

# **HUMAN RIGHTS, SEX WORK AND THE CHALLENGE OF TRAFFICKING**

**Human rights impact assessment  
of anti-trafficking policy in the UK**

**A report by the x:talk project  
October 2010**

## Acknowledgments

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*Human rights, sex work and the challenge of trafficking*

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# Foreword

This report was produced by the x:talk project and the main findings reflect the experiences and views of people working in the sex industry in London. The x:talk project is a grassroots sex worker rights network made up of people working in the sex industry and allies. In addition to providing free English classes to migrant sex workers, we support critical interventions around issues of migration, race, gender, sexuality and labour, we participate in feminist and anti-racist campaigns and we are active in the struggle for the rights of sex workers in London, the UK and globally. The x:talk project has been developed from our experiences as workers in the sex industry. x:talk is sex worker-led not because we think that being a ‘sex worker’ is a fixed identity, but because we believe that those who experience the material conditions of the sex industry are in the best position to know how to change it.

This report demonstrates that for the human rights of sex workers to be protected and for instances of trafficking to be dealt with in an effective and appropriate manner, the co-option of anti-trafficking discourse in the service of both an abolitionist approach to sex work and an anti-immigration agenda has to end. Instead there needs to be a shift at the policy, legal and administrative levels to reflect an understanding that the women, men and transgender people engaged in commercial sexual services are engaged in a labour process. The existing focus in anti-trafficking policy on migration, law enforcement and on the sex industry does not address the needs, choices and agency of trafficked people, whether they work in the sex industry or elsewhere, and prevents migrant and non-migrant people working in the sex industry from asserting fundamental rights.

# the x:talk project

x:talk was born in a brothel in south London. The project grew out of the experiences of a prostitute called Alice who was working in a flat with many women from Thailand. They had paid £20,000 to come to the UK to work, they did not have their passports and they earned less money than Alice who was considered to be ‘European’. One reason they did not earn as much money as Alice was because they couldn’t negotiate with English speaking clients very easily. When Alice asked the women how she could help them – they expressed very clearly they did not want to be ‘helped’ but instead that they wanted to learn English. So began the first x:talk classes – in between clients and during the long hours of waiting. It was clear to Alice that we need to be able to speak together to be able to organise at work. x:talk is not about helping people, but about collective action and solidarity.

The x:talk project has grown into a sex worker-led workers’ co-operative which approaches language teaching as knowledge sharing between equals and regards the ability to communicate as a fundamental tool for sex workers to work in safer conditions, to organise and to socialise with each other.

We understand language to be a politically and socially charged instrument of power, which we aim to teach critically and thoughtfully. Our English classes are organised to create a space where sex work as work can be openly talked about and does not have to be concealed or hidden. Through providing such a space we aim to challenge the stigma and isolation attached to our profession while at the same time we guarantee confidentiality and respect for those involved.

We are interested in organising to radically transform the sex industry so that sex workers have more control over their lives and work. We are not interested in passing judgement on what type of work people do. We recognise that many women, men and trans people have a diverse range of experiences in the sex industry – good, bad and ugly. Our project is open to people who sell sex or sexual services – including workers in brothels, escort agencies, outdoors, flats, bars, on the phone or the internet, strippers, dancers, models, porn stars and glamour models. We respect and support people’s choices or circumstances about continuing to work in the sex industry or exiting the industry.

# Contributors

**Xanthe Whittaker** co-ordinated the x:talk HRIA project. She is a journalist and has been active in struggles for women's rights, queer liberation and against racism for the past 15 years.

**Heather Monroe** works as an independent escort. She began working for escort agencies and has worked in London and Paris. She has also worked in the corporate sector and is experienced in teaching languages.

**Katie Cruz** is a PhD candidate at the University of Nottingham. Her research focuses on feminist legal theory, feminist participation in the regulation of sex industries and the criminalisation of sex workers and their clients in the UK.

**Marcia Regina de Lima** is a sex worker rights activist. She has 20 years experience working in flats in Spain and three years in the London sex industry. She is a former student of the x:talk English programme and is now a teaching assistant for the classes.

**Claire English** is involved in activist projects that advocate for freedom of movement for all people, including Calais Migrant Solidarity and London No Borders. She has a MSc in Gender, Development and Globalisation from LSE.

**Josie Cousens** has been politically active around migration and queer issues for ten years, with groups including London No Borders. By day she is a swimming teacher.

**Alice Spencer** has four years experience working in flats and escort agencies in London. She is actively involved in fighting for the rights of sex workers and helped to establish the x:talk project in 2006.

**Niki Adams** is a spokeswoman for the English Collective of Prostitutes. Founded in 1975, the ECP is an organisation of sex workers campaigning for decriminalisation, sex workers' rights and safety and for financial alternatives to enable women to leave prostitution if they want.

**Tiziana Mancinelli** has been involved in anti-racist and feminist activism for many years. She works at a sexual health organisation for sex workers in London.

**Heidi Hoefinger** is a social researcher and sex worker rights activist interested in issues around sex, gender and transnationalism. She received her PhD from Goldsmiths College in 2010.

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**Nic Beuret** is a graphic designer who has been a long standing supporter of the x:talk project - [www.derelictspaces.net](http://www.derelictspaces.net)

## ACRONYMS AND ABBREVIATIONS

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ATMG	Anti-Trafficking Monitoring Group
ATP	Anti-Trafficking Policy
CATW	Coalition Against Trafficking in Women
ECPAT UK	End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes
ECP	English Collective of Prostitutes
EEA	European Economic Area
EU	European Union
European Convention	Council of Europe Convention on Action Against Trafficking in Human Beings
FOI	Freedom of Information
HRIA	Human Rights Impact Assessment
ICCPR	International Covenant on Civil and Political Rights
ILO	International Labour Organisation
IUSW	International Union of Sex Workers
NGO	Non-Government Organisation
NRM	National Referral Mechanism
pVoT	presumed Victim of Trafficking
Palermo Protocol	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children
SOCA	Serious Organised Crime Agency
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UKBA	United Kingdom Border Agency
UKHTC	United Kingdom Human Trafficking Centre
UN	United Nations

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“If you have come here to help me you are wasting your time.  
But if you have come because your liberation is bound up with mine,  
then let us work together.”

*Lila Watson, Aboriginal activist, Australia*



# Executive Summary

The x:talk project conducted a Human Rights Impact Assessment (HRIA) of Anti-trafficking Policy (ATP) in the UK with a view to examining whether ATP has been used to advance an abolitionist policy framework in the sex industry, as well as what the effect has been of its implementation in a climate of increasingly tighter border and immigration controls.

The study shows that processes set up to deal with cases of trafficking are in many ways deeply flawed and have not suitably addressed the human rights aspects of trafficking, instead tending to deal with trafficking as organised immigration crime.

ATP's have resulted in an unprecedented incursion into the lives and work of people employed in the indoor sex industry. They have resulted in an increase in arrests and convictions for prostitution and immigration crimes. They also contribute to a climate of fear among migrant sex workers and increase the likelihood that they will engage in behaviours that make them vulnerable to exploitation and rights abuses.

Government-provided services for men, transgender people and people trafficked into non-sexual work are seriously inadequate and those services offered to women trafficked into sex work risk undermine their right to work.

Anti-trafficking laws have changed the way people in the sex industry work. In particular, more support staff - often referred to as maids; are now working off-site, sex workers are more likely to be displaced from places of work, and service providers are finding it harder to find sex workers and maintain services to them.

This report argues that in order to guard against exploitative conditions in the sex industry and to regulate workplaces against unsafe practices, sex work must be recognised as work; that problems occurring at work should be dealt with as employment issues; and that safe workplaces and fair employment should be rights enjoyed by workers in the sex industry regardless of their migration status.

The anti-trafficking laws have been applied in the UK to arbitrarily arrest and detain sex workers and others working in the sex industry. Raids have resulted in arrest and detention without regard to the right to liberty or a fair trial. For people identified as victims of trafficking, there is no mechanism guaranteeing the return of property or compensation for crimes committed against them.

The Detained Fast-Track Asylum process poses a number of potential rights violations, some particular to trafficked persons. The National Referral Mechanism (NRM) operates in a flawed way with limited appeal processes and no access to representation or legal aid, which exacerbates these rights violations. Problems with the NRM leave those trafficked into non-sexual labour at risk of being classified as 'illegal' immigrants, rather than as victims of crime, and more vulnerable to arrest and detention in contravention of their rights.

ATP has been developed largely without input from those it seeks to affect, compromising the rights of those groups to participation and access to information. This report argues that the UK must incorporate the voices of affected groups into the development of all future anti-trafficking policy and legislation.

# Recommendations

The evidence and research gathered in this project demonstrate that for the human rights of sex workers to be protected and for instances of trafficking to be dealt with in an effective and appropriate manner, the co-option of anti-trafficking discourse in the service of both an abolitionist approach to sex work and an anti-immigration agenda has to end. Instead there needs to be a shift at the policy, legal and administrative levels to reflect an understanding that the women, men and transgender people engaged in commercial sexual services are engaged in a labour process. From this labour framework, it is then possible to identify instances of forced labour and poor working conditions and enact appropriate remedies and responses while at the same time protecting the rights of sex workers and migrants.

## This report recommends:

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- decriminalisation of all aspects of the adult commercial sex industry;
- the UK signs and ratifies the *Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* (ICPRMW);
- the UK signs and ratifies the *ILO C no. 143: Convention on Migrant Workers*;
- the incorporation of the Right to Free Choice of Employment and to Just and Fair Working Conditions into the *Human Rights Act 1998*;
- the incorporation of the Right to Participation and Access to Information into the UK *Human Rights Act 1998*;
- the creation of a single law to deal with trafficking rather than a law that creates a special relationship between trafficking and prostitution, i.e. no differentiation in law between people trafficked into sex work and those trafficked into other forms of labour. This law should be included in an act dealing with slavery and forced labour, not with immigration and asylum;
- a definition of trafficking is adopted into UK law that differentiates between people forced, coerced or deceived into sex work and those migrating to work in the sex industry willingly;
- removal of sections 14 of the *Policing and Crime Act 2009*;
- removal of section 21 of the *Policing and Crime Act 2009* and other provisions, such as the “brothel-keeping” laws, which make it an offence for sex workers to work together;
- there is an acknowledgement by the government, Home Office and other official bodies dealing with ATP, that raids are an ineffective method for detecting and assisting trafficked persons and an end to raids on indoor sex venues as part of ATP;
- sex workers and their organisations are invited to participate in all future consultations about anti-trafficking policy;
- automatic granting of the right to asylum for trafficked persons, should they wish to remain in the UK as a way of removing the possibility that their migration status can be used as a control mechanism by their traffickers or exploiters;
- guaranteed access to representation and legal aid for all people referred to the NRM;
- separation of support services for trafficking persons from criminal or immigration aspects of ATP, so that access to such services is no longer dependent on cooperation with police investigations;
- a greater role for service providers and welfare organisations in the NRM to ensure that trafficked persons are referred to support and services as a priority, not as an after-thought;
- provision of support and services for trafficked persons that are not contingent upon them exiting the sex industry.

# Introduction

Anti-trafficking policy has been a battleground for opposing views about sex work since the drafting of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol)<sup>1</sup> in 2000 and the Council of Europe Convention on Action Against Trafficking in Human Beings (the European Convention) in 2005. Conflicting understandings about sex work pivot around two positions: one adopted by sex worker rights activists and the other by a group of radical feminists who seek to abolish prostitution. Broadly defined, the sex worker rights position argues for the decriminalisation of the sex industry and that sex work needs to be viewed within a labour rights framework. The radical feminist position, encapsulated by the viewpoint of the Coalition Against Trafficking in Women (CATW), argues that sex work can never be a woman's choice, is always forced, and is therefore violence against women. This perspective sees all sex work as trafficking.<sup>2</sup>

The resulting definition of trafficking laid out in the Palermo Protocol and the European Convention amount to an attempt at compromise between these two positions. Sex worker rights organisations have had concerns that the adoption of elements of the European Convention in different states could leave anti-trafficking policy open to manipulation and misuse by those seeking to abolish the sex industry.

x:talk conducted a Human Rights Impact Assessment (HRIA) of Anti-Trafficking Policy (ATP) in the UK with a view to examining whether ATP has been used to advance an abolitionist policy framework in the sex industry, as well as what the effect has been of its implementation in a climate of increasingly tighter border and immigration controls.

x:talk started with the contention that the complex interaction between the laws and policies that make up ATP in the UK, and the particular way they have been implemented in practice have been used to control and criminalise the women, men and transgender people who work in the sex industry and, in particular, those who are irregular migrants.

x:talk wanted to use the HRIA to examine whether ATP is effective in protecting and supporting trafficked persons or whether the rights of trafficked persons may actually be compromised by the strict focus on migration status and border control. x:talk sought to examine whether the prioritisation and focus on the criminal and immigration aspects of trafficking within ATP seriously compromise the human rights of sex workers - particularly migrant sex workers and if the disproportionate focus on the sex industry means that it fails to adequately address genuine instances of trafficking.

This research focused on three key policies that have been enacted as a result of ATP and have affected the lives and work of people employed in the sex industry. Those policies are:

- anti-trafficking provisions in the *Policing And Crime Act 2009*;
- police operations Pentameter and Pentameter 2; and
- the National Referral Mechanism.

The impact of each of these policies was assessed in terms of how it affects different groups of workers in the sex industry. In particular, the HRIA analysed the impact according to the type of employment workers were engaged in, their gender, and their migration status. The research focused on instances where increased criminalisation of activities in the indoor sex industry were being introduced under the guise of anti-trafficking policy.

## Methodology

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The main findings of this report reflect the experiences and views of people working in the sex industry. As a sex worker rights network with many members currently employed in the sex industry, and as a provider of English language classes to migrant sex workers, the x:talk project was in a unique position to collaborate with sex workers for the purposes of this study, and carried out 14 semi-structured interviews with sex workers.

Our findings were further strengthened by having access to data from the recent study conducted by Nicola Mai (2009) titled *Migrant Workers in the UK Sex Industry*. Mai's study is the largest and most comprehensive survey to date of migrants in the UK sex industry, and utilises information collected from in-depth interviews with 67 women, 24 men and 9 transgender people employed in London. The interviews included questions relating to sexual exploitation and the impact of anti-trafficking measures. Members of x:talk helped facilitate that research by conducting many of the interviews. Dr Mai was a member of the steering committee for the HRIA report presented here, which ultimately supports, and is greatly enhanced by, his previous research.

The x:talk HRIA was overseen by a steering committee made up of x:talk collective members, which met regularly throughout the assessment process to give direction to the project, analyse findings, and discuss and resolve any issues that arose. A core group of five collective members worked on the project and research was led by a research co-ordinator. A number of specialists assisted the steering committee, and included people with expertise in the sex industry, human rights law, criminal law and policy; academics in the sex work field; and people with specific language skills. Most of the steering committee members have worked or currently work in the sex industry.

Information about relevant laws, policies and practices was gathered primarily through public documents. Documents that were analysed include government papers and policies, consultation papers and submissions from NGOs and other organisations, parliamentary debates, statutes and explanatory notes, relevant case law, newspaper articles and academic articles.

A total of 14 in-depth semi-structured interviews were conducted with sex workers from different sectors of the industry and attempts were made, where possible, to reflect the views of men, women and transgender people from the UK, EU, EU accession states and outside Europe. Several of the interviews were conducted in Spanish or Portuguese and translated into English. x:talk took a participatory approach to interviews, meaning that interviewees were invited to take part in the steering committee. Keeping in line with x:talk's strong commitment to research ethics, participants were offered advice or information if an interviewer felt they were not aware of their rights, or of services and support available to them. Prior to their participation, interviewees were given an explanation of the research and how comments and views would be incorporated into the assessment. They were given assurances that their contributions would be kept confidential and that any direct quotes used in the report would not be traceable to individuals. Interviewees were given an opportunity to review their responses before publication.

Interviewees have been made anonymous for the purpose of giving quotations, but, where known, age, country of origin, type of work and migration status are given. x:talk engaged the views of sex workers' clients by initiating and joining discussions on dedicated sex work Internet forums.

While the interviews conducted during the HRIA reflect only a small sample of the sex industry in London, a qualitative analysis of the responses collected builds a picture of some of the issues that have arisen as a result of ATP. They also point to some areas that are in need of further examination, especially where legislation has recently come into force and effects are not yet known. These areas are outlined in the Future Directions section at the end of this report.

A number of informal discussions with sex workers were also included in the research, with the consent of those sex workers and additional interviews were also conducted with sexual health service providers, clients, support staff in the sex industry and academics. x:talk has on-going relationships with five inner-city sexual health services for sex workers and was able to draw on previous knowledge and communications with those services, as well.

The UK Human Trafficking Centre (UKHTC) and UK Border Agency (UKBA) were contacted with the hopes of interviewing case-workers responsible for the implementation of ATP. It was felt this could give the study a more nuanced perspective on the tensions that arise in terms of policy implementation. x:talk was unable to secure any interviews with these organisations.

# Chapter one

## Overview of UK anti-trafficking policy and legal framework

### Policy Overview: Setting the Scene

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Anti-trafficking debates and discourse in the UK, and elsewhere, are a complex interplay between differing views and agendas from several key stakeholders. Abolitionist feminists inside and outside the Labour Party have dominated the debate for at least the past ten years and this has driven much of the design of ATP in the UK. Further, it has been implemented in a climate where stricter immigration controls have been given increasing importance by the mainstream media and all the major political parties.

In 2000, when the UK was involved in negotiations around the Palermo Protocol, the then Labour Government initiated a review of sexual offences law and published a consultation paper titled *Setting the Boundaries*, which called for a specific trafficking offence. The offence was initially conceived as ‘transporting’ a person into prostitution and did not suggest a need for force, coercion or deception:

“This offence could involve bringing or enabling a person to move from one place to another for the purposes of commercial sexual exploitation or to work as a prostitute (e.g. knowingly facilitating transportation), for reward.”<sup>3</sup>

In the same year, a research paper titled *Stopping Traffic* was commissioned by the Home Office and was aimed at both assessing the extent of trafficking in women for the purposes of sexual exploitation and reviewing law enforcement responses to instances of trafficking. *Stopping Traffic* deliberately blurred the line between trafficking and prostitution in general:

“Whilst much international policy documentation attempts to draw boundaries between trafficking in women and prostitution, it may be suggested that such clear demarcations are problematic. Trafficking in women for the purposes of sexual exploitation relies upon, and sustains, prostitution and women’s inequality.”<sup>4</sup>

From the outset, human trafficking was framed in the UK in terms of a sexual offence whose victims were women, and little distinction was made between trafficking and prostitution *per se*.

The most recent Home Office paper relating to trafficking, titled *Tackling the Demand for Prostitution*,<sup>5</sup> made a case for the criminalisation of the buyers of sex—provisions that were introduced into the *Policing and Crime Act 2009*. The report described tackling demand as an ‘integral element’ of the government’s anti-trafficking response. It also described those who sell sex as:

“often the victims of serious violence and exploitation; they are often vulnerable to abuse, coercion or control by others, who gain from their involvement. Some individuals are forced to sell sex against their will, and have little say in who or how many people they have sex with.”<sup>6</sup>

This description uses a language of trafficking to include ‘force, coercion and control’ and attempts to apply it to the general conditions of sex work. While it acknowledges there is a distinction between exploitation and force, the arguments made in favour of the criminalisation of clients and the strict liability nature of the new offence mean that, in practice, the effects of the law make little distinction between trafficked people and sex workers in general (regardless of the conditions of work they face).

These discussions about trafficking have occurred in a period where the UK government has been moving progressively towards stricter immigration controls. This has included tightening the criteria for most classes of visas and ‘leave to remain’ in the UK,<sup>7</sup> as well as gearing migration towards a points-based system that preferences migrants from English-speaking countries who have education levels and skills sets that are in shortage in the UK. A system has been created that is both complicated and bureaucratic, where migrants are classed with differing rights and access to services and benefits. It is a system that is difficult to negotiate and is regulated with punitive measures, including detention and deportation. It has also resulted in the creation of an estimated half million “irregular migrants” – or people who slip through the complex web of immigration laws, either before or after arrival.<sup>8</sup>

Due to a combination of the gendered nature of moral panics involving the sex industry, and heightened anxiety around migration, the trafficking discourse in the UK has maintained a special relationship between trafficking and sex work. ATP focuses almost exclusively on women and, specifically, women in the sex industry. This has the dual effect of rendering men and transgender sex workers as invisible in anti-trafficking efforts and fails to address the trafficking of people into non-sexual work.

While the government has formally recognised the need to widen the scope of ATP in practice,<sup>9</sup> prosecutions for trafficking into sex work have far-outweighed those for non-sexual work and there continues to be a great discrepancy in the funding of services that respond to the needs of victims of trafficking into sexual work compared to those trafficked into other kinds of labour. Between 2003 and December 2008, a total of 92 people had been convicted of sex trafficking, compared with four convictions for labour trafficking.<sup>10</sup>

## **UK Law and the UN Trafficking Protocol**

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The UK signed the Palermo Protocol in 2000 and ratified it in 2006. The Palermo Protocol states that in order for a trafficking offence to occur, there must be force, coercion or deception for the purpose of exploitation. It defines exploitation in relation to sex work as ‘the exploitation of the prostitution of others or other forms of sexual exploitation’.<sup>11</sup> This definition was intended to allow states to sign and ratify the Palermo Protocol regardless of their domestic policy on prostitution. As a result, it deliberately allows a broad, arguably nebulous, interpretation of what constitutes exploitation in relation to sex work.

The question of consent, like the definition of exploitation, has been a contentious issue in the formulation of definitions of trafficking. Initially, policy-makers were keen to distinguish between instances of trafficking and ‘people smuggling’,<sup>12</sup> but the reality of trafficking has meant that a person who consents, at some point, to being ‘transported’ for work -sexual or otherwise- is not therefore guarded against the forced labour that the trafficking offence seeks to address. For example, knowledge that a



person will be crossing a border illegally or knowledge that he/she will be working in the sex industry<sup>13</sup> does not necessarily mean that that person will not encounter slave-like conditions or exploitation upon arrival. Conversely, a definition of trafficking that underplays the consent of a person in determining whether they have been trafficked could uphold the abolitionist agenda whereby any women working in the sex industry could be deemed trafficked.

Article 3b of the Palermo Protocol stipulates that ‘the consent of a victim of trafficking in persons to the intended exploitation . . . shall be irrelevant’, where that consent has been achieved as a consequence of threat, coercion, fraud, deception, abuse of power, abuse of vulnerability or provision of payments/ benefits.

At times the contested and differing ideological positions at play in ATP create contradictory tensions and outcomes. For example, where abolitionist campaigners have sought to use trafficking arguments to spearhead the eradication of all sex work, they have found themselves critical of the attempts advanced by the UK Border Agency (UKBA) to use ATP as a means of border control. Conversely, it would appear the UKBA has, in practice, applied a much narrower definition of trafficking and much stricter tests of ‘force’, ‘coercion’ and ‘deceit’ in order to limit the number of irregular migrants afforded protection under anti-trafficking laws.

## Trafficking in UK Law

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The first piece of trafficking legislation entered the UK via the *Nationality, Immigration and Asylum Act 2002*. Section 145 of the Act created a criminal offence of arranging or facilitating the transportation of a person into, out of, or within the UK for the purposes of controlling them in prostitution. This provision was heavily criticised at the time for its sole focus on trafficking into sex work. In response to this criticism, the government stated the legislation would be a stop-gap measure until the next review of Sexual Offences legislation was introduced.

In 2003 the *Sexual Offences Act* was enacted. Sections 57-59 of the Act contain the offence of trafficking into the UK for sexual exploitation. These sections create an offence of arranging or facilitating the transportation of a person into, within or out of the UK for the purposes of sexual exploitation.

These sections do not require that the person facilitating arrival, travel or departure of a person for the purposes of sexual exploitation, use force, coercion or deception as required by the Palermo Protocol. The Palermo Protocol states that such force, coercion or deception is needed in order to negate consent. However, in the UK context, and specifically in relation to ‘trafficking for sexual exploitation’ there is a situation where exploitation (although undefined, much like in the Palermo Protocol) is prioritised over consent. Thus, the Act theoretically criminalises those who intentionally facilitate the movement of a person who consents to move for sex work, as long as they intend to, or do, exploit that person - where exploitation could be interpreted as simply working in the sex industry.

This Act, like the trafficking provisions in the *Nationality, Immigration and Asylum Act 2002*, did not address trafficking into non-sexual exploitation.

As sex work academic Vanessa Munro (2008) has noted, no consideration was given as to what ‘exploitation’ might mean in this sexual context, highlighting that the mere fact of ‘having worked as’, or ‘having had intended to work as’ a prostitute could be interpreted as exploitation.<sup>14</sup> In a review of anti-trafficking policies in the UK, Klara Skrivankova argued in 2007 that the UK “makes it a crime to procure people for sex work who take on such work voluntarily, where no force or coercion is present.”<sup>15</sup>

To extend the remit of trafficking to non-sexual work, the government introduced the *Asylum and Immigration (Treatment of Claimants, etc.) Act* in 2004. Section 4 of the Act makes it an offence to facilitate the transportation of a person into, out of, or within the UK for the purposes of labour exploitation.

In contrast to the undefined nature of exploitation in the sex trafficking provisions, here exploitation is established when a person is subjected to force, threats or deception in order to compel that person to provide labour, services or benefits. Hence, where force, threats or deception are present, exploitation and consent will be negated, as required by the UN trafficking protocol.

This suggests that the UK government require a higher level of proof for cases involving trafficking people for exploitation (labour trafficking) than they do for trafficking for sexual exploitation. This accords with the more general abolitionist approach; by leaving exploitation undefined, the law suggests that that selling sex is inherently exploitative.

## Action Plan

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The first national action plan to outline how ATP would be implemented in the UK was released in March 2007. Anti-trafficking measures were based around three broadly defined objectives: prevention of trafficking; the investigation and prosecution of perpetrators; and the protection and support of victims of trafficking.

A UK Human Trafficking Centre (UKHTC) was set up as a police-led ‘multi-agency centre’ to oversee the delivery of ATP. Staffed by police and officers from the Serious Organised Crime Agency (SOCA), the UK Border Agency (UKBA) and the Crown Prosecution Service, the UKHTC, as a legal entity, was then transferred to SOCA in April 2010.

While the European Convention calls for a human rights approach, the UK Action Plan has been criticised for failing to do so, and for the interpretation of human trafficking as organised immigration crime. The UKHTC does not provide or fund support services to trafficked persons. In fact, there is no national coordinated framework for providing services to victims of trafficking. In August 2010, the SOCA website defined trafficking as: “the movement of illegal immigrants for exploitation within the UK,”<sup>16</sup> which reflects the government’s emphasis on migration status, and fails to acknowledge that trafficking does not always involve cross-border migration or breaches of migration law.

## Issues around Identification of Trafficked Persons

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The prevention element of ATP has centred on the UK government's assistance to, and cooperation with, sending states (or countries whose nationals are expected to be trafficked). The UK government has repeatedly acknowledged that prevention is hampered by a lack of accurate data around the extent and nature of the problem, including the discovery and targeting of those countries where people are being trafficked from.<sup>17</sup>

Gaps in the intelligence surrounding the scope and nature of trafficking have led to two separate but related problems. Firstly, the extent of trafficking in the UK and, in particular, the numbers of trafficked persons, has become a hotly-contested debate and one with a moral dimension. In an article in the *Guardian* newspaper in October 2009, journalist Nick Davies describes how the officially accepted and highly dubious figure of 4,000 persons who had been 'trafficked' into sexual slavery in the UK was arrived at through the co-option of fully speculative figures and moreover, how the inflation of trafficking figures "has been driven by political opportunists and interest groups in pursuit of an agenda ... by an unlikely union of evangelical Christians with feminist campaigners, who pursued the trafficking tale to secure their greater goal ... of legal change to abolish all prostitution."<sup>18</sup>

Secondly, a lack of intelligence has meant that identifying trafficked persons has been fraught with difficulties. Due to the nature of the crime committed against them, which involves threats or coercion, trafficked persons are often unable to present themselves to the authorities or are unwilling because of their migration status. Further issues can then arise when a person does claim trafficked status with the authorities. For example, in a situation where a non-EU citizen refers themselves to the UKBA as a trafficked person, but where the UK Border Agency has a priority to remove or deport people with irregular migration status, ambiguities in the definition of trafficking have been open to broad interpretation. This issue will be discussed in more detail in the subsection on the National Referral Mechanism.

## Raids – Operations Pentameter and Pentameter 2

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The main strategy used by the government to identify trafficked persons has been through 'rescue operations'. To date there have been two waves of 'rescue operations' – Pentameter (2006) and Pentameter 2 (2007-8). Both targeted 'sex trafficking' and resulted in hundreds of raids on sex work premises suspected of involvement in trafficking.

Pentameter 2 was a nationally coordinated 'enforcement action' involving the cooperation of all UK police forces, other law enforcement agencies (in particular UKBA), the UK Human Trafficking Centre, and other voluntary and statutory agencies. The operation conducted raids at 822 brothels, flats and massages parlours across the UK. In February 2009, UKTHC published statistical data stating that the raids had resulted in the conviction of just 15 people for trafficking offences, following the arrest of 422 and the identification of 164 trafficked persons.<sup>19</sup> A Home Office report in November 2008 claimed that Pentameter 2 raids had resulted in 122 arrests for immigration offences.<sup>20</sup>

These raids represented an unprecedented incursion into the lives and work of people employed in the indoor sex industry. There is no centrally recorded, publicly available data on the number or type of non-trafficking convictions brought as a result of the Pentameter 2, however, extensive anecdotal evidence suggests that the operation led to an increase in arrests and convictions for prostitution and immigration crimes.

As suggested by the Home Office report quoted above, raids resulted in large-scale detainment and deportation of people with irregular immigration status. Research conducted by x:talk and presented in detail in Chapter Two indicates that the raids have had the effect of eroding relationships between police and sex workers regardless of their migration status. It also created a climate of fear among migrant sex workers and increased the likelihood that they would engage in behaviours that made them vulnerable to exploitation and rights abuses.

Future investigation and research of the impact of Operation Pentameter and Pentameter 2 could include a Freedom of Information (FOI) request to the Home Office for details of non-trafficking convictions resulting from raids.

Police have been granted the power to use the *Proceeds of Crime Act 2002* during raids on sex premises, according to which money and other belongings may be confiscated, and if a prosecution results, those seized assets may be kept. This means 25 per cent of any assets and 50 per cent of any cash can be kept by police; 25 per cent by Crown Prosecution Service; and the remainder by Inland Revenue. It has been common for police to seize any money found on raided premises, and unusual for sex workers to reclaim it when they are not prosecuted.<sup>21</sup>

## **National Referral Mechanism**

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The National Referral Mechanism (NRM) was set up in 2009 to investigate the cases of trafficked persons and ensure that the UK's obligations to those persons were being met. It is a framework that outlines which government departments and agencies or NGOs have responsibilities in responding to trafficked persons. This includes examining cases to determine whether a person is trafficked and, in theory, to refer them to support services. It also has a role in ensuring investigations and prosecution efforts can be pursued. As such, it forms the core of the ATP's 'victim response'.

Many aspects of the NRM have come under scrutiny, not only by NGOs and rights groups who support trafficked persons and migrants, but also by welfare, legal and other organisations that find themselves implicated in the process, as well as official parliamentary bodies. An in-depth analysis of these criticisms would warrant a separate report. Therefore what follows is only a sketch of some of the critiques that are most relevant to this assessment.

In accordance with the NRM, any 'presumed victim of trafficking' (pVoT) who is not an EEA national will have their case examined by a UKBA official. Upon referral to the NRM, a person should have a 'reasonable grounds' decision made within five days, which grants the trafficked person a 45-day 'reflection period' and access to housing and support while their case for trafficking is investigated fully and a conclusive decision arrived upon. The 'reasonable grounds' decision should be made on the basis of 'I suspect but I cannot prove'.

The UK government was initially reluctant to grant a reflection period or temporary resident permits to trafficked persons<sup>22</sup>, despite the fact that a 30-day reflection period is a requirement of the European Convention. The UK government feared these provisions would create ‘pull factors’ to the UK – an indication that the needs and safety of trafficked people were at risk of being subjugated to the priorities of border control.

The reflection period is intended to allow trafficked persons to start addressing the trauma they may have suffered as a result of their experience, which can include seeking psychological, medical and legal support, and deciding whether to assist with criminal proceedings against traffickers. Many groups have expressed concern that the NRM does not allow for the reflection set out in Clause 1 of Article 13 of the European Convention. The Anti-Trafficking Monitoring Group reports that “during reflection periods, interviews with the police, screening and asylum interviews and even criminal court proceedings against victims reportedly did not stop.”<sup>23</sup>

There is no formal appeal mechanism for either a ‘reasonable grounds’ or conclusive decision made by UKBA, short of Judicial Review. This means a decision cannot be appealed on the merits of the case, but only on points of law. The Immigration Law Practitioners Association, whose members represent people referred to the NRM, have also expressed concern that there is often no provision for those being assessed to be made aware of their rights or for legal aid or representation.<sup>24</sup> NRM decisions affect not only the support and services a person will be granted, but his/her entitlement to remain in the UK and any future criminal proceedings against traffickers.

A person receiving a negative decision via the NRM could be placed in the Detained Fast-Track System while their application for asylum is assessed. This means that, where an asylum case has been made on the basis that a person is trafficked, their case will likely be refused and they can be deported before they have the chance to take the NRM decision to Judicial Review.

The UKHTC does not publish details of the number of people who receive negative decisions through the NRM, or what the reason for those decisions are, or what happens to people after decisions are made. The figures for 2009 were released following a FOI request by the Anti-Trafficking Monitoring Group (ATMG).

The ATMG, established in May 2009, is made up of NGOs including Anti-Slavery UK, Amnesty International, and ECPAT UK (End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes). The group, whose members all have some involvement in the anti-trafficking sphere, felt that in the absence of a national rapporteur to oversee the UK’s ATP, they would monitor how the policy was being implemented and whether the UK was complying with its obligations under the European Convention.

The results of their request showed that of the 477 people referred to the NRM, only 91 were granted positive conclusive decisions (i.e. deemed trafficked). When decisions were disaggregated according to country of origin, it showed that 76 per cent of UK nationals referred to the NRM received positive conclusive decisions compared with 11.9 per cent of referrals of people from outside the EU.<sup>25</sup> The ATMG suggests that the differential in identification of people depending on their country of origin or immigration status could point towards discrimination and requires further investigation by the Home Office.

The NRM has been criticised for the lack of training, expertise and awareness about trafficking by UKBA officials dealing with these cases. Trafficking cases are often reviewed simultaneously with asylum cases and by the same UKBA official, despite the fact that they are very different procedures. For example, the ATMG found 39 cases where people who had been granted ‘reasonable grounds’ decisions for trafficking but continued to be detained for immigration offences.<sup>26</sup>

There are also instances where trafficked persons are being prosecuted for crimes committed under duress, in contravention of Article 26 of the European Convention which calls for the non-punishment of victims of trafficking. Many of these problems arise because there is no separation between support services for trafficked people and police or Border Agency imperatives.

There is still no specific provision to allow those who are identified as victims of trafficking to remain purely on the basis of their status as a trafficked person and leave to remain is decided on a case-by-case basis. Under the NRM, the police apply for a residence permit on behalf of the trafficked person. This application is based upon whether that person is cooperating with any investigation or criminal proceedings. If the victim is not cooperating with an investigation, then the UKBA considers whether there are any compassionate factors meriting a grant of a 12 months discretionary leave to remain in the UK. A decision which finds no compassionate factors meriting a grant of discretionary leave is not open to appeal.

## **Support for Trafficked Persons**

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The only government-funded, dedicated service for women trafficked into sexual exploitation is the Poppy Project. There is no equivalent for people trafficked into non-sexual labour, although the Poppy Project has started to accept a small number of people trafficked into domestic servitude. The project does not accept men or transgender people. Some church groups, women’s refuges and other charities provide services on an ad hoc basis but none are publicly funded to support trafficked persons.

The Poppy Project received £5.8m between April 2006 and February 2009, with a further grant of £3.7m for three years from March 2009.<sup>27</sup> It provides accommodation as well as legal advice, interpretive assistance and health services within London, Sheffield and Cardiff. Under the terms of the funding agreement between Poppy Project and the Home Office, trafficked women can only be supported in return for cooperation with the authorities in gathering intelligence about the traffickers and taking legal action against them.<sup>28</sup>

Aside from the gross lack of services available to men and transgender people and those people trafficked into non-sexual work, assistance and support for trafficked women is predicated on cooperation with police operations. This runs the risk that the pursuit of criminal prosecutions is being given priority over support and assistance for trafficked workers.

As the only government-funded support service, the Poppy Project operates from an avowed abolitionist framework. Support through the project is contingent upon women giving up sex work and its program is aimed at ‘rehabilitating’ women out of the industry. Support and services are unavailable to, or inappropriate for, people who wish to remain working in the sex industry. It creates a policy and discourse around sex work whereby trafficked persons are ‘good’ and may seek recourse to their rights and

others who may be exploited (or not) in the sex industry are ‘bad’ and cannot, or will not, be given the resources, support and information to do so.

The Poppy Project has published dubious overestimations of the numbers of people trafficked into sex work in the UK,<sup>29</sup> in, for example, their report of the London off-street sex industry, *Big Brothel*.<sup>30</sup> The methodology and assumptions on which the Poppy Project bases its reports and its figures have been heavily criticised by academics and practitioners in the field.<sup>31</sup> Arguably, the Poppy Project have an interest in inflating figures, given their funding relies on the number of people affected by trafficking.

The Poppy Project has actively propagated the racist assumption that conflates immigrant sex workers with trafficked persons. In a statement to the Home Affairs Committee on trafficking in April 2008, project manager, Anna Johanson, claimed that in London “approximately 6,000 women were involved in off-street prostitution, 80 per cent of which were foreign nationals and we believe that a large percentage of that 80 per cent had indeed been trafficked.”<sup>32</sup> The Poppy Project’s finding that 80 per cent of sex workers in London are foreign nationals is backed up by other research, however their assertion that 80 per cent had been trafficked is not, and while this inaccuracy has been challenged by specialist police, it has nonetheless been recycled through media reports.<sup>33</sup>

Various organisations including the Poppy Project have assisted trafficked persons to access compensation through the Criminal Injuries Compensation Scheme. However, compensation is not routinely available to trafficked persons through this scheme or via civil claims.

## **Policing & Crime Act 2009**

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The two following sections of the *Policing & Crime Act 2009* arose in the context of government discussions about tackling demand not only for those trafficked into sexual exploitation, but also in relation to domestic sex workers. Demand for people trafficked into non-sexual labour was not addressed in the government’s discussion paper, *Tackling Demand for Prostitution: A Review* (hereafter referred to as *Tackling Demand*), which focussed solely on sex workers and those trafficked into sexual exploitation.

Jacqui Smith, the then Labour Party Home Secretary who commissioned *Tackling Demand* made the claim that “many of the estimated 80,000 women in England involved in prostitution are subject to coercion, control and exploitation. New anti-trafficking measures in the *Policing and Crime Act 2009* are aimed at protecting these vulnerable women from abuse.”<sup>34</sup>

### *Section 14: Criminalising Clients*

In the Home Office guidance released in April 2010, it is stated that section 14 of the *Policing and Crime Act 2009* was introduced to “enable the UK to meet its international legal obligations to discourage the demand for sexual services” under Article 9 of the Palermo Protocol, which requires States to analyse the factors that result in women being trafficked and suppress them, including the demand to sexually exploit women.<sup>35</sup>

Section 14 creates an offence of paying, or promising to pay, for the sexual services of a person who is being subjected to ‘exploitative conduct’ by a third party. The section

makes no reference to trafficking, but simply to ‘exploitative conduct’ which is to be found where a third party uses force, threats (whether or not relating to violence) or any other form of coercion, or deception. Further, it is considered a strict liability offence.

The new legislation was introduced at a time when the policy focus was on trafficking for sexual exploitation. It uses the language of trafficking and arises from a policy document which makes its case for legislative change due to the need to tackle trafficking and fulfil the UK’s anti-trafficking obligations. But the offence makes no mention of trafficking, and hence could apply to any person selling sex who is deemed to be the subject of ‘exploitative conduct’.

In April 2010, the Home Office released guidance on how ‘exploitative conduct’ will be defined. The guidance states that exploitative conduct is “conduct which involves the use of: force; threats (whether or not relating to violence); any other form of coercion; and, deception”.<sup>36</sup>

The law came into force in April 2010 and, as yet, it is unclear what legal tests will apply. Case law will be needed to determine how the courts are interpreting ‘force, threats or any other form of coercion’. However, we can see from the Home Office guidance that the definitions are likely to be far-reaching. For example, a person (B) selling sex may be deemed exploited by a third party by virtue of being threatened where that third party threatens to, “tell family, friends or community about B’s involvement in prostitution or about some other fact which would damage B’s reputation or otherwise embarrass him or her.”<sup>37</sup> As such, the offence could apply to many clients who buy the sexual services of another person and is clearly not limited to trafficking situations.

This measure has been introduced as a means of complying with Article 9 of the Palermo Protocol. However, given that ‘exploitation’ is undefined in this Article, the government has chosen to define exploitation by a third party (which could be a trafficker, but could equally be a brother, owner or manager) in a very broad sense. This goes beyond the Palermo Protocol’s definition of exploitation and is arguably due to their desire to tackle the demand for all sexual services, and not only when they are provided by trafficked persons.

Concerns have been raised from a number of sectors that criminalising clients may also lead to instances of trafficking going unreported, particularly where clients have historically played a central role in identifying trafficked sex workers, and provided the police with information and referred sex workers to support and assistance services.<sup>38</sup>

### *Section 21: Closure Orders*

In addition to Section 14, the *Policing and Crime Act 2009* introduces new powers to allow police to close premises associated with certain prostitution or pornography related offences for a period of three months (Section 21). Up until this point, police could only close premises associated with prostitution if anti-social behaviour or Class A drugs were involved. The prostitution-related offences that would allow the police to close premises relate to Sections 52 & 53 in the *Sexual Offences Act 2003*, and make it an offence to cause, incite or control prostitution for gain. However, these offences are not solely applicable to trafficking cases and have been used to apply to domestic prostitution where a person is ‘coerced’ to sell sex by a partner by playing on the ‘vulnerabilities’ of that person. For example, in *R v Massey (2007)* the Court of Appeal stated:



“There may be a variety of reasons why the other person does as instructed. It may be because of physical violence or threats of violence. It may be because of emotional blackmail, for example, being told that ‘if you really loved me, you would do this for me.’ It may be because the defendant has a dominating personality and the woman who acts under his direction is psychologically damaged and fragile. It may be because the defendant is an older person and the other person is emotionally immature. It may be because the defendant holds out the lure of gain, or the hope of a better life. Or there may be other reasons.”<sup>39</sup>

The definition of coercion arising from *R v Massey (2007)* suggests that, although the recent offences relating to sex work have arisen in a political context concerned with (sex) trafficking, they have application far beyond. They potentially criminalise clients who buy sex from those subjected to ‘exploitative conduct’ which, as shown, has the potential - following Home Office guidance - to be interpreted widely.

## Positions of Major UK Political Parties

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With the recent change of government, it remains unclear how the Conservative Party, now governing in coalition with the Liberal Democrats, will develop ATP. The Conservative’s current position is one that situates trafficking firmly within an illegal migration framework. In their policy manifesto for 2010, *Where We Stand*, they state:

“We will work to prevent illegal migration with a dedicated Border Police Force to crack down on illegal immigration and people trafficking.”<sup>40</sup>

Therefore, there is unlikely to be a shift away from trafficking as being viewed in an immigration control framework. It is entirely possible that the creation of a National Crime Agency, which will subsume UKHTC, SOCA and the UKBA as announced by the government in July 2010, could tip the balance further in favour of a crime and immigration-led approach to trafficking.

The Liberal Democrats, who hold a minority position in the coalition government, promised a modest amnesty for irregular migrants in their election manifesto:

“We will allow people who have been in Britain without the correct papers for ten years, but speak English, have a clean record and want to live here long-term to earn their citizenship.”<sup>41</sup>

The Liberal Democrats, when in opposition, were broadly critical of the sexual offence provisions in the *Policing and Crime Act 2009* and opposed the criminalisation of clients. Describing the provisions in the Bill as ‘objectionable’, Chris Huhne, the then Shadow Home Secretary, said the proposals would: “drive sex workers underground, into less safety, more isolation and a greater risk of disease”.<sup>42</sup> The Liberal Democrats have advocated for the regulation of the industry and warned against further criminalisation of sex workers.

## Summary

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The anti-trafficking agenda in the UK has been manipulated by abolitionists who have used anti-trafficking law and policies as a justification for increasing the surveillance and criminalisation of the legal indoor sex industry.

A growing bi-partisan support for tougher immigration controls has meant that ATP has been implemented as a tool for border policing, often at the expense of a victim-centred

and rights-based approach to tackling trafficking. Ambiguities about the definition of trafficking have exacerbated this tension, as has placing the policy operations in the Serious Organised Crime Agency and, therefore in the framework of organised crime and 'law and order' solutions.

The discourse around the funds and resources for ATP have been disproportionately and almost exclusively focussed on women in the sex industry. Anti-trafficking efforts have largely failed to address the trafficking of men and transgender people into the sex industry and people of all genders trafficked into non-sexual work.

UK law treats sex work as inherently exploitative, where 'exploitation' is prioritised over consent, which makes it a crime to procure someone for sex work, even where there is no force, coercion or deception. The provision that deals with trafficking people into forced labour places greater emphasis on the need for the presence of force, threats or deception.

Despite having a national organising body (UKHTC) for the collection and dissemination of data, information and policy relating to trafficking, there is no national coordinated framework for providing services to victims of trafficking.

The government used a series of raids to attempt to identify trafficked persons who were subjected to sexual exploitation between 2006 and 2008. These actions have resulted in relatively few convictions for trafficking compared to the 122 arrests for immigration offences. Instead, it represented the greatest incursion into the indoor sex industry to date, and had a negative and lasting impact on the relationship between sex workers and the police.

The NRM makes decisions that greatly affect the support and services a trafficked person will be granted. It has received widespread criticism in its application of ATP and its treatment of trafficked persons - some of which could constitute rights violations. Many of these problems arise because there is no separation between support services for trafficked people and police or Border Agency imperatives.

There is a gross lack of services available to men and transgender people trafficked into sex work and those people trafficked into non-sexual work. The Poppy Project is the only service for trafficked persons funded by the government and they have provided support and assistance to some trafficked women. However, assistance and support for trafficked women is predicated on cooperation with police operations. Further, the project will only assist women who agree to exit the sex industry and be 'rehabilitated'.

Sex workers and others working in the industry, as well as clients, and places of work are being criminalized through laws which have been created in the context of an anti-trafficking discourse that focuses almost exclusively on trafficking into sex work. These criminal measures are being justified as necessary to bringing national law in line with international anti-trafficking obligations.

It is still unclear how the new government will develop ATP. However, there is unlikely to be a shift away from trafficking being viewed in an immigration control framework. It is possible that the creation of a National Crime Agency could tip the balance further in favour of a crime and immigration-led approach to trafficking.

# Chapter two

## Human rights in practice: the impact of policy

This chapter attempts to analyse the findings gleaned from interviews and discussions with sex workers and service providers in the sex industry, as conducted by x:talk for the purposes of this assessment. These findings have been cross-referenced with the findings from Nick Mai's (2009) research into the London sex industry<sup>43</sup>.

Interviewees were encouraged to reflect on their experiences of working conditions in the industry, including any practices they felt were exploitative or coercive. The interviews covered problems faced by workers in their jobs, areas where they felt they had the ability to respond to practices they thought were not acceptable, as well as specifics on how they responded to those issues. The questions were aimed at gauging the types of relationships workers had not only with the authorities, representatives and political bodies, but with the health/legal services specifically targeted at sex workers, as well. Interviewees described where they felt there were gaps or problems with the provision of support, services or political representation and how they sought to redress these issues, if at all. They were given the opportunity to talk about how they had been personally affected by anti-trafficking measures, as well as to comment on their general views around criminalisation of the sex industry, migration, trafficking and anti-trafficking measures.

### Conditions of Work in the Sex Industry

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Most of the interviewees defined 'good' working conditions as where they had control over the hours they worked, earned 'good money' and had a safe workplace. Working with others and having a decent relationship with co-workers was also seen as an important element in terms of whether they were happy with their working situation and, moreover, whether they felt safe. One documented female sex worker employed in a flat in Soho summed up this perspective:

"I don't think I'm treated badly. I've not worked anywhere else. I can control the time and the conditions. I know the maid very well, we work together every day. We work together—we both clean up when needed; she gets in food. I work long hours but that is because I need to make money."

An undocumented sex worker conversely described what she viewed as 'good' working conditions:

"To be able to chose how many hours to work—not like the flats where you work 12 hours without being sure of getting work, and if you don't earn money you have to stay until closing time. And if you leave before then you risk not getting paid and you can't make a complaint about that."

Most interviewees cited a stable workplace with regular clients as key to maintaining 'good' work conditions and improving safety. The majority of participants agreed that working with others - either with other sex workers or with a maid - was crucial in dealing with problems that arise at work. As another documented female worker in a Soho flat explains:

"I only had problems with clients. Some clients ask for their money back. I call the police and they get them out. Police never make the girls give the money back. This happens maybe once a month. Other times I have got into arguments and [the clients] have turned nasty. I leave the room or call my maid and she deals with it. Usually the men don't feel they can be aggressive with her. I go and stand in the kitchen, out of sight, and she tells them to leave. They sometimes threaten to call the police and I say 'go ahead'."

This statement demonstrates a number of similar findings that emerged from the interviews. Firstly, all sex workers who worked with a maid felt that having a maid was an important factor in dealing with difficult clients. Most maids interviewed felt they were indispensable in this respect and viewed the safety of the sex workers they worked with as their primary responsibility. It was also common that documented workers were confident in calling the police when there were problem clients, although this was usually viewed as a last resort.

One undocumented sex worker employed in a flat described how vulnerable she felt while working alone:

"I have no security in the flat. I work alone and the owner never appears, because the police have already closed some flats of hers. I'm afraid because some clients try to take advantage of me when they realize I'm alone."

The desire to work with a maid or other sex workers in order to guard against problem clients, violence and robbery, and to generally maintain 'good' working conditions, must be noted in the context of maids being targeted for convictions under 'control for gain' laws within ATP. In addition to 'brothel keeping' laws that have traditionally been used against maids and sex workers when they sought to work together, these more serious charges have now been brought against maids. Several service providers operating in London have noted that, since the introduction of these offences through the *Policing and Crime Act 2009*, more maids are working off-premises, handling client calls from a remote location and informing the worker of a visit over the phone.

Interviewees who expressed happiness about the work they do noted that the stigma and secrecy surrounding their jobs was something they'd like to change. One maid currently working in Soho and with 10 years of sex work experience said: "It would be nice not to have to make up what I do." Other sex workers concurred they could not tell friends or family members what they do for a living.

All interviewees confirmed that certain clients do cause problems but these ranged in severity from drunkenness or refusing to pay, to getting 'rough' or 'nasty', and many women referred to robberies. This accords with Mai's findings that:

"In general, interviewees found that there was a clear link between stigma and violence and they felt that the bad reputation attached to working in the sex industry implicitly legitimised violent and criminal behaviour towards them. In this respect, it is important to underline how the main violence-related problems interviewees pointed out were, in general, robberies, and not abusive behaviour from clients."<sup>44</sup>

Another undocumented female worker had experienced working conditions that should be defined as ‘exploitative’ but would fall short of ‘trafficking’:

“One of the problems I have working here is that I have to be very careful with the clients—they take off their condoms and the bosses say I have to offer oral services without a condom.”

It is important to highlight these problems as they give a clear example of the kinds of exploitative conditions that can exist in parts of the sex industry - conditions which need to be addressed in a systematic way but which cannot be properly dealt with until there is a legal and policy framework that defines sex work as work.

Overall, interview data reveals that undocumented workers were more likely than documented workers to talk about unfavourable working conditions as a problem at work. These included being pressured into providing sexual services without a condom; being made to work when ill; being made to work long hours; and being forced to put up with degrading situations. For example, one undocumented worker described how she would be made to work even when she was menstruating. Her boss would give her a sponge to stem the flow and she would be expected to keep working.

Mai’s research discovered similar findings about the different experiences of documented and undocumented migrants: “Interviewees whose documentation had to be renewed or did not correspond to the intended duration and/or to the purpose of their stay in the UK had to accept personal and professional circumstances that made them more vulnerable to emotional and other forms of labour exploitation.”<sup>45</sup>

In terms of coercion, none of the interviewees in this research felt they had currently experienced coercion or were ‘forced’ to work in the sex industry. One Lithuanian sex worker was trafficked, but she has since become an EU citizen and continues to work in the sex industry. She described her experience of being trafficked and the importance of a maid in assisting her in her extraction from the situation:

“I arrived in the country from Lithuania with a pimp who gave me £10 a day. I saved the money, starving myself every day. I was working in a good flat with a good maid. The maid has helped me escape from the pimp. I was working with her and sharing my stories, giving her names and details of other people involved in the trafficking. She hid me in her own flat for a few weeks, until the pimp was jailed.”

Mai’s research, which involved a larger and more representative sample than that obtained for the purposes of this report, found that 13 per cent of female interviewees regarded themselves as having been exploited, where understandings of exploitation ranged from extreme cases of trafficking to more ambiguous arrangements. Only 6 per cent of female interviewees in Mai’s sample felt that they had been deceived and forced into selling sex in circumstances within which they felt they had no share of control or consent.<sup>46</sup>

## Trafficking

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Aside from the Lithuanian worker from above who'd been directly trafficked herself, most interviewees had at least known of someone who had been trafficked. One maid explained her knowledge of the kind of debt bondage that is sometimes used to control migrant sex workers:

“I know of Chinese and Thai women who come here illegally but for free. But when they get here they're told they have to repay £30,000. They have to work very hard to pay it off but once that is done they are free to go. They work in different places, moving about all the time.”

This example again illustrates a situation where sex workers who willingly migrate to the UK may be controlled and exploited for a period of time but would most likely not deem themselves as 'trafficked' or want to reveal themselves to the authorities for fear of deportation. Outside of a trafficking context, however, there are no avenues to pursue the coercion and exploitation they face; and, moreover, their exploitation is a direct result of immigration policies that leave them vulnerable to this kind of abuse.

When instances of trafficking surfaced among the workers, they were most often alerted to the police with the help of a maid. Most sex workers had not heard of the Poppy Project or other available services aimed at supporting and assisting victims of trafficking. However, many maids interviewed had heard of the Poppy Project, and most were suspicious or disparaging of the service and claimed they would not refer anyone there.

## Finding Solutions: Changing the Sex Industry for the Better

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All interviewees expressed a desire for either decriminalisation or legalisation of the sex industry, with some arguing for a licensing regime or regulation for workplaces. As one documented female sex worker in a Soho flat explained:

“If it were legal it would be safer. If they try and close us down we'll end up on the street. It would be better if more women were able to work like we do from a flat with another woman. I used to work in Romilly Street and when that flat closed down one of the girls went to work in East London on the street for a while. It was terrible for her. She told me that she was always scared, the police were always around but they were threatening.”

Another undocumented female sex worker offered a pragmatic suggestion:

“If there could be some regulation like an association or institution that the girls could complain to and this institution could complain to the authorities so they could investigate and take a view and that way it wouldn't be so easy for them to take advantage of the situation.”

This comment is interesting in that it reflects the fact that many sex workers, when questioned, have detailed, well-formulated ideas about how the industry could be changed to make it fairer or safer for both undocumented and documented workers. Many of the sex workers interviewed had experience with laws and policy regimes related to prostitution in other countries, and therefore, had first-hand experience with those that they believed to be useful, beneficial and effective—and those that are not. In short, the workers themselves are ideally placed to contribute to discussions about what kinds of laws and policies should be applied to sex work, yet they are rarely invited to participate in such discussions.

Most of the sex workers interviewed felt frustration with their inability to change the issues they viewed as problematic with sex work laws and policies, or expressed doubt in the likelihood that those things would be changed. When asked her thoughts about the possibility of such improvements or changes, one documented sex worker explained:

“I don’t know. I think there is a chance. It is hard for the girls to get together because we are in competition. I speak to the girl upstairs but most girls don’t want to know each other. We want to keep our heads down, get on with working and get money to keep our children. A lot of girls send money home. Some girls have boyfriends who control them. It is hard for us to come together. I liked it when we had those meetings in the church and all the girls came.”

Similar to the comments of workers in various other workplaces, this interviewee notes the variety of reasons why it has been difficult for sex workers to come together and push for legal and political change: from the competitive nature of the work to difficult personal circumstances to coercive or controlling relationships.

## **Relationship with Police and other Authorities**

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Most documented workers did claim they would go to the police if a crime were committed against them or someone they knew. However, not one of the undocumented workers said they would report a crime committed against them. All undocumented workers expressed feelings of helplessness in such situations, but some said they might approach hospitals or health services if abused or assaulted. One undocumented sex worker described how she had been assaulted but did not report it for fear of being deported for a second time. She said she would be unlikely to report any crime committed against her.

The extract below is from a documented sex worker describing her interactions with the police:

“The police have come in twice when we called them. They just spoke to the client who was causing trouble and told him to leave. They raided this flat once – different police – but I wasn’t here...Mostly they are straightforward; sometimes you get one officer who is a bit rude.”

In contrast, an undocumented worker explains how she views the authorities in the UK:

“I believe that [in the UK] the cops are better than in other countries I know. Only the migrant police are abusive and they come to migrants’ houses without women police. The policemen harass migrant women and they are aggressive and violent.”

This highlights differences in police behaviour as experienced by documented and undocumented workers. While undocumented women tended to generally have a more tenuous relationship with the police, most of the documented workers interviewed felt they had a reasonable, or at least workable, relationship with the police. However, many felt that this had changed since the raids (Pentameter and Pentameter II), when trust had been lost and interviewees now claimed to be less likely to report incidents to the police.

The above discussions about the police and other authorities supported Mai's findings in that the "lack of legal immigration status had very important implications for the cases of exploitation ... as the few interviewees who had been implicated underlined that the fear of being deported prevented them from contacting the police, as they felt they would have been unable to repay the debt they had contracted and also exposed as prostitutes to their families, friends and relatives."<sup>47</sup>

## **The Impact of Trafficking Laws**

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Responses to the new anti-trafficking provisions in the *Policing and Crime Act 2009* were varied – documented workers tended to express more awareness that changes had been put in place, as compared to undocumented workers who tended to view all police and other authorities with suspicion. This is most likely a result of their 'illegal' migration status which overshadowed all their dealings with the law. Their fear of arrest and harassment was more generalised around their immigration status rather than the illegality of their work.

Several maids expressed concerns about 'immoral living' laws being used against them and indicated that these had changed the way they worked. For example, they felt they could no longer handle or even touch the workers' money. In some cases, this represented a misunderstanding of the new laws, but also a concern that laws would be applied arbitrarily. When talking about the laws that were introduced in April 2010, one maid lamented: "I worry they [the police] will come back and raid and maybe find a way to prosecute us." Another maid explained she had been arrested and charged with a trafficking offence for "giving another woman a lift."

## **Criminalisation of Clients**

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A number of interviewees felt that clients had been 'scared away' by the new laws, while other men were being more cautious about whether the sex workers were trafficked. Many workers reported being asked if they were 'safe'. As one maid claimed:

"Customers are scared to come to our flat as it is visible and likely to be raided, in particular since the new law punishing customers."

Another maid worried that the new laws will "scare clients away and the good established premises will close down to leave place for less controlled, more dangerous places."

A health service provider working with sex workers in London confirmed that their service had witnessed this as a general trend:

"Since the new legislation punishing clients, men are scared to go to the safer more exposed flats and turn towards more underground settings. It is pushing the industry further underground and women are seeking work in less safe venues. More women are also working independently and adopting more dangerous behaviour, like handing out business cards in the street."



## Closure Orders

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Both documented and undocumented sex workers expressed concern about new closure orders, mostly in reference to interruption of work and loss of earnings. For others, closure orders meant constant displacement from workplaces. One documented sex worker described a raid that resulted in a temporary closure:

“The police came into the flat, checked my ID. Although I was legal in the country, they shut the premise down but let me free. One of the cops told me that, although he wasn’t supposed to say so, I could come back to work in a couple of hours. The cops didn’t say how long they were closing the flat for. I went back to work the next day as if nothing had happened... I worry about police raid and arrest as every time they raid, they let me free, being legal in the country but shut the flat down. I then lose income and have to work later to make up for the loss of money. Working late hours is less safe as most problems happen late at night. Because I have lost money following a raid, I cannot pay my bills or tax and have to pay a fine for late payment.”

An undocumented sex worker described how closure not only disrupted her work, but also prevented her from finding a stable workplace:

“...because I lose my day’s work and money and don’t work in the same place again. And the only people who lose are us, the women. Because the flat stays open and the clients keep going and nothing at all changes. It just makes our life worse.”

A health service provider operating in London felt that the closure orders, and the new laws in general, were eroding the general standards of work in the industry by targeting the safer, ‘better-run’ flats and workplaces:

“The worse-managed flats tend to stay whilst the better flats close down. The better or safer flats usually have greater exposure and are more visible. As they are more visible they are more easily targeted by the police. Allowing people to work in a collaborative way is best, so women can work in more co-operative settings and less underground places, making them less vulnerable. Women starting in the sex industry do not want to work independently.”

All service providers felt that these changes were making it harder for them to deliver essential services to sex workers. One provider commented:

“The number of flats we used to visit [before the new laws came into effect] went from 35 or 40 to 24 or 27, but the number of sex workers has certainly not decreased. It is harder for us to find the women as they are working independently and more underground. As women are more difficult to find, it is harder to offer support services and give advice. Hotel set-ups are getting more frequent. Whilst the hotelier is happy to turn a blind eye on clients coming and going, they are less comfortable with two women from the NHS turning up with bags to visit a room.”

Other service providers commented that with sex workers changing locations more frequently, it was harder for workers to find out about services available to them by word-of-mouth. This further coincides with Mai’s finding in that for many migrant sex workers who are not proficient in English and are unfamiliar with UK bureaucracy in securing housing, for example, or finding other available services, social and work networks become key to obtaining information and support.<sup>48</sup>

## Raids

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In reference to raids, a maid in Soho explained:

“The local [cops] used to do regular visits. They knew we were all legal—they were polite. Then we were raided by 10-11 officers and immigration. They broke down the doors and came in with guns and in bullet-proof vests. They took the rent and personal belongings, which haven’t been returned as I am being prosecuted...I wasn’t worried before because I knew I was doing nothing wrong and the police knew about the flat and knew no one was illegal. I would have [reported a crime against myself or someone else] before the raid. In the past I would have gone to the Police, but now I would go to the ECP. My GP once gave the name of a sex work project but I haven’t been to them.”

Most of the documented workers interviewed had experienced at least one raid and the majority had had possessions confiscated. Certain maids had been charged with sexual offences, such as brothel-keeping charges, and one with a trafficking offence. All undocumented workers feared arrest and deportation. Another cause for concern stemming from this threat was that they were unlikely to report crimes committed against them and some did not access even basic health services such as a GP due to these fears.

A maid in Soho described a raid in a flat where she and a sex worker were held by immigration officials for one and a half hours, impeded from going to the toilet unaccompanied or from looking in their bags for cigarettes. She described how she had seen officials tormenting and upsetting sex workers, leaving them ‘shaking and crying’. During the raid, one sex worker was taken into a room on her own for questioning and, despite requests from both the maid and the sex worker, the maid was not permitted to accompany her to provide support, despite the fact that this non-English-speaking sex worker was interrogated in English. The maid explained that it had appeared the woman could not understand what was being asked by immigration officials and was therefore replying ‘yes’ to all their questions. The authorities would not provide a translator, nor allow the maid to attempt to calm the woman down or help her to understand what was being said. The sex worker was taken to Charing Cross Police Station, where she was detained. When the maid tried to visit her, she was denied access. The maid was unable to find out the worker’s fate as she never returned to the flat to collect her belongings or wages.

Most of the undocumented sex workers, on the other hand, had not been involved in raids, presumably because, if they had, they would no longer be permitted to reside in the UK. Fear of raids caused great anxiety among all undocumented workers, as one female worker explains:

“If they deport me I’ll be left with a debt of £80,000 that I owe for a loan I got in my country to come here, buy a passport and rebuild my mother’s house that was destroyed by floods.”

## Use of Services

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All interviewees accessed some kind of health services, which were mostly those aimed specifically at sex workers. Documented sex workers were more likely to seek assistance and advice from counselling services, self-help groups and legal centres.

Undocumented workers felt they wanted - and needed - access to counselling or psychological services, GPs, dentists, English language courses, and other forms of education, but that these services were unavailable to them. Although emergency health services are, in fact, available to everyone, many undocumented migrant interviewees were unaware of their rights and related services until the x:talk interviewer had provided them with the relevant information.

The inability to open a bank account was a recurring problem for undocumented workers. As one undocumented worker explains:

“The most important problem is not having a bank account. We are in a rare position of having a daily income and yet we have nowhere to keep any quantity of money. We can’t keep it in the house because we share flats with people that we do not know at all and who change every week. And we cannot keep it on ourselves because we don’t have the security and safety to look after our money.”

## Summary

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Of the sex workers interviewed for this report, all expressed a desire for decriminalisation or legalisation as a way of making the industry safer. The majority of interviewees stressed the importance of working with others. When difficulties arose at work, many were more likely to seek help through advocacy groups such as the ECP or the IUSW, or from health services including hospitals, rather than approaching the police.

The raids have created a climate where some migrant sex workers are too afraid to access basic health and other services. Actual raids, or simply fear of raids, within the heightened climate of criminalisation have pushed migrant sex workers further underground where they are more vulnerable to exploitation and coercion. It also means that women, men and transgender workers in the sex industry who are raped, robbed, assaulted, trapped or wronged in any other way are unwilling to seek assistance or report crimes against them for fear of their irregular status being discovered.

# Chapter three

## Human rights obligations and anti-trafficking policy

This chapter is an examination of the human rights that may be at risk of being violated, undermined or compromised by the current ATP regime in the UK. The focus of this section is limited to rights individuals have recourse to within UK law, which means those rights set out in the *Human Rights Act 1998*. Also included is a discussion of two further rights: the Right to Free Choice of Employment and Just Working Conditions and the Right to Participation and Access to Information. These rights are subsequently not included in the *Human Rights Act 1998* and this reports argue they should be incorporated into UK law in order to protect all workers against exploitative working conditions. Both appear in international agreements ratified by the UK, suggesting that, in principle, the UK should already be providing a legal framework to guarantee these rights. x:talk would therefore like to press for their inclusion into the *Human Rights Act 1998*.

The scope of this assessment did not allow for a detailed examination of the human rights discussed in this chapter. Ideally, a more in-depth study would review how the *Human Rights Act 1998* had been invoked, as well as which interpretations and tests were applied to its provisions in practice. For the purposes of this study, however, x:talk has highlighted those rights which are most relevant to the population involved in the research.

This chapter is structured around the examination of each right, which first includes an outline of the provisions of that right, followed by the international and domestic instruments that it derives from, and concludes with a brief argument about how it relates to ATP in the UK.

### Employment Justice

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#### *Right to Free Choice of Employment and to Just and Fair Working Conditions*

Everyone has the right to be free to choose his or her work and to receive a salary which is adequate to support his or her family. Every one has the right to equal pay for equal work. If a man and a woman do the same or equivalent work, they should receive the same salary. The place of work should be safe and the terms of employment should be fair.

Source: UDHR 23, 24 & 25; ICESCR 6, 7; CRC 32; ICPRMW 25; ILO C 143, 9

This right appears in the *Universal Declaration of Human Rights* (UDHR), and the ILO Convention: C143 but is not enforceable within the UK. This report argues that it should be. The UK government should be obliged to ensure that individuals are able to enjoy their working rights to the fullest extent, and this report recommends that the UK implement the Right to Free Choice of Employment and Just and Fair Working Conditions into domestic law.

This section argues for the need to recognise that sex work is work in order to guard against exploitative conditions in the industry and to regulate workplaces against unsafe practices. And that problems at work, such as bad conditions, unfair dismissal or poor terms of employment, should be dealt with as employment issues.

Further to the first point, x:talk argues that safe workplaces and fair employment should be rights enjoyed by workers in the sex industry regardless of their migration status and that instances where these rights are violated or undermined should be addressed and compensated for without the issue of a person's migration status being considered in relation to the rights abuse. Furthermore, that offering people trafficked into sex work support and services contingent upon them exiting the sex industry negates their right to choose their work.

## **Sex Work as Labour**

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The assumption necessary to understanding the link between the potential human rights violations associated with ATP and the conventions related to the Right to Free Choice of Employment and to Just and Fair Working Conditions is one that is key to x:talk's conceptual framework, which is that sex work is a form of labour. In what seems like a tautological formulation, sex workers will not have access to rights that ensure just and fair working conditions until their work is recognised as work.

While abolitionist feminists and some NGOs and parliamentarians have endeavoured to have sex work defined as either forced labour or a form of violence against women, this report works argues that sex work must be viewed pragmatically as a job, with differentiated levels of working conditions, varying from very 'good' to exceedingly 'bad'.

'Bad' working conditions do not necessarily imply forms of 'slavery', and this report maintains that sex workers have agency to individually or collectively organise to change their terms of labour, though their ability to do so is greatly impeded by the criminalisation of their work and the unregulated nature of the industry.

This report challenges the idea that all sex workers are forced into prostitution against their will and points out that many people choose to work in the sex industry for a variety of reasons. It is of course important to acknowledge that an individual's 'choice' and 'agency' with regard to decisions about waged labour in capitalist societies is greatly limited – due to the reality of having no other choice than to earn some form of income to survive. Within this context, x:talk argues that the majority of sex workers enter the industry with the view that sex work is the best paid form of work available to them. In addition, the criminalisation and stigmatisation of sex work resulting from ATP further undermines a sex worker's right to free choice of employment when it operates as a barrier to leaving the industry, for example the negative effects of obtaining a criminal record and as a result the inability to peruse other employment options.

## Implications of UK ATP

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ATP has created new crimes around the selling of consensual sexual services between adults and its implementation has resulted in an increase in arrests and convictions for sex workers and other workers in the sex industry. The combination of anti-trafficking raids, brothel closures and increased surveillance of the indoor sex industry has caused serious disruptions to sex workers' working environments and made the industry less safe, especially for migrant sex workers.

Changing workplaces every two months<sup>49</sup> makes it impossible for sex workers to have a sense of permanency or safety at work. The introduction of laws that have caused maids to work off-site for fear of arrest has resulted in the shutting-down of 'better-run', safer workplaces, while the less visible, more exploitative businesses have thrived.

ATP has created a climate whereby fear of arrest, detainment and deportation - whether real or imagined - compromises the safety of workers in the sex industry, particularly those who are migrant workers. Many undocumented migrants are unable or unwilling to exercise their worker rights, or rights in terms of accessing basic services, such as healthcare. Nor do they seek redress when they are wronged or abused.

This climate, where migration status is prioritised over employment and other rights, does not only undermine the ability of undocumented migrants to exercise their full rights, but it leaves them more vulnerable to blackmail or manipulation because of their "illegal" status. Therefore, it creates a system where employers or traffickers are able to abuse people by threatening to reveal their migration status to the authorities.

This report argues that the employment rights of all people must be upheld regardless of their migration status. The UK should sign and ratify the *Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* and the *ILO Convention no. 143: Convention on Migrant Workers*, as a matter of urgency, while paying particular attention to the provisions set out in Article 9 of the ILO Convention, which states:

"Without prejudice to measures designed to control movements of migrants for employment by ensuring that migrant workers enter national territory and are admitted to employment in conformity with the relevant laws and regulations, the migrant worker shall, in cases in which these laws and regulations have not been respected and in which his position cannot be regularised, enjoy equality of treatment for himself and his family in respect of rights arising out of past employment as regards remuneration, social security and other benefits."

## Free Choice of Employment

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ATP works from a definition that sees all sex work as a form of violence and exploitation—a position not uniform under the law. This has fuelled a 'rescue industry',<sup>50</sup> where government funds are channelled into projects that seek to rehabilitate women out of sex work, rather than improve the conditions of people working in it.

A 'rehabilitation reliant' process denies trafficked persons the services that should be available to them if they choose to continue to work in the sex industry. The Poppy Project, the only government-funded dedicated service for trafficked persons, infringes upon the right to free choice of employment by forcing women to leave sex work if they wish to use the services offered by the project.

## **Representation for Workers in the Sex Industry**

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The criminalisation of some aspects of sex work has created substantial obstacles for those sex workers attempting to organise as a way to change the conditions of workplaces and the industry. The large number of migrant workers in the industry, whose legal and political standing mean they run the risk of being arrested if they attempt to challenge or report exploitation or unsafe practices, drastically reinforces and augments those obstacles.

### *Comments*

Because sex work is viewed as violence rather than as work, it is impossible for decent standards, conditions and rates of pay to be determined and for those to be regulated, as they would in other industries. It means that ATP cannot and does not differentiate between genuinely forced and slave-like conditions and sex work *per se*, leaving laws open to manipulation and sex workers vulnerable to arrest and conviction or, in the case of undocumented migrant workers, detainment and deportation.

The projects that the NRM refers trafficked women to - including the Poppy Project - require that sex workers are 'rehabilitated' from the industry rather than assist them in improving the conditions within the industry, which is often the preference of the workers. This violates their right to free choice of employment.

Raids and closures leading to the displacement of sex workers undermine the permanency of work as well as deny them a safe place of work.

## **Right to Life, Liberty and Security of the Person & Right to a Fair Trial**

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Everyone has the right to life and to live in freedom and safety. Everyone has the right to be free from unlawful or arbitrary arrest, detention or deprivation of his or her liberty. Everyone, including migrant workers, is entitled to protection against violence, physical injury, threats and intimidation by state officials or private individuals, groups or institutions

Sources: UDHR 3, 9; ICCPR 6, 9; ICERD 5; CRC 6; CRC 37; ICPRMW 9, 16; ILO C 143, 1; ECHR 2, 5

This right enters UK law as the right to Liberty (Human Rights Act 1998, Article 5). It recognises that no one should be deprived of their liberty, except in certain defined circumstances. It requires that any person arrested must be made aware of the reasons for their arrest in a language they understand and is entitled to be tried within a reasonable time.

Everyone has the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal. Everyone shall be presumed innocent until proved guilty by the law.

Sources: UDHR 6, 7 10 & 11; ECHR, 6, 7

## **Arbitrary arrest, detention or deprivation of liberty**

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The use of trafficking law to arrest sex workers when they engage in consensual activities with other adults may be viewed as arbitrary and therefore a violation of the right to liberty. This report argues that if a maid is arrested under trafficking laws for driving a sex worker to her workplace - where both workers have entered into a consensual agreement and there is no force, threat or coercion - that to find this maid guilty of trafficking is both an ideological abuse of a trafficking law in order to punish that sex worker and an abuse of the right to liberty.

Evidence gathered for this report about the conduct of police and immigration officers during raids suggests that sex workers who are arrested are 1) not routinely provided with the reasons for their arrest; 2) not provided interpreters who can help them understand why they are being arrested; and 3) what their specific rights are. Raids where sex workers have been held in their workplaces and unable to go to the toilet unaccompanied for up to two hours could constitute arbitrary arrest.

The use of the Detained Fast-Track Asylum process also runs the risk of violating a person's right to Liberty, first, by detaining them without charge and second, by not providing them reasonable time to prepare a case in their defence. This is particularly the case for migrants and trafficked persons who may have had important documentation confiscated from them by traffickers or others. Much has been written about the Detained Fast-Track Asylum process elsewhere,<sup>51</sup> but in specific relation to trafficked persons, where suitable appeal mechanisms do not exist for people presented with a negative 'reasonable grounds' or inconclusive decision on their trafficked status, the possibility that their right to liberty will be violated is great.

## **ATP and non-sexual forced labour**

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Due to the overwhelming focus of ATP on trafficking into sex work, those people trafficked into other forms of labour may not be afforded the rights of trafficked persons. Concerns that UKBA officials are ill-informed about the nature of trafficking into non-sexual labour combined with a legal regime that applies stricter rules to the definition of trafficking into non-sexual labour means that people who are actually trafficked run a greater risk of being classified as 'illegal' immigrants rather than as victims of crime. This can result in their arbitrary detention and deportation. It also means they run the risk of being prosecuted for crimes committed under duress which limits their ability to bring their traffickers and exploiters to justice or to seek compensation for damages.

The Right to a Fair Trial applies not only to court proceedings but to civil and administrative decisions. Fairness appears to be undermined when a person is prohibited from appealing a decision made by the NRM. This right also extends beyond procedural fairness and includes a responsibility of the state to ensure that people have the resources they need for a fair trial, such as legal representation and legal aid, and that they are made aware of their rights. None of these provisions are guaranteed for people going through the NRM.



## Comments

Trafficking laws have been applied in the UK to arbitrarily arrest and detain sex workers and others working in the sex industry. Raids have resulted in the arrest and detention of workers without regard to their right to liberty or a fair trial.

The Detained Fast-Track Asylum poses a number of potential rights violations, some particular to trafficked persons. This is exacerbated by the official mechanism used to identify trafficked persons, the NRM, which operates in a flawed manner with limited appeal processes and no access to representation or legal aid. Problems with the NRM leave those people trafficked into non-sexual labour particularly vulnerable to arrest and detention which is in contravention of their human rights.

## Right to Property

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Everyone has the right to property. No one shall be arbitrarily deprived of their property.

Sources: UDHR 17; ICPRMW

This right appears in the Universal Declaration of Human Rights and is incorporated in UK law via the Human Rights Act 1998, Protocol 1, Article 1. Anti-trafficking policy in the UK can be seen to compromise this right for sex workers regardless of immigration status, trafficked persons and irregular migrants.

## Effects of Raids

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Raids by police and immigration officers on sex work premises or other premises suspected of employing trafficked persons have continued after the conclusion of Operation Pentameter 2. Such raids, conducted under the Policing and Crime Act 2009 or other laws forming part of ATP, have resulted in the seizure of property under the *Proceeds of Crime Act, 2002*. The powers granted under the *Proceeds of Crime Act 2002* could potentially provide an incentive for raids by police.

Reclaiming property seized by police is potentially difficult for all workers in the sex industry. Due to stigma around their work, many sex workers do not want to report to a police station and give their name in order to retrieve property. For irregular workers, this risks arousing suspicion about their status and could result in potential immigration investigations.

Irregular workers generally do not maintain documentation of their earnings, meaning it is effectively impossible to prove that assets seized are not the proceeds of crime (this proof being the requirement necessary to obtaining the seized goods back). This means they are unlikely to ever have seized property or money returned to them even if it is not the proceed of a crime. As stated above, this poses a further problem for irregular workers as they often don't have a bank account and as a result, keep large amounts of cash on their person or at their workplace.

Property is also routinely seized by immigration officials in cases of people who are identified as irregular migrants but not as trafficked persons. Anecdotal evidence suggests that property seized in these circumstances is often not returned, particularly in cases that result in a person's deportation.

Even when people are identified as victims of trafficking, there is no mechanism guaranteeing the return of property or compensation for crimes committed against them.

For all workers in the sex industry, raids carried out under ATP lead to disruption of work and loss of income, which can be seen as a form of deprivation of property. This is due to both the work hours which are lost while a worker is under arrest and to disruption caused by closures.

### *Comments*

Raids conducted under the pretext of ATP can have the effect of arbitrarily depriving trafficked persons as well as regular and irregular sex workers and migrants, of their property.

## **The Right to Participation and Access to Information**

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In order to ensure a true enjoyment of their rights, individuals must be able to participate in the decision-making process about their rights. Individuals must be able to access important information about decisions that might affect the enjoyment of their rights

Sources: UDHR 21; ICCPR 25

This right appears in the UDHR. It is also contained in the International Covenant on Civil and Political Rights (1966) (ICCPR), which the UK has ratified. As such, the UK is obliged to ensure that everyone in the UK, regardless of immigration status, can enjoy this right. However, it is not included in the current *Human Rights Act (1998)*, and so is not currently enforceable in UK law. The findings of this HRIA report support the argument that it should be enforceable in UK law.

This report has argued that ATP compromises, in varying degrees, the human rights of trafficked persons, irregular migrants, migrant sex workers and all workers in the sex industry. In light of this, the right to participate in decision-making processes which affect the enjoyment of their rights - more specifically, the right to participate in the development of ATP - may help to rectify this situation.

## **Input into Services and Policy Development**

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Sex workers and their representative organisations have rarely been invited to participate in the development of policy that affects them and their work. Sanders and Campbell<sup>52</sup> point to the gulf between assumptions about the risks involved in sex work which underpin the development of ATP, and perceptions expressed by sex workers themselves about the risks involved in their work. This results in policy which does not reflect the needs, priorities or lived experiences of sex workers.

Sex workers are also unable to participate in decision-making about funding for services that are meant to meet their needs. The interviews conducted with sex workers in this study illustrate a striking example of the significant disjuncture between the services currently available to workers and those they would like to access.

The problem that arises in conflating trafficking with all sex work means that funding for services is directed towards addressing the needs of trafficked persons, while other workers in the industry who are being exploited or suffering from difficult working conditions - but who are not trafficked - are denied the resources that would empower them to change those circumstances.

In reference to the services that are funded by the government, the emphasis on ‘rescuing’ sex workers with a requirement that they exit from sex work further fails to meet the needs of people choosing to remain working in the industry. While services do exist which do not emphasize the exiting of sex work (such as drop-in support, advice and advocacy services), many of the service providers and workers interviewed in this report argued that these programs are generally under-funded and therefore unable to meet identified needs. Unmet needs expressed in the interviews included accessible dental and psychotherapy services. Irregular migrant sex workers also expressed the desire for access to banking services, educational courses and libraries.

## **Lack of Consultation on the ‘Tackling Demand’ Policy Paper**

An additional and significant example of the lack of access to participation afforded to sex workers in the development of ATP was the absence of a consultation process on the government policy paper *Tackling Demand for Prostitution: A Review (2008)*. This paper resulted in the *Policing & Crime Act 2009*.

Home Office policy-making in the UK usually follows a process of consultation whereby affected parties can submit responses to government proposals. For example, this was the process followed preceding the introduction of *A Coordinated Prostitution Strategy (2006)* (one of the central policy papers on sex work in the UK), which summarised the responses to the *Paying the Price (2004)* consultation paper, as well as being the process for the *UK Action Plan on Tackling Human Trafficking (2007)*. Such a process is open to all NGOs, individuals and civil society, more generally, and is the central mechanism for registering opinions with proposed government policies.

However, this consultation process is not always followed, nor is there a guarantee that all recommendations made will carry the same weight once the policy is implemented in practice. In the case of *Tackling Demand*, no consultation process took place.

Instead, the government decided who would participate in the review of the paper. The review involved key stakeholders and practitioners, including the police and the Crown Prosecution Service as well as organisations supporting individuals involved in sex work. Steps undertaken within the review of the paper included an assessment of academic research on sex buyers, an audit of enforcement and prosecution practice in England and Wales to identify best practice, an independent evaluation of approaches to tackling demand in nine other countries, and Ministerial visits to Sweden and the Netherlands to learn more from the differing approaches taken in these countries. However, sex workers had no direct access to the process, and were represented instead by organisations selected by the Home Office.

### *Comments*

In summary, ATP has been developed largely without input from those it seeks to affect, compromising the right of those groups to participation and access to information. This report argues that the UK must incorporate the voices of affected groups into the development of all future anti-trafficking policy and legislation.

# Chapter four

## Conclusion & future directions

The current approach to ATP largely adopts an abolitionist position that refuses to regard sex work as work and deems all sex work as coercion. This has led to a situation where there is an absence of legally binding standards to determine just and fair conditions of employment in the sex industry. The result is a policy framework that cannot make a distinction between genuine cases of trafficking in the sex industry and conditions of work that are exploitative but not forced.

The lack of any operational or formal definition of what constitutes exploitative and non-exploitative working conditions in the sex industry means that these are open to moralised, politicised and contradictory interpretations by different actors, both institutional and non-governmental. ATP has been used as a ‘humanitarian’ justification for greater encroachment on the legal indoor sex trade by police and immigration authorities. It has enabled the UKBA to target migrant workers in the sex industry for deportation.

ATP positions sex workers, in general, and migrants, in particular, as passive victims in need of help. It fails to recognise that, for most, sex work is work or a livelihood strategy. The result is that support and services are designed without the input of those they affect—sex workers and migrant sex workers, more specifically. Sex workers have not been involved in finding solutions to exploitative practices within the sex industry outside of a trafficking framework.

If support is intended to protect the interests, rights and safety of migrants working in the sex industry, then it fails to do so on the basis that it is only available to ‘trafficked women’ who fall into certain, narrow categories. Migrants and others who do not fall into the ‘trafficked’ category are not able to receive assistance and support which would empower them to guard against exploitative conditions.

Because of the combined moral panic around migration and the sex industry, ATP focuses almost exclusively on women in the sex industry. This has the dual effect of rendering men and transgender people invisible in anti-trafficking efforts, and of ignoring the trafficking of people into non-sexual work.

The Poppy Project, using their unique position as a specialist provider of services to trafficked women which has been afforded to them through generous funding from the Home Office, has been able to ‘rescue’ presumably ‘helpless victims’ out of the industry while strengthening their moral position in terms of making in-roads into the ‘eradication’ of the legal sex industry.

The existing focus on migration law enforcement and on the sex industry does not address the needs, choices and agency of trafficked people, whether they work in the sex industry or elsewhere, and prevents migrant and non-migrant people working in the sex industry from asserting fundamental rights.

## Future Directions

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In the process of researching this report, x:talk came up against a number of gaps in the information available and limitations in terms of time and resources. This meant there still is a number of areas that could be investigated or reviewed at a later date in order to give a fuller picture about anti-trafficking policy in the UK and the effects it is having on sex workers and migrants and their rights.

The following represents just some of those areas that require further investigation.

The *Policing and Crime Act 2009* came into force on 1 April 2010. While it was too soon to see the full effects of its enforcement at the time of writing, it would greatly enhance general understanding of the laws to return to them in one year and:

- review case law, to determine how the courts are interpreting ‘force, threats or any other form of coercion’; and
- conduct another series of interviews to see how the new laws are being applied and what effects they are having.

Given that the UK has recently had a change of government, it is likely that ATP may change in the coming months. While x:talk’s priority is to lobby, demand and fight for sex worker rights, x:talk will also study closely the new government’s orientation to sex work, border policing and trafficking—and intervene where appropriate.

This report has also highlighted the need for further investigation, both quantitative and qualitative, of the impact of both the Pentameter raids, particularly in relation to the people arrested and convicted of non-trafficking violations. Along similar lines, a longitudinal study would be useful on the trajectories of sex workers who are arrested in raids. The project would involve collecting information about any charges, detention and deportations and observing their treatment throughout.

In terms of assessing the rights arguments laid out in this report, and their relation to male, female and transgender sex workers, migrants, and trafficked people, a more in-depth study would review how rights contained in the *Human Rights Act (1998)* have been invoked to date and what interpretations and tests have applied to its provisions.

# Appendix A

## UK Human Rights Obligations

The *Human Rights Act 1998* (enforceable as of October 2000) saw the incorporation of the 1950 European Convention on Human Rights into domestic law. This Act refers primarily to ‘civil and political rights’, and the rights included in this Act are only enforceable against public authorities.

A claimant can use the Act if there has been, or they believe there is going to be, a breach of their convention rights. In addition, the Act can be used as a defence in court proceedings.

The rights encapsulated in the Act are:

- right to life;*
- prohibition of torture;*
- prohibition of slavery and forced labour;*
- right to liberty & security;*
- right to a fair trial;*
- no punishment without law;*
- right to respect for private and family life;*
- freedom of thought, conscience & religion;*
- freedom of assembly & association;*
- freedom of expression;*
- right to marry;*
- prohibition on discrimination;*
- protection of property;*
- right to education and right to free elections.*

There are several International Human Rights & Anti Trafficking treaties ratified by the UK. These include:

#### *UN Human Rights treaties & conventions*

- International Covenant on Civil and Political Rights (ICCPR) - Ratified: 20 May 1976
- International Covenant on Economic, Social and Cultural Rights (ICESCR) - Ratified: 20 May 1976
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) - Ratified: 7 Apr 1986
- Convention on the Elimination of All Forms of Racial Discrimination (CERD) - Ratified: 7 Mar 1969
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) - Ratified: 8 Dec 1988
- Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery (1956) - Ratified: 30 Apr 1957
- Convention relating to the Status of Refugees (1951) - Ratified: 11 March 1954

The UK has not ratified or signed the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICPRMW).

#### *International anti-trafficking treaties*

- Convention Against Transnational Organized Crime (2000) - Ratified: 9 Feb 2006
- UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000) [also called Palermo Protocol] - Ratified: 9 Feb 2006

#### *International Labour Organisation agreements*

- no. 29: Forced Labour Convention (1930) - Ratified: 3 June 1931
- no. 105: Abolition of Forced Labour Convention (1957) - Ratified: 30 December 1957
- no. 87: Freedom of Association and Protection of the Right to Organise Convention (1948) - Ratified: 27 June 1949
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- Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001)

# Notes

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