

Part 3

Recommendations



This report was being finalised just as the Criminal Sexual Law Reform Bill was being discussed in Parliament (early November 2021). Myria was heard in the Chamber Committee on Justice, along with other stakeholders, who all expressed concerns about the section on prostitution and, in particular, its possible impact on human trafficking.

One of the main intentions of the Minister of Justice in this bill is to destigmatise sex work. This would also lead to a social status for some sex workers. The legislative work on this particular aspect is not yet underway.

Myria understands - and shares the opinion - that the fight against human trafficking shouldn't be confused with the fight against prostitution. Here, Myria refers to the Swedish approach and the lack of convictions of human traffickers. The policy to be pursued can still be debated, but these indications must be taken very seriously.

While we are moving towards better recognition of sex work, there are nevertheless serious concerns about the possible implications concerning the fight against trafficking for the purpose of sexual exploitation, and even the fight against trafficking for the purpose of labour exploitation. Sex work is very diverse. Thus, the bill raises questions not only about the legal instruments, but also about its implementation.

1. Be vigilant about implementing a bill without clear boundaries

Greater clarity on the concept of "abuse of prostitution" and the distinction in relation to human trafficking.

While the reform of the sexual criminal law proposed by the Minister of Justice has made some progress, particularly in destigmatising sex work, the vagueness of certain offences could have a negative impact on the fight against human trafficking and the protection of victims. **Myria therefore recommends further clarification of the concept of abnormal profit, which lies at the heart of the new criminalisation of abuse of prostitution, as well as considering the deletion of the bill's article on aggravated abuse of prostitution, which could leave potential victims of human trafficking out in the cold.**

Between "simple" sex work, which is carried out willingly and under good conditions, and human trafficking, there are a number of situations/levels where sex work - even carried out willingly - can lead to abuse. It is important that the victims of such abuse can see that the perpetrators get punished. This is why Myria supports the authors of the bill whose intention is to ensure that any form of abuse of prostitution of adults that doesn't fall under the definition of human trafficking is punished.

However, Myria questions the actual interpretation of the notion of abnormal profit from the prostitution of an adult provided for in the bill's provisions, as well as the distinction to be made between human trafficking and aggravated abuse of prostitution, referred to in draft Article 433^{quater}/5, the definition of which is very close to that of human trafficking. The distinction between "human trafficking" and "aggravated abuse of prostitution" isn't without consequences for the victims. In the case of human trafficking, they will be able to benefit from the specific provisions, whereas in the case of (aggravated) abuse of prostitution, they won't.

2. Priority and capacity

The fight against human trafficking must become a real priority, both in the field and at political level. It must be secured before the introduction of a new law, which will require many additional resources as a result of the increased number of tasks.

While human trafficking is an important priority in the national security plan, but it isn't necessarily so in reality. In practice, resources dedicated to human trafficking in frontline services and the judiciary are reduced or eliminated owing to other priorities or constraints. Some units of the federal judicial police dedicated to human trafficking have even been abolished. In some judicial districts, there are no longer any real reference magistrates or they have been absorbed into a larger major crime unit, which deals with different criminal phenomena and is therefore less specialised in human trafficking. Thus, due to lack of time and resources, some investigations into human trafficking are no longer pursued, or not in depth.

The police, the judiciary and the inspection services must therefore have sufficient manpower and technical resources to be able to combat this phenomenon more effectively. The situation becomes even more critical when a new law requires adjustments and adds new tasks. Resources for players in the field - such as frontline services, magistrates and specialised centres for victims of trafficking - are more necessary than ever. This involves improving the training of frontline services, which are essential for detecting victims of trafficking.

Frontline services and the various public prosecutors' offices must continue to make the fight against human trafficking a priority in their action plans. The multidisciplinary circular on human trafficking must also be effectively applied in the field and be considered a priority.

In the same vein, it is also essential that a parliamentary committee controls, monitors and evaluates the anti-human trafficking policy at political level and in the field. Myria hopes that this point of the government agreement can be implemented quickly.

3. Prioritising checks on human trafficking indicators rather than (illegal) residence status in urban prostitution areas

Myria recommends maintaining urban prostitution areas where police checks are mainly directed at human trafficking indicators rather than at (illegal) residence. In certain prostitution areas, undocumented sex workers may be active, including potential victims of trafficking.

If this reform were to be implemented, it would be necessary to be able to continue to take care of these third-country nationals so that they don't end up in even more dangerous situations of exploitation.

Currently, there are "tolerance zones" in some towns, where undocumented sex workers work alongside documented workers.

The emphasis here is on combating human trafficking and not on checking residence status. The specialised THB units of the local police and the federal judicial police are therefore attentive to indicators of human trafficking. They can establish a relationship of trust with sex workers, regardless of their residence status. If potential victims don't feel like they are being hunted down, they will be more willing to cooperate with the police and justice system.

This gives the police a better overview and better control of the phenomenon and enables them to identify abuses related to human trafficking. This policy has already led to numerous successes, trials and convictions for human trafficking. Myria has seen this in the cases in which it has acted as a civil party.

It remains to be seen how this bill will be applied in practice in the field. Towns and municipalities will retain their authority. Will the Minister of Justice promote a policy whereby prostitution areas will only accommodate legally staying sex workers, or will there be a certain margin? Better control of human trafficking within visible prostitution can reduce the risk of exploitation without driving the most vulnerable sex workers and undocumented sex workers underground.

4. Better application of the status of victim of human trafficking in urban prostitution zones

Local police forces in cities - especially Brussels with its multiple zones - should apply the status of victim of human trafficking better and, as soon as a potential victim of human trafficking is intercepted, they should contact the specialised human trafficking unit to continue the procedure and refer the victims to the specialised centres more efficiently. The specialised human trafficking units therefore need greater powers of investigation. Local authorities should also be made aware of the status of victim of human trafficking.

Often, checks are carried out by local police officers who have little expertise in human trafficking and aren't aware of the specific status of victim of human trafficking. They often simply target undocumented people in order to transfer them to a detention centre for repatriation or to issue them an order to leave the country. More specifically, in the case of underage Nigerian victims who don't have identity documents, officers often don't ask about their age. The Nigerian pimps and their accomplices aren't worried about these checks because they have (false) identity documents.

Local authorities in towns and municipalities often have to perform their tasks with limited resources, but this doesn't absolve them of their responsibility. They should also be fully aware that, according to the regulations in force, potential victims of human trafficking should be referred to the specialised reception centres and not treated as undocumented migrants in the context of illegal stay. Although human trafficking is a federal matter, local authorities can't simply deal with the problem from the point of view of nuisance control.

5. Advertising and memoranda of understanding

To better combat human trafficking on the internet, Myria recommends that legal protocols be established between the judiciary and internet service providers to report abuse.

Prostitution through dating sites and social media is on the rise. During interviews, Myria learned that 60,000 people in Belgium surf the internet every day in search of sex. The police use the internet and social media for their investigations. According to the Minister of Justice, the police already cooperate as much as possible with the providers of sex sites to prevent their platforms from being used for criminal purposes.

Magistrates and internet service providers would like to have memoranda of understanding with the judiciary to report abuses, which isn't possible under the current legislation which prohibits advertising for prostitution. Perhaps the new bill could allow it. The Minister of Justice promised parliamentarians this in early May 2021, but the bill

was amended in the meantime. This then raises the question of whether digital advertising through third parties (companies such as internet service providers and website operators) will continue to be prohibited, because only offering one's own services on a digital platform would be allowed.

6. Raising awareness among clients

Myria stresses that sex clients can also play an important role in the fight against human trafficking on the internet and that they should be made aware through campaigns to report abuse to the police.

Prostitution through sex dating sites and social media is on the rise. The police can carry out checks on the internet, but these are resource-intensive and the task is sometimes complicated by special applications intended for and available only to clients. The latter can therefore represent an important added value in the fight against human trafficking, as they can, of course, identify certain abuses much more easily and quickly in places that aren't easily accessible or even inaccessible to the police.

The police consider client awareness as an important form of social control in the fight against human trafficking as regards (increasing) private prostitution via the internet. Sex clients sometimes report possible abuse anonymously. They aren't afraid of the police, but don't want their names to be registered so as not to damage their reputation. According to the Minister of Justice, it is important that sex clients are informed about the signs of possible exploitation and that they are encouraged to report exploitation promptly by means of low-pressure, effective and non-stigmatising reporting.

Raising client awareness of human trafficking and encouraging them to report possible abuse can reduce the demand for trafficking for the purpose of sexual exploitation. On the one hand, this will make sex clients more aware of the issue of human trafficking, and on the other hand, pimps will avoid the risks associated with employing trafficked persons.

7. Impact on the anti-trafficking mechanism

The new bill mustn't have a negative impact on the mechanism to combat human trafficking.

Lastly, there are certain questions about the impact of the new bill on the mechanism for combating human trafficking.

Could adding the new concept of "abuse of prostitution" lead to a change in how the mechanism to combat human trafficking functions, including frontline services (in their approach) and the judiciary (in the choice of certain inquiries)?

In practice, will the fight against human trafficking be more closely linked to the fight against the abuse of prostitution? Will the Interdepartmental Coordination Unit and its executive bureau also be authorised in the future to monitor and coordinate the policy on the abuse of prostitution? Could this also have an impact on international obligations to record human trafficking?

In time-consuming investigations where resources are limited, magistrates may be tempted to opt for the charge of abuse of prostitution rather than human trafficking. Abuse of prostitution presents a broader operational scope of criminal acts than human trafficking for the public prosecutor's office and may facilitate the collection of evidence. However, what are the consequences for the victims of human trafficking who may be left out in the cold?

The Minister of Justice stated in Parliament on 30 June 2021 that the social inspection services would play a role in monitoring compliance with the social status laid down for the practice of prostitution. As a result, should these services play a greater role in checking the contracts of sex workers and focus more on investigations into the abuse of prostitution for abnormal profit?

The social inspection services mainly focus on and specialise in labour exploitation and, to a lesser extent, on sexual exploitation, which also necessitates a different approach. Adapting the way they operate takes time, with a period of transition, and requires additional resources at a time when their resources are decreasing.

Trafficking in human beings isn't only limited to sexual exploitation and sufficient attention must be paid to labour exploitation, in which Belgium has acquired a lot of expertise and is a pioneer on the international scene.

The new bill must not undermine the mechanism for combating human trafficking. Specialisation is the key factor in the fight against human trafficking but this level of specialisation could be undermined in an interdisciplinary framework.

8. Reasonable period of transition

Myria argues in favour of a sufficiently long transition period after the possible adoption of the criminal sexual law bill, which requires changes in the regulation of human trafficking, and sufficient time for frontline services to adapt and become familiar with it.

The bill, which introduces new concepts such as "abuse of prostitution", has an impact on the regulation of human trafficking and on the functioning of the anti-trafficking mechanism.

If the concept of abuse of prostitution is introduced, there will have to be a major adjustment to the way the specialised centres operate. To what extent, then, should the formal regulations on victim status be changed? Such a change in victim status would then also have to be approved by the Interdepartmental Coordination Unit, the legal body implementing the policy on THB, together with all competent federal and regional players and services.

Several frontline services will have to adapt the way they operate after the introduction of the new law. Therefore, it will also be necessary to allow time for those concerned to familiarise themselves with it and to develop new expertise.