



PROJECTS

# PROSTITUTION AND HUMAN TRAFFICKING

An **Għaqda Studenti tal-Liġi**  
Legislative Proposal



GħSL  
Għaqda Studenti tal-Liġi



# PRESIDENT'S NOTE

As President of the Malta Law Students' Society, it's my pleasure to present to you this legislative proposal on prostitution and human trafficking.

Throughout the years, GhSL has consistently worked on similar undertakings, from academic papers to policy documents, with the aim of contributing a legal perspective towards the most pressing issues of the day.

Following the launch of similar policy documents in previous years, GhSL decided to embark on this new initiative by focusing on the apparent symbiotic relationship between human trafficking and prostitution. In turn, our ultimate aim was to present a number of legislative proposals related directly to the subject matter, and therefore ensuring, as always, a more substantial contribution.

I would like to congratulate the Projects Committee, which was established for the first time earlier this year, for working tirelessly in ensuring the completion of this document, while thanking all the contributors and peer-reviewers for leaving their mark.

Yours truly,

CELINE CUSCHIERI DEBONO  
President



# FOREWORD

I'm proud to be able to present this paper, as GhSL's contribution to the Public Consultation launched by the Parliamentary Secretariat for Reforms, Citizenship and Simplification of Administrative Processes within the Office of the Prim Minister.

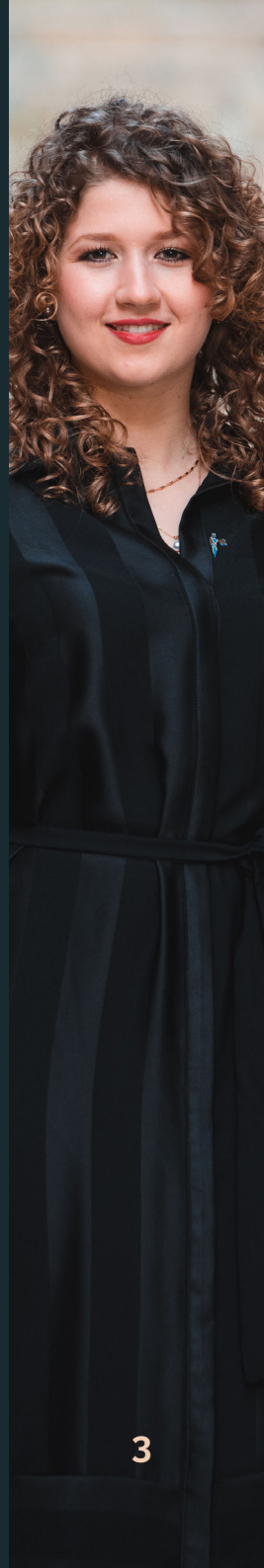
This document is the cumulative effort of a number of committed law students. As an organisation on the forefront of student activism, we believe that the future legislators, advocates and adjudicators of our country should be able to exploit any opportunity in shaping any future regulatory regimes. With this in mind, GhSL has once again seized the opportunity in leaving a mark.

We believe that with the proposals put forward by our contributors, our academic research, our comparative legal analysis and our survey, law students have once again managed to leave an indelible mark on the legislative process in this country.

Our only hope is that in the future, this paper will help inspire similar projects in other areas as well.

Sincerely,

MARIAH MICALLEF  
Projects Officer



# OPENING REMARKS

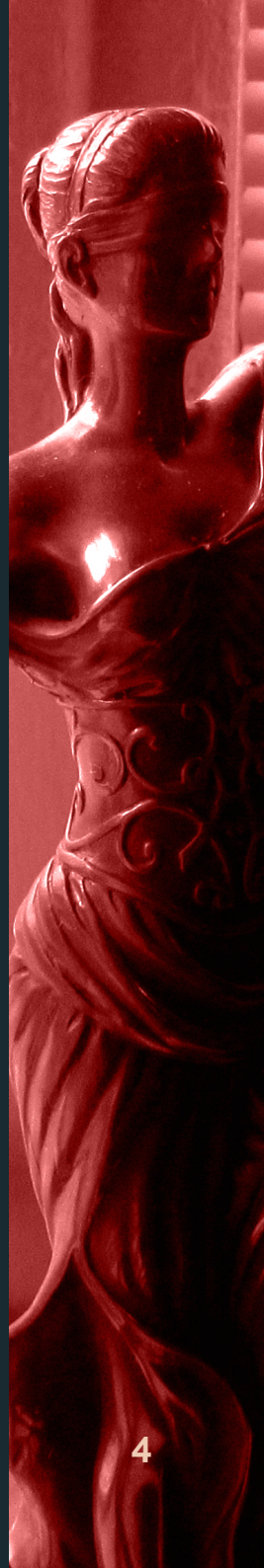
It is indeed an honour for me to usher in this report, researched and compiled by a number of Law Students, on behalf of the Għaqda Studenti tal-Liġi (GħSL).

The organisation itself goes back to 1943, and the Founding Fathers would be extremely proud to see what their successors are up to these days, how well organised they are, and also how active they are.

This initiative involving human trafficking is theirs, and theirs alone, from start to finish; GħSL got to know about the Parliamentary Secretariat's consultation document, researched it, and compiled the following response.

This was all done on a voluntary basis, by students giving up their free time (free time being very scarce in the Law Course with all the lectures, reading, etc.); the ideas are theirs, and indeed it would take somebody young and motivated to suggest for example, harnessing modern technology to combat human trafficking.

For the initiative, for their motivation and energy, I congratulate the GħSL and its members, and encourage them to keep up their good work.



To the Authorities I suggest that they encourage such initiatives and harness the energy and will power of the young; only good can come out of it.

DR. IVAN MIFSUD  
Dean, Faculty of Laws





# INTRODUCTION

Modern slavery, including human trafficking for sexual exploitation, is a very prevalent issue which encompasses human trafficking by coercing, deceiving, and use of force and threats.<sup>1</sup> It is mostly thought of as global crime since victims are often trafficked across borders, and offenders move from one country to another.<sup>2</sup> However, this may not always be the case. One may fall victim to human trafficking and sexual exploitation in his own home country.<sup>3</sup>

Offenders may form part of criminal networks who recruit vulnerable persons through deceitful and violent means.<sup>4</sup> This is an offence that is also legislated for in Malta. However, looking at Maltese law which regulates cases of human trafficking and of prostitution, one major problem can be noted: Maltese law is not victim-oriented at all. On the other hand, looking at case law, there is often a lack of proof against the true perpetrator of the crime. Furthermore, proceedings may last for years, which may be very traumatizing and emotionally exhausting to the victim.

In reaction to the *Reform on Human Trafficking and Prostitution* public consultation document,<sup>5</sup> Għaqda Studenti tal-Liġi (hereafter referred to

1 HM Government, 'Modern Slavery Strategy' (2014) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/383764/Modern\\_Slavery\\_Strategy\\_FINAL\\_DEC2015.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/383764/Modern_Slavery_Strategy_FINAL_DEC2015.pdf)> accessed on 18th September 2019.

2 Ibid.

3 Ibid.

4 Ibid.

5 Parliamentary Secretariat for Reforms, Citizenship and Simplification of Administrative Processes (September 2019).



as 'GhSL') or the Maltese Law Student Society, has looked into and analysed the topic of human trafficking and prostitution. Our intention is to propose ideas on how to combat this issue and perhaps suggest a way forward, enabling the Maltese legal sphere to develop and progress with regards to human rights pertaining to such issues. The central aim is an attempt to bring the law closer to the most vulnerable persons by making it more victim-oriented. Maltese law should be amended so as to truly bring justice by prosecuting those at the top of the food chain, as well as to provide a support system to the victims.

This is no easy task, and thus a lot of thought should be given to the process in its entirety. GhSL will first look at present Maltese legislation and case law to identify the main issues and will then discuss a survey it conducted to gather information from a sample of the population. The paper will be concluded by proposals from GhSL on how to make the law more victim-oriented and on how to effectively gather proof.



# THE M MALTESE B BACKGROUND

Under our law, human trafficking and prostitution are regulated under the Criminal Code<sup>6</sup>, the White Slave Traffic Ordinance<sup>7</sup>, and the Permission to Reside for Victims of Trafficking or Illegal Immigration who co-operate with the Maltese Authorities Regulations.<sup>8</sup> It is to be noted that, despite such legal mechanisms, the law only prohibits manipulating and forcing another into prostitution.

In our Criminal Code, there are three main articles which deal with the subject at hand; Article 197 on prostitution of persons under-age by an ascendant, Article 204 on the prohibition of prostitution of persons under-age, and Article 205 on prostitution of persons of age. These shall be discussed in the coming paragraphs.

### **Article 197**

*(1) Any ascendant by consanguinity or affinity who, by the use of violence or by threats, compels, or, by deceit, induces any descendant under age to prostitution, shall, on conviction, be liable to imprisonment for a term from six to twelve years.<sup>9</sup>*

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6 The Criminal Code, Chapter 9 of the Laws of Malta.

7 The White Slave Traffic (Suppression) Ordinance, Chapter 63 of the Laws of Malta.

8 Legal Notice 157 of 2007, Subsidiary Legislation 217.07, PERMISSION TO RESIDE FOR VICTIMS OF TRAFFICKING OR ILLEGAL IMMIGRATION WHO CO-OPERATE WITH THE MALTESE AUTHORITIES.

9 Ibid, Article 197.

## **Article 204**

*(1) Whosoever in order to gratify the lust of any other person induces a person under age to practice prostitution, or instigates the defilement of such person, or encourages or facilitates the prostitution or defilement of such person, shall, on conviction, be liable to imprisonment for a term from three to six years,*

*(...)*

## **Article 204A**

*(1) Whosoever,*

*(a) with violence, threats, coercion or force compels a person under age into prostitution or into participating in a pornographic performance, or*

*(b) knowingly makes any gain or derives any benefit from the conduct referred to in paragraph (a) (...)*

*shall, on conviction, be liable to imprisonment for a term from six to twelve years.*

*(...)*

## Article 204B

*(1) Whosoever in order to gratify the lust of any other person engages, recruits or causes a person under age to practice prostitution, or to participate in pornographic performances, or profits from or otherwise exploits a person under age for such purposes, shall, on conviction, be liable to imprisonment for a term from five to ten years.*

*(...)*

## Article 204C

*(1) Whosoever takes part in sexual activities with a person who has not completed the age of sixteen years shall, on conviction, be liable to imprisonment for a term from five to ten years.<sup>10</sup>*

## Article 205

*Whosoever in order to gratify the lust of any other person, by the use of violence, compels or, by deceit, induces a person of age, to practice prostitution, shall, where the act committed does not constitute a more serious offence, be liable, on conviction, to imprisonment for a term from three to seven years: Provided that the offence shall be punishable with imprisonment for a term of four to nine years, if it is committed -*

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10      *Ibid*, Article 204.

*(a) with abuse of authority, of trust  
or of domestic relations; or*

*(b) habitually or for gain.<sup>11</sup>*

Article 197 is distinct from Article 204. The former provides for a harsher punishment since the ascendant would have made use of violence, threats, coercion or deceit; otherwise, such actions would be charged under Article 204. The proviso of this article gives us four aggravations: these are when the offence is committed on minors under the age of twelve and is carried out by deceit, by an ascendant, adoptive parents or persons charged with the care of the minor, or when the offence is committed habitually or for gain.

In order to be charged under Article 204, one must have coerced an under-age person to practice prostitution, or have instigated the defilement of such minors, or else encouraged or facilitate the prostitution or defilement of such persons. The offence may be committed by a person of any age and sex and the prostitution must have been carried out to gratify the lust of any other person. The satisfaction of the lust of a third person distinguishes this offence from that of defilement of minors.

Under Article 205, the victim in question is to be over the age of 18, with the criminalising agents being the gratification of the lust of a third party, the use of violence, coercion, or deceit by the agent, the inducement of a person of age, and the act of prostitution by the victim. This article is also a residual offence, meaning that one is found guilty of 205 if the circumstances of

11 Ibid, Article 205.

the case do not satisfy another graver offence. These offences are;

(i) the trafficking of persons of age for exploitation under **Article 248A**;

*248A. (1) Whosoever, by any means mentioned in sub-article (2), traffics a person of age for the purpose of exploiting that person in: (a) the production of goods or provision of services; or (b) slavery or practices similar to slavery; or (c) servitude or forced labour; or (d) activities associated with begging; or (e) any other unlawful activities not specifically provided or elsewhere under this sub-title, shall, on conviction, be liable to the punishment of imprisonment from six to twelve years.<sup>12</sup>*

(ii) the trafficking of persons of age for the purpose of prostitution under **Article 248B**;

*248B. Whosoever, by any means mentioned in article 248A(2), trafficks a person of age for the purpose of exploiting that person in prostitution or in pornographic performances or in the production of pornographic material or other forms of sexual exploitation shall, on conviction, be liable to the punishment laid down in Article 248A(1).<sup>13</sup>*

(iii) the inducement of persons under or over

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12 Ibid, Article 248A.

13 Ibid, Article 248B.



21 years of age to leave or come to Malta for purposes of prostitution under **Article 2** or **3** of the **White Slave Traffic Ordinance**<sup>14</sup>;

*2(1) Whoever, in order to gratify the lust of any other person, compels by means of violence or threats, or induces by deceit, a person who has attained the age of twenty-one years to leave Malta for purposes of prostitution elsewhere or to come to Malta from elsewhere for the purposes of prostitution in these islands, shall be liable, on conviction, to imprisonment for a term not exceeding two years, with or without solitary confinement.*<sup>15</sup>

(...)

*3.(1) Whoever, in order to gratify the lust of any other person, induces a person under the age of twenty-one years to leave Malta or to come to Malta for purposes of prostitution elsewhere, or encourages or facilitates his departure from Malta or arrival in Malta for the same purpose, shall be liable, on conviction, to imprisonment for a term from two to five years, with or without solitary confinement.*<sup>16</sup>

Article 2 of the White Slave Traffic Ordinance<sup>17</sup> states that whoever makes use of violence, threats, or deceit to induce a person over the age

14 Subsidiary Legislation 217.07, Laws of Malta.

15 The White Slave Traffic Ordinance, Article 2.

16 Ibid, Article 3.

17 Ibid.

of 21 to leave or come to Malta for prostitution is liable for imprisonment not exceeding two years. The punishment is increased to a term between two and ten years with or without solitary confinement if it was committed by an ascendant, a spouse, or a sibling; by abuse of one's position, habitually, or for gain. Sub-article 2 continues to state that, if one is found guilty, that person loses any rights previously held over the victim or the victim's property.

Article 3 then focuses on victims under the age of twenty-one and holds that the punishment is of two to five years of imprisonment, or three to ten with or without solitary confinement, if the crime was committed on a person under the age of twelve, by violence, deceit, or threats, by an ascendant or tutor or any other person in charge of the care of the minor. Again, sub-article 2 takes away any authority previously held over the minor by the agent.

Article 248A prohibits the trafficking of persons of age, whether for production of goods or service, slavery, forced labour, begging, or any other unlawful activities by means of violence, threats, deceit, fraud, misuse of authority, influence or pressure, giving or receiving of payments or benefits, or abuse of power. Vulnerable persons are defined as those who have no choice but to submit to such abuse, and that any consent is invalid when such means have been used. 248D states that if the victim is a minor, the same punishment applies. However, if the means mentioned in 248A were used to facilitate the crime, the punishment is increased by one degree. 248B continues that if the person of age is trafficked, as mentioned in Article

248A, for the purposes of sexual exploitation, s/he also punished under 248A(1).

Article 248E<sup>18</sup> defines trafficking as '*recruitment, transportation, sale or transfer*'. This may also include the '*harbouring and exchange or transfer of control*' of a person or minor as well as a '*behaviour which facilitates the entry into, transit through*', and residence in a territory. Sub-article (2) states that when the offences mentioned in Articles 248A to 248D were '*accompanied by violence or results in physical or psychological harm*', or in financial gain of more than €11,646.87, a criminal organisation was involved, or was committed by abuse of one's duties or on vulnerable persons or endangers the life of the victim, or was committed by a family member or by someone who abused the trust in his relationship to a minor, the punishment is increased by one degree.

Thus, in Malta, voluntary prostitution is not illegal, but it is the manipulative and deceptive nature that could be tied to the act which is, involving inducing or compelling another to prostitution. In addition, even loitering and *lenocinium* – living off profits of prostitution of an underage person – of minors is illegal.

The Civil Code<sup>19</sup> allows for the lessor to recover possession of his tenement if it is rented out and used for immoral purposes (such as prostitution) under Article 1618. Furthermore, under **Article 623**, an ascendant may disinherit a descendant who is a prostitute without the connivance of the testator.

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18 Ibid.

19 Chapter 16 of the Laws of Malta.

623. *Saving the provisions of Article 630, the grounds on which a descendant may be disinherited are the following only:*

(...)

*f) if the descendant is a prostitute without the connivance of the testator...<sup>20</sup>*

Malta has ratified the European Convention on Human Rights, the Convention on Action Against Trafficking in Human Beings and the International Labour Organisation Convention No. 182 on the Worst Forms of Child Labour and signed the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.

THE EUROPEAN  
UNION  
AND HUMAN  
TRAFFICKING

GHSL has also looked at The Charter of Fundamental Rights of the European Union. This is of particular importance, as since the birth of the Lisbon Treaty, the Charter became directly enforceable for EU institutions and all Member States when applying EU law. Indeed, Article 5 of the Charter prohibits human trafficking:<sup>21</sup>

### **Article 5**

*Prohibition of slavery and forced labour;*

*1. No one shall be held in slavery or servitude.*

*2. No one shall be required to perform forced or compulsory labour.*

*3. Trafficking in human beings is prohibited.*

Furthermore, articles 79 and 83 of the Treaty on the Functioning of the European Union state that that Member States must have specific legislation against the offence of human trafficking<sup>22</sup>.

### **Article 79**

*1. The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced*

21 The Charter of Fundamental Rights of Europe.

22 Treaty on the Functioning of the European Union OJ C 326, 26.10.2012, p. 47-390

*measures to combat, illegal immigration and trafficking in human beings.*

*2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures in the following areas:*

*(...)*

*(d) combating trafficking in persons, in particular women and children.*

### **Article 83**

*1. The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.*

*These areas of crime are the following: ... trafficking in human beings and sexual exploitation of women and children (...)*

The Anti-Trafficking Directive<sup>23</sup>, in Article 2.1,

23 Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protect-

lists three essential elements to the crime which are the act, the means, and the purpose. The act is the recruitment and control over the victim, the means is the manner in which the victim was recruited, such as by force and deceit, and the purpose is for exploitation of the victim.

## Article 2

### ***Offences concerning trafficking in human beings***

*1. Member States shall take the necessary measures to ensure that the following intentional acts are punishable:*

*The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.<sup>24</sup>*

In the Directive, one may also find a non-exhaustive list of modes of exploitation, including sexual exploitation.

ing its victims, and replacing Council Framework Decision 2002/629/JHA *OJ L 101, 15.4.2011, p. 1–11.*

24 *Ibid* 24, article 2.1.



In 2013 amendments were made to the Criminal Code of Malta in order to transpose the Directive to combat Human Trafficking into Maltese law.<sup>25</sup> To align Maltese law with requirements of the European Union, the amendments increased the punishment for crimes of human trafficking and included a section penalizing persons who make use of a service with the knowledge that the person offering that service had fallen victim to human trafficking.<sup>26</sup>

Furthermore, Malta has implemented its fourth action plan against human trafficking.<sup>27</sup> The aim was to complete tasks from the third action plan within January 2017 and December 2019, mainly adhering to international commitments on combatting sex trafficking.<sup>28</sup> The main focus had been on raising awareness.<sup>29</sup>

EU Member States are obliged to raise awareness on human trafficking and provide for adequate training to those working closely with potential victims. Prevention of human trafficking is a requisite within the scope of the EU. The Communication of 2017<sup>30</sup> states that

25 <[https://ec.europa.eu/anti-trafficking/member-states/Malta\\_en](https://ec.europa.eu/anti-trafficking/member-states/Malta_en)> accessed on 19th August 2019.

26 Ibid.

27 Ibid.

28 Ibid.

29 <<https://homeaffairs.gov.mt/en/MHAS-Information/Documents/Trafficking%20in%20Human%20Beings/National%20Action%20Plan%202017-2019.pdf>> accessed on 19th August 2019.

30 European Commission, 'Working Together To Address Trafficking In Human Beings: Key Concepts In A Nutshell.' (2018) <[https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/key\\_concepts\\_in\\_a\\_nutshell.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/key_concepts_in_a_nutshell.pdf)> accessed on 19th August 2019.

prevention should be the main objective since the harm caused to the victims is major. Thus, the EU requires that all Member States work to diminishing instances which increase the risk of human exploitation, remembering that most motivation stems from an economic factor. It has been suggested that one should also punish who knowingly makes use of any service provided by a victim of human trafficking.<sup>31</sup>

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31     ibid.

# THE DIFFERENT APPROACHES TAKEN TOWARDS PROSTITUTION AND MALTA'S POSITION

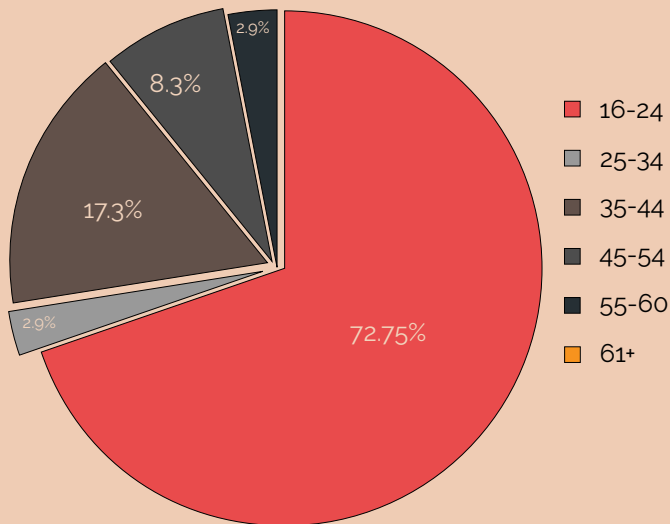
**M**alta takes a prohibitionist approach which can be seen through domestic laws. There is no specific statute stating this. Meanwhile, other countries such as Sweden, take on a neo-prohibitionist approach where clients are penalised for paying for such services rather than the prostitute.

Abolitionism seeks to prohibit the economic exploitation of the prostituted by penalising the act itself, such that of renting the room rather than the prostitute. This approach looks at prostitutes as human beings who deserve civil rights and, in the long term, is believed to encourage them to find another trade.

# THE STUDENTS' OPINION

GhSL has taken the opportunity to prepare a survey in order to gather information on how aware the students are on the topic and their opinion. There was a good mix of female and male students, most of whom are between the ages of 16 and 24 and are currently enrolled in an under-graduate course.

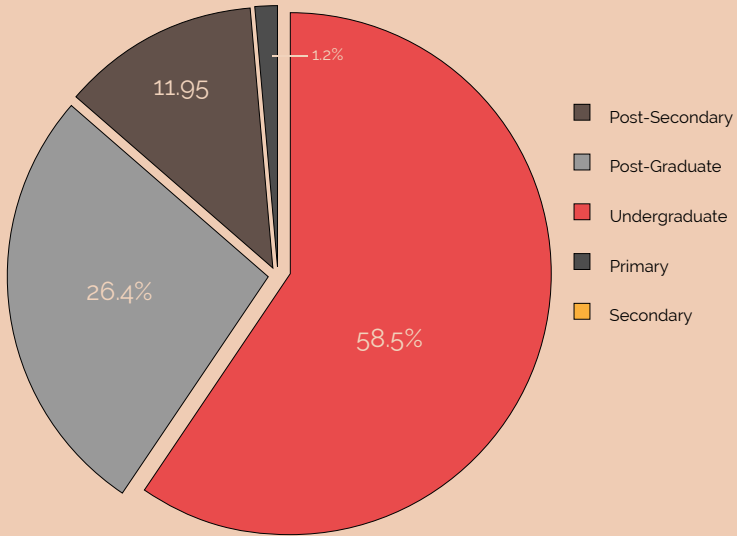
**AGE**



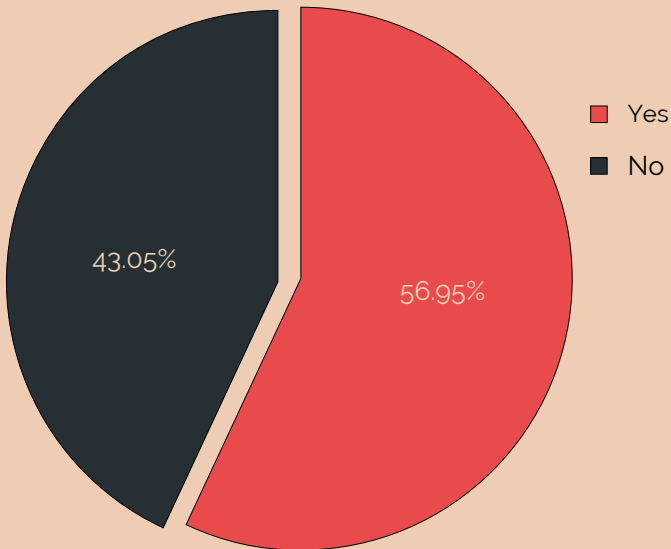
43.5% of the students were not aware that there is a task force which works against human trafficking in Malta. Moreover, 27.2% were not aware that there is an ongoing consultation process on human trafficking and prostitution law reform.

That being said, 69.45% think that Maltese law in regard to prostitution should be amended, however, 45.1% do not believe that legalising prostitution would have a positive effect in reducing human trafficking cases.

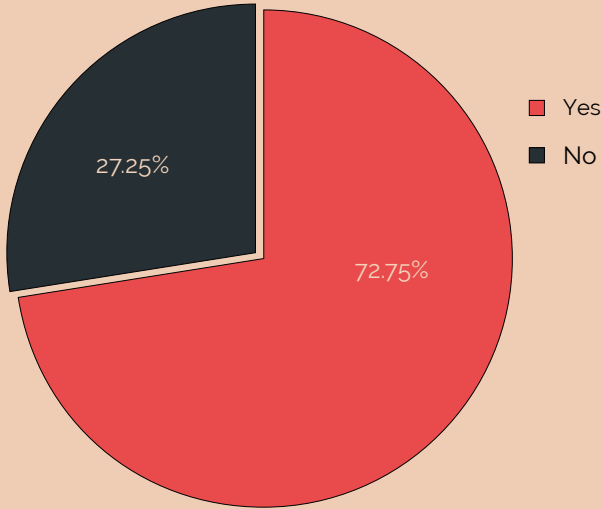
### LEVEL OF EDUCATION



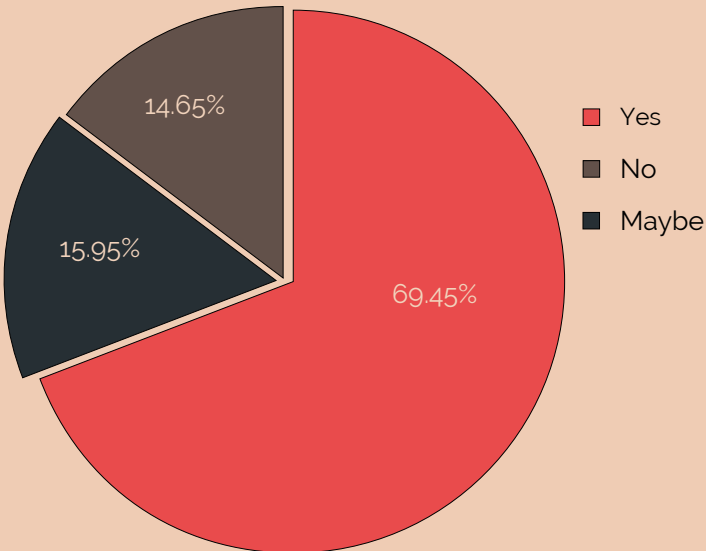
### DO YOU THINK THERE IS A HUMAN TRAFFICKING TASK FORCE IN MALTA?



**ARE YOU AWARE OF THE ON-GOING CONSULTATION  
PROCESS ON HUMAN TRAFFICKING AND PROSTITUTION  
REFORM IN MALTA?**

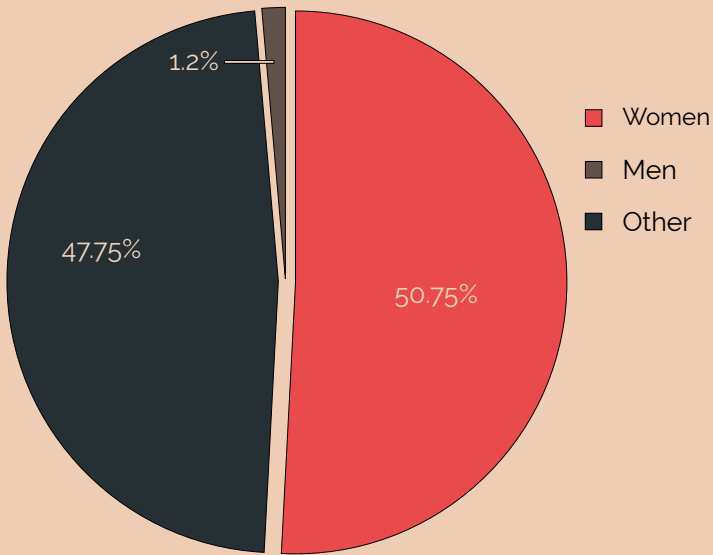


**DO YOU THINK THAT MALTESE LAW SHOULD CHANGE  
IN REGULATING PROSTITUTION?**

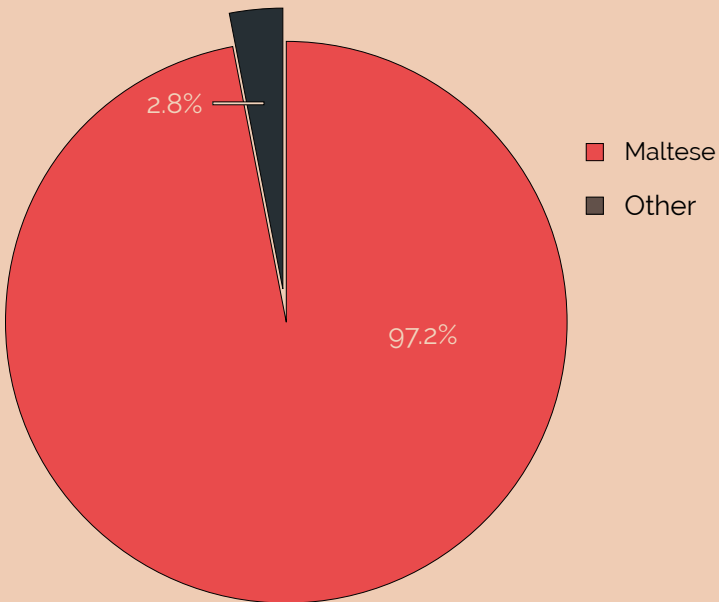




## GENDER



## NATIONALITY



The results to this question highlight that a large majority of the sample population believe that sex trafficking is indeed prevalent in Malta. This, in turn, shows a certain level of awareness on the part of the sample population.

Although 56.95% have responded that they know there is a taskforce working against human trafficking, 43.05% is still a significant number of persons not aware that this taskforce exists. This could mean that the task force should be developed further.

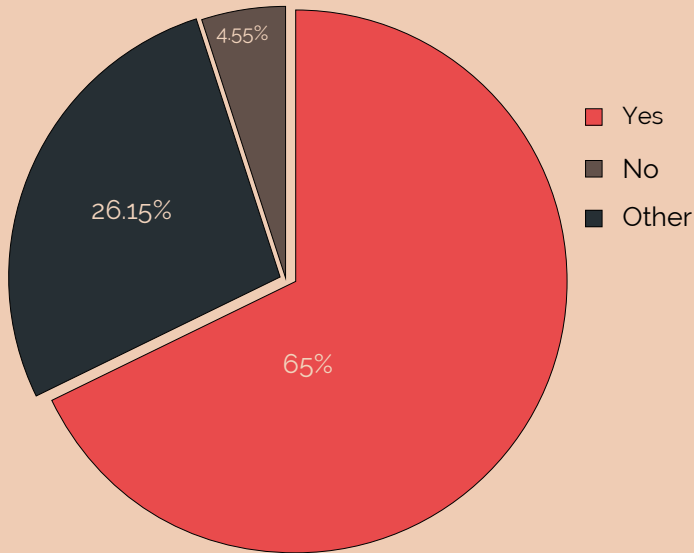
This shows that a significant percentage of the persons who responded believe that not only is human trafficking an issue in Malta, but that it also leads to cases of prostitution.

The result of this question shows that the sample population is aware that not only is human trafficking a prevalent issue in Malta, but also that Maltese nationals can fall victims themselves. Maltese nationals should therefore feel more protected by the law. The majority of the sample population is aware of the consultation process that is going on.

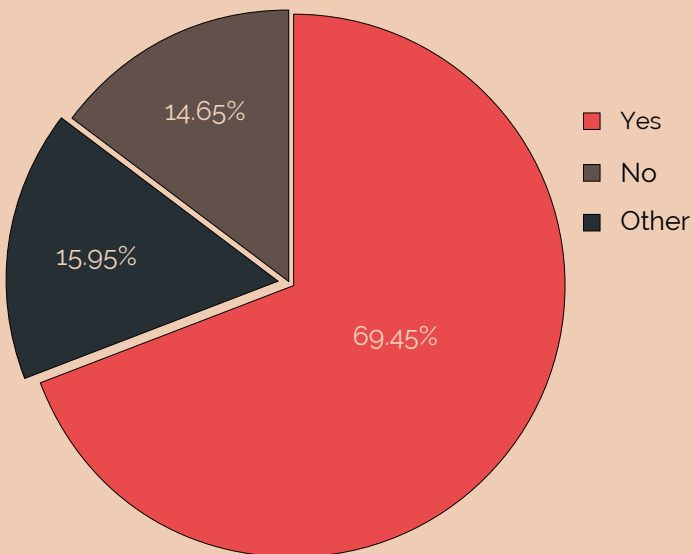
Furthermore, this shows that the vast majority of the population thinks that the law should change with regards to prostitution. While 69.45% have answered yes, another 15.95% answered maybe.

However, these results show that this sample population do not believe that prostitution should be legalised, but rather to search for other manners to regulate the issue at hand on human trafficking and prostitution.

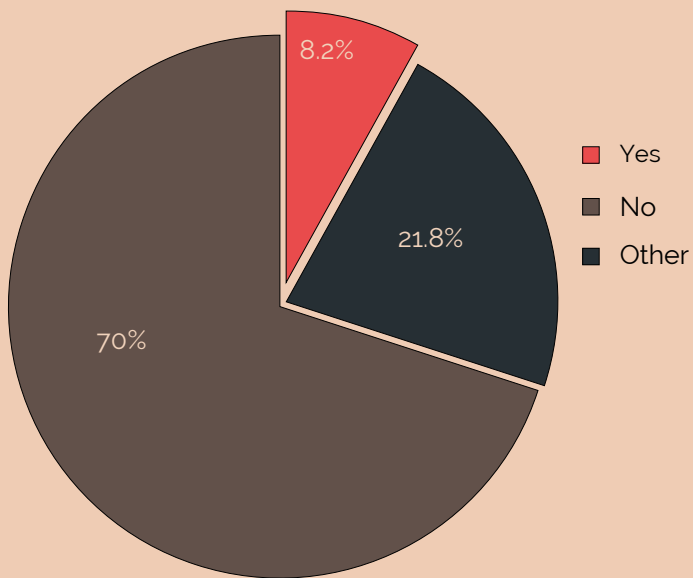
**DO YOU THINK THAT HUMAN TRAFFICKING IS LINKED TO PROSTITUTION IN MALTA?**



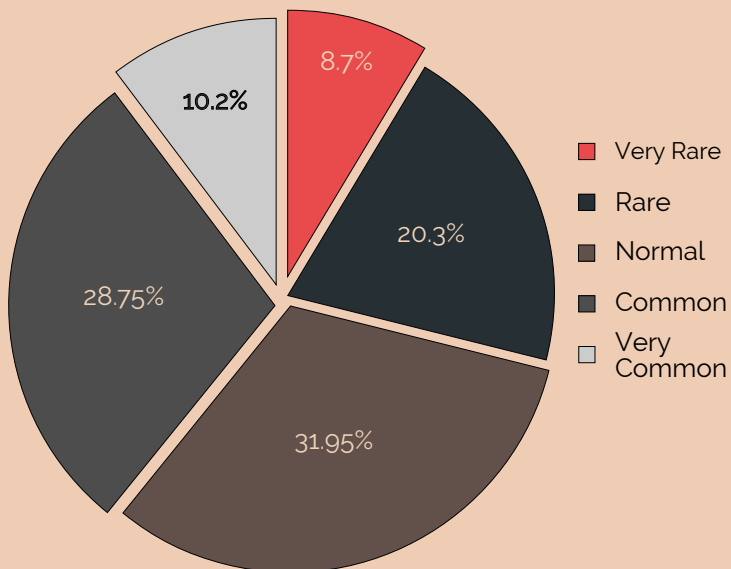
**DO YOU THINK THAT MALTESE NATIONALS CAN ALSO BE VICTIMS OF HUMAN TRAFFICKING?**



### DO YOU THINK THAT LEGALISING PROSTITUTION IS A WAY TO REDUCE HUMAN TRAFFICKING CASES?



### HOW COMMON DO YOU THINK THAT SEX TRAFFICKING IS IN MALTA?



PROPOSALS -  
THE WAY  
FORWARD

# PROPOSAL 1

## AFFORDING SPECIALISED WHISTLEBLOWER PROTECTION TO VICTIMS OF PROSTITUTION AND HUMAN TRAFFICKING

**G**hSL strongly suggests that victim-oriented and specialised protection and immunity is provided for victims of human trafficking, especially in the prostitution sector. Whilst understanding that creating law is much more complex than merely amending existing Acts, the scenario is so sensitive that it requires particular attention. Nonetheless, the content of such Act dealing with prostitution and human trafficking specifically, would be read in conjunction with the existing Whistleblower Act.

At present, the Whistleblower Act of 2013 provides, in Article 5, that no immunity to the whistleblower will be given if he/she was the perpetrator or an accomplice. How can this provision be reconciled with our proposal to afford protection to victims of prostitution and/or human trafficking if the victim himself/herself

can indeed be considered an accomplice?

The method in which GhSL proposes to cater for this discrepancy between the provisions of the current Act and our proposal, is by means of a proviso catering for such specific scenarios. This would mitigate the risk of abuse since, as an organisation, we are aware of the *forma mentis* of having such a provision in the first place. This proviso would serve as an exception to the rule without changing the rule itself, as per the Latin principle of *lex specialis derogat generalis*.

Due to the fact that the focus of the law should be victim-oriented, being an accomplice in this crime would entail being employed as a prostitute or sex-worker within an illegal industry or under illegal conditions. The proviso proposed by GhSL would exempt prostitutes who are unjustly placed at the bottom of the illegal food chain. This proviso is essential to encourage victims to speak up confidently through the immunity provided.

# AMENDING ARTICLE 45 OF THE POLICE ACT DEALING WITH WITNESS PROTECTION

While the basis for witness protection can be duly found in the Police Act, GhSL proposes that in order for such protection to truly and effectively be victim-oriented, certain amendments need to be implemented. Particularly, Article 45 of the Act holds that first, it is up to the Commissioner of Police to ascertain whether a person qualifies for admission to the programme, upon which application to the Attorney General is made in writing. In addition, the Attorney General is afforded a great level of discretion ('individual judgment') and his decision may not be questioned by any court or tribunal.<sup>32</sup>

Two questions arise here: is this cumbersome bureaucratic procedure victim-oriented? Is it just for this level of discretion to be given to one



person with no possibility of appeal just?

In light of this, we propose that while the decision of the Commissioner, followed by that of the Attorney General are pending, a temporary protection order similar to what is provided in Article 540A of the Criminal Code,<sup>33</sup> which provides for such protection in domestic violence cases, is given to witnesses in cases of prostitution and/or domestic violence. It must be noted that such witnesses may as well be prostitutes themselves, and therefore this proposal works hand-in-hand with the one previously discussed dealing with the Whistleblower Act.

## PROPOSAL 3

# THE SETTING UP OF AN INDEPENDENT TRIBUNAL TO REVIEW CASES AND ALLOW FOR WITNESS PROTECTION, INSTEAD OF THE AG

As mentioned above when criticizing Article 45 (1) of the Police Act, there is an issue with allowing the AG to allow or dismiss applications for witness protection. Having an independent tribunal would not only avert the issue of having to process applications with multiple parties (which would ensure that such vulnerable cases are not lengthened more than they should be,) but will also ensure that there is a specific entity available to provide its entire and undivided attention to such cases, thus providing a secure and thorough evaluation.

This would not mean de-criminalising prostitution. On the contrary, it would merely mean accommodating and eventually de-criminalising those persons who seek aid from the criminal food chain, and who desire to change their lives for the better. Otherwise, it is a

system which can provide a way out for women caught in precarious situations. With psychiatric, medical, legal and educative assistance on premises, not only would one be decreasing the number of criminals within our country, but also the other downfalls to prostitution, mainly abuse, the spread of sexual diseases, as well as the amount of pimps lying around in the streets. The main idea is not legalisation, but the encouragement of decriminalisation of prostitutes who are determined to live a legal life and criminalize those who do not.

In fact, the court procedural system is slow partially due to lack of coordination between the authorities in an efficient manner. A clear exhibit of this is the following case of Il- Pulizija (Spettur Louise Calleja) vs Alfred Attard<sup>34</sup>, which lasted from 2012 to 2019;

*'Sfortunatament għalkemm il-legiżlatur fassal l-għodda kollha neċessarja sabiex jassisti kemm investigazzjoni kif ukoll prosekuzzjonijiet, ta' spiss l-awtoritajiet konċernati jiskartaw tali għodda ... kien bl-Att III tal-2002 li l-legiżlatur ipprova għal ordnijiet ta' investigazzjoni, ta' sekwestru w ta' ffrizar sabiex l-awtoritajiet jingħataw għodda effettiva sabiex kwalunkwe reat li jgorr piena ta' prigunerija jew ta' detenzjoni għal żmien iktar minn sena jigi investigat b'aktar reqqa'*

## PROPOSAL 4

# THE INTRODUCTION OF A GOVERNMENTAL FOUNDATION WHICH CAN HARBOUR VICTIMS AND PROVIDE OTHER SERVICES

Many victimised prostitutes also find themselves having to care for both themselves, and their children, in charitable places which welcome them during the day, due to insufficient funds preventing them from owning a place of their own. One might thus propose the setting up of a government foundation which welcomes persons of this sort, not merely for accommodation purposes, but also with the intention of using the valuable daytime to educate such persons on different ways through which they can use their abilities to move away from a life of prostitution. Such a place should also be a place of support and education for their children, if any. Furthermore, victims should also have easy access to medical treatments, whether physical or mental. Indeed, one such option could be that doctors will be present at all times on the premises.

The Malta *legal aid* may also be interconnected with such premises, in order to provide legal remedies for those who have been abused and are unable to pay for good legal representation. Legal experts working in such premises should also receive specific training to work hand in hand with psychologists and related professions to help victims of sexual abuse. The main intention behind setting up such a place is that it is specifically targeted for victims of human trafficking, and an all-encompassing environment to help them reintegrate with society.

This place could be used to encourage the victims to enrol in the programs such that the termination of such programs, if terminated successfully, would result in aid for finding a job, as well as their criminal exemption. This would be extremely important as not having a stain on their criminal record would be of great aid for reintegration into the working society. This would mean harbouring prostitutes involved in illegal scandals, or prostitutes who fell into the profession because of being unable to have other means of work, in the facility for a certain period as a means of both deterring them from returning to the job, as well as reintroduction into society without the fear of being attacked by their perpetrators, pimps, financial issues and social stigmas.

## PROPOSAL 5

# THE USE OF AN APP THROUGH WHICH VICTIMS OR PASSERS-BY MAY BE EDUCATED ON AND REPORT CASES OF ABUSE OF PERSONS OR OF THE LAW WHILST PRESERVING THEIR IDENTITY

Victims forced into prostitution, and possibly being trafficked, are scared to show themselves up as they are not reassured of protection; therefore the use of technology, as shall be discussed below, or the introduction of a witness protection act, reviewed by an independent tribunal, would definitely help people who feel such way, as in the case of The Police (Inspector Joseph Busuttill) vs Alexandru Onofrei;

*'If you would be in my place ... none of you would actually leave because you don't know how he can threaten you and offend you. He is a very very dangerous person. And he does not joke.....; Even in this moment I am still afraid that he will come out one day and he will do something to me in*

*the future.....; (vide folio 208). You don't know the terror that I was feeling; (vide folio 209).<sup>35</sup>*

In today's digital age, in which everyone is extremely well-connected, there can exist a preventive mechanism which can be used by all simply with the click of a button - an app which anyone can freely download on their smart-phones. Passers-by who witness any type of sexual offence, or even victims of abuse, may use this app anonymously and contact the relevant authority giving a detailed description of what they are seeing. This is an easy and effective way which will surely incentivize more people to report such crimes and, perhaps, encourage victims of abuse to get out of a dangerous situation due to the app's anonymity feature. Furthermore, this app would also have an educational section providing information on sexual offences and giving informative tips on how to look out for any victims or perpetrators and how best to offer help.

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35 The Police (Inspector Joseph Busuttill) Vs Alexandru Onofrei, 15<sup>th</sup> July 2016, Comp. No. 841/2014.

## PROPOSAL 6

# SAFEGUARDING VICTIMS, ESPECIALLY THOSE UNDER- AGE

Another initiative being proposed by GhSL is that of a mechanism which can safeguard persons based on the presumption of age. When age is unsure, but the victim is believed to be a child, such child should get immediate protection and care without having to pass them through lengthy and stressful procedures which serve as a detriment to persons of such a vulnerable age.

Another initiative should be strengthening agencies who work against child abuse and sexual exploitation. It is important to hold campaigns which educate the general public on safeguarding children against abuse and on signs that such abuse may be going on.<sup>36</sup> This

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<sup>36</sup> HM Government, 'Modern Slavery Strategy' (2014) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/)



is fundamental since we can never know who may fall victim or who may be an agent in such crimes.

However, it is also important to note that all members of society may find themselves in a vulnerable situation. Thus, we believe that campaigns should also be held to help individuals understand the true meaning of consent in a relationship and on the signs of an abusive relationship, whilst also offering easy access services to those who feel that they may have found themselves in a dangerous situation.

37

[file/383764/Modern\\_Slavery\\_Strategy\\_FINAL\\_DEC2015.pdf](#)> accessed on the 22nd of September 2019.

37 HM Government, 'Modern Slavery Strategy' (2014) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/383764/Modern\\_Slavery\\_Strategy\\_FINAL\\_DEC2015.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/383764/Modern_Slavery_Strategy_FINAL_DEC2015.pdf)> accessed on the 22nd of September 2019.

## MORE CONTROL OVER MESSAGE PARLOURS

Message parlours are notorious for the employment of foreigners who, to earn more loving, offer sexual services, some of whom also do this against their will. A big issue is that such parlours are operating under licenses providing for particular services, which actual services vary greatly from their original and legally approved purpose. The main problem is, however, that when it comes to condemning the owners of such outlets, more often than not two arguments follow, most of which have provided valid excuses leading to exemption;

**1) The owner allegedly did not know that such sexual services were being conducted in his own shop, as happened in the case of Il- Pulizija (Spettur Louise Calleja) vs Alfred Attard, as mentioned previously; '**

*Illi fuq dan l-insenjament u kkunsidrati r-rizultanzi proċesswali ma hemmx dubbju li dak li kien qed issir ġewwa l-massage parlours kien jammonta mhux biss għall-skopijiet immorali iżda għal prostituzzjoni. Illi pero` dan mhux biżżejjed għas-sejbien ta' htija tieghu peress li limputazzjonijiet kontestati lill-akkużat jirrikjedu l-konsapevolezza, ix-xjenza u l-għarfien tiegħu tal-attività ta' prostituzzjoni li kienet qed isseħħ fil-ħwienet liċenzjati f'ismu.'*

## **2) There isn't sufficient proof to validate arguments claiming that such outlets are being used for sexual services.**

Thus, stronger monitoring should be employed, through means such as mystery shoppers and more funding and training, to tackle the argument differently. A taskforce trained specifically to make frequent raids and investigations could also be set-up or funded more generously, to ensure that such outlets, which are known by all public to contain illicit activities, are monitored well. This would be done so as to discern whether the use of the outlet has varied from that permitted by the license, which would also seem less invasive on innocent outlet owners. Refer to the *The Police (Inspector Louise Calleja) vs Guohong Rekkers*<sup>38</sup> for example;

*'It has already been established that Beijing Bella was being used for purposes of prostitution. Prostitution*

38 The Police (Inspector Louise Calleja) vs Guohong Rekkers, 17 th September 2018.

*was not, and could not have been, listed as one of the purposes for which the trading licence was issued in respect of that premises. The business carried out therein was therefore clearly in contravention of the license.'*

Secondly, there should be more enforcement when it comes to the investigation and gathering of evidence, so as to ensure efficient proceedings with fresh proof.

Indeed, *'It [was] the Court's view that these messages can leave hardly any doubt that the whoever was using that mobile phone not only knew exactly what was going on in the salon, but was also very active in the business and in the procuring of clients for purposes of prostitution ... However these sms's and all information retrieved form that mobile phone are inadmissible as evidence<sup>39</sup> being as there was no sufficient proof tying the accused to such proof.*

# THE CREATION OF AN INDEPENDENT ANTI-SLAVERY COMMISSIONER

An option to regulate closer human trafficking would be to create an Independent Anti-Slavery Commissioner who would work closely with law enforcement agencies and any organisations who work in the sector as well as with the Foreign and European Affairs Committee. Furthermore, it should be ensured that the national police and others working at ports and borders receive adequate training in identifying cases of human trafficking. It is important to have information on all foreigners who come to live in Malta. Written contracts before admitting foreigners with terms and conditions of what workers should expect, their rights, where they will be working, in their own language and in clear terms.<sup>40</sup>

40 HM Government, 'Modern Slavery Strategy' (2014). <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/)

This would mean that there would be a record of where these people are supposed to be working when they first arrive and that they are aware of their rights and options they have in case things take a wrong turn.

# CONCLUSION

It is of fundamental importance that the State seeks to reduce the threat by ensuring proper prosecution of the offenders, and by installing efficient mechanisms to try as much as possible, to disrupt these criminal networks.<sup>41</sup>

Our suggestions have been the setting up of an Independent tribunal to offer legal services at lower costs and to review applications efficiently for witness protection. Furthermore, of particular cruciality is the assurance that the victims who are most vulnerable, and those witnesses that had observed such acts of violence or abuse, are protected all throughout the investigation and the proceedings. Given this, we have gone on to suggest a Proviso to the Whistleblower Act that offers immunity. Moreover, it is to be noted that this would go on to aid the police force in gathering evidence, since lack of proof due to the large criminal rings in this sector and the tremendous fear witnesses experience, is a huge issue.

Furthermore, one must employ a system to reduce the vulnerability of persons, by educating the general public through working with community groups and hence raising awareness on the subject, allowing for proper support systems.<sup>42</sup>

Another idea was the smartphone application, which would serve as an educative source for

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41 HM Government, 'Modern Slavery Strategy' (2014) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/383764/Modern\\_Slavery\\_Strategy\\_FINAL\\_DEC2015.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/383764/Modern_Slavery_Strategy_FINAL_DEC2015.pdf)>, accessed on 22nd September 2019

42 Ibid.



the general public since it will contain a section of information on how to identify signs of human trafficking, and also as a means of reporting anonymously any tips or hints an individual from the general public has that another person may be in a dangerous and vulnerable situation.

It is also of fundamental importance that the Government continuously holds campaigns to further educate the public on cases of sex trafficking, on the desperate situation that the victims are in and on the issue of sex trafficking characterized by deceitfulness, helplessness, and fear.

The Government should also ensure that the most vulnerable will also find a welcoming place which offers services of medical help both mentally and physically, educational courses, and legal aid as an alternative to sending victims to prison, but rather encourage these victims to gain the necessary social skills and tools to reintegrate with the rest of the society.



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