EUROPEAN COURT OF HUMAN RIGHTS

Council of Europe

Strasbourg, France

**Third-party intervention**

**On the case of M. A. and 256 others against France and 4 other applications (Applications nos. 63664/19, 64450/19, 24387/20, 24391/20 and 24393/20)**

On behalf of the following coalition of Dutch non-government organisations, social work & municipal health organisations and one municipality (in alphabetical order):

1. Association Women and Law ‘Clara Wichmann’ (VVR)
2. Belle/De Tussenvoorziening, Advice and Help for Sex Workers, Utrecht
3. Black Pride
4. Bureau Clara Wichmann
5. Dutch CEDAW-Network
6. Dutch Association of People with HIV
7. Municipality of Tilburg
8. Under My Red Umbrella (Onder Mijn Rode Paraplu)
9. P&G 292, Advice & Help for Sex Workers, Amsterdam
10. PROUD, Dutch Union for Sex Workers
11. Prostitution Social Work Hart van Brabant, Advice & Help for Sex Workers, Brabant
12. Prostitution Information Centre (PIC)
13. Queer.red presents
14. Re Imagining Sex Work
15. Red Insight
16. SekswerkExpertise, Dutch platform for the advancement of sex workers rights
17. SHOP, Assistance & Advice for sex workers and victims of trafficking, The Hague
18. Stichting Aids Fonds-Stop Aids Now-Soa Aids Nederland
19. Sex Workers Against Violence and Exploitation (SAVE)
20. SWARP
21. SeksWorks, Tilburg
22. Transgender Network Netherlands (TNN)
23. Trans United Europe (TUE)
24. WO=MEN, Dutch Gender Platform
25. Wild Thing

1. By letter dated June 14, 2021, SekswerkExpertise on behalf of a Coalition of twenty-five Dutch non-government organisations, social work & municipal health organisations and one municipality, all working in the field of sex work and human trafficking based in the Netherlands, requested authorization to present a third-party intervention in the context of the case of *M.A. and others v. France* (Applications n° 63664/19, 64450/19, 24387/20, 24391/20 and 24393/20). On August 27, 2021, we were informed of the decision of the President of the Fifth Section to grant our request.

2. In our submission we seek to assist the Court by providing an overview of the laws and policies on sex work and human trafficking in the Netherlands, the principles on which they rest, and the impact on

* the safety and health of sex workers
* the fight against human trafficking and exploitation
* violence against sex workers and other forms of abuse
* the position of sex workers within the Dutch society

In addition we will pay attention to the impact of the ban on sex work during the COVID crisis on the increase of violence against sex workers and the outcomes of an international comparative research on the relation between sex work policy and the prevalence of trafficking.

## Decriminalisation of the sex industry: lifting of the ban on brothels

3. On 1 October 2000 the Dutch Parliament lifted the general ban on brothels. This allowed regulation of sex businesses under administrative and labour law and the treatment of sex work as labour. Since then the Dutch Penal Code no longer treats organising the voluntary prostitution of adult persons as a crime. This means that it is legal to operate a sex business, when it takes place on a consensual basis and involves persons above 18 years of age. At the same time the exploitation of involuntary prostitution and of minors became more strictly penalized, as were clients of minors. The lifting of the ban on brothels was not followed by a new national prostitution law. Regulation of the sex industry was left to the municipalities. After 2000 most cities introduced a licensing system for sex businesses, while setting a maximum on the number of licenses. Sex businesses have to be registered at the Chamber of Commerce and pay taxes.

4. Sex workers themselves have never been criminalized in the Netherlands, nor have activities like soliciting or loitering. Sex workers from EU countries can legally work in the Netherlands under the same conditions as national sex workers. The Migrant Workers Act (WAV), however, prohibits the issuance of working permits for work in the sex industry to non-EU persons.

5. The abolition of the ban on brothels served three major aims: to control and regulate voluntary prostitution; to be able to more effectively combat trafficking and other ‘unacceptable’ forms of prostitution (minors, undocumented sex workers); and to protect the position of sex workers. It was expected that by bringing sex work into the Dutch administrative and welfare regulatory framework and separating punishable and non-punishable forms of (exploitation of) prostitution, it would be easier to crack down on the criminal aspects of the prostitution sector. The Dutch approach is thus designed as a mixture of regulating and decriminalising impulses.

6. In order to monitor the effects of the law reform, evaluations were carried out in 2001, 2006 and 2014. Each evaluation consisted of three separate sub-studies: on the social position of sex workers; on municipal policies; and on illegal and prohibited prostitution (trafficking, minors, undocumented workers). Each study is based on interviews with sex workers, brothel operators, police, representatives of municipalities, service providers and other key informants. The Scientific Research Centre of the Ministry of Justice (WODC) is responsible for overseeing the studies.[[1]](#footnote-1) Arguably, assertions that lifting the ban on brothels in the Netherlands has been a failure are based on unrealistic expectations about the elimination of trafficking and other abuses by a sole change of law and do not take into account a backlog of more than a century of social and labour exclusion.

Background of the lifting of the ban on brothels

7. The discussion on the abolition of the ban on brothels originates in the second feminist wave which put violence against women on the political agenda. Dutch feminists started to question the traditional divisions between ‘good’ women who deserved protection and ‘bad’ ones who could be abused with impunity. By challenging the whore stigma as an instrument to control female sexuality and mobility they made prostitutes’ rights central to all women’s rights.[[2]](#footnote-2) Sex worker activists and feminists argued that the principle of self-determination should also apply to prostitution and that the right of women to have control over their own bodies should also give them the right to sell sex.

The 1984 Parliamentary Note on the Policy to Combat Violence against Women of the Ministry of Social Affairs stated that on the basis of the right to physical and psychological integrity and the right to self-determination women should have the freedom to choose prostitution as profession. Not prostitution as such, but violence and coercion needed to be combated. Moreover, the State should strive to improve the position of prostitutes and abolish the stigmatisation of prostitutes.[[3]](#footnote-3) In 1985 a sex workers organisation, the Red Thread, was founded by (former) sex workers.

8. At the same time women’s groups and third world solidarity groups drew attention to the exploitation of migrant prostitutes who were working under slavery-like conditions and called for harsher penalties for trafficking in women. In the same Parliamentary Note on Violence against Women trafficking in women was recognised as a form of sexual violence. In 1987 the Foundation against Trafficking in Women (STV) was founded, financed by the Ministry of Social Affairs.

9. This debate was the cradle for the Dutch approach towards prostitution: a sharp division between voluntary and involuntary prostitution, between consent and coercion. If a man or woman considers prostitution an option to earn a living, he or she should be able to work under proper conditions and should have the same rights and the same protection against violence and abuse as any worker has. If a woman or man is forced into prostitution or faces violence, abuse or deceit in the course of her or his work, the law should protect her or him.[[4]](#footnote-4)

10. The second feminist wave and the debate on prostitution coincided with the expansion of the sex industry and the increase of female labour migrants in the 80s. As a result of these developments local administrators increasingly felt the need for more instruments to control and regulate the growing sex sector. For many municipalities, in particular the big cities, the removal of the ban on brothels became imperative.

Regulation of the sex sector

11. Regulation of the sex sector was implemented by means of a licensing system under administrative law. After 2000 most municipalities introduced a licensing system, requiring brothels to meet certain standards concerning city planning, health & safety and management (e.g. no forced drinking, no unsafe sex, no minors, no undocumented workers and no trafficking). Brothel operators are responsible that no trafficking takes place in their establishment and have to inform the police if there are indicators that a sex worker is a victim of trafficking. When they violate the requirements they can be fined or the brothel can be shut down. Operators also have to comply with the Public Administration Probity Screening, which makes it possible to refuse or revoke their license if they cannot sufficiently prove that their finances are upfront and legal.

## Policies on combating human trafficking and **exploitation**

12. Dutch anti-trafficking combine a broad definition of trafficking in the Criminal Code (CC), specialised police, prosecutors and judges; special provisions in the Aliens Law; protection & assistance of victims through a national network of specialised support organisations and shelters; training of police, immigration officials and other professionals who might come in contact with victims; awareness raising campaigns; central registration of signals about possible victims; the establishment of an independent National Rapporteur on Trafficking in Human Beings; and close cooperation between all ‘partners in the chain’, the so-called ‘chain approach’.

Criminal law

13. The current Article 273f CC on trafficking in human beings criminalises any use of coercion, (threat of) violence, deceit or abuse of authority or a vulnerable position in regard to conditions of recruitment and/or conditions of work, as well as profiting from the prostitution of another person under the aforementioned conditions. It is not relevant whether the victim worked in prostitution before, knew s/he would do so or wants to continue to do so under free conditions. The core of the crime is deceit, coercion and exploitation, not prostitution. Also offences that in other countries might be qualified as pimping fall under trafficking when any form of deceit or coercion is used. This includes traditional forms of pimping like so-called ‘loverboys’, young men who lure girls and young women into prostitution by pretending to be in love with them. This makes it difficult to compare Dutch figures of trafficking to countries that use a more narrow definition of trafficking and/or prosecute cases as pimping which in the Netherlands would be prosecuted as trafficking.

The recruitment and/or exploitation of minors is punishable irrespective of coercion or consent, as is the recruitment of sex workers across borders. However, following a 2016 ruling of the Supreme Court (Hoge Raad, 17 May 2016, no. 14/05782, ECLI:NL:HR:2016:857) the latter is only punishable when there is an element of exploitation or abuse involved. Since 2000 the article has been amended several times. Among others to bring it in accordance with the UN Trafficking Protocol.

14. Per January 2022 clients of sex workers who know or have serious reason to suspect that the sex worker is a victim of trafficking will be criminalised.[[5]](#footnote-5) The law was adopted despite doubts of, i.a., the Council of State about its enforceability, feasibility and practicality as even for trained professionals it is extremely difficult to identify trafficking victims. Concerns also exist about possible negative impacts, as an increasing body of research shows that any form of criminalisation, including partial client criminalisation, rather than protecting sex workers makes them more vulnerable for violence and abuse.[[6]](#footnote-6) Similarly, fears exist that clients might be less willing to report possible cases of trafficking when it is unclear whether they risk being prosecuted themselves when they do so. Research from the Amsterdam Municipal Health Service, e.g., showed that almost 70% of clients feel responsible for abuses in the sex sector. About 40% is willing to actually report abuses. As factors that encourage reporting they mention guarantees of anonymity and safety; a low threshold for reporting; and transparency on how reports are dealt with.[[7]](#footnote-7)

15. During 2015–2019 about 180 trafficking cases (suspects) per year were registered at the Public Prosecution Service (PPS). About 80% of these cases concerned sexual exploitation; in about one fifth of the cases the victim was a minor. Approximately 74% of the registered cases of sexual exploitation were brought to court. In the period 2015-2019 in total 406 cases of trafficking for sexual exploitation led to a conviction. Inland sexual exploitation is the most common form of human trafficking.[[8]](#footnote-8)

16. Since 2000 the Netherlands has a National Rapporteur on Trafficking in Human Beings. The National Rapporteur investigates the nature and extent of trafficking, monitors developments and advises national and local governments, other administrative bodies, international organisations and professionals who provide assistance and support, on how to prevent and combat human trafficking. The Rapporteur is independent and directly accountable to the Parliament.[[9]](#footnote-9)

17. Analysis by the National Rapporteur on Trafficking in Human Beings of the coercive means applied in 111 cases of sexual exploitation in 2009-2010 showed that only 22% of the charges (and 16% of the proven cases) related to deception regarding the nature of the work.[[10]](#footnote-10) This means that, contrary to the stereotype of ‘innocent’ victim being forced into prostitution against her will, the majority of cases do not concern coercion into prostitution, but coercion and exploitation within prostitution: people who consciously choose to work in prostitution, but who subsequently end up in a situation of exploitation, where they are forced to work in conditions they are not free to decide about and/or are forced to hand over their earnings. In addition it should be noted that the idea of victims needing to be ‘innocent’ is a form of victim blaming, as if sex workers have less right to protection from trafficking and other abuses than other people.

Identification, Assistance & protection of victims

18. CoMensha is the national coordination and expertise centre on human trafficking, and is subsidised by the Ministries of Justice & Security, Social Affairs & Employment, and Health, Welfare & Sport. They coordinate the primary reception and care of (potential) trafficking victims. In 2019, they received 192 requests for primary reception of victims and/or follow-up shelter. When a victim is placed in one of the shelters, coordination of the assistance is transferred to one of the 10 regional coordinators. Coordination of assistance to minor victims is done by the youth care service. There are special shelters for non-EU trafficking victims who make use of the reflection period. There are also specialised shelters and support services for young, mostly Dutch and female, victims of so-called “loverboys”. Unaccompanied foreign minors who are trafficked or are at risk of trafficking can be accommodated in protected reception centres. A national referral mechanism exists since 2013.

19. Professionals who might come in contact with (potential) victims are regularly trained in order to be able to recognise indicators of trafficking and to know how to act in such cases. This includes, for example, police, labour inspectors, youth care professionals, health professionals working with sex workers, professionals working with (minor) asylum seekers, etc.

20. Measures are in place to protect victims in criminal investigations and avoid secondary victimisation. Trafficking cases are handled by specialised judges. Victims are entitled to free legal aid. They can claim material and immaterial damages through the criminal proceedings, including compensation for the money they earned and were forced to hand over to their traffickers, and the Criminal Injuries Compensation Fund. If the offender has not paid the awarded compensation 8 months after the final verdict, the victim can seek an advance payment from the State.

21. At the slightest indication of trafficking, possible victims are entitled to a reflection period of 3 months. If they decide to press charges non-EU victims are entitled to a temporary residence permit during criminal proceedings. When the traffickers are convicted or when it is not safe for the victim to return to their home country they may qualify for a long term residence permit on humanitarian grounds. During the reflection time as well as the temporary or long term residence permit they are entitled to social benefits, health insurance, shelter, health & social care. They also have access to the labour market.

22. Signals of possible victims of trafficking are centrally registered by CoMensha in order to get insight into the scale and nature of trafficking and the impact of anti-trafficking policies. Between 2015 and 2019, Comensha received about 5.000 signals about possible victims, of which about 62% (3.148) concerned exploitation in the sex industry. Most reports come from the police, others come from professionals in other sectors, like service providers, medical professionals or lawyers. Not all reported possible victims have become victim of trafficking in the Netherlands. Especially over the last years there is an increase of reports of non-EU victims who have been exploited in another country but report in the Netherlands in the context of a Dublin claim.

23. Remarkably, the number of reported possible victims exploited in the less visible sex sectors is much higher than the number of reports about possible victims exploited in the licensed sector between 2015 and 2019. Moreover the share of sexual exploitation in the visible, regulated sex sectors appears to be decreasing yearly.

24. On average 32% of the reported possible victims across all forms of trafficking is male. However, the proportion of male possible victims of cross-border sexual exploitation increased significantly: from 9% in 2015 to 42% in 2019. The top 5 countries of origin of possible victims are the Netherlands (varying from 32% in 2015 to 18% in 2019), Poland, Romania, Uganda and Nigeria. The average age of possible victims of sexual exploitation is 23 (in-land) to 28 year (cross-border). About 31% of the Dutch possible victims is minor, against about 4% of the victims of cross-border trafficking. A group that deserves special attention are unaccompanied minor asylum seekers who disappear from protected reception centres.[[11]](#footnote-11)

25. While the number of reported (possible) victims at CoMensha has increased since 2000, it is difficult to interpret these figures, as the increase in reports can be both a signal of successful policies (better detection, identification and assistance of victims) and failing policies (more victims) or simply indicate that the police more consistently report indications of trafficking to CoMensha, as they are obliged to do since 2012. Moreover, the figures concern “signals of possible victims”, which can vary from “the slightest indication” to actual cases. On the basis of these figures it is therefore impossible to establish the actual number of victims.

Estimates of the number of victims of trafficking and/or exploitation

26. It is not possible to make a reliable estimate of the actual number of victims of trafficking and/or exploitation in the sex sector. Estimates are the subject of public and political battle and vary from 10-90%, depending on one’s view on sex work. Some estimates also include ‘force’ by economic circumstances, thus going far beyond the definition of trafficking. However, purely the fact that somebody has to work for a living does not qualify as trafficking, as is sometimes suggested by the media or politicians in order to (falsely) inflate the figures about the number of persons trafficked. Another factor that may inflate estimates is the moral judgement that may lie beneath it, in particular the idea that no woman can work in prostitution voluntarily resp. that women do not have the agency to decide to do so. Within that view, all prostitution is forced, irrespective actual cases of violence or coercion. Moreover, most figures lack sound empirical evidence.

27. Research, however, consistently reveals low prevalence figures, varying from 4% to 10%. The 2006 evaluation of the lifting of the ban on brothels found some indications of involuntary prostitution or prostitution by minors, but to a very limited extent. Of the 354 interviewed sex workers 8% were forced into sex work through trafficking or by a boyfriend or lover boy. Over 60% had started sex work before 25; 5% had started before the age of 18. Most of the sex workers did not start sex work because of financial problems or to earn something on the side; often they saw it as a way of earning more than they could in other industries.

Also the 2014 evaluation found no indications of the large scale existence of trafficking or prostitution of minors. Of the 365 interviewed sex workers 4% indicated that they had experienced some form of coercion. Two thirds of the interviewed sex workers thought that the majority of their colleagues worked on a voluntary basis. The average age they had started working was 28; 4% stated they had started working before the age of 18 (but not necessarily in the Netherlands, as some of the respondents came from other countries).[[12]](#footnote-12) These figures are in line with the findings of the research of Wagenaar et al. in 2013, in which about 10% of the interviewed sex workers stated that they had ever been forced to engage in prostitution or to work under unacceptable working conditions. Moreover, most of them had managed to break free of their exploiters by themselves without interference of police. The latter indicates a remarkable level of self-determination, which at least puts the image of the sex worker as victim into perspective.[[13]](#footnote-13)

28. Studies also show that for many migrant sex workers migration for sex work is a conscious and deliberate decision. Usually, they do not recognize themselves in the definition of victim of sex trafficking. Rather, they see themselves as migrants who fled their country of origin for lack of perspective and are now working in the sex industry in the Netherlands.[[14]](#footnote-14)

Prevention & Measures to discourage demand

29. Measures to discourage demand predominantly consist of awareness-raising campaigns aimed at, in particular, (male) clients to encourage them to report possible cases of trafficking. An example is the Crime Stoppers campaign on trafficking and forced prostitution encouraging clients to anonymously report suspicions of trafficking and other abuses.[[15]](#footnote-15) Other preventive measures include awareness-raising campaigns about the phenomenon of so-called “loverboys” in schools and among parents, trainings to prevent youth prostitution for social workers, police officers, local and provincial governments and schools, and websites where young people can chat with social workers on topics such as loverboys, online sexual abuse or relationships.

## **Social position sex workers: safety,** health and autonomy

1. 30. There are different ways to practice sex work in the Netherlands. Sex businesses such as brothels, clubs, windows and escort agencies need a license to operate. The number of licenses and the conditions to obtain one are determined by the municipalities. Contrary to other labour sectors, it is next to impossible for sex workers to work legally and independently as self-employed workers, as most municipalities prohibit independent (home-based) sex work on a professional basis. Some cities allow home-based work on the condition that the sex worker does not advertise and works alone in her/his own house. Working in the streets is forbidden in almost all municipalities, but some cities still have a street zone.
2. 31. In practice, almost the only way to work legally is to work for a licensed sex business, such as windows, brothels, private clubs or escort agencies. However, many cities have maximised the number of licenses. In addition, there has been a steady decrease of licensed working places over the last years, often in the name of combating trafficking. This causes an increasing number of sex workers to work outside the licensed sector.
3. 32. Escort and indoor sex workers in brothels and private clubs mostly work according to the government-imposed so-called opting-in system, a fiscal system in which the operator withholds income tax and VAT on the earnings of sex workers, on top of a percentage they charge as commission. To safeguard the autonomy of the sex worker, the opting-in system comes with a packet of conditions laying down fundamental rights, such as the right of the sex worker to refuse clients and/or certain sexual services and to decide about her/his own working hours. The operator cannot prescribe sex workers what to wear, obliged them to use alcohol and drugs, impose fines or prohibit her/him working for others. In window-prostitution and street prostitution sex workers are self-employed.
4. 33. Only EU citizens can legally work in the Netherlands. Sex work is the only labour sector for which the law prohibits the issuing of a working permit. Sex workers who don't have a EU passport or a residence permit which allows them to work, are regarded as illegal workers and have no access to the licensed sex sector, thus making them more dependent on intermediaries and negatively impacting their health, safety, and labour rights. Increased reliance on third parties, especially when working informally, increases the risk of hazardous working conditions. However this does not mean that they are working by force or are trafficked. Migrants move to the Netherlands and other countries for many reasons: the income gap between the country of origin and the country of destination, the lack of social and economic opportunities in the country of origin, the institutional persecution of LGBT+ persons and the high levels of homophobia and transphobia. For women, escaping gender violence and discrimination in their home country might also play a role. [[16]](#footnote-16)
5. Access to health & social care

34. Most big cities offer health & support services that are specifically geared towards sex workers and where the medical and social staff is specialized in the needs of sex workers. They are mostly financed by the municipality. Services are accessible, anonymous and free. Sex workers, regardless their gender, workplace or immigration status, can turn to them for STI-testing and treatment, PREP, contraception, hepatitis B vaccinations and sexual education, but also for financial problems, questions about starting and stopping sex work, psychosocial support and stress-related complaints. They offer information & advice to sex workers on how to work safely and healthy, as well as exit programs and specialised assistance to victims of trafficking. Some also offer assertiveness classes, Dutch and English lessons or various group activities. Some also run ‘sounding board groups’, meetings where the municipality enters into dialogue with sex workers and municipal policies can be tested against practice. In this way, policies can anticipate on signals from the field.

35. Most centres work with multi-disciplinary teams, consisting of social workers, nurses, educators, and expert-sex workers who speak various languages to enable conversations with all sex workers, regardless of their cultural background. They work closely together with various aid agencies with the common goal of promoting the self-reliance and emancipation of sex workers by improving their physical health condition; strengthen their psychosocial health; improve their social and labour rights; and identifying and helping to tackle forms of violence and sexual exploitation. As expressed by P&G292, the Amsterdam centre: “Autonomy is central to us: every person has the right to freely choose and exercise their profession. There should never be any form of exploitation or oppression.”

36. They may reach sex workers through physical fieldwork, visiting clubs, windows etc.; internet fieldwork, e.g. targeting sex workers directly by sending emails or calls to sex workers advertising on sex work websites; and through the chat function on their website.

1. Exit programs

37. The government annually makes about € 3 mln available for exit programs. Some sex workers move on to other work completely independently. Others can use help in doing so. Sex workers who want support can turn to various organisations for professional help. These are often organisations that specialise in supporting sex workers in all kinds of areas and also offer so-called Prostitution Social Work. Many of them work together with other parties who offer life-oriented support, such as debt counseling, addiction care and reintegration support. Exit programs can include arranging access to social benefits and housing, debt relief, training & education, Dutch or English classes, but also, e.g., dealing with the stigma on sex work.

38. Exit programs are open to all sex workers, including female, male and trans EU and non-EU sex workers, and are tailored to their individual needs, wishes and competences. Examples of competences acquired through sex work are people skills, customer friendliness, communication and negotiation skills, creativity, the ability to set limits, stress resistance, independence and perseverance. These are all competences that can be of great value in many other professions and that form a starting point for giving up sex work. There is national network of projects with diverse programs. Annually about 650, mostly female, sex workers make use of these programs, of whom about 300 sex workers actually quit sex work and start another career.

Relation between workplace & Safety

1. 39. A recent study carried out by SoaAids and Proud, the sex workers union, showed that sex workers felt safer working in the windows, in clubs and private houses or in street walking areas, because of the presence of other people around, the possibility to press an alarm button and the opportunity to screen clients and reject them. Sex workers who operate outside licensed working places in hotel rooms, massage parlours or r at home face an increased risk of violence. They are also less likely to report violence to the police for fear of negative repercussions. Violent clients and thugs know this and take advantage of it.[[17]](#footnote-17) In a study aimed at migrant sex workers in the Netherlands, sex workers confirmed that they felt safer working in licensed places such as windows, clubs or private houses, due to the presence of alarm buttons and cameras, but also having colleagues around increased their sense of safety.[[18]](#footnote-18)
2. 40. However, accessing licensed work places is impossible for undocumented migrants and is difficult for LGBT+ sex workers. The fact that there are almost no licensed places to work for cis-men and trans sex workers increases their risk to face violence while working (on top of the risk of violence due to homophobia or transphobia) and decreases their willingness to report violence. The lack of access to legal ways of doing sex work also makes non-EU migrant workers more vulnerable to violence and exploitation. In general sex workers working without a license distrust the police due to the fear of receiving a fine and having to stop working or, in case of undocumented migrant workers, fear for deportation. Decriminalization and de-stigmatization of sex work would make it easier for sex workers to reach out in case of violence and unfair labour conditions.
3. Impact of Covid on the increase of violence against sex workers
4. 41. The Covid crisis made clear what happens when sex workers from one day to the other are forced from a legal working situation into illegality, i.e. from a decriminalised into a criminalised situation. During Covid sex workers were not allowed to work but at the same time most of them did not qualify for state support. As a result, many of them ended up in a precarious situation which prompted some to continue working despite the health risks to themselves and others. Confronted with violence or theft sex workers did not dare to go to the police for fear of fines as they worked illegally. Violent clients and thugs abused this vulnerable position of sex workers. The result was a marked rise in violence and aggression against sex workers. In total minimum 25 cases of violence, varying from theft to severe violence, were reported at service providers.[[19]](#footnote-19)

Stigma and health & safety of sex workers: Sex Work Alliance De-stigmatisation (SWAD)

42. Sex work is a legal profession in the Netherlands. Yet, the stigma attached to sex work is high. Sex workers are often seen as victims, instead of as people with a legal profession. This is because sex work and human trafficking are often directly associated with each other, while they are two different things. Politicians and policy makers tend to only pay attention to the link between sex work and human trafficking. This leads to a one-sided approach and stigmatisation of sex workers who consciously choose this work. The effects of stigma are manifold. It has a negative impact on the social position of sex workers, making them more vulnerable to violence and exploitation. Stigma also contributes to reduced access to health care or police; exclusion from services such as mortgages or bank accounts; negative treatment by family, friends or third parties; psychological complaints due to a negative self-image.

43. The link between violence against sex workers and STIs and HIV is strong. Violence hampers sex workers' rights and threatens their health. Besides different kinds of injuries that violence can cause, violence also affects mental health and well-being. Moreover, violence increases vulnerability to STIs and HIV. Internal injuries, for example, can increase the risk of infection. Violence and threats can also be used as a means of pressure for unpaid, unwanted or risky sexual services.

43. SWAD is an alliance of 22 initiatives and organisations working together to implement a five-year programme to reduce the stigma surrounding sex work and improve the social position of sex workers so that they are also less vulnerable to stigma and violence.[[20]](#footnote-20) The idea is that there are many initiatives in the Netherlands that are united in their desire to improve the social position of sex workers, and that by joining forces, they can put sex work on the map in a positive way. De-stigmatisation of sex work will ensure social inclusiveness of (former) sex workers in policy and practice, both by institutions and by their environment and themselves (self-stigma). The program is financed by i.a. the Ministry of Justice & Security.

Local forms of collaborative governance

44. In some cities experiments start with Participatory Action Research. Often prostitution policies are made without using the knowledge, experience and expertise of sex workers. Participative Action Research is a successful method to have sex workers, municipalities, police and service providers work together to investigate a shared complex situation, reflect on it and co-create the best fitting interventions to tackle the situation together and achieve sustainable impact.problems. By coming up with solutions together, participants feel motivated and strengthened to persevere, resulting in concrete results in a short time, e.g. joint initiatives of sex workers and police to combat abuses against sex workers. It forms a basis for de-stigmatization, promotes mutual understanding, cooperation and meaningful participation of sex workers in the development of policies, and contributes to a safe and healthy sector.

## **Obligations under CEDAW**

45. Since the legalization of sex work in the Netherlands the CEDAW Committee has devoted attention to the situation of Dutch sex workers in several of its Concluding Observations on the Netherlands. In none of these has the CEDAW Committee suggested that the Dutch policy of legalizing sex work violates Article 6 of the Convention which obliges States Parties to ‘take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women'. Instead the CEDAW Committee has repeatedly expressed concern about efforts by the Dutch government to restrict sex workers' liberties and rights. In particular, it has criticized attempts by the Dutch government to subject sex workers to mandatory registration through the Bill on the Regulation of Prostitution (Wrs). In 2010 the Committee stated that it was: *'Concerned that the new bill on prostitution in the Netherlands making the registration of prostitutes compulsory may lead the majority of prostitutes to work illegally. Among those prostitutes are migrant women from third countries who will not have the possibility of registering. The Committee is therefore concerned that the law, rather than improving the situation of prostitutes, might on the contrary undermine efforts to combat the sexual exploitation of women and increase the vulnerability of prostitutes who are not able or not willing to register by worsening their working conditions and exacerbating their social exclusion. The Committee expresses concern that this new legislation may also create serious risks for registered prostitutes’ privacy and safety.'*

46. After the Dutch government introduced a new bill on the regulation of sex work, from which the mandatory registration of sex workers had been removed, the Committee's concluding observations of 2016 recommended the Dutch government to: *'Ensure that upon the adoption of the draft law on the Regulation of Prostitution and Combating Abuses in the Sex Industry, municipal authorities are closely monitored to ensure that they do not engage in illegal registration of women in prostitution*.'

47.  It should also be noted that the committee has not only expressed concerns about the negative impact of measures that restrict the rights of sex workers in its Concluding Observations on the Netherlands. Also in relation to other countries, such as China and Fiji, the Committee has expressed concerns about the disproportionate, impact on women sex workers of the continued criminalisation of sex work. The Committee has urged Hungary to adopt measures aimed at preventing discrimination against sex workers and ensure that legislation on their right to safe working conditions is guaranteed at national and local levels.

## Dutch international policies

The Netherlands has been for many years a supporter of the human rights, well-being and protection of sex workers through their development aid funding practices and public appearances in international spaces. In the 2018 policy document “Investing in perspective” of the Ministry of Foreign Affairs e.g., sex workers are explicitly mentioned in the section “investing in rights and services”, under the chapter on “Education, work and freedom of choice for women and girls”, where they are recognized as stigmatized people whose rights should be supported.

The Dutch government has financially supported grantmaking practices intended to directly benefit self-led organisations of sex workers that worked towards strengthening their human rights, including their right to life and physical integrity and the right to privacy of sex workers, including freedom of self-determination. These funds have support human rights trainings for sex workers, legal support to sex workers, direct services (HIV and health services, access to condoms, social services such as support to find shelter, protection services such as in cases of abuse or violence, etc), skills building and mobilization and advocacy efforts. This has improved the lives and integrity of sex workers and protected them from violence including murder by police, clients, family, criminals or the general public.

By speaking out in international spaces about the human rights of sex workers, and providing opportunities for sex workers to speak out for themselves, the Dutch government has explicitly recognized sex workers as people before the law, as rights-holders. In many other countries where sex work (the work itself, the sex workers and/or their clients) is criminalized it tends to be very difficult and risky for sex workers to organize, speak up and access justice when their rights are violated.

## To do: Relation between prostitution policies and prevalence of trafficking

Relation sex work policy regimes and the prevalence of trafficking: research University of Humanistics: (uitkomst: geen zinnig word over te zeggen) + uberhaupt moeilijk iets over te zeggen, afhankelijk van een range van factoren. Wat in de wet staat zegt nog niet zoveel.

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