder, *Participation in American Politics: The Dynamics of Agenda-Building*, Johns Hopkins University Press, Baltimore, 1972.

²⁶ D Bousquet, ‘Prostitution: des violences du corps à l’esprit’, *Après-demain*, vol. 2, no. 26, 2013.

²⁷ Mathieu.

²⁸ H Becker, *Outsiders: Studies in the sociology of deviance*, Free Press, New York, 1973.

²⁹ The *Mouvement du Nid* was created in 1946 by a preacher, Jean-Marie Talvas, and sits within the left Catholic movement *Action Catholique Ouvrière*. *Fondation Scelles* was registered as a public benefit organisation in 1994 and is less established than the *Mouvement du Nid*. Its members come from bourgeois social backgrounds with senior civil servants and magistrates being part of the foundation. They publish materials and organise seminars to sensitise the public about the dangers of prostitution.

Y. Charpenel: We created *Abolition 2012* together and we created the CAP [Coalition for the Abolition of Prostitution], which gathers 23 organisations from 23 different countries, and we exchange knowledge about different national laws, and we also work with survivors' organisations ['survivors' here refers to former sex workers—authors' note].

C: So *Abolition 2012* was at its beginning created by...?

Y. Charpenel: The *Fondation* [Scelles] and the *Mouvement du Nid*, yes. And then feminists joined in.

Abolition 2012 was the result of the alliance of about 80 neo-abolitionists and feminists coming both from advocacy groups and public institutions. They gathered to organise meetings and demonstrations to support the end-demand law. The interviewed MPs mentioned the indispensable support of feminist organisations. Catherine Coutelle, former MP and vice-president of the special committee charged with the development of the law, stated that: '*Abolition 2012* has been a very useful movement, we regularly engaged with them when we felt that public opinion and the press were not enough in favour, then they wrote editorials in newspapers etc...' (interview, January 2018). *Abolition 2012* is not just an advocacy group composed of organisations trying to put pressure on public institutions; officials and institutions are a *central part* of the collective. During an interview with H  l  ne Bidard, the official in charge of gender equality in Paris, she confirmed the importance of this collective and the role of the *Mairie de Paris* and other public institutions in the development of the end-demand law, stating that: 'they repeatedly gathered and organised demonstrations in front of the Assembly and the Senate for it to be placed on the agenda' (interview, April 2018).

In this process, the *Mouvement du Nid* became what Kingdon calls a 'hidden participant'³⁰ as it played a leading role behind the scenes through persistent lobbying. In our interview, Catherine Coutelle pointed out the *Mouvement's* relentless engagement:

I'm going to explain it to you from the very beginning, as no one knows [laughs]. The *Mouvement du Nid* organised a lunch at the summer university of La Rochelle in 2012, with Najat Vallaud-Belkacem [then Minister of Women's Affairs]. Gr  goire Th  ry [the *Mouvement* president] wanted me to come, as I had just become president of the women's rights delegation, so they knew I could be

³⁰ J Kingdon, *Agendas, Alternatives and Public Policies*, Little, Brown, 1984.

a strategic actor. And I felt this lunch was like a trap [laughs], I mean, he [Théry] was next to Najat, saying: ‘Najat, this law must absolutely pass, you have to adopt it, it must be put on the agenda, when does parliament start discussing it?’ I was astonished, thinking ‘but what’s this organisation doing, dictating our agenda to us? ...’.

The *Mouvement* managed to put pressure on MPs and officials during formal and informal meetings by continually stressing both the relevance and the urgency of the law. When describing the *Mouvement’s* lobbying practice, Lorraine Questiaux, a lawyer at the *Mouvement*, used the expression ‘harassing politicians’ (interview, April 2018). At all levels, the *Mouvement* played a key role in redefining the problem and placing it onto the institutional agenda.

The ideological redefinition of the ‘problem of prostitution’: the use of anti-capitalist rhetoric

It is worth noting that the French government’s repressive policy on sex work is the result of the convictions and efforts of socialist politicians, as opposed to other countries where the end-demand model was implemented under conservative governments, as in the cases of Canada and Northern Ireland. In fact, the political redefinition of the ‘problem of prostitution’ from a leftist standpoint has been essential to the success of the feminist, neo-abolitionist vision in France. The use of the anti-globalisation argument,³¹ as well as other Marxist ideas about the commodification of the labour force, has served as a way of claiming that the law is not only progressive but even anti-capitalistic at its core.

Feminists on the radical left contributed to the consolidation of support for the end-demand model. For instance, the gender committee of the anti-globalisation group *Attac* has argued that prostitution fosters the commodification of women’s bodies, and that it represents the best example of globalised forced labour, thereby fitting into a neoliberal ideology.³² Sociologist Marie-Victoire Louis, president of the AVFT (*Association européenne contre les violences faites aux femmes au travail*), was the first to link anti-capitalism and neo-abolitionism in the 1990s. She defined prostitution as the fruit of patriarchal violence, leading to the commodification of women’s bodies for the benefit of clients, pimps, and the state.³³ Following this logic, repression becomes the necessary position to adopt in order to reaffirm the ‘non-ownership’ of the human body, which is linked to the legal notion of human

³¹ Mathieu.

³² Attac, *Mondialisation de la Prostitution, Atteinte Globale à la Dignité Humaine*, Mille et une nuits, Paris, 2008.

³³ Mathieu.

dignity, as exemplified by the title of the 2008 *Attac* report: ‘The globalisation of prostitution, a global violation to human dignity’.

Some among the neo-abolitionist actors who supported or mobilised around the 2016 law had careers and public roles in neo-abolitionist groups, feminist organisations, and radical left political parties. For example, in our interview, Lorraine Questiaux of the *Mouvement* argued that the 2016 law represented a ‘real revolution’:

It is a revolution; it is to me the most revolutionary law of the past 40 years. It is the last social progress we earned: it is the first time that we affirm in such a clear way that labour cannot be a total exploitation of the individual. We affirm we cannot entirely exploit the individual, their body, and their *psyche*. It is an anti-capitalist law. A Marxist law, deeply Marxist.

When asked to explain how this law is ‘deeply Marxist’, she stated that ‘the culmination of capitalism is prostitution’, as it integrally exploits the person. She then inscribed abolitionism into the history of movements for social progress:

Every labour law and reform had a single goal: preventing prostitution. From the beginning of the century, we demanded the protection of the body, that work accidents should be covered, flexible working hours so that people do not die in the workplace, so that the body cannot be damaged, consumed by the individual need of the capitalist exploiter.

Thus, neo-abolitionist actors use anti-capitalist rhetoric to defend their ideological position. The inscription of the neo-abolitionist law in the historical framework of social reforms is enhanced by the participation of actors from the French radical left in the debate on prostitution, but also by actors enjoying a multi-positionality—being involved simultaneously in feminist organisations, public institutions, and radical left parties.

The delegitimisation of sex workers: symbolic violence and collateral damage

Policy and lawmakers perpetuate sex workers’ historical inaudibility and sex workers continue to speak through organisations, unions, individual representatives, but nobody listens.³⁴ In particular, migrants working in the

³⁴ G Pheterson, ‘At long last, listen to the women!’, *Open Democracy*, 2 March 2016, <https://www.opendemocracy.net/beyondslavery/sws/gail-pheterson/at-long-last-listen-to-women>.

sex work sector are subject to institutional silencing strategies in specific ways. First, this is accomplished through the victim of trafficking category, as it is systematically applied to them. The case of Chinese sex workers in Paris is significant in that it challenges this categorisation. Florence Lévy and Marylène Lieber show that Chinese women selling sex in Paris work, in large part, independently and that they start sex work after assessing the possibilities of countering poverty and accessing resources, that is, their ability to make plans, to have strategies, and to act within a limiting structure.³⁵ Yet, during our interview, the neo-abolitionist politician Maud Olivier categorically stated that Chinese sex workers depend on ‘very violent Chinese mafias, they are violated and brutalised’, thus entirely erasing any form of agency this group of migrant women may have. Second, when migrant sex workers mobilise to claim their rights and fight for improvements in their working conditions through public demonstrations, they are exposed to more policing, and their migration statuses can readily make them subject to detention and deportation. For instance, even after the mobilisation of Chinese sex workers through the Lotus Bus—a support programme that the NGO Médecins du Monde launched in 2002—the police repression they experienced remained high.³⁶ Further, during our fieldwork, we also learnt that both the sex workers and Médecins du Monde stopped receiving public subsidies from the *Marie de Paris*. Thus, in the name of protection, migrant sex workers are often the targets of repressive and punitive policies. These mechanisms are part and parcel of a ‘sexual humanitarian’ logic, a concept that Nicola Mai uses to describe the specific interplay between protection and control that migrants experience when they are seen as vulnerable by humanitarian discourse and interventions because of their sexual behaviours, orientations, and labour.³⁷

More generally, the delegitimisation of sex workers’ arguments and work, be they migrants or non-migrants, relies on the notion of ‘symbolic violence’, which refers to ‘the violence exercised upon a social agent with their complicity’.³⁸ In France, this concept was used extensively in both the hijab ban and the sex work debates, allowing policymakers to claim that dominated people—here veiled women and sex workers—unconsciously accept being dominated and even claim the right to be so. A prominent example of this was when, in 2016,

³⁵ F Lévy and L Marylene, ‘Sex and Emotion-Based Relations as a Resource in Migration: Northern Chinese women in Paris’, *Revue française de sociologie*, vol. 52, no. 5, 2011, pp. 3-29, <https://doi.org/10.3917/rfs.525.0003>.

³⁶ H Le Bail, ‘Mobilisation de Femmes Chinoises Migrantes se Prostituant à Paris. De l’invisibilité à l’action collective’, *Genre, sexualité & société*, no. 14, 2015, <https://doi.org/10.4000/gss.3679>.

³⁷ N Mai, ‘Assembling Samira: Understanding sexual humanitarianism through experimental filmmaking’, *anti-Atlas Journal*, vol. 1, 2016.

³⁸ P Bourdieu and L Wacquant, *An Invitation to Reflexive Sociology*, University of Chicago Press, Chicago, 1992, p. 167.

the then minister of women's rights, Laurence Rossignol, compared Muslim women wearing the hijab to the '[African slaves in the US] who were in favour of slavery' on a French radio programme.³⁹ Further, the repressive sex work paradigm cannot conceive that sex workers can speak for themselves. Thierry Schaffauser, a member of STRASS, the French union of sex workers, told us that: 'because I'm a man, because I can challenge their arguments, the abolitionists do not see me as a sex worker; they say that I choose it or that I am a pimp'. Since its inception in 2009, STRASS has been the target of neo-abolitionist arguments in the press and the national media that sex worker activists are pimps, liars, or 'enablers of exploiters and traffickers'.⁴⁰

Important similarities can be observed in the drafting process leading to the 2004 law banning the headscarf in schools and the 2016 law criminalising clients of sex workers, notably through the delegitimisation of both veiled women and sex workers and their alleged inability to speak for themselves.⁴¹ In both cases, special committees at the National Assembly were in charge of conducting hearings with selected groups and individuals, which were understood to be 'experts' on the respective matter. As for the 2004 ban, veiled women were not present at the special committee,⁴² and neither were the anti-ban spokespersons, social scientists, and teachers.⁴³

In 2013, the special committee convened the opponents of the end-demand law all at the same time and on a single day (30 April), allowing them only a few hours to debate with MPs. Yet, organisations and individuals supporting the law were involved throughout the entire drafting process. Maud Olivier, the then MP rapporteuse of the law, said that the MPs 'had to also listen to them [the sex worker organisations] not to appear sectarian, partisan, or not

³⁹ RMC radio programme on 30 March 2016 (see the press article: K Lewis, 'French minister Laurence Rossignol compares Muslim women who wear veils to "negroes in favour of slavery"', *The Independent*, 31 March 2016, <https://www.independent.co.uk/news/world/europe/french-minister-laurence-rossignol-compares-muslim-women-who-wear-veils-to-negroes-in-favour-of-a6961121.html>).

⁴⁰ See, for example, a TV interview with Lorraine Questiaux: "'Vous mentez!': vif échange entre une avocate des travailleuses du sexe et l'une d'entre elles', *L'CI*, 13 April 2016, retrieved 14 November 2018, <https://www.lci.fr/france/vous-mentez-vif-echange-entre-une-avocate-des-travailleuses-du-sexe-et-lune-dentre-elles-1255046.html>.

⁴¹ C Calderaro, *La 'Problématique du Voile' et son Entrée dans le Cadre Juridique Français: Genèse et évolution*, Master dissertation, Presses Universitaires de Strasbourg, Strasbourg, 2017.

⁴² A Gresh, *L'Islam, la République et le Monde*, Fayard, Paris, 2004; I Chouder, M Latrèche, P Tevanian, *Les Filles Voilées Parlent*, La Fabrique, Paris, 2004.

⁴³ P Tevanian, *Le Voile Médiatique. Un faux débat: "L'affaire du foulard islamique"*, Raisons d'agir, Paris, 2005, pp. 44-46.

objective’, and that ‘the MPs already knew they would not be convincing’. At the same time, the sex worker organisations were aware that their invitation into the discussion was merely a form of tokenism. The then secretary of STRASS, Morgane Merteuil, told us that: ‘the MPs’ objective was to set up a situation where words could be used against us; they needed our arguments to finish their report and to legitimise what they’ve been saying since the beginning’ (interview, April 2018). This meant that the decision had already been made.

The makeup of the special government committees on these two issues (the headscarf and prostitution) reflected their members’ ideological positions; these committees effectively became the strategic site for ‘the construction of a narrative planned in advance to justify the necessity of the ban’.⁴⁴ Here, the veil is readily cast as a symbol of women’s oppression and prostitution is seen as inherently gendered violence. This is the logic that excluded veiled women from the political and parliamentary debate in 2004, and later on, sex workers from the debates in 2013–2016.

The neo-abolitionist framework has inevitably produced collateral damage, that is, the negative impact of these policies is not accounted for. In this context, the figure of the sex worker is construed as worthy of rescuing and, at the same time, accepted as collateral damage given her situatedness in a criminalised politico-economic space. Among policymakers, the sexual humanitarian discourse of intervening to end symbolic violence and the awareness of the damage brought to the targeted populations co-exist. Acting on ‘symbolic violence’ functions at a discursive level, and its resulting corollary is the detrimental impact on the livelihood of sex workers who remain the ones hit hardest by penalising measures. In the process, sex workers’ lives become ‘disposable’,⁴⁵ in that they can be sacrificed for the greater good of attempting to create a world without prostitution. At the governmental level, this damage caused to sex workers is justified by border control, national security, public order, and women’s rights.

⁴⁴ P Portier, ‘La Politique du Voile en France: Droits et valeurs dans la fabrique de la laïcité’, *Revue du droit des religions*, Presses Universitaires de Strasbourg, no. 2, 2016.

⁴⁵ J Butler, *Frames of War: When is life grievable?*, Verso, New York, 2009.

Conclusion

The moral panic over trafficking leads to the perpetuation of myths about its scale and the circumstances under which it occurs.⁴⁶ In a study conducted in France in 2015, prior to the implementation of the April 2016 law, Mai and Giametta conducted a survey with 500 sex workers based in the main French cities,⁴⁷ which showed that 98 per cent of respondents were against the adoption of the law and that around 7 per cent could be identified as potential victims of trafficking.

The way in which France has decided to address the ‘problem of prostitution’ resonates with broader ideological positions on the war on drugs and prostitution elsewhere in the world. First, it rejects empirical knowledge produced by social scientists studying the phenomena.⁴⁸ Second, it uses racialised imagery to stir affective and humanitarian forms of governance based on loathing (of traffickers and other ‘exploiters’) and pity (toward sex workers/victims). Finally, it produces policies that are highly detrimental to the livelihood of the very people it purports to protect, as it makes the work much more hidden and dangerous. Scholarly research on the ‘Swedish model’ and its impact in Sweden has shown that this framework has been detrimental to sex workers’ livelihood, increasing their isolation and stigmatisation as well as their exposure to violence.⁴⁹ Activists and academics have also repeatedly called into question the anti-trafficking dimension intrinsic to the end-demand approach. Sex workers, both migrants and non-migrants, end up more vulnerable to exploitation, abuse, and coercion as a consequence of ‘anti-trafficking’.⁵⁰ Furthermore, as Anderson and O’Connell Davidson argue, criminalising the demand does not address the structural socio-economic issues that produce and sustain human trafficking and exploitation.⁵¹

⁴⁶ N Mai, ‘Between Embodied Cosmopolitanism and Sexual Humanitarianism: The fractal mobilities and subjectivities of migrants working in the sex industry’ in V Baby-Collins and L Anteby (eds.), *Borders, Mobilities and Migrations: Perspectives from the Mediterranean in the 21st century*, Peter Lang, Brussels, 2014, pp. 175–192.

⁴⁷ N Mai, *Sondage sur la Pénalisation de Clients en France*, Marseille, 2015, http://www.lames.cnrs.fr/IMG/pdf/RESUME_ETUDE_PENALISATION-2.pdf.

⁴⁸ N Mai, C Giametta and H Le Bail, ‘The Impact of the Swedish Model in France: Chronicle of a disaster foretold’, *Open Democracy*, 25 April 2018, <https://www.opendemocracy.net/beyondslavery/nicola-mai-calogero-giametta-h-l-nelle-bail/impact-of-swedish-model-in-france-chronicl>.

⁴⁹ Levy and Jacobsson; Östergren.

⁵⁰ P G Maciotti and G Garofalo Geymonat, ‘Sex Workers Speak: Who listens?’, *Open Democracy*, 29 February 2016, <https://www.opendemocracy.net/beyondslavery/sws/giulia-garofalo-geymonat-pg-maciotti/sex-workers-speak-who-listens>.

⁵¹ B Anderson and J O’Connell Davidson, *Is Trafficking in Human Beings Demand Driven? A multi-country pilot study*, IOM, Geneva, 2003.

Sex workers' exclusion from the political debates that concern them results from them being construed as 'socially deviant' through the prism of gender and race⁵² and is situated within the framework of larger national anxieties about public order, security, and immigration control. As we have shown, veiled Muslim women share a similar predicament in France: the ban on the veil cannot be detached from racist and anti-immigration policies depicting Muslim men as 'oppressors' and Muslim women as 'victims' to save.⁵³ Similarly, the repressive sex work policies cannot be isolated from national concerns about immigration and security.⁵⁴ Legal taxonomy avails itself of social categories of deviancy that circulate through socio-political and cultural discourses in the larger society.⁵⁵ Repressive laws on prostitution not only consolidate 'deviant categories', but they also put them in the service of broader strategies of state control.

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⁵² N Heitzeg, 'Differentials in Deviance: Race, class, gender and age' in B D Clifton (ed.), *Routledge Handbook of Deviant Behavior*, Routledge, London and New York, 2011, pp. 53-60.

⁵³ S Farris, *In the Name of Women's Rights: The rise of femonationalism*, Duke University Press, Durham, 2017.

⁵⁴ G Pheterson, *The Prostitution Prism*, Amsterdam University Press, Amsterdam, 1996; L Oso Casas, 'Prostitution et immigration des femmes latino-américaines en Espagne', *Cahiers du genre*, no. 40, pp. 91-113, <https://doi.org/10.3917/cdge.040.0091>.

⁵⁵ C Rinaldi, *Diventare normali. Teorie, analisi e applicazioni interazioniste della devianza e del crimine*, McGraw-Hill Education, New York, 2016.

'Sex Trafficking' as Epistemic Violence

Ben Chapman-Schmidt

Abstract

While the American *Allow States and Victims to Fight Online Sex Trafficking Act of 2017* (FOSTA) has been heavily criticised by researchers and activists for the harm it inflicts on sex workers, many of these critics nevertheless agree with the Act's goal of fighting sex trafficking online. This paper, however, argues that in American legal discourse, 'sex trafficking' refers not to human trafficking for sexual exploitation, but rather to all forms of sex work. As such, the law's punitive treatment of sex workers needs to be understood as the law's purpose, rather than an unfortunate side effect. This paper also demonstrates how the discourse of 'sex trafficking' is itself a form of epistemic violence that silences sex workers and leaves them vulnerable to abuse, with FOSTA serving to broaden the scope of this violence. The paper concludes by highlighting ways journalists and academic researchers can avoid becoming complicit in this violence.

Keywords: human trafficking, sex work, human rights, law enforcement, governmentality, postcolonial theory

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Introduction

On 11 April 2018, the United States signed into law the *Allow States and Victims to Fight Online Sex Trafficking Act of 2017* (FOSTA), with the stated purpose of ending 'sex trafficking' on the internet. There has been widespread criticism of this bill from researchers and activists, both for the way it undermines free speech on the internet and for the likelihood that it will negatively impact the health and safety of sex workers. However, even among these critical, sex worker-supportive outlets, many have spoken positively about

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the Act's stated purpose of targeting 'sex trafficking' online.¹ These researchers and journalists tend to depict the negative outcomes of FOSTA as consequences of overreach or an excess of zeal; for them, the campaign against 'sex trafficking' itself is both a worthy cause and compatible with the rights of sex workers.

This paper challenges that position. Drawing on an analysis of American legislation and a review of the existing literature on human trafficking and sex work, it argues that in American legal discourses, 'sex trafficking' refers not to human trafficking for sexual exploitation but rather to the traffic in sex—a definition which includes all forms of sex work. As such, the negative consequences of FOSTA for sex workers are, in fact, the intended outcome of this anti-'sex trafficking' law. This paper further argues that the propagation of the term 'sex trafficking', and its displacement of both the language and social spaces used by sex workers, constitutes a form of epistemic violence, and that this epistemic violence leads, in turn, to an increase in physical violence against sex workers. FOSTA thus represents an attempt to entrench and advance this form of epistemic violence. The paper concludes by exploring the role that journalists and researchers play in propagating this epistemic violence and by suggesting strategies that might be adopted to resist it.

What is 'Sex Trafficking'?

Many researchers and journalists appear to use the term 'sex trafficking' as a shorthand for human trafficking for sexual exploitation. However, in the context of United States law, the term 'sex trafficking' is given meaning by the *Trafficking Victims Protection Act of 2000 (TVPA)*, which defines it as: 'The recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.'² Notably absent from this definition

¹ See for example A Romano, 'A New Law Intended to Curb Sex Trafficking Threatens the Future of the Internet as We Know It', *Vox*, 13 April 2018, <https://www.vox.com/culture/2018/4/13/17172762/fosta-sesta-backpage-230-internet-freedom>; E Goldman, 'Balancing Section 230 and Anti-Sex Trafficking Initiatives', *Legal Studies Research Papers Series*, No. 2017-17, Santa Clara University School of Law, Rochester, NY, 30 November 2017, <http://papers.ssrn.com/abstract=3079193>; E Goldman, 'Sex Trafficking Exceptions to Section 230', *Legal Studies Research Papers Series*, No. 2017-13, Santa Clara University School of Law, Rochester, NY, 19 September 2017, <http://papers.ssrn.com/abstract=3038632>; A Glaser, 'After Backpage', *Slate*, 27 April 2018, <https://slate.com/technology/2018/04/after-backpage-and-sesta-sex-workers-worry-theyll-have-to-return-to-the-streets.html>.

² *Victims of Trafficking and Violence Protection Act of 2000*. Public Law 106–386. U.S. Statutes at Large 114 (2000): 1463-1548. Cited below as TVPA 2000. Sec. 103(9).

is any requirement for a ‘means’, or even for ‘exploitation’. In other words, according to the TVPA, ‘sex trafficking’ is simply involvement in any aspect of personnel recruitment for the sex industry. Moreover, this definition has subsequently been expanded to include ‘patronizing or soliciting’,³ meaning that in the United States, ‘sex trafficking’ is legally defined to include the act of purchasing sex. This definition is clearly at odds with the idea of human trafficking for sexual exploitation found in the UN Trafficking Protocol. Instead, it appears to be based on a literal reading of the term ‘sex trafficking’: the illicit trade in commercial sex.⁴

It is important here to note that the TVPA does not actually criminalise ‘sex trafficking’. Instead, it criminalises ‘severe forms of trafficking in persons’, which it defines as:

- (A) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.⁵

Taken together, these two sections suggest that the American definition of ‘severe forms of trafficking in persons’ is relatively close to the definition of ‘trafficking in persons’ found in the UN Trafficking Protocol, in that it both includes forms of exploitation not related to sex and does not include sex work practices by consenting adults.⁶ However, the fact that the TVPA does

³ *Justice for Victims of Trafficking Act of 2015*, Pub. L. No. 114–22, 129 Stat. 227–267 (2015) (“TVPA 2015”), Sec. 108(c).

⁴ The usage of the term ‘trafficking’ here appears to follow this definition given by the Oxford English Dictionary: ‘Dealing or bargaining in something which should not be made the subject of trade’. See ‘Traffic, N.’, OED Online, Oxford University Press, <http://www.oed.com/view/Entry/204333>; see also A E Cassimatis, C Drummond and K Greenwood, ‘Traffic in Arms’, *Max Planck Encyclopedia of Public International Law*, Max Planck Foundation for International Peace and the Rule of Law, 2016, <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e98> for a discussion of the distinction between ‘arms trade’ and ‘arms trafficking’.

⁵ TVPA 2000, Sec. 103(8).

⁶ This two-tiered definition emerged both from the messy legislative process of merging competing anti-trafficking bills in 1999, and the on-going battle over how to define ‘human trafficking’ that also led to the ambiguity found in the UN definition. See, for example: J A Chuang, ‘Rescuing Trafficking from Ideological Capture: Prostitution reform and anti-trafficking law and policy’, *University of Pennsylvania Law Review*, vol. 158, no. 6, 2010, pp. 1655–1728; B Sullivan, ‘Trafficking in Women: Feminism and new international law’, *International Feminist Journal of Politics*, vol. 5, no. 1, 2003, pp. 67–91, <https://doi.org/10.1080/1461674021000056773>.

not make ‘sex trafficking’ a criminal offense at the federal level is somewhat misleading. In the United States, most criminal law enforcement is conducted at the state level⁷ and sex work is already illegal in every state but Nevada⁸—meaning that any attempt to criminalise ‘sex trafficking’ at the federal level would have been largely redundant.

This does not mean that the introduction of the ‘sex trafficking’ paradigm into the American legal system did not have an impact at the state level. Subsequent to the passage of the TVPA, some states did begin to target sex workers’ clients for criminal sanction, on the theory that these individuals were ‘sex traffickers’.⁹ Others, however, have deliberately decided not to target the buyers of sex, under the logic that targeting sex workers does more to diminish the availability of commercial sex.¹⁰ Notably, despite the fact that, in the eyes of the law in the United States, all purchases of commercial sex are ‘sex trafficking’, no states have ended the penal sanctioning of sex workers themselves, except for cases where the individuals involved are minors.¹¹ In some cases, these sanctions have simply been rebranded. The State of New York decided that sex workers are, in fact, victims of ‘sex trafficking’—and subsequently established diversionary courts where they could be suitably tried

⁷ As measured by the relative number of prisoners in the state prisons (1,316,205 in 2016) compared to the number of prisoners in federal prisons (189,192 in 2016), on the basis that prison populations will provide a (very rough) proxy for law enforcement activities. Statistics from E A Carson, ‘Prisoners in 2016’, Bulletin, US Department of Justice, Bureau of Justice Statistics, January 2018, p. 4.

⁸ Even in Nevada, sex work is only legal in certain (largely rural) counties, and is criminalised in the major metropolitan areas. See R Weitzer, ‘The Movement to Criminalize Sex Work in the United States’, *Journal of Law and Society*, vol. 37, no. 1, 2010, pp. 61–84, <https://doi.org/10.1111/j.1467-6478.2010.00495.x>; O Myers, ‘Sex for Sale: The implications of Lawrence and Windsor on prostitution in the United States’, *Tennessee Journal of Race, Gender, & Social Justice*, vol. 5, issue 1, 2016, pp. 93–112; K Lerum and B G Brents, ‘Sociological Perspectives on Sex Work and Human Trafficking’, *Sociological Perspectives*, vol. 59, no. 1, 2016, pp. 17–26, <https://doi.org/10.1177/0731121416628550>.

⁹ E Bernstein, ‘Carceral Politics as Gender Justice? The “traffic in women” and neoliberal circuits of crime, sex, and rights’, *Theory and Society*, vol. 41, no. 3, 2012, pp. 233–59, <https://doi.org/10.1007/s11186-012-9165-9>.

¹⁰ N Benitez *et al.*, ‘Prostitution and Sex Work Annual Review’, *Georgetown Journal of Gender and the Law*, vol. 19, 2018, pp. 339–40.

¹¹ For examples of the latter, see, for instance: L Territo and N Glover, *Criminal Investigation of Sex Trafficking in America*, CRC Press, Boca Raton, FL, 2013, pp. 67–72.

as victims.¹² In Houston, the police have claimed that arresting and prosecuting sex workers is intended to help them escape from trafficking.¹³ In other cases, there has been movement in the opposite direction. Rhode Island, where previously only solicitation had been illegal, criminalised the sale of sex in 2009.¹⁴ Much of the driving force for this change came from the local activist Donna Hughes,¹⁵ who has publically stated that she views ‘sex trafficking’ and sex work as one and the same.¹⁶ The cumulative effect of these laws is that in the American criminal justice system, sex workers are treated as being equally—if not more—culpable as their clients in the crime of ‘sex trafficking’.

This is the context in which we should view the *Allow States and Victims to Fight Online Sex Trafficking Act of 2017* (FOSTA). It should also be noted that the internet, which has enabled the proliferation of alternative modes of sexuality, has long attracted the ire of activists in religiously conservative countries such as Pakistan,¹⁷ Egypt,¹⁸ and the United States.¹⁹ Activities targeted by these activists have certainly not been limited to sex work; the groups and

¹² A Ray and E Caterine, *Criminal, Victim or Worker? The effects of New York’s human trafficking intervention courts on adults charged with prostitution-related offences*, Red Umbrella Project, New York, October 2014; A Gruber, A J Cohen, and K Mogulescu, ‘Penal Welfare and the New Human Trafficking Intervention Courts’, *Florida Law Review*, vol. 68, 2016, pp. 1333–1402, <https://doi.org/10.2139/ssrn.2776870>; A J Cohen and A Gruber, ‘Governance Feminism in New York’s Alternative “Human Trafficking Intervention Courts”’, SSRN Scholarly Paper, Social Science Research Network, Rochester, NY, 2 March 2017, <https://papers-ssrn-com.virtual.anu.edu.au/abstract=2926393>; M Dank, J Yahner, and L Yu, ‘Consequences of Policing Prostitution’, Urban Institute, April 2017.

¹³ J Musto, *Control and Protect: Collaboration, carceral protection, and domestic sex trafficking in the United States*, University of California Press, Berkeley, CA, 2016, pp. xii–xiii.

¹⁴ Benitez *et al.*, p. 335.

¹⁵ E O’Brien, S Hayes, and B Carpenter, *The Politics of Sex Trafficking: A moral geography*, Palgrave Macmillan, Basingstoke, Hampshire, 2013, p. 16.

¹⁶ K J Lopez and D Hughes, ‘The New Abolitionist Movement: Donna Hughes on progress fighting sex trafficking’, *National Review*, 26 January 2006, retrieved 7 November 2018, <https://www.nationalreview.com/2006/01/new-abolitionist-movement-interview/>.

¹⁷ U Ali and H B Munawar, ‘Internet Landscape of Pakistan 2017’, *Bytes for All*, Pakistan, 2017, https://bytesforall.pk/sites/default/files/Internet_Landscape_Pakistan_2017.pdf.

¹⁸ J Zittrain and J Palfrey, ‘Internet Filtering: The politics and mechanisms of control’, in R Deibert, J Palfrey, R Rohozinski and K Zittrain (eds.), *Access Denied: The practice and policy of global internet filtering*, MIT Press, Cambridge, MA, 2008, p. 32.

¹⁹ P Franzese *et al.*, ‘Censorship on the Internet: Do obscene or pornographic materials have a protected status?’, *Fordham Intellectual Property, Media and Entertainment Law Journal*, vol. 5, no. 2, 1995, pp. 279–327.

individuals that collaborated on FOSTA, for example, have also been involved in efforts to crack down on pornography²⁰ as well as to marginalise and stigmatise LGBTIQ individuals.²¹ In the United States, however, efforts by moral entrepreneurs to censor sections of the internet they find objectionable have been stymied by Section 230 of the *Communications Act of 1934*, a law that holds that, ‘No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.’²² This provision made it possible for websites like eBay, Facebook, and Google to host user-generated content without worrying that they would face civil and criminal liability if their users used their platforms to, for example, negotiate the sale of sex.²³ One website in particular—the classifieds website Backpage.com (Backpage)—became well-known as a platform for sex workers to negotiate with clients, and the owners of this website subsequently made heavy use of Section 230 to defend themselves from legal and economic sanctions from officials who saw it as a front for ‘sex trafficking’.²⁴

²⁰ The National Center on Sexual Exploitation, which Romano characterises as ‘one of the bill’s main supporters’, uses misleading ‘research reports’ to fabricate a false medical consensus about the harms of pornography. See Romano; National Center on Sexual Exploitation, ‘Pornography: A public health crisis’, National Center on Sexual Exploitation, 1 April 2015, <https://endsexualexploitation.org/publichealth/>.

²¹ Mimi Walters, the Congressional Representative who introduced the critical amendment to FOSTA allowing for the targeting of websites with criminal and civil sanctions, supported California’s infamous proposition 8, as well as voting to secure the right for federal contractors to discriminate against LGBT individuals. See ‘Endorsements’, Yes on 8: Protect Marriage, ProtectMarriage.com, 4 November 2008, <https://web.archive.org/web/20081104193847/http://www.protectmarriage.com/endorsements/officials>; S Pathé, ‘7 Republicans Flipped Their Vote on LGBT Amendment, Setting Them Up for Attack’, *Roll Call*, 19 May 2016, <https://www.rollcall.com/news/politics/democrats-pounce-vulnerable-republicans-suspected-switching-vote-lgbt-protections>.

²² *Communications Act, U.S. Code 47* (1934), sec. 201 et seq, as amended by the *Telecommunications Act of 1996*. Public Law 104–104. U.S. Statutes at Large 110 (1996): 56–161. Title V—Obscenity and Violence (‘Communications Decency Act of 1996’), sec. 509.

²³ D S Ardia, ‘Free Speech Savior or Shield for Scoundrels: An empirical study of intermediary immunity under section 230 of the Communications Decency Act’, *Loyola of Los Angeles Law Review*, vol. 43, 2010, pp. 373–506; M A Lemley, ‘Rationalizing Internet Safe Harbors’, *Journal on Telecommunications & High Technology Law*, vol. 6, 2007, pp. 101–120.

²⁴ A F Levy, ‘The Virtues of Unvirtuous Spaces’, *Wake Forest Law Review*, vol. 52, 2017, pp. 403–434; N Tischler, ‘Free Speech under Siege: Why the vitality of modern free speech hinges on the survival of section 230 of the Communications Decency Act: Notes & Comments’, *Temple Political & Civil Rights Law Review*, vol. 24, 2014, pp. 277–300.

The courts eventually found that Backpage did not have Section 230 immunity,²⁵ and more recently, its CEO pleaded guilty to facilitating prostitution and to money laundering.²⁶ Nevertheless, Backpage's long history of openly advertising sexual services in the face of a governance regime that defined all such services as 'sex trafficking' led to a movement by moral entrepreneurs to limit the scope of Section 230. This movement culminated in the drafting of both the original version of FOSTA, introduced in the United States House of Representatives on 3 April 2017, and the *Stop Enabling Sex Traffickers Act of 2017* (SESTA), introduced in the United States Senate on 1 August 2017.²⁷

FOSTA (in the version sent to the Senate) created a new criminal law targeting 'whoever uses or operates a facility or means of interstate or foreign commerce or attempts to do so with the intent to promote or facilitate the prostitution of another person'.²⁸ This bill, as the inclusion of 'sex trafficking' in its title would suggest, broadly targeted all websites facilitating sex work. However, to be targeted for sanctions, a prosecutor would need to demonstrate that this facilitation was intentional. SESTA, on the other hand, simply declared that Section 230 would not apply to the US Code, Section 1591—'Sex trafficking of children or by force, fraud, or coercion.'²⁹ Prosecutors would thus not need to show that the website intended to host the offending content, but such

²⁵ S J Daheim, 'How the Washington State Supreme Court Wrongly Applied the Communications Decency Act in *Village Voice*, and What It Means for Internet Service Providers', *Washington Journal of Law, Technology & Arts*, vol. 12, no. 1, 2016, pp. 77–94.

²⁶ M Ehrenkrantz, 'Backpage CEO Pleads Guilty and the Website Will Be Permanently Shut Down', *Gizmodo*, 13 April 2018, <https://gizmodo.com/backpage-ceo-pleads-guilty-and-the-website-will-be-perm-1825236756>.

²⁷ This according to two of the primary sponsors of SESTA, Rob Portman and Claire McCaskill. See 'FACT SHEET: Portman's Stop Enabling Sex Traffickers Act', Rob Portman: United States Senator for Ohio, 14 March 2018, <https://www.portman.senate.gov/public/index.cfm/press-releases?ID=CCBC2A79-5C48-4C53-8C9B-12D35277E6B4>; 'McCaskill, Bipartisan Group, Introduce Legislation to "Stop the next Backpage", Ensure Justice for Victims of Sex Trafficking', Claire McCaskill: An Independent Voice for Missouri, 1 August 2017, <https://www.mccaskill.senate.gov/media-center/news-releases/mccaskill-bipartisan-group-introduce-legislation-to-stop-the-next-backpage-ensure-justice-for-victims-of-sex-trafficking>.

²⁸ U.S. Congress, House, *Allow States and Victims to Fight Online Sex Trafficking Act of 2017*, HR 1865, 115th Cong., 2nd session, introduced in House 3 April 2017, as reported in House 20 February 2018, <https://www.congress.gov/bill/115th-congress/house-bill/1865/text/rh>.

²⁹ U.S. Congress, Senate, *Stop Enabling Sex Traffickers Act of 2017*, SR 1693, 115th Cong., 2nd session, introduced in Senate 1 August 2017, <https://www.congress.gov/bill/115th-congress/house-bill/1865/text/rh>.

prosecutions would be limited to cases where the individuals involved were below the age of eighteen. FOSTA was then subsequently amended to include SESTA's limitations of Section 230, and it was this version of FOSTA (sometimes referred to as 'FOSTA-SESTA')—one which requires neither intent on behalf of the content host nor that the individual involved be below the age of 18—that was ultimately signed into law.

'Sex Trafficking' as Epistemic Violence

For libertarians,³⁰ civil liberties advocates,³¹ and proponents of a free and open internet, the finalised version of FOSTA thus represents the worst of both worlds. The Electronic Frontier Foundation (EFF) referred to this version as 'A bad bill that turned into a worse bill', and noted that, 'Today was a dark day for the Internet';³² it has subsequently launched a lawsuit to have the law declared unconstitutional.³³ However, even as the EFF and others—such as Human Rights Watch³⁴—seek an injunction against the law, its effects are already being felt. Reddit has shut down social spaces ('subreddits') for sex workers, such as r/escorts; Instagram has increased scrutiny over hashtags used by sex workers; and Patreon, a site for content creators to seek funders, has shut down accounts linked to adult content.³⁵ Notably, these latter two sites are nothing like Backpage: they do not offer infrastructure facilitating

³⁰ E Nolan Brown, 'FOSTA and the Federal Seizure of Backpage.com', *CATO Institute Daily Podcast*, 12 April 2018, <https://www.cato.org/multimedia/cato-daily-podcast/fosta-federal-seizure-backpage.com>.

³¹ I Thompson, 'Congress Proposes to Fight Online Trafficking by Harming Sex Workers', American Civil Liberties Union, 16 March 2018, <https://www.aclu.org/blog/criminal-law-reform/congress-proposes-fight-online-trafficking-harming-sex-workers>.

³² E Harmon, 'How Congress Censored the Internet', Electronic Frontier Foundation, 21 March 2018, <https://www.eff.org/deeplinks/2018/03/how-congress-censored-internet>.

³³ D Greene, 'EFF Sues to Invalidate FOSTA, an Unconstitutional Internet Censorship Law', Electronic Frontier Foundation, 28 June 2018, <https://www.eff.org/deeplinks/2018/06/eff-sues-invalidate-fosta-unconstitutional-internet-censorship-law>.

³⁴ M Locklear, 'EFF and Human Rights Groups Sue to Have FOSTA Declared Unconstitutional', *Engadget*, 29 June 2018, <https://www.engadget.com/2018/06/29/eff-human-rights-groups-sue-fosta-unconstitutional>.

³⁵ T Horn, 'Sex-Worker Advocates Sue Over Internet "Censorship" Law', *Rolling Stone*, 30 June 2018, <https://www.rollingstone.com/culture/culture-features/sex-worker-advocates-lawsuit-internet-censorship-sesta-fosta-666783/>. Horn claimed that Reddit had banned r/Sexworkers, but as of the time of writing, this subreddit is still available. Others, such as r/Hookers and r/Escorts have been confirmed as banned.

commercial sex but rather social and artistic spaces. FOSTA has also led to the cancellation of the largest sex worker conference in the US (out of concern that some of the workshops would now be illegal),³⁶ and the shutting down of sex worker outreach services.³⁷ That these are not unexpected consequences—the House and Senate heard multiple testimonies about the likely outcomes of these measures³⁸—suggests that they were also not unintended, and that the shuttering of expressive and communicative spaces for sex workers was a feature of the bill, not a bug. After all, these spaces are, in the language of the American legal system, ‘facilitating sex trafficking’.

FOSTA, then, aims not only to target sex workers with criminal sanctions, but also to cut off the means they have to express themselves online—in effect, to silence them, along with the people and organisations that support them. Silencing groups that provide assistance to sex workers has been a longstanding US government policy: both TVPA (as amended in 2003) and the President’s Emergency Plan for AIDS Relief (PEPFAR, also passed in 2003) contained language requiring any organisation receiving funding to have

³⁶ According to the conference website; see Desiree Alliance, ‘Conference’, Desiree Alliance, <http://desireealliance.org/conference/>. However, in an interview with Courtney Trouble, Cris Sardina, the director at the Desiree Alliance, noted that the shutdown was also motivated in part by a fear of Immigration and Customs Enforcement (ICE) raids. See C Trouble, ‘Largest Sex Worker Conference in the US Is Canceled Amid FOSTA Fears’, *Motherboard*, 15 June 2018, https://motherboard.vice.com/en_us/article/wjbkp9/desiree-conference-canceled-fosta-sesta-sex; see also Global Network of Sex Work Projects, ‘Largest Sex Worker Conference in the USA Is Cancelled Due to Threat from FOSTA-SESTA’, NSW, 22 June 2018, <http://www.nswp.org/news/largest-sex-worker-conference-the-usa-cancelled-due-threat-fosta-sesta>.

³⁷ Note that the primary reason given by SWOP Sacramento in March 2018 for suspending many of its outreach services was the threat posed by Bill SB 1204 in California. See Swop Sacramento, Twitter post, 31 March 2018, <https://twitter.com/SwopSacramento/status/980104504422031360>. However, the organisation also noted the ‘recent political climate’, and Kristen DiAngelo, the executive director of SWOP Sacramento, has elsewhere elaborated that this refers to the result of FOSTA emboldening police and prosecutors to target sex workers. See T Clark-Flory, ‘Facing SESTA and Political Threats, Sex Worker Organizations Brace for Fallout’, *The Slot*, 6 April 2018, <https://theslot.jezebel.com/facing-sesta-and-political-threats-sex-worker-organiza-1824257817>.

³⁸ See, for example, Goldman, ‘Balancing Section 230 and Anti-Sex Trafficking Initiatives’; Goldman, ‘Sex Trafficking Exceptions to Section 230’; American Civil Liberties Union, ‘ACLU Vote Recommendation on FOSTA’, ACLU, 20 March 2018, <https://www.aclu.org/letter/aclu-vote-recommendation-fosta>; S E Boyd, ‘The Views of the Department of Justice on H.R. 1865, the “Allow States and Victims to Fight Online Sex Trafficking Act of 2017”’, US Department of Justice, Office of Legislative Affairs, 27 February 2018, <https://assets.documentcloud.org/documents/4390361/Views-Ltr-Re-H-R-1865-Allow-States-and-Victims.pdf>.

an explicit policy opposing prostitution,³⁹ mirroring the language used in a 2002 National Security Presidential Directive.⁴⁰ With this requirement for an ‘anti-prostitution pledge’, the US government sought to control not only how public funds were used, but also how the organisations receiving those funds think and express themselves at all times. This requirement remained in effect for all grant recipients until its application to American organisations was struck down by the Supreme Court as unconstitutional in 2013; it remains in effect, however, for foreign grant recipients.⁴¹ Similarly, the US government controls a very significant portion of the available research funding in the social sciences; here, too, it works to ensure that funds for research on ‘trafficking’ are directed toward research that supports the ‘sex work as sex trafficking’ paradigm and away from research that supports sex workers’ rights.⁴² Researchers who do receive funding from the US government are not only unable to advocate for sex workers, but also are often unable to even use terms such as ‘sex work’ or ‘sex worker’ in any of their reports.⁴³ These efforts

³⁹ See, for example, N Franck Masenior and C Beyrer, ‘The US Anti-Prostitution Pledge: First Amendment challenges and public health priorities’, *PLoS Medicine*, vol. 4, no. 7, 24 July 2007, <https://doi.org/10.1371/journal.pmed.0040207>; R Moshman, ‘Anti-Prostitution Pledge: Limiting speech and development litigation updates’, *Sustainable Development Law & Policy*, vol. 6, 2005, pp. 66–67.

⁴⁰ J L Musto, ‘What’s in a Name?: Conflations and contradictions in contemporary U.S. discourses of human trafficking’, *Women’s Studies International Forum*, vol. 32, no. 4, 2009, pp. 281–287, <https://doi.org/10.1016/j.wsif.2009.05.016>.

⁴¹ Note that, despite this ruling, the government continued to apply the pledge to US organisations operating abroad until this practice was struck down in 2015. See S Krueger, ‘A Striking Defeat for U.S. Government’s Anti-Prostitution Pledge’, Open Society Foundations, 24 February 2015, <https://www.opensocietyfoundations.org/voices/striking-defeat-us-government-s-anti-prostitution-pledge>.

⁴² J Dorf, *Sex Worker Health and Rights: Where is the funding?*, Sexual Health and Rights Project, Open Society Institute, June 2006, <https://www.opensocietyfoundations.org/sites/default/files/where.pdf>; R Weitzer, ‘The Social Construction of Sex Trafficking: Ideology and institutionalization of a moral crusade’, *Politics & Society*, vol. 35, no. 3, 2007, pp. 447–475, <https://doi.org/10.1177/0032329207304319>; A Forbes, ‘Speaking of Sex Workers: How suppression of research has distorted the United States’ domestic HIV response’, *Reproductive Health Matters*, vol. 23, no. 45, 2015, pp. 21–29, <https://doi.org/10.1016/j.rhm.2015.06.008>; J Fitzgerald, ‘How the Government and the Christian Lobby Quash Real Research on Sex Workers’, *Pacific Standard*, 16 June 2015, <https://psmag.com/news/government-christian-lobby-quashes-real-research-on-sex-workers>.

⁴³ Forbes; E C M Kinney, ‘Appropriations for the Abolitionists: Undermining effects of the U.S. mandatory anti-prostitution pledge in the fight against human trafficking and HIV/AIDS recent development’, *Berkeley Journal of Gender, Law & Justice*, vol. 21, 2006, pp. 158–194, <https://doi.org/10.15779/Z38S17SS0N>; M R Decker, C Beyrer, and S G Sherman, ‘Ending the Invisibility of Sex Workers in the US HIV/AIDS Surveillance and Prevention Strategy’, *AIDS*, vol. 28, no. 15, 24 September 2014, pp. 2325–2327, <https://doi.org/10.1097/QAD.0000000000000411>.

form part of a broader effort to delegitimise and stigmatise researchers who advocate for sex workers' rights, with government-sponsored anti-sex worker activists claiming that these researchers are 'sex radicals'⁴⁴ or that they are part of 'pro-prostitution industry groups'.⁴⁵

Taken together, these efforts represent an attempt to silence any discussions of sex work and to replace them with discussions of 'sex trafficking'. This suggests that the effort to eradicate the term 'sex work' needs to be understood as an example of what Gayatri Spivak calls 'epistemic violence'. Spivak is primarily interested in the subaltern subject (subjects who are both colonised and non-elite, and who are thus fully cut off from access to hegemonic culture), arguing that they cannot 'speak', even through the language of an elite academic interpreter, as the epistemic violence of imperialism has deprived them of the tools they need to express themselves.⁴⁶ Changing the episteme thus deprives marginalised subjects of their voices, and forces them to speak in the language of their oppressors.

Sex workers are not all (although certainly many are) subaltern in the sense that Spivak used the term: many, in particular those in wealthy Anglo-European countries, retain access in some way to hegemonic cultural power. However, sex workers do remain very clearly marginalised, both by professional stigma and by legal sanctions. Historically, the language used to refer to sex workers has served to amplify this stigma as it has allowed them to be represented only as 'prostituted women' (i.e. unwilling victim objects),⁴⁷ or else as 'whores'

⁴⁴ Donna Hughes as cited in R Weitzer, 'Resistance to Sex Work Stigma', *Sexualities*, vol. 21, no. 5-6, 2017, p. 10, <https://doi.org/10.1177/1363460716684509>.

⁴⁵ J G Raymond, 'Prostitution as Violence Against Women: NGO stonewalling in Beijing and elsewhere', *Women's Studies International Forum*, vol. 21, no. 1, 1998, p. 3, [https://doi.org/10.1016/S0277-5395\(96\)00102-1](https://doi.org/10.1016/S0277-5395(96)00102-1).

⁴⁶ G Chakravorty Spivak, 'Can the Subaltern Speak?', in C Nelson and L Grossberg (eds.), *Marxism and the Interpretation of Culture*, University of Illinois Press, Urbana, IL, 1988, pp. 281, 310; M Foucault, *Madness and Civilization: A history of insanity in the age of reason*, trans. Richard Howard, 1961; repr., Vintage Books, New York, NY, 1965.

⁴⁷ See, for example, H Van Bavel, 'Beyond Exploitation: Towards a nuanced understanding of agency for adolescent female sex workers—evidence from Zanzibar and Morogoro', *Culture, Health & Sexuality*, vol. 19, no. 1, 2017, p. 76, <https://doi.org/10.1080/13691058.2016.1207253>; G Ellison, 'Who Needs Evidence? Radical feminism, the Christian right and sex work research in Northern Ireland', in S Armstrong, J Blaustein, and A Henry (eds.), *Reflexivity and Criminal Justice: Intersections of policy, practice and research*, Palgrave Macmillan, London, 2017, pp. 291–292; S Huschke, 'Victims Without a Choice? A critical view on the debate about sex work in Northern Ireland', *Sexuality Research and Social Policy*, vol. 14, no. 2, 2017, pp. 192–205, <https://doi.org/10.1007/s13178-016-0254-9>.

(i.e. deviant criminal subjects).⁴⁸ The early days of the sex workers' rights movement in the United States thus featured attempts by sex workers and activists to reclaim stigmatised labels so that they might have a language by which they could advocate for their rights.⁴⁹ However, these efforts were largely superseded by the emergence of the language of 'sex work'—language which was created by a sex worker, and which was further propagated by those sex workers who did have access to hegemonic power.⁵⁰

The development of the language of 'sex work' has thus been crucial to the development of the sex workers' rights movement. It opened the door for groups such as the International Labour Organization to recognise sex work as labour.⁵¹ It also helped reconceptualise how HIV researchers engage with and help deliver services to sex workers, which, in turn, created fora for sex workers to organise and rally for political changes.⁵² More recently, it has provided the conceptual framework for organisations like Amnesty International to call on states to respect, protect, and fulfil the rights of sex workers.⁵³

The term 'sex trafficking', however, shuts down all these possibilities. It once again transforms sex workers from workers who can claim their rights into either criminal 'sex traffickers', subject to punishment, or else passive 'victims

⁴⁸ See, for example, G Pheterson, 'The Whore Stigma: Female dishonor and male unworthiness', *Social Text*, vol. 37, 1993, pp. 39–64, <https://doi.org/10.2307/466259>; J Doezema, *Sex Slaves and Discourse Masters: The construction of trafficking*, Zed Books, London, 2010; H K Hallgrímsdóttir, R Phillips, and C Benoit, 'Fallen Women and Rescued Girls: Social stigma and media narratives of the sex industry in Victoria, B.C., from 1980 to 2005', *Canadian Review of Sociology/Revue Canadienne de Sociologie*, vol. 43, no. 3, 2006, pp. 265–80, <https://doi.org/10.1111/j.1755-618X.2006.tb02224.x>; J A Koken, 'The Meaning of the "Whore": How feminist theories on prostitution shape research on female sex workers', in M H Ditmore, A Levy, and A Willman (eds.), *Sex Work Matters: Exploring money, power and intimacy in the sex industry*, Zed Books, London, 2010, pp. 28–64.

⁴⁹ Weitzer, 'Resistance to Sex Work Stigma', p. 5.

⁵⁰ C Leigh, 'Inventing Sex Work', in Jill Nagle (ed.), *Whores and Other Feminists*, Routledge, New York, 1997, pp. 225–32; K Kempadoo, 'Globalizing Sex Worker Rights', in K Kempadoo and J Doezema (eds.), *Global Sex Workers: Rights, resistance and redefinition*, Routledge, London, 1998, p. 8; F Delacoste and P Alexander (eds.), *Sex Work: Writings by women in the sex industry*, Cleis Press, Minneapolis, MN, 1987.

⁵¹ L L Lim (ed.), *The Sex Sector: The economic and social bases of prostitution in Southeast Asia*, International Labour Office, Geneva, 1998.

⁵² M H Ditmore (ed.), *Encyclopedia of Prostitution and Sex Work*, Greenwood Press, Westport, CT, 2006, pp. 208–209, 547.

⁵³ Amnesty International, *Amnesty International Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers*, AI, 2016, <https://www.amnesty.org/en/documents/pol30/4062/2016/en/>.

of sex trafficking’, subject to forced rescue. If the sex industry is composed entirely of victims and perpetrators, then the only viable solution becomes police raids. The US Department of State, operating under the paradigm of ‘sex work as sex trafficking’, has long used its *Trafficking in Persons* (TIP) *Report* to push more developed countries, like Singapore, to use raids against their sex industries;⁵⁴ in less developed countries, these raids are often funded and even directly managed by American religious organisations.⁵⁵ This runs counter to much of the research on addressing human trafficking, since these raids—beyond the direct harm inflicted on the sex workers targeted for criminal sanction or forced rescue—can generate fear and distrust of law enforcement in vulnerable populations, making future cooperation against exploitative actors more difficult.⁵⁶ This, in turn, leaves sex workers vulnerable to violent predation, and opens the door for violent organised crime groups to fill the governance void left by the state.⁵⁷

The development and deployment of the term ‘sex trafficking’ is thus, in and of itself, a form of epistemic violence against sex workers. FOSTA, however, takes this epistemic violence one step further by rendering sex workers not only less able to speak to hegemonic culture, but also less able to speak among themselves. In part, it has done this by shuttering the social spaces previously used by sex workers. These have included not only major sites like Reddit but

⁵⁴ B Chapman-Schmidt, ‘Sex in the Shadow of the Law: Regulating sex work and human trafficking in Singapore’, *Asian Journal of Comparative Law*, vol. 10, no. 1, 2015, pp. 1–21, <https://doi.org/10.1017/asjcl.2015.1>.

⁵⁵ Empower, *A Report by Empower Chiang Mai on the Human Rights Violations Women Are Subjected to When ‘Rescued’ by Anti-Trafficking Groups Who Employ Methods Using Deception, Force and Coercion*, Empower Foundation, Chiang Mai, 2003; 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; V Magar, ‘Rescue and Rehabilitation: A critical analysis of sex workers’ antitrafficking response in India’, *Signs*, vol. 37, no. 3, 2012, pp. 619–644, <https://doi.org/10.1086/662698>.

⁵⁶ M Ditmore, ‘The Use of Raids to Fight Trafficking in Persons’, Sex Workers Project, New York, 2009, <http://sexworkersproject.org/publications/reports/raids-and-trafficking/>; M Ditmore and J Thukral, ‘Accountability and the Use of Raids to Fight Trafficking’, *Anti-Trafficking Review*, issue 1, 2012, pp. 134–48, <https://doi.org/10.14197/atr.201218>; A 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, pp. 149–168, <https://doi.org/10.14197/atr.201219>; M Dottridge, ‘Introduction’, in Global Alliance Against Traffic in Women, *Collateral Damage: The impact of anti-trafficking measures on human rights around the world*, GAATW, Bangkok, 2007, pp. 1–27.

⁵⁷ B Chapman-Schmidt, ‘The Transnational Governance of Human Trafficking in Japan’, PhD diss., Australian National University, 2017, pp. 34–40, <https://openresearch-repository.anu.edu.au/handle/1885/144231>.

also smaller sites like ‘HungAngels’, which, out of fear for potential liability, removed forums that had previously provided social spaces for trans sex workers.⁵⁸ It has also led to the disappearance of social safety tools for sex workers, such as the ‘JUST FOR SAFETY’ screening tools offered by VerifyHim, which had previously allowed sex workers to discuss safety concerns and avoid abusive clients.⁵⁹ Notably, the little existing empirical evidence on services like these suggests that they have had a positive impact on sex workers’ safety.⁶⁰ If this is correct, then by eliminating these spaces, FOSTA is causing direct harm to sex workers. It will be some time before this can be verified with empirical research but the initial reports are not promising.⁶¹ One sex worker-run blog states that:

The sex worker community online started to hear about workers going back out on the street and missing their check-in calls—as of April 14th, just based on anecdotal data passed between us, 13 workers have gone missing and two have been confirmed dead. Two workers have been assaulted at gunpoint, and I can’t even count how many other stories of rape and assault I’ve heard from people returning to or just learning the streets for the first time. One person has already taken their life because of this legislation.⁶²

Conclusion

In the American legal system, ‘sex trafficking’ refers to the trafficking of sex, and not, as many assume, to the trafficking of human beings for the purpose of sexual exploitation. This has been a legal reality since the passage of the *Trafficking Victims Protection Act* in 2000, and it has subsequently led to the

⁵⁸ A Zimmerman, ‘Sex Workers Fear for Their Future: How SESTA is putting many prostitutes in peril’, *The Daily Beast*, 4 April 2018, <https://www.thedailybeast.com/sex-workers-fear-for-their-future-how-sesta-is-putting-many-prostitutes-in-peril>.

⁵⁹ Greene, ‘EFF Sues to Invalidate FOSTA, an Unconstitutional Internet Censorship Law.’

⁶⁰ S Cunningham, G DeAngelo, and J Tripp, ‘Craigslis’s Effect on Violence Against Women’, Working Paper, November 2017, <http://gregoryjdeangelo.com/workingpapers/Craigslis5.0.pdf>.

⁶¹ See, for example, S Cole, ‘Pimps Are Preying on Sex Workers Pushed Off the Web Because of FOSTA-SESTA’, *Motherboard*, 1 May 2018, https://motherboard.vice.com/en_us/article/bjqqvz/fosta-sesta-sex-work-and-trafficking; Siouxsie Q, ‘The War on Sex Workers Needs to Stop Now’, *Rolling Stone*, 13 April 2018, <https://www.rollingstone.com/politics/politics-news/the-war-on-sex-workers-needs-to-stop-now-628335/>.

⁶² C Simon, ‘On Backpage’, *Tits and Sass* (blog), 25 April 2018, <http://titsandsass.com/on-the-death-of-backpage/>.

United States government using instruments such as the *Trafficking in Persons Report* to push foreign states to adopt prohibitionist legislation and harmful criminal justice practices. It has also had domestic consequences, allowing laws like the recently passed FOSTA, which broadly target consensual sex work, to be sold to the public as efforts to fight ‘sex trafficking’. The propagation of the term ‘sex trafficking’ has thus become a form of epistemic violence that eliminates both the spaces and the very language used by sex workers to communicate with each other and with the general public. This epistemic violence, in turn, opens the door to increased physical violence against sex workers.

Researchers, including both academics and journalists, need to be particularly aware of this epistemic violence so that they can avoid participating in its propagation. This can be challenging, since, as Zimmerman notes, there is a ‘moral consensus’ on the issue of human trafficking: ‘no one is “for” human trafficking.’⁶³ Bernstein (perhaps unintentionally) reinterprets this to argue that, ‘no one could plausibly claim to be “for sex trafficking” either’.⁶⁴ This, in turn, puts researchers in a bind. Goldman, for example, testified before both the US House of Representatives and the US Senate, arguing that FOSTA would harm sex workers and victims of human trafficking (as well as ‘damage[ing] the Internet, perhaps radically’).⁶⁵ Yet, in both cases, Goldman seemed to feel compelled to open his statements by observing that ‘sex trafficking’ was a ‘horrific’ and ‘horrible’ crime.⁶⁶ However, if ‘sex trafficking’ is simply ‘the trafficking of sex’, then defining it as a ‘horrible crime’ suggests that a law like FOSTA might be entirely necessary—undermining everything that comes next in Goldman’s testimonies. Likewise, Human Rights Watch has stated that, ‘Sex work is based on adult consensual agreement. Sex trafficking is a horrific crime’,⁶⁷ again without seeming to be aware that ‘sex work based on consensual agreement’ is legally considered ‘sex trafficking’ in the United States. The same is true with media outlets, with reporters like Aja Romano, who provided an extensively researched overview of FOSTA for

⁶³ Y C Zimmerman, *Other Dreams of Freedom: Religion, sex, and human trafficking*, Oxford University Press, Oxford, 2013, p. 21.

⁶⁴ E Bernstein, ‘Militarized Humanitarianism Meets Carceral Feminism: The politics of sex, rights, and freedom in contemporary antitrafficking campaigns’, *Signs*, vol. 36, no. 1, 2010, p. 46, <https://doi.org/10.1086/651184>.

⁶⁵ Goldman, ‘Sex Trafficking Exceptions to Section 230’, p. 5.

⁶⁶ Goldman, ‘Balancing Section 230 and Anti-Sex Trafficking Initiatives’; Goldman, ‘Sex Trafficking Exceptions to Section 230’.

⁶⁷ S Wheeler, ‘Why We’ve Filed a Lawsuit Against a US Federal Law Targeting Sex Workers’, Human Rights Watch, 29 June 2018, <https://www.hrw.org/news/2018/06/29/why-weve-filed-lawsuit-against-us-federal-law-targeting-sex-workers>.

Vox, presenting the term ‘sex trafficking’ uncritically and without a definition.⁶⁸ While these researchers may personally use the term ‘sex trafficking’ as a shorthand for ‘human trafficking for sexual exploitation’, repeating it without exploring its legal meaning or critically engaging with it creates an atmosphere of definitional confusion. This, in turn, allows religious conservatives, for example, to recruit nominally progressive celebrities, such as the comedian Amy Schumer and the talk show host Seth Meyers, to appear in a public service announcement claiming that a law aimed at harming sex workers will instead help them.⁶⁹

For any researcher or journalist concerned about the health and safety of sex workers, then, it is imperative to resist this epistemic violence. As a matter of principle, we should therefore avoid using the term ‘sex trafficking’ except when referring to specific policies such as FOSTA; in particular, the term should never be used as a shorthand for ‘human trafficking for sexual exploitation’. Researchers and journalists should also not assume that politicians and policymakers calling for measures against ‘sex trafficking’ have the best interests of human trafficking victims at heart. Instead, these calls need to be viewed as efforts to target sex workers until or unless proven otherwise. Finally, researchers and journalists should push back against the propagation of these terms, and work to reopen both linguistic and social spaces for sex workers.

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⁶⁸ Romano.

⁶⁹ Mary Mazzio, *PSA Featuring Seth Meyers, Amy Schumer, Josh Charles, Tony Shalhoub and Others - SESTA*, accessed 9 July 2018, <https://www.youtube.com/watch?v=9SB7-uqvnS0>.

Short articles section

The New Virtual Crackdown on Sex Workers' Rights: Perspectives from the United States

Meghan Peterson, Bella Robinson, and Elena Shih

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On 11 April 2018, the *Fight Online Sex Trafficking Act* (FOSTA) was signed into law in the United States.¹ FOSTA introduced new provisions to amend the *Communications Act of 1934* so that websites can be prosecuted if they engage 'in the promotion or facilitation of prostitution' or 'facilitate traffickers in advertising the sale of unlawful sex acts with sex trafficking victims.'² While supporters of the law claim that its aim is to target human traffickers, its text makes no effort to differentiate between trafficking and consensual sex work and it functionally includes websites where workers advertise services or share information, including safety tips.³ Following the law's passage—and even before its full implementation—sex workers felt its impact as websites began to eliminate platforms previously used to advertise services. Backpage, an adult advertising website, was pre-emptively seized by the FBI.⁴ Other platforms began to censor or remove content related to sex work, including Google, Craigslist, and many online advertising networks.⁵ Sex workers in the United States have denounced the passage of FOSTA for reducing workers' ability to

¹ US Congress, *Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA) of 2017*.

² *Ibid.*

³ Global Network of Sex Work Projects, *Briefing Note: U.S.A. FOSTA Legislation*, NSWP, 2018, retrieved 24 November 2018, http://www.nswp.org/sites/nswp.org/files/fosta_briefing_note_2018.pdf.

⁴ S Lynch and L Lambert, 'Sex ads website Backpage shut down by U.S. authorities', *Reuters*, 6 April 2018, <https://www.reuters.com/article/us-usa-backpage-justice/sex-ads-website-backpage-shut-down-by-u-s-authorities-idUSKCN1HD2QP>.

⁵ Survivors Against SESTA, 'Documenting Tech Actions', 21 March 2018, <https://survivorsagainstsesta.org/documentation>.

screen clients and ensure safety practices.⁶ This paper provides an overview of the findings of a recent survey with sex workers in the United States, details the advent of similar initiatives in other countries, and explores how the legislation conflates trafficking with consensual sex work.

Effects of FOSTA

Between the bill's passage and late 2018, FOSTA's effects had already been tangibly felt in sex worker communities. While there was no noticeable reduction in sex work, workers reported having to resort to unsafe practices. To gauge the effects of FOSTA, from 14 April to 25 May 2018, the sex worker-led organisation Call Off Your Tired Old Tactics—Rhode Island chapter (COYOTE-RI) conducted an 'After FOSTA' survey. Survey questions related to income, experiences of violence and exploitation, and screening practices before and after FOSTA. The survey, which was conducted online, was distributed through social media and forwarded to sex worker advocacy organisations in the United States, which were encouraged to share links to the survey through their social media platforms. In doing so, the survey reached a wide array of sex workers. The survey results were analysed by the Sex Workers Outreach Project (SWOP) Seattle.⁷

Of 262 participants, 60 per cent reported that they had to take on potentially violent clients to make ends meet following the enactment of FOSTA. One of the benefits of online advertising is that it provides workers the time and ability to screen clients, for example by verifying a client's identity and reputation before agreeing to see them. The survey results, however, indicated a reduction in screening practices. 92 per cent of participants noted that before FOSTA, they had screened their clients, but for the time after FOSTA's passage, this figure dropped to 63 per cent. One participant qualitatively commented, 'I try to still screen, but sometimes I just can't because I truly need the money.' Another responded that, 'I try to, but have moved to "dating" websites that are in denial about sex work. It's much, much harder to screen since so many sex worker sites went down.'

Seventy per cent of participants in the survey also reported that they had experienced loss of income since the law's enactment. One stated that they 'stopped advertising on [Backpage] after they removed the erotic services section

⁶ E Witt, 'After the Closure of Backpage, Increasingly Vulnerable Sex Workers are Demanding their Rights', *The New Yorker*, 8 June 2018, <https://www.newyorker.com/news/dispatch/after-the-closure-of-backpage-increasingly-vulnerable-sex-workers-are-demanding-their-rights>.

⁷ COYOTE RI, 'COYOTE-RI Impact Survey Results', 26 May 2018, retrieved 13 September 2018, https://docs.google.com/presentation/d/1KBsVBQh7EsRexAyZacaf_fUvvsVb2MR1Q30_gV7Jegc/edit#slide=id.p.

last year. It was [my] main source of income at the time.’ Another felt ‘encouraged to engage in activities outside of [my] comfort zone because [I] need the income.’ Other respondents indicated an increase in solicitations from potentially dangerous clients. For example, in response to questions about whether anyone had recently tried to exploit, threaten, or receive free services from them, 65 per cent answered affirmatively. One worker stated that ‘Men calling themselves gorilla pimps [had] been trying to access all the girls since [FOSTA] passed.’ Another reported similar solicitation, adding that the number of predatory requests had increased and they had met with ‘more folks trying to coerce [me] into work [I] don’t want to do.’ Overall, survey results demonstrated decreases in income, available clients, screening practices, and worker bargaining power. Participants also reported increases in risk taking, contact from predators preying on desperation, and demands for cheaper services.

International Implications

In addition to its domestic impact, FOSTA also has the potential to influence legal regimes outside of the United States. Since the law’s passage, anti-trafficking and conservative groups have tried to promote similar laws in other countries. For example, Israel introduced a Swedish-style ‘end demand’ law, including a ban on advertisements for sex work.⁸ In the UK, the All-Party Parliamentary Group on Prostitution and the Global Sex Trade recommended passage of a similar-style law.⁹ Additionally, given the global reach of the internet, sex workers outside the United States may use or rely on American personals websites to advertise or to organise. Sex workers in Australia and New Zealand, for instance, have already noted that web-based advertising platforms they previously used have been dismantled.¹⁰ FOSTA’s effects have therefore been felt beyond the United States.

⁸ L Yaron, ‘Israel Targets the Sex Industry: Moving to Ban Internet Ads, Fine the Johns and Close Websites’, *Haaretz*, 13 June 2018, retrieved 8 January 2019, <https://www.haaretz.com/israel-news/.premium-israel-targets-sex-industry-through-new-knesset-bill-1.6173744>.

⁹ All-Party Parliamentary Group on Prostitution and the Global Sex Trade, *Behind Closed Doors: Organised sexual exploitation in England and Wales*, retrieved 24 November 2018, <https://appgprostitution.uk/wp-content/uploads/2018/05/Behind-closed-doors-APPG-on-Prostitution.pdf>.

¹⁰ M Young, ‘Sex workers in Australia say American law is creating devastating losses back home,’ *news.com.au*, 23 April 2018, <https://www.news.com.au/lifestyle/relationships/sex/sex-workers-in-australia-say-american-law-is-creating-devastating-losses-back-home/news-story/09139a2f0d631cd7284090d2336ca517>; B Macdonald, ‘How the FBI has disrupted NZ’s sex work industry’, *NZ Herald*, 23 April 2018, https://www.nzherald.co.nz/lifestyle/news/article.cfm?c_id=6&objectid=12037972.

FOSTA's passage illustrates how stakeholders such as anti-trafficking organisations, legislators, and faith-based organisations have targeted sex workers by conflating them with victims of trafficking. The discourse surrounding trafficking in the United States has applied victim narratives that strip workers of their agency. Using moralistic arguments, the prevalence of trafficking in the sex industry compared to other labour sectors has been overstated.¹¹ The only comprehensive, evidence-based policy to protect sex workers is decriminalisation. Decriminalisation has been associated with better sex worker health and better HIV outcomes.¹² Organisations dedicated to human rights and health, such as the World Health Organization, UNAIDS, and Amnesty International, have called for decriminalisation based on empirical evidence.¹³ As the rollout of FOSTA impacts sex workers both in the United States and globally, sex workers' rights advocates must be aware of how similar laws could further endanger workers.

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¹¹ A Romano, 'A new law intended to curb sex trafficking threatens the future of the internet as we know it', *Vox*, 13 April 2018, retrieved 24 November 2018, <https://www.vox.com/culture/2018/4/13/17172762/fosta-sesta-backpage-230-internet-freedom>.

¹² C Beyrer *et al.*, 'An action agenda for HIV and sex workers', *The Lancet*, vol. 385, no. 9964, 2015, pp. 287-301, [https://doi.org/10.1016/S0140-6736\(14\)60933-8](https://doi.org/10.1016/S0140-6736(14)60933-8).

¹³ Amnesty International, 'Amnesty International publishes policy and research on protection of sex workers' rights', 26 May 2016, <https://www.amnesty.org/en/latest/news/2016/05/amnesty-international-publishes-policy-and-research-on-protection-of-sex-workers-rights/>; WHO, UNFPA, UNAIDS and NSWP, *Prevention and Treatment of HIV and Other Sexually Transmitted Infections for Sex Workers in Low- and Middle-Income Countries*, World Health Organization, Geneva, 2012.

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Time to Turn Up the Volume

Nadia van der Linde

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I remember my first self-organised donor panel well. It was at the Global Social Change Philanthropy Conference in Washington, DC in 2013. I had just started work as the first coordinator of the Red Umbrella Fund—the newly established fund for and by sex workers. I organised a session that would clarify the distinction between sex work and human trafficking and emphasise the need to fund sex worker organising. We had a strong panel: an awesome sex worker activist, a knowledgeable academic, a passionate service provider, and a committed funder. I was, however, in for a rude awakening: even though the line-up was great, the audience was scarce. I thought to myself, if we can't even get funders to show up and learn about sex workers' rights, how will we ever meet the needs of sex worker organisations fighting for their basic human rights?

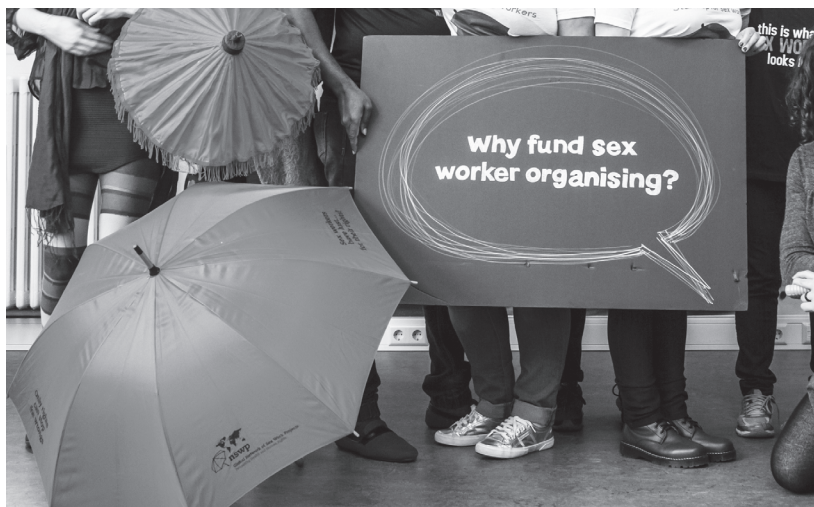


Image 1: Meeting of the Programme Advisory Committee of the Red Umbrella Fund, Amsterdam, 2017. Image credit: Vera Rodriguez, Red Umbrella Fund.

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Why the Need for Donor Support?

Sex workers are criminalised for their means of making a living in all but a handful of countries and jurisdictions. Addressing stigma and violence are key priorities of sex worker groups everywhere. For most sex workers, police are not there to protect them but perpetrate most of the violence against them.¹ Harassment, confiscation of condoms, extortion, arbitrary arrest, and rape are common examples of police violence. Even in the Netherlands, where sex work is regulated, most sex workers do not report cases of physical or sexual violence to the police.² A rare exception is New Zealand, where sex work is decriminalised and the government helps fund a sex worker organisation to provide information, services, and support to their peers. The New Zealand Prostitutes Collective and police work together to prevent violence and encourage sex workers to file a report when they experience sexual assault and other violent crimes.³

Sex workers across the world are organising against criminalisation, which puts not just their livelihood at risk but their entire lives—and those of their loved ones. They are generally recognised as marginalised and highly vulnerable in today's societies, embodying multiple layers of stigma because of the work they do, and also because they are often poor, lack formal education, belong to Indigenous or migrant populations, identify as trans or gay, or are single mothers. However, funding to support sex worker organisations and their community mobilisation efforts is scarce.⁴ In 2013, foundations invested a meagre USD 11 million in grants to support sex worker rights worldwide.⁵

¹ M Bhattacharjya, E Fulu and L Murthy, *The Right(s) Evidence: Sex work, violence and HIV in Asia. A multi-country qualitative study*, UNFPA, UNDP and APNSW (CASAM), Bangkok, 2015, retrieved 19 December 2018, http://www.asia-pacific.undp.org/content/dam/rbap/docs/Research%20&%20Publications/hiv_aids/rbap-hhd-2015-the-rights-evidence-sex-work-violence-and-hiv-in-asia.pdf.

² M Kloek and M Dijkstra, *Sex Work, Stigma and Violence in the Netherlands*, Aidsfonds, Amsterdam, 2018, <https://www.soaaids.nl/sites/default/files/documenten/Prostitutie/Sex%20Work%20Stigma%20and%20Violence%20in%20the%20Netherlands%20Report%28digital%29.pdf>.

³ E McKay, 'World-first partnership between NZ Police and Prostitutes' Collective', *NZ Herald*, 17 December 2018, https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12178217.

⁴ J Dorf, *Sex Worker Health and Rights: Where is the funding?*, Open Society Institute, New York, 2006, <https://www.opensocietyfoundations.org/sites/default/files/where.pdf>.

⁵ Mama Cash, Red Umbrella Fund and Open Society Foundations, *Funding for Sex Worker Rights. Opportunities for foundations to fund more and better*, Mama Cash/RUF, Amsterdam, 2014, <https://www.redumbrellafund.org/report>.

Most sex worker organisations have no funding at all, but those that do receive an institutional grant usually still have annual budgets below USD 70,000 and their reliance on volunteer work remains high. At the same time, raid and rescue programmes and rehabilitation centres continue to be generously funded as, supposedly, models of supporting or ‘helping’ women in the sex industry.

Sex worker organisations call on funders to provide more funding that is long term and covers rent, salaries, trainings, legal services, and advocacy. They also want funders to speak up in support of sex workers’ rights.⁶ A conversation I had recently with another human rights funder revealed that, while they had given some grants to sex worker groups before, they had never realised that most peer human rights funders still do not fund such work. We clearly need to more effectively leverage our access and knowledge to educate and activate our philanthropic peers.

Changing Perspective

The best way to educate funders is through people’s lived experiences. We interviewed staff of funding organisations who had changed their perspective from assuming all sex work (or prostitution) is exploitation and trafficking to recognising sex workers as human beings who are entitled to rights, including in relation to their work. This revealed that academic evidence, UN documents, and human rights organisations’ public support for sex workers’ rights are all helpful, but the main lever to a more nuanced understanding comes from direct interactions with sex workers.⁷ We need to bring funders and sex workers in the same room.

The international donor-activist dialogue on sex work and trafficking that took place in 2008 was one notable success of getting funders to listen to sex workers.⁸ Members of the Global Network of Sex Work Projects (NSWP) played a crucial role in subsequent donor education, speaking from lived

⁶ *Ibid.*

⁷ N van der Linde and S Bos, ‘Mind the Gap—What we learned about how funders can be moved in the right direction’, *Alliance Magazine*, 7 September 2016, <https://www.alliancemagazine.org/blog/mind-the-gap-what-we-learned-about-how-funders-can-be-moved-in-the-right-direction>.

⁸ CREA, NSWP and SHARP, *Sex Work and Trafficking A Donor/ Activist Dialogue on Rights and Funding*, CREA, NSWP and SHARP, 2008, https://www.redumbrellafund.org/wp-content/uploads/2014/07/Donor_Dialogue_Final_REPORT_December2008.pdf.

experience about the harms of many anti-trafficking initiatives on sex workers. By the end of the event, funders were united in their acknowledgement that sex workers need funding to effectively organise and stand up for their rights. Four years later, the Red Umbrella Fund was launched.⁹

So far, the Red Umbrella Fund has awarded 158 grants to 103 sex worker-led groups in over fifty countries. These investments have resulted in stronger organisations and leadership and increased solidarity and connections within the movement and with other movements. This is not, however, nearly enough to foster real change. For every grant awarded, applications by many other groups had to be declined due to the limited money available.

Self-organising for Labour Rights

Since the fund was established in 2012, our grantee partners have taught us how the conflation of sex work and trafficking plays out in their daily lives. It is not just that anti-trafficking policies often harm them; stigma and criminalisation also create a social climate where sex workers are at greater risk of being trafficked and survivors of trafficking may have few other options to make a living than sex work. Although they hardly ever mention it in their own publications, many sex worker groups provide crucial services and support to people who have experienced trafficking.¹⁰ Similarly, labour unions and women's organisations that stand up for domestic workers or agricultural labourers who work in poor conditions do not force them to quit their work or support incarcerating them, but instead focus on improving their labour conditions and self-organising capacity. As one sex worker at a donor-activist meeting organised by the Global Alliance Against Traffic in Women (GAATW) in Bangkok in February 2018 stated:

We are fighting for our rights, for our labour rights, for better working conditions. Sex workers and clients, for the most part, are against trafficking and exploitation. Sex workers support trafficked people, and we protect them from the police.

⁹ Red Umbrella Fund, *The Creation of a Collaborative Fund for and by Sex Workers*, 2017, <https://www.redumbrellafund.org/wp-content/uploads/2014/07/Red-Umbrella-Fund-The-creation-of-a-Collaborative-Fund.pdf>.

¹⁰ See, for example, Global Alliance Against Traffic in Women, *Sex Workers Organising for Change: Self-representation, community mobilization, and working conditions*, GAATW, Bangkok, 2018.

It is no surprise that a review of the grant applications we received over the years shows that, although local contexts differ greatly, ending stigma, violence, and criminalisation are the key priorities for sex worker organisations everywhere. Sex worker organisations prevent exploitation and trafficking by providing safe spaces, information, support, and accompaniment to relevant services.¹¹ Their campaigns for decriminalisation of sex work are crucial to build safer work environments where problems can be reported to police and justice can be sought. And where, as is highlighted by the New Zealand Prostitutes Collective, sex workers have the right to say yes, but also the right to say no.¹²

Conclusion

A peer activist funder recently explained the evolution of their donor advocacy strategy to me, which had gone from ‘philanthro-shaming’ (highlighting the urgent need to increase funding in a particular area to avoid or address a certain problem) to unapologetically using the popular concept of FOMO, the fear of missing out. Too often, he shared, we highlight funding gaps and needs, hoping it will persuade funders to fill the abyss. That may help some allied funders to expand their grantmaking, but it will not convince the sex worker rights funding ‘virgins’. The reality is that even many self-identified social justice funders still claim ‘neutrality’ on the topic of sex workers’ rights, or simply lack the courage to speak out. Those funders need to realise that they are not the first sheep to leap over the ditch. In the case of this peer activist funder, their new donor advocacy strategy, therefore, intends to take a ‘jump on the bandwagon or miss out’ approach, highlighting that funding sex worker organising is *the* thing to do, and now!

I don’t think this bandwagon approach alone will do the trick, but at least we have started forming a band and developing some common tunes. Different funders have started coming together in a new collaborative effort to ensure that more funding is directed to the sex worker rights movements. Now it’s time to turn up that volume and reach the right audience.

¹¹ *Ibid.*; see also: W Volbehr, ‘Improving Anti-Trafficking Strategies: Why sex workers should be involved’, *Open Democracy*, 17 July 2017, <https://www.opendemocracy.net/beyondslavery/wendelijn-vollbehr/improving-anti-trafficking-strategies-why-sex-workers-should-be-inv>.

¹² NZPC, *Our Right to Say Yes, Our Right to Say No*, n.d., <http://www.nzpc.org.nz/pdfs/Right-to-Say-Yes-or-No-Poster.pdf>.

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Book review

Anti-trafficking Efforts and Colonial Violence in Canada

Katrin Roots

Review of: *Responding to Human Trafficking: Dispossession, Colonial Violence, and Resistance among Indigenous and Racialized Women*, Julie Kaye, 2017, University of Toronto Press, 978-1487521615.

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In *Responding to Human Trafficking: Dispossession, Colonial Violence, and Resistance among Indigenous and Racialized Women*, Julie Kaye offers a critical examination of how Canadian state and non-state actors understand human trafficking and implement anti-trafficking measures. Kaye examines Canada's anti-trafficking policies and the efforts of non-government organisations (NGOs) through one-on-one interviews and focus group discussions. She demonstrates the way in which this politically charged issue has worked to conceal Canada's violent colonial history and naturalise the inequalities and structural and material conditions in which trafficking and various forms of violence occur. Kaye argues that trafficking discourses position the colonial state as the saviour and therefore work to reinforce its power.

The book begins with a powerful foreword by Sarah Hunt¹ who reminds us that the strength and resilience of Indigenous peoples are being undermined by anti-trafficking responses. Such responses construct Indigenous women, youth, and Two-Spirit² people as always and already 'at risk' of experiencing

¹ Sarah Hunt is an assistant professor in First Nations and Indigenous Studies and the Department of Geography at the University of British Columbia. Her work, which focuses on Indigenous and legal geographies, critically takes up questions of justice, gender, self-determination, and the spatiality of Indigenous law. She has written several articles on the role of the anti-trafficking framework on Indigenous communities.

² 'Two-Spirit' person is a term used by some Indigenous people to identify themselves as having both masculine and feminine spirits.

violence through their ‘own choices’ to engage in risky behaviours such as drug and alcohol use and sex work. When responses to trafficking are presented as yet another form of state-led rescue, Hunt argues, they do more to harm Indigenous women, youth, and Two-Spirit people by contributing to the naturalisation of Indigenous communities as sites of violence, criminalising them, forcing them into state protection, and casting them as in need of rescue by the colonial state. As Hunt points out, the way forward for Indigenous peoples is not through attempts to save or rescue them but by dismantling ‘the oppressive system that created conditions from which we need to heal’ (p. xiv).

In *Responding to Human Trafficking*, Kaye contributes to trafficking scholarship in several important ways. Most notably, this book offers a unique perspective on trafficking by focusing on how anti-trafficking frameworks reproduce structures of domination that naturalise settler colonialism in Canada. Kaye points out the contradiction between the frequently made argument that anti-trafficking policies are working to address colonial legacies and the reality that they work to maintain colonial relations, and, in effect, undermine and impede the ongoing resistance of marginalised communities.

Second, Kaye notes an important shift in the Canadian context, from a focus on international trafficking to an increasingly prevalent emphasis on domestic trafficking. By providing specific examples of this shift through concerns over child sexual exploitation, sex work, and violence against women, especially Indigenous women, Kaye asks, ‘in the context of settler colonialism, what are the implications of representing specific subjects as internal or domestic as opposed to international or global?’ (p. 5). She argues that the over-arching focus on violence against women within the anti-trafficking framework enables the erasure of systemic forms of discrimination and indeed ‘naturalizes the national, racial and sexual priorities of a settler colonial state’ (p. 17). This is accomplished by emphasising the efforts aimed at the ‘at risk’ subject—a gendered, raced, and classed subject constructed overwhelmingly as an Indigenous woman or girl. While this approach appears to highlight the overwhelming violence inflicted on Indigenous women and girls, the focus of anti-trafficking responses on individual traffickers as offenders conceals the state’s role in establishing and maintaining the structures of domination that enable this violence.

Third, Kaye rightly argues for the need to understand international and domestic trafficking discourses not as two separately operating discourses but, rather, as intersecting and mutually constitutive. As she argues in Chapter Three, these discourses operate simultaneously to criminalise non-citizens and other marginalised individuals. For instance, discourses around international trafficking justify the implementation of stricter immigration policies in the name of national security and public safety while simultaneously

building up the image of Canada as a good, kind, and helpful nation, thus concealing the violence of its colonial history. In contrast, discourses around domestic trafficking enable the targeting of the sex trade through anti-trafficking interventions. Yet, this separation between the international and domestic trafficking discourses serves to conceal the reproduction of the settler colonial state through modes of inclusion and exclusion. Kaye demonstrates that local understandings and responses to trafficking challenge our ability to use binaries such as international/domestic, victim/agent, or consent/coercion, since they involve far more nuances, complexities, and site-specific variations.

Finally, Kaye's research is an important empirical contribution to the anti-trafficking literature, particularly in the Canadian context. While scholarship on trafficking has seen significant growth in recent years, there is a notable lack of substantive empirical work on the topic in Canada.³ Therefore, Kaye's book, based on 56 interviews and two focus groups with front-line anti-trafficking service providers, government agencies, and law enforcement in three Canadian provinces, Manitoba, British Columbia and Alberta, provides much needed insight into the ways in which trafficking is being addressed in a localised context.

My one critique of the book relates to Kaye's conceptualisation of the Canadian state. While she notes that different state actors held varied understandings of trafficking, her analysis tends to reproduce a reified understanding of the Canadian state grounded in the assumption that it is unified when initiating and negotiating anti-trafficking responses. On balance, however, the book makes an important contribution to anti-trafficking scholarship in Canada. Given its reliance on empirical research at the localised level, it enables us to gain a better understanding of on-the-ground impact of anti-trafficking laws and policies. Kaye's examination of anti-trafficking responses in the context of Canada's settler-colonial history and the role of anti-trafficking initiatives in the continued reproduction of colonial relations offers new and insightful perspectives on the particular ways in which Canadian anti-trafficking measures operate to ensure the ongoing inequality of and violence against Indigenous peoples. The book will be useful to students, teachers, researchers, and, hopefully, policy makers alike.

³ See, for example, H Millar, T O'Doherty and K Roots, 'A Formidable Task: Reflections on obtaining legal empirical evidence on human trafficking in Canada', *Anti-Trafficking Review*, issue 8, 2017, pp. 34-49, <https://doi.org/10.14197/atr.20121783>; K Roots, *The Human Trafficking Matrix: Law, policy and anti-trafficking practices in the Canadian criminal justice system*, Doctoral Dissertation, York University, Toronto, ON, 2018.

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