

Exclusion almost never equals protection:

The case of migrant sex workers in the Netherlands after the legalization of the sex industry in 2000



Colophon

Anaïs David

s1335049

a.e.david@umail.leidenuniv.nl

1st reader Marion Pluskota

2nd reader Andrew Shield

Governance of Migration and Diversity

Academic year 2019-2020

Table of Contents

List of abbreviations	3
Introduction	4
<i>Historiography.....</i>	6
<i>Material and Methods</i>	10
<i>Concepts and theories</i>	14
Traffic in human beings	14
Human security approach	15
Intersectionality.....	16
Multilevel governance	16
Chapter 1: Victims or perpetrators?	18
<i>EU level narratives and their legal impacts</i>	18
<i>National level narratives and their impact on the legality of sex work(ers)</i>	24
<i>Overlaps and domino-effect; local impact</i>	26
Chapter 2: The right to have rights	30
<i>Intersectionality, policy barriers, and narrative in play</i>	32
<i>Accessibility of health care for EU and non-EU migrant sex workers</i>	39
<i>Towards human security-based sex work policies.....</i>	41
Chapter 3: The impact of multilevel governance gaps on migrant sex workers	44
<i>Going back home</i>	44
<i>Exit programs and support on the ground: access, impact, and shortcomings</i>	48
Conclusion.....	56

List of abbreviations

CAP	Coalition Abolition Prostitution
CETS	Council of Europe Treaty Series
EU	European Union
GGD	Gemeentelijke Geneeskundige Dienst
HAP	Huiskamer Aanloop Prostituees
IGO	Intra-governmental organization
INI	Own-initiative procedure
NGO	Non-governmental organization
NRMSGK	Bureau National Rapporteur Mensenhandel en Seksueel Geweld tegen Kinderen
PSI	Private Sector Investment program
PSOM	Programme for Cooperation with Emerging Markets
RUPS	Regeling uitstapprogramma's prostituees
TAMPEP	European Network for the Promotion of Rights and Health among Migrant Sex Workers
UN-CESCR	United Nations' Committee on Economic, Social, and Cultural Rights
UNDP	United Nation Development Program
WODC	Wetenschappelijk Onderzoek- en Documentatiecentrum
Wrp	Wetsvoorstel Regulering prostitutie en bestrijding misstanden seksbranche

Introduction

“The ability to control migration has shrunk as the desire to do so has increased.”¹ Hence, as migration spreads, it becomes more difficult to control it, resulting in widespread fear and restrictionism. In the light of increased female mobility, independence, anxieties regarding female sexuality, and technological developments (i.e. steamboats and the telegraph) between 1860 and 1914, restrictions of women based on fear surfaced. Due to the aforementioned worries, the concept of *white slavery* emerged. A concept that expresses the fear of women, especially white middle-class women, coming into harm’s way through international migration. The driving thought of white slavery was that these migrant women would fall into the hands of traffickers who would then force them into the sex industry to profit from their suffering.² This *white slavery scare*³, frightened so many back then and is still scaring many today, under a different guise. Nowadays, this idea of forced sex work is more generalized including women of all ages, backgrounds, as well as other genders. The characteristics of what constitutes a white slave may have changed, but the guiding narrative persists. That is, the idea that all migrant women in the sex industry are victims of human trafficking for sexual exploitation. This victim narrative has been guiding many anti-prostitution ideas and legalization policies.⁴ Although quite contradicting, anti-prostitution, and legalization both state that sex work is an inherent part of trafficking. Cho, Dreher, and Neumayer noted that “many authors, therefore, believe that trafficking is caused by prostitution”.⁵ Based on this inherent connection, migrant sex workers were excluded from the legalized sex industry in the Netherlands from 2000 onwards. It is believed that if the migrant sex workers are not allowed to work in the new legal framework, they would return home, and it would decrease the inflow of this group.⁶ Nevertheless, that did not have the

¹ Mathias Czaika, Hein de Haas, ‘The Effectiveness of Immigration Policies’, *Population and Development review* 39:3 (2013) p. 487–508, p. 487.

² Jo Doezema, ‘Loose Women or Lost Women? The Re-emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women’, *Gender Issues* (2000) p. 23-50, p. 39.

³ Marlou Schrover, Joanne van der Leun, Leo Lucassen and Chris Quispel, ‘Introduction: Illegal migration and gender in a global and historical perspective’, in *Illegal Migration and Gender in a Global and Historical Perspective* (Amsterdam 2008), p. 9-28, p. 12 and 18-19.

⁴ Doezema, ‘Loose Women’, p. 23-24 and 44; Explanatory memorandum B. 70 of Doc. 13446 report of the Parliamentary Assembly of the Council of Europe (20 March 2014), *Prostitution, trafficking and modern slavery in Europe*.

⁵ Seo-Young Cho, Axel Dreher, Eric Neumayer, ‘Does Legalized Prostitution Increase Human Trafficking?’ *World Development* 41 (2013), p. 67–82, p. 67.

⁶ *Handeling I* 1993, 3, p. 174.

expected impact. Based on quantitative information published by TAMPEP in 2006, 60 percent of the sex workers have a migrant background.⁷ Thus, the majority of sex workers in the Netherlands have a migrant background. Additionally, a study by Cho, Dreher, and Neumayer in 2013 shows that countries with legalized prostitution have a greater inflow of trafficked persons.⁸ Meaning, the protection rationale behind exclusion also did not pan out. This is not surprising, as the demand for migrant women does not decline just because this group is excluded from the legal circuit.⁹ This exclusion also meant that the sex workers brought by exploiters before legalization will have no power to distance themselves from these exploiters afterward.¹⁰ This meant that migrant sex workers would be exploited, mistreated, marginalized, and twice as vulnerable as they were during the period of *regulated tolerance*.¹¹ Due to this new vulnerability and marginalization of migrant sex workers in the Netherlands after 2000, this thesis will focus on migrant sex workers from the European Union (EU) as well as non-EU migrants. As the legal sex industry is only accessible to EU migrants,¹² the EU expansion¹³ between 2000 and 2019 directly impacted the legality of Central and Eastern European migrant sex workers in the Netherlands. For this and reasons previously discussed, this analysis will go beyond the national border to assess the impact of multilevel governance on the legalization of sex work in the Netherlands. By using multilevel governance and the concept of intersectionality, it will be possible to uncover the gaps in policy on different levels that exacerbate inequalities and leaves migrant sex workers without “the right to have rights.”¹⁴ Furthermore, the expression used to describe the persons working in the sex industry in this research will be ‘sex workers’. This is to clear up the confusion made on the perceived interconnectivity of

⁷ TAMPEP *National Mapping Reports* (TAMPEP 24 January 2010), 197 <<https://tampep.eu/wp-content/uploads/2017/11/ANNEX-4-National-Reports.pdf>> [accessed 29 March 2020].

⁸ Cho, Dreher, Neumayer, ‘Does Legalized Prostitution’, p. 68.

⁹ Erika Schulze et al., *Sexual exploitation and prostitution and its impact on gender equality* (Luxembourg: Publications Office of the EU 2014), 27; *Handeling I* 1993, 3, p. 143.

¹⁰ Marie-Louise Jansen, ‘Introductie’, in: *Reizende Seksworkers* (Apeldoorn 2007), p. 1-28, p. 13.

¹¹ This is a concept used by Chrisje Brants in ‘The Fine Art of Regulated Tolerance: Prostitution in Amsterdam’ *Journal of Law and Society* 25:4 (1998) p. 621–635, to categorize the period prior to legalization in the Netherlands, where prostitution was allowed/not criminalized as long as it did not disturb the peace.

¹² *Werken in de prostitutie in Nederland – wie mag wat wanneer?* (2015) <<https://www.rijksoverheid.nl/documenten/brochures/2015/03/20/werken-in-de-prostitutie-in-nederland>> [accessed 1 May 2020].

¹³ Europa.eu, ‘Countries,’ *European Union* (2020) <https://europa.eu/european-union/about-eu/countries_en> [accessed 29 June 2020].

¹⁴ A term coined by Hannah Arendt to describe the vulnerable position of migrants that are not recognized as being part of a political community.

trafficking for sexual exploitation and the sex industry. This paper will look at the professionals in the sex industry with a foreign background. The following guiding question will be the basis of this research:

Why did the return migration approach guiding the exclusion of migrant sex workers from the 2000 legalization scheme fail to provide the desired outcome and instead increased the vulnerability of migrant sex workers?

To answer this question several sources will be used, of which: regional and national parliamentary minutes, reports, policies, conventions and treaties, qualitative sources, and evaluations of exit programs subsidized by the Dutch state. These sources offer relevant information for every level and aspect of this research, providing a steadfast take on the impact of multilevel governance and the impact of sex industry legalization on migrant sex workers after 2000 in the Netherlands. The information collected from these sources will be outlined in three analytical chapters. Chapter one will discuss guiding narratives used by the EU and the Dutch state in debates, to assess their impact on the formulated legal documents such as policies. The second chapter will look at *the right to have rights*, and how intersectionality plays a role in this context. This chapter will also provide a human security-based option for future policies. The last chapter will provide information on the approaches used by the state to mitigate the migrant sex worker's issue they perceived, as well as providing an in-depth analysis of these approaches.

Historiography

In the heated debates on trafficking in persons, sex work is a recurrent cause. Even without proof of a connection, these topics are often depicted as interlinked in past and current debates. As trafficking in persons entails the forceful movement of people, the focus usually falls onto the migrant sex workers. They are depicted as victims of coercion and the commercialized sex industry.¹⁵ This group's lack of agency is often used as a rationale for strict migration policies. Specifically, through these restrictive policies all these young,

¹⁵ Melissa Farley, 'Prostitution, Trafficking, and Cultural Amnesia: What We Must Not Know in Order To Keep the Business of Sexual Exploitation Running Smoothly', *Yale Journal of Law and Feminism* 18:1 (1998) p. 109-144, p. 110; Michelle R. Adelman, 'International sex trafficking: dismantling the demand', *Southern California Review of Law and Women's Studies* 13:2 (2004) p. 387-414, p. 190-191.

innocent women that become victims of human trafficking, will be saved.¹⁶ Nevertheless, various actors believe that these restrictive and sometimes exclusionary policies do the exact opposite.¹⁷

Seo-Young Cho, Axel Dreher, and Eric Neumayer believe that the legalization of the sex industry increases trafficking in persons. Based on their research they found that between 1996 and 2003 there was an observable increase in the inflow of trafficked sex workers.¹⁸ Although the increase may not be exponential, it does show that the issue of trafficking in persons is spreading. As Vincenzo Musacchio states, “migrant prostitution and procuring have become more and more inseparable.” Hence, the demand for migrant sex workers is becoming increasingly connected to organized crime.¹⁹ As Dina Siegel also notes “the mobility of prostitutes is inextricably linked to the cross-border mobility of organized crime.”²⁰ Such a statement although founded can be problematic in debates on migrant sex workers’ rights to work abroad, as it essentially supports the idea that women are at risk when they travel and that restrictive policies will contain the situation. Moreover, the former director and founder of *De Rode Draad*,²¹ Margot Alvarez, gives new insight into the reasons behind the observed influx of trafficking victims and migrant sex workers of the Netherlands. Alvarez states that she noticed the increase of migrant sex workers in the 1980s and 1990s. She expressed that it was an expansion strategy by the pimps during the legalization process in the Netherlands.²² As the exploiters found out about the legalization scheme and how difficult it would be to expand their businesses, they decided to expand beforehand. This led to smaller spaces for higher prices resulting in an outflow of sex workers from these facilities leaving these exploiters with an empty business. To populate their establishments, they decided to bring more women in.²³ This was a very insightful

¹⁶ Gülçür and Ilkcaracan, ‘The “Natasha” experience’, p. 419; Doezema, ‘Loose women’, p. 22.

¹⁷ Schrover *et al.*, ‘Introduction’, p. 11; Doezema, ‘Loose Women or Lost Women’, p. 24.

¹⁸ Cho, Dreher, and Neumayer, ‘Does Legalized Prostitution’, p. 68 and 70.

¹⁹ Vincenzo Musacchio, ‘Migration, Prostitution and Trafficking in Women: An Overview’, *German Law Journal* 05:09 (2004) p. 1015-1030, p. 1020.

²⁰ Dina Siegel, ‘Mobility of Sex Workers in European Cities’, *European Journal on Criminal Policy Research* 18 (2012) p. 255-268, p. 264.

²¹ De Rode Draad is an organization founded by (ex)sex workers in 1985 (bankrupt in 2012) to fight for the rights of all sex workers, notwithstanding their background or legal status. ‘Korte geschiedenis van De Rode Draad’, *Sekswerkerfgoed* <<https://sekswerkerfgoed.nl/korte-geschiedenis-van-de-rode-draad/>> [accessed 29 May 2020].

²² Marie-Louise Jansen, ‘Introductie’, in: *Reizende Sekswerkers* (Apeldoorn 2007), p. 1-28, p. 13.

²³ *Ibidem*.

statement, as it gives clear reasoning behind this influx concerning legalization and the increased struggle of migrant sex workers in the country.

Moreover, an important aspect of sex work that has also come up in several articles is the circularity of migration. In Nicole Keusch's chapter, *Migration, and prostitution*, she notes that "prostitution and migration are closely connected, that you can't identify if a migrant is a prostitute or if a prostitute is a migrant."²⁴ On the one hand, it can be based on the sex worker's business needs (moving to a place with greater demand),²⁵ and on the other hand, it can be a pimp's way to keep migrant sex workers from getting attached to clients or law enforcement agents.²⁶ Either way, if it is through legal migration, smuggling, or trafficking, the mobility of sex workers is paramount. Marie-Louise Jansen even talks about the transnationalism of sex work. Firstly, transnational sex work facilitates the creation and maintenance of a double identity. Through this multidimensional or intersectional understanding of their identities, sex workers can find comfort in their independent identity markers. Their transnational identity helps them cope with the stigma of sex work, by drawing a line between their *two lives*: private and work life.²⁷ This separation is a reason why many sex workers refuse to register as a sex worker.

Secondly, there are the transnational paths that facilitated the worker's entry to the Netherlands. As Jansen's book is focused on the Dominican Republic, the path, in this case, is through the Caribbean islands of the Dutch Kingdom: primarily Curacao and Aruba. The existing colonial relations between these islands and the Netherlands created a path that sex workers currently use for different migratory forms.²⁸ Going beyond this geographical mobility, Siegel provides an out of the box perspective on the mobility of sex workers by looking at internal mobility. She discussed the different roles women can take within the sex industry; including managerial positions. In her article *Mobility of Sex Workers in European Cities*, she describes different forms of movement: from geographical to organizational.²⁹ This is a very different outlook on the topic of migration and sex work.

²⁴ Nicole Keusch, 'Migration and prostitution', in: Magaly Rodríguez García, Lex Heerma van Vos and Elise van Nederveen Meerkerk (eds.), *Selling sex in the city: a global history of prostitution, 1600-2000s* (Leiden 2017) p. 707-729, p. 714.

²⁵ Keusch, 'Migration and prostitution', p. 720.

²⁶ Siegel, 'Mobility of Sex Workers', p. 263.

²⁷ Marie-Louise Jansen, 'Conclusie', in: *Reizende Sekswerkers* (Apeldoorn 2007), p. 199-214., p. 203-204.

²⁸ Idem, p. 204.

²⁹ Siegel, 'Mobility of Sex Workers', p. 256.

Through this article women in the industry are seen in a different light. They are no longer trafficking victims: they are businesswomen and role models.³⁰ In countries like Moldova, Romania, Bulgaria, and Nigeria, sex workers and madams are seen in quite a positive light. Romanian and Bulgarian teenagers want to become urban sex workers to acquire wealth and luxury,³¹ while the Nigerian community lines up to be selected as a sex worker under the wings of madams in the Netherlands.³²

On the other hand, some see sex workers as powerless victims of capitalism and globalization. This kind of understanding negatively impacts the social, political, and legal image of some migrant women. Leyla Gülcür and Pinar Ilkcaracan discuss the case of the *Natashas* from Eastern Europe and the former Soviet Union. These are women that travel primarily to Turkey to work as sex workers. Sometimes they also dabble in sales,³³ blurring the line between these two professions. Due to this unclear divide, any female that fits the profile of a Natasha is harassed.³⁴ Aside from this more direct attack on individual migrant(s) (sex workers), Gülcür and Ilkcaracan also identified indirect group focused attacks. That is, the exclusion of some from the legal sex industry based on the erroneous focus of debates on the form of sex work (forced and voluntary).³⁵ As there is such a complex issue regarding this differentiation and the right punishment for each category, the focus shifts from the protection of individual's rights to finding the culprits and formulating fitting punishments.³⁶ It is also about protecting the state's territorial integrity. Hence, keeping illegal or unwanted migrants at bay.³⁷ The need for control discussed in the first section relates to this shift. As state officials feel that they are losing control over the regulation of visitors to their territory, they become more restrictive. The outcome of this repossession of control, in this case, is the exclusion of migrant sex workers from the legal circuit. Due to this exclusion from the legal circuit migrant sex workers are left bare to all types of abuses. As they have no *right to have rights*, they cannot reach the right institutions

³⁰ Idem, 265 and 267.

³¹ Idem, 258-259.

³² Idem, 262.

³³ In the article these saleswomen were understood as *suitcase traders*, highlighting the kind of sales form they used. They were women that soled products they could fit in a suitcase.

³⁴ Leyla Gülcür and Pinar Ilkcaracan, 'The "Natasha" experience: migrant sex workers from the former Soviet Union and Eastern Europe in Turkey, *Women's Studies International Forum* 25:4 (2002) 411–421, 414.

³⁵ Gülcür and Ilkcaracan, 'The "Natasha" experience', 419.

³⁶ Ibidem.

³⁷ Musacchio, 'Migration, prostitution and trafficking in women', 1018 and 1026.

for fundamental support when necessary.³⁸ Although victims of trafficking are often migrant sex workers, states still exclude them from the legal sex industry because they believe that this will protect this group of migrants from becoming victims of human trafficking.³⁹ Instead, these migrant sex workers are forced to go underground due to legalization and end up becoming more dependent on and vulnerable to abuse by their employers.⁴⁰ Additionally, they will need to acquire a pimp to find clients,⁴¹ they can be displaced,⁴² and even become victims of trafficking.

Throughout these articles and chapters, much information is outlined. Nevertheless, some elements are also missing. Firstly, none of the articles discuss the outflows of trafficking concerning legalization. They do not discuss the outflow of trafficking victims dependently or independently of legalization. Siegel, Doezema, Schrover et al., and Gülcür and Ilkcaracan mentioned the possibility of migrant sex workers falling prey to traffickers due to their exclusion of the legal circuit, or the fact that many are smuggled. Secondly, even though many articles did touch upon the possible negative outcomes of this exclusion, none of the articles was focused on discussing the outcomes of legalization on migrant sex workers. Thirdly, the support of local and state initiatives after legalization was also missing. Especially due to the complex transition migrant sex workers would have had to go through after legalization, support on the ground would have been key. In the light of these gaps and the importance of an individual's migratory status, this research will focus on multilevel governance and its impact on migrant sex workers' *right to have rights*, the power of narrative in formulating policies, and state support on the ground. Through this research the intention is to expand the way to discuss the impacts of legalization and its multidimensional nature, while triggering new questions for further research and encouraging critical analysis of rationales behind policies concerning the sex industry.

Material and Methods

To answer the aforementioned research question, a variety of documents concerning sex work in the Netherlands will be consulted, with a focus period starting from 2000 onwards.

³⁸ Jansen, 'Conclusie, 206; Doezema, 'Loose women', p. 37.

³⁹ Doezema, 'Loose women', p. 32.

⁴⁰ Musacchio, 'Migration, prostitution and trafficking in women', p. 1021 and 1026; Jansen, 'Introductie', p. 15.

⁴¹ Gülcür and Ilkcaracan, 'The "Natasha" experience', p. 416.

⁴² Siegel, 'Mobility of sex workers', p. 260.

As sex industry was legalized from 2000, it will be the starting point of the general research. Nevertheless, two debates prior to legalization will also have to be analyzed as they weight greatly on the outcome of the legalization. These debates were in 1987 and 1993. Also, in order to set a timeline and record changes in perspectives regarding the topic of sex work and its legality, some treaties and conventions prior to 2000 will also be discussed. As this thesis mainly focuses on governing bodies of various levels the sources are primarily legal documents and reports from these organs and some non-governmental organizations.

Firstly, for (legal) documents on the EU level the website of the European Parliament⁴³ and the Council of Europe⁴⁴ were consulted. Access to these departments' databases provided policies, debates, treaties, conventions, and reports, that will be discussed and analyzed later on in this thesis. The selection of documents was based on their relevance to migration and the sex industry, and their impact on the national and local level governance. As multilevel governance is a key element of this research, the impact of regional documents on local and national policies is very important. While it has a great impact on what its Member States do,⁴⁵ the EU does not have any executive powers.⁴⁶ Without the consent of its Member States, it cannot move forward. Despite their lack of executive powers the EU directly impacts governments that do have the power to formulate and implement policies and measures that shape populations. Moreover, the existence and accessibility of those treaties and convention made on the EU level, can have serious impacts on the national and local levels of Member States. As stated in Art. 1 of the *Vienna Convention on the Law of Treaties 1969*, international treaties are meant to be between states.⁴⁷ Thus, only states can prosecute one another on the basis of the terms agreed upon in the signed treaties. Due to this understanding, individuals cannot directly address a state judicially based on the rights outlined in treaties. The only way individuals can access certain rights is if they have been absorbed by the national law of the state they

⁴³ 'Committees: European Parliament,' *European Parliament*

<<https://www.europarl.europa.eu/committees/en/documents/search>> [accessed 29 March 2020].

⁴⁴ 'Full list,' *Treaty Office* <<https://www.coe.int/en/web/conventions/full-list>> [accessed 29 March 2020].

⁴⁵ Santiago Eizaguirre et al., 'Multilevel governance and social cohesion: bringing back conflict in citizenship practices,' *Urban Studies* 49 (2012) p. 1999–2016 doi:10.1177/0042098012444890, p. 2002.

⁴⁶ *Idem.*, p. 13.

⁴⁷ *Vienna Convention on the Law of Treaties*, Vienne, 23 May 1969, *United Nations Treaty Series*, vol. 1155, No. 18232 p. 331 <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>, article 1.

reside in.⁴⁸ Hence, if the rights outlined in the various international treaties are not translated into national law, these treaties do not have legal substance for individuals.

Secondly, to access state level documents, the Netherlands' official website for the publication of state documents: Overheid.nl⁴⁹, and the Dutch Senate's⁵⁰ website were accessed. These two websites provide general information on national debates, policies and policy proposals, reports, letters, and the contents of the Dutch national law. Although the websites are easily accessible and provide different sources, they do not have access to all relevant reports referred to during state debates. Therefore, several other sources were also consulted to support the notions stated in the debates and to provide a different perspective on the topic. Sources of the following organizations were accessed for this analysis: the Bureau Nationaal Rapporteur Mensenhandel en Seksueel Geweld tegen Kinderen (NRMSGK),⁵¹ the European Network for the Promotion of Rights and Health among Migrant Sex Workers (TAMPEP),⁵² Regioplan,⁵³ and the Ministry of Foreign Affairs. Of these organizations two are governmental (NRMSGK and the Ministry of Foreign Affairs), one is a non-profit (TAMPEP), and one is a policy research institute (Regioplan). All three perspectives help to provide a complete picture of the sex industry aspect analyzed in this thesis. Firstly, the government institutions provide in-depth information on policies concerning the sex industry in general and its connection to human trafficking. On the one hand, the Ministry of Foreign Affairs provides information on cooperation between the Netherlands and foreign countries on issues such as refugee flows and human trafficking.⁵⁴ On the other hand, the NRMSGK is a bureau built in 1997 as advised by The Hague Declaration. The NRMSGK is one of several rapporteurs in the EU to facilitate information

⁴⁸ Ibidem.

⁴⁹ 'Uitgebreid zoeken: Overheid.nl > Officiële bekendmakingen,' <<https://zoek.officiëlebekendmakingen.nl/uitgebreidzoeken>> [accessed 3 March 2020].

⁵⁰ 'Kamerstukken,' *Eerste Kamer der Staten-Generaal – Kamerstukken* <https://www.eerstekamer.nl/begrip/kamerstukken_2> [accessed 29 March 2020].

⁵¹ 'Publicaties,' *Nationaal Rapporteur* (Ministerie van Veiligheid en Justitie 2017) <<https://www.nationaalrapporteur.nl/Publicaties/index.aspx>> [accessed 4 July 2020].

⁵² 'Resources,' *TAMPEP* <<https://tampep.eu/resources/>> [accessed 4 July 2020].

⁵³ 'Home,' *Regioplan* (Regioplan 2019) <<https://www.regioplan.nl/>> [accessed 4 July 2020].

⁵⁴ 'Organisatie ministerie van Buitenlandse Zaken' (Ministerie van Buitenlandse Zaken 2019) <<https://www.rijksoverheid.nl/ministeries/ministerie-van-buitenlandse-zaken/organisatie>> [accessed 4 July 2020].

sharing on the topic of human trafficking and strategies applied to eliminate this issue.⁵⁵ Thus, providing a specialized look at the issue of human trafficking, including statistics of the Netherlands. Together, these two sources provide more policy-based information and specialized information on the topic otherwise unavailable. Secondly, TAMPEP is a non-profit organization by sex workers for sex workers founded in 1993. It brings advocates and sex workers together to fight for their rights and better health care services on the European level. Its focus group is migrant sex workers and mobile sex workers in Europe.⁵⁶ The information provided by this organization offers a more sector-specific and non-governmental input on the topic. Thus, offering a more critical and human-centered (instead of state-centered) opinion on the topic, as well as migrant sex worker specific information that is fairly difficult to acquire. The downside is, that TAMPEP does not have reports or papers discussing the situation for every year. It also does not have a vast database with countless statistical data. Hence, TAMPEP cannot be used to construct a timeline of all events that occurred in the last two decades nor can it be used to measure the influx of migrant sex workers of the whole analyzed period. It can only provide some information on specific moments of the last two decades. Lastly, the research institute provides scholarly and statistical input on sex industry policies. Through the research of Regioplan critical analyses are done to evaluate the input and results of policy-based projects such as the exit programs known as the Regeling uitstapprogramma's prostituees (RUPS).

Combined, all these different sources provide a variety of perspectives that enrich the analysis outlined in this thesis. Although the sources can provide one-sided observations on the research topic independently, their specialized perspectives make for a balanced understanding of the research topic. Thus, resulting in fewer biased information and a broader understanding of the position of migrant sex workers in the legalized sex industry of the Netherlands.

⁵⁵ *Human Trafficking – ten years of independent monitoring* (National Rapporteur on Trafficking in Human Beings 2010) <https://www.nationaalrapporteur.nl/binaries/8e-rapportage-nrm-eng-web-tcm64-310472_tcm23-34822.pdf> [accessed 2 May 2020], p. 9.

⁵⁶ *TAMPEP mission and principles* (TAMPEP May 2017) <<https://tampep.eu/wp-content/uploads/2019/01/Mission-and-Principles.pdf>> [accessed 5 April 2020].

Concepts and theories

In the context of a complex topic as sex work in the Netherlands, several concepts and theories are relevant. For this thesis traffic in human beings, intersectionality, multilevel governance, and human security will be discussed.

Traffic in human beings

This concept, as aforementioned, is based on the white slavery scare and has been defined in various ways, predominantly as modern-day slavery.⁵⁷ For this thesis traffic in human beings or human trafficking will be defined as outlined in Art. 4 of the *Convention on Action against Trafficking in Human Beings* (CETS) 2005/197 of the Council of Europe:

“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”⁵⁸

This definition has also been translated into the Dutch Criminal Code under Art. 273f, *Serious Offences against Personal Liberty*,⁵⁹ after 2000. Before 2000 the Dutch Criminal Code provided a more sex industry-focused definition of human trafficking in Art. 250a, *Serious Offences against Public Morals*. Based on Art. 250a individuals could only be prosecuted due to their involvement in the sexual exploitation of others, especially women.⁶⁰ But after *Protocol to Prevent, Suppress and Punish trafficking in Persons*,

⁵⁷ ‘Trafficking in Human Beings,’ *Europol* <<https://www.europol.europa.eu/crime-areas-and-trends/crime-areas/trafficking-in-human-beings>> [accessed 18 June 2020]; Preamble of the Convention on Action against Trafficking in Human Beings (CETS) 2005/197 of the Council of Europe; CatharineA. MacKinnon, ‘Pronography as trafficking’, *Michigan Journal of International Law* 26:4 (2015) , p. 993-1012, p. 995 and 999.

⁵⁸ Article 4 of the Convention on Action against Trafficking in Human Beings (CETS) 2005/197 of the Council of Europe.

⁵⁹ Artikel 273f van Boek 2 van de Wetboek van Strafrecht.

⁶⁰ *Trafficking in Human Beings - Ten years of independent monitoring*, p.17 and 25.

especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime was formulated in 2000, the NRMSGK strongly advised the Dutch state to change the criminal law to better coincide with the broadened definition espoused by the international community.⁶¹ Notwithstanding this broad definition, when the *trafficking victims* or *victims of trafficking in human beings* is expressed, it should be understood in the context of this research. Meaning, when these concepts are used it should be understood as traffic for sexual exploitation.

Human security approach

Human security is an approach coined by the United Nation Development Program (UNDP) in 1990 after the Cold War, to go beyond state security (i.e. human trafficking) to include group and individual rights. It espouses the protection of individual human rights, as well as the empowerment of these individuals or communities, to strengthen their representative capabilities. In modern-day governance, the human security approach is key as it takes different actors into account (governmental and non-governmental) and it understands that security should also transcend national interests. Simply put, it converges human characteristics of security, rights, and development to safeguard the “vital core of all human lives.”⁶² In this understanding of the core of human lives, human security places great value on human dignity, as a fundamental element of human rights and as a building block of human security.⁶³ Therefore, human security advocates empowerment as it signifies an individual’s autonomous recognition and their capacity to fend for themselves as a requisite of human dignity.⁶⁴ Even though human security gives an alternative to the issue of *right to have rights*, in an era where state security overshadows individual citizen security, Rhoda E. Howard-Hassmann found that if defined broadly the approach will fail. She believes that human security overshadows human rights instead of strengthening them because of the broad understanding of human security reveals new rights that were not outlined in the

⁶¹ *Idem.*, p. 17 and 24.

⁶² Sadako N. Ogata and Amartya Sen, *Final Report of the Commission on Human Security* (New York: CHS Secretariat in New York 2003), p. 4; Dorothy Estrada-Tanck, ‘Human Security and the Human Rights of Undocumented Migrants: Systemic Vulnerabilities and Obligations of Protection’, *European Journal of Social Security* 15:2 (2013) p. 151-170, p. 151-153; Rhoda E. Howard-Hassmann, Human Security: Undermining Human Rights?, *Human Rights Quarterly* 34:1 (2012) p. 88-112, p. 90 and 102.

⁶³ *Final Report*, p. 4.

⁶⁴ Howard-Hassmann, ‘Human Security’, p. 107; Estrada-Tanck, ‘Human Security and the Human Rights of Undocumented Migrants’, p. 156.

original human rights convention.⁶⁵ Nevertheless, its broad scope and focus on the individual and their empowerment and dignity is essential in the analysis of migrant sex workers in the Netherlands and will, therefore, be applied in this analysis.

Intersectionality

It is the notion that every individual has a collection of layered inequalities, that exacerbate their position when discussed as a whole. Although independent markers such as race, gender, and class have a significant impact on an individual's life, when combined they exert a greater impact. Moreover, this concept also states that the individual's intersectionality can change depending on the context. Thus, intersectionality is not static but fluid.⁶⁶ Additionally, intersectionality emphasizes the interdependence of the existing inequality structures and the individual's experience of oppression. It states that the structures and experiences are mutually constructed. Hence, intersectionality-based experiences can impact the (re)construction of existing structures as well as *vice versa*.⁶⁷ Intersectionality is especially applicable to people on the move like migrants because they create new realities when they move that change their social, political, economic, and legal position.⁶⁸

Multilevel governance

This concept offers a broader understanding of governing, beyond government and national sovereign states.⁶⁹ Firstly, this form of governing includes institutions outside the government, thus diversifying the type of input through diversified sources of information.⁷⁰ Secondly, multilevel governance implies a fluidity between governing levels is it globally, regionally, nationally, or locally, fostered in cooperation. It is through this

⁶⁵ Howard-Hassmann, 'Human Security', p. 89, 101 and 104.

⁶⁶ H.-J. Bürkner, 'Intersectionality: How Gender Studies Might Inspire the Analysis of Social Inequality among Migrants', *Population, Space, and Place* 18 (2012) p. 181–195, p. 182; Ethel Tungohan, 'Global care chains and the spectral histories of care migration,' *International Journal of Care and Caring* 3 (2019) p. 229–245 doi:10.1332/239788218x15411704809877, p. 237; Bastia, 'Intersectionality, migration and development', p. 238-240.

⁶⁷ Tungohan, 'Global care chains', p. 14.

⁶⁸ Bastia, 'Intersectionality, migration and development', p. 238.

⁶⁹ Alexander Betts, 'Introduction: global migration governance,' *Global Migration Governance* (2011) p. 1–33 doi:10.1093/acprof:oso/9780199600458.003.0001, p. 6.

⁷⁰ Idem, 5; Eizaguirre et al., 'Multilevel governance and social cohesion,' p. 2002.

cooperation that the EU has been able to impact local level governance. Moreover, the multilevel structure also increases the adaptability of the states involved, concerning changing capital demands. Specifically, in this post-Fordist era, keeping a close bond between the state and the regional strategy based economic market is important to foster growth.⁷¹ Aside from the cooperative and economic connections, multilevel governance also stresses a good relationship between the various levels to ensure effective decision-making strategies. As through this new structure, new supranational actors have emerged, policies are dependent on a clear role division and strong local institutions to manifest the union's common values.⁷²

⁷¹ Eizaguirre et al., 'Multilevel governance and social cohesion', 2p. 002-2003; Sandra Lavenex, 'Multilevelling EU external governance: the role of international organizations in the diffusion of EU migration policies,' *Journal of Ethnic and Migration Studies* 42 (2015) p. 554–570 doi:10.1080/1369183x.2015.1102047, , p. 557.

⁷² Idem, p. 2004 and 2006; Maarten den Heijer, Jorrit Rijpma and Thomas Spijkerboer, 'Coercion, prohibition, and great expectations' *Common Market Law Review* 53 (2016), p. 607-642, p. 620.

Chapter 1: Victims or perpetrators?

“The picture that emerges is of a complex and fragmented tapestry of overlapping, parallel, and nested institutions.”⁷³ This is the image Alexander Betts paints of the global governance of migration. The complex and fragmented tapestry he discusses can be conceptualized as multilevel governance. This is a framework used by the European Union, and other international overarching organizations, to coordinate cooperation between various actors on various levels of governance.⁷⁴ In the context of this thesis the narratives of the EU, the national government of The Netherlands, and the local municipalities of The Netherlands will be discussed. Looking at conventions, protocols, policies, minutes, and debates on the EU and national level throughout the last two decades, the governing narratives of sex work and their impact on policies will be identified and discussed throughout this chapter. The first section will focus on the EU narratives and their impacts on the legal measures taken towards the sex industry in general, and the migrant sex workers specifically. The second section will look at the national level and the narrative-based policies formulated in this context. The last section will discuss the general impact of multilevel governance of the sex industry on the local context, with a special look at the position of the EU and non-EU sex workers working in the country.

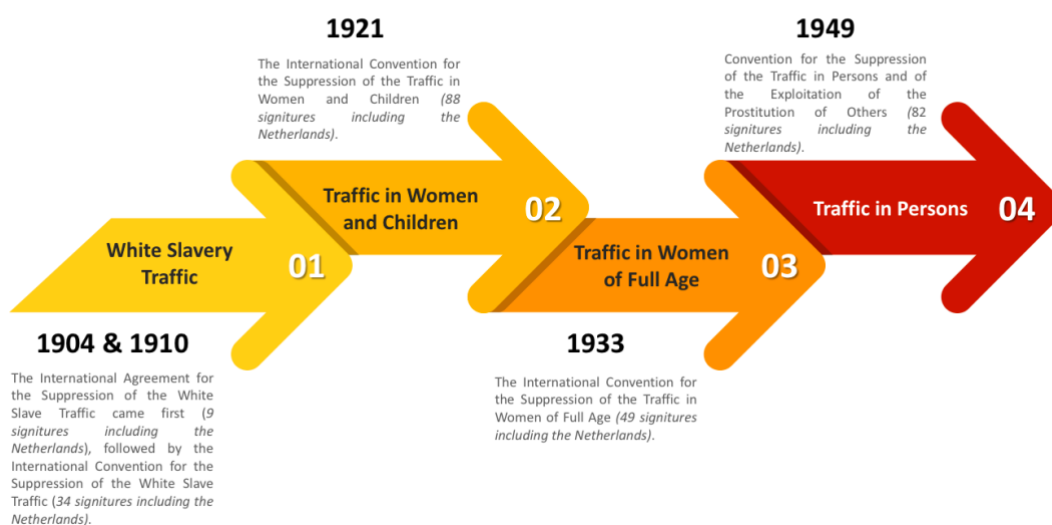
EU level narratives and their legal impacts

The sex industry has been a complex subject, especially in the context of exploitation. As discussed in the introduction, the white slavery scare was a great ordeal that had a significant impact on different actors.

⁷³ Betts, ‘Global migration governance’, p. 2.

⁷⁴ Eizaguirre et al., ‘Multilevel governance and social cohesion’, p. 2006.

Figure 1. The Evolution of Human Trafficking Conventions



As seen in figure 1 this concept was fundamental in conventions related to the exploitation of white female migrants until 1921, when it started to become more general and inclusive. This shows a shift in narrative and the understanding of who the victims are. Moreover, this illustration and the conventions in question show that although the idea of white slavery evolved into the traffic in human beings the inherent connection between prostitution and traffic in human beings persisted. In the United Nations Convention on the Repression of Traffic in Persons and of the Exploitation of the Prostitution of Others approved in 1949, this inherent connection is solidified. The first paragraph of the preamble already sets the tone for this connection and all the narratives to come:

“Whereas prostitution and the accompanying evil of the traffic in persons for prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family, and the community.”⁷⁵

Firstly, the use of “accompanying” clearly expresses a causal connection between traffic in human beings for sexual exploitation and sex work itself. Simply put, the narrative displayed here is that prostitution causes traffic in human beings. At least for prostitution.

⁷⁵ General Assembly resolution 317, *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, A/RES/317 (2 December 1949), available from undocs.org/en/A/RES/317.

Some researchers believe that the commercialization of the sex industry bolsters demand and trafficking along with it.⁷⁶ An argument can be made that this connection may indeed arise in some instances, but it is not a causal relation. Although these subjects may correlate, this is not enough to claim causality, because prostitution does not necessarily lead to traffic in human beings. Moreover, using the word *are* instead of *is* in the second underlined section, paints a negative picture of prostitution as being the polar opposite of dignity and worth. By using plurality this claim includes not only traffic in human beings to be “incompatible with dignity and worth of the human person”, but the action of prostitution as well. This idea of prostitution being inherently abusive is supported by many neo-abolitionist scholars and organizations such as Catharine A. MacKinnon and the Coalition Abolition Prostitution (CAP).⁷⁷ Although the convention was implemented before the distinction between forced and voluntary prostitution was made and before the concept of *sex work* had come to be, the idea that prostitution is always forced persists. This clear disregard for the agency of workers in this sector and their adamant victimization are distinctly outlined throughout this convention. The first two articles of the convention unequivocally state that any involvement with prostitution is to be punished, regardless of consent by the party performing the services.⁷⁸ The convention goes on to criminalize anyone involved in the sex industry irrespective of their legal status.⁷⁹ Article 6 goes a step further by putting forward a measure to eliminate prostitution from all the Member States that have signed this document, including the Netherlands. They were to annul all legal or institutional tools in play to regulate prostitution.⁸⁰ Based on the previously mentioned link between sex work and the traffic in human beings, this approach was an attempt to eradicate trafficking in human beings through the abolition of prostitution. This kind of approach persists in the 21st century, although the context and the degree of abolition differ. As the focus from 1949 onwards was to abolish the sex industry no laws or regulations to safeguard the rights of sex workers were drafted until half a century later. In those 50 years conventions such as the United Nation Convention on the Elimination of All

⁷⁶ MacKinnon, ‘Pornography as trafficking,’ 999 ; Adelman, ‘International sex trafficking,’ p. 391.

⁷⁷ MacKinnon, ‘Pornography as trafficking,’ p. 997-998; ‘Prostitution under International Human Rights Law,’ *cap-international* (2016) p. 3-23 <<http://www.cap-international.org/wp-content/uploads/2016/11/ProstitutionUnderIntlHumanRightsLawEN.pdf>> [accessed 29 May 2020], p. 14.

⁷⁸ A/RES/317 (2 December 1949), articles 1, 2 and 16.

⁷⁹ *Idem.*, articles 4 and 5.

⁸⁰ *Idem.*, article 6.

Forms of Discrimination Against Women of 1979, to protect the rights of women were drafted as well as several conventions to protect migrant rights. All these treaties, although indirectly, outline the conglomerate of rights sex workers should be able to access based on their rights as women and migrants.⁸¹

Only in the early 2000s, were their documents drafted directly addressing the topic of sex work and the traffic in human beings. As the feminist waves of the 1970s and the growing labor capital of the sex industry were making significant strides towards a legalized form of prostitution,⁸² the former (neo)abolitionist treaties could no longer hold ground. To address the presumed dangers of migration and prostitution in the 21st century, international treaties started to address the topic directly. The first relevant one is the *Protocol to Prevent, Suppress, and Punish trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* drafted in 2000 and active since 2005. This protocol is extremely similar to the 2005 Council of Europe *Convention on Action against Trafficking in Human Beings*. The biggest difference between these two documents is that the latter is more detailed than the former. As the latter is a convention in its own right as opposed to a supporting protocol as the former, its detailed expression is unsurprising. These details concern various aspects of the human trafficking subject. A core detail missing from the 2000 protocol, in which victims have the right to access aid. Article 5 paragraph 3 of the 2000 protocol states that: “Each State Party shall consider implementing measures to provide for the physical, psychological, and social recovery of victims of trafficking in persons.”⁸³ Thus, there are no further details on the profile of the victims in contrast to Art. 12 (3) and Art. 12 (4). In this article of the 2005 convention, the legality of the victims is explicitly mentioned: “each Party shall provide

⁸¹ *The Declaration of the Rights of Sex Workers in Europe* (International Committee on the Rights of Sex workers in Europe 16 October 2005)
<https://www.sexworkeurope.org/sites/default/files/userfiles/files/join/dec_brussels2005.pdf> [accessed 1 May 2020], p. 4.

⁸² Maite Verhoeven. ‘Introduction’, in: *Government policies and sex work realities: human trafficking in the regulated sex industry*, (Enschede 2017) p. 9-50, p. 14; Joyce Outshoorn, ‘Introduction: prostitution, women’s movements and democratic politics’, in: *The politics of prostitution women’s movements, democratic states, and the globalisation of sex commerce* (Cambridge 2004) p. 1-20, p. 9.

⁸³ Article 5 paragraph 3 of the General Assembly resolution 55/25, *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*, A/RES/55/25 (15 November 2000), available from undocs.org/en/A/RES/55/25.

necessary medical or other assistance to victims lawfully resident within its territory”.⁸⁴ The use of “lawfully” in this section does beg the question: Do irregular migrants in such a situation have the right to get the necessary assistance?

In addition to the claimed causality put forth in the 1949 convention, targeting the sex industry is also a constant nowadays. Despite this continuation, there was a shift from abolishing prostitution to limiting the procurement of these services as expressed in Art. 6 of the 2005 convention on the discouragement of demand.⁸⁵ Due to the understanding that prostitution can be voluntary or forced, and that the legality of the sex branch difference throughout states, the focus shifted from abolishment to regulation of procurement. Thus, the same goal of reducing commercialized sex work remains, although the approach changed to fit the new circumstances. This new approach came up several times in the EU debates on the topic of human trafficking between 2008 and 2012. In all four of the debates during this period, targeting procurement was seen as the main solution to decrease human trafficking. As human trafficking is understood as the result of prostitution, to a great extent, managing the demand of the latter will remedy the former.⁸⁶ This is translated into the measures outlined in the 2013 Own-initiative procedure (INI). One such measure states:

“Stressing that as prostitution is a cross-border problem, Member States should assume responsibility for combating the buying of sex outside their own territory by introducing measures similar to those adopted in Norway, where a citizen can be prosecuted for purchasing sex abroad.”⁸⁷

Thus, the *Nordic model* of prostitution, common in Norway, Sweden, and Iceland, is set forth as the best way to combat human trafficking. This model is believed to be the most effective as it directly targets demand while decriminalizing sex workers.⁸⁸ Based on the

⁸⁴ Article 12 paragraph 3 and article 4 of the Convention on Action against Trafficking in Human Beings (CETS) 2005/197 of the Council of Europe.

⁸⁵ Article 6 of the Convention on Action against Trafficking in Human Beings (CETS) 2005/197 of the Council of Europe.

⁸⁶ European Parliament Debates (4 June 2008), CRE 04/06/2008 – 28; European Parliament Debates (19 January 2010), CRE 19/01/2010 – 10; European Parliament Debates (14 December 2010), CRE 14/12/2010 – 7; European Parliament Debates (19 April 2012), [CRE 19/04/2012 – 5](#).

⁸⁷ Sexual exploitation and prostitution and its impact on gender equality (INI) 2013/2103 of the European Parliament.

⁸⁸ *Idem*.

conclusions from the research discussed in this INI, legalization of any kind and decriminalization will only help to facilitate traffickers with access to the most vulnerable members of the society.⁸⁹ Thus, through this approach, the EU is suggesting that its Member States take a second look at the debate on legalization versus abolition. As seen in the aforementioned quote, prostitution itself is seen as a cross-border problem. The document does not differentiate between forced or voluntary sex work at this point, which is quite problematic. This kind of misconception can have negative effects on persons that want to work in the sex industry as professionals. Broadly, it makes them a victim by default. This idea of victimization is further apparent in this INI through the wording used throughout the document. The victim narrative put forth in this document is very clear in the following quote: “Parliament calls on the Member States to refrain from criminalising and penalising prostituted persons, and to develop programmes to assist prostituted persons/sex workers.”⁹⁰ The use of ‘prostituted’ here makes it seem like the people involved, especially women, do not have any agency; as if this is done to them. Also, the use of ‘prostituted persons’ and ‘sex workers’ in this sentence conveys the impression of them being the same. As if they are synonymous with one another, although this may not be the case. Hence, the differentiation between forced and voluntary sex work is overlooked. Krisztina Morvai, Eu parliamentarian of Hungary, even stated that there is no such thing as voluntary prostitution. To her, prostitution is always forced.⁹¹ She was not the only representative that stated this. Unlike miss Morvai’s agency-based understanding of force, many other representatives at the debates between 2008 and 2012 mentioned macro-economic mechanisms that constrained many leading to them choosing for a career in the sex industry. Particularly, poverty and inequality in countries of origin were identified as causes of sex work and human trafficking. Thus, showing a different understanding of the issue, as it shifts the focus from the migratory journey to the context before migration. This idea of a development driven migration has come up several times during these debates and research done by the European Parliament Directorate-General for Internal Policies.⁹² As a result, the INI of 2013 included measures advising Member States to invest in

⁸⁹ Idem.

⁹⁰ Idem.

⁹¹ European Parliament Debates (14 December 2010), CRE 14/12/2010 – 7.

⁹² European Parliament Debates (4 June 2008), CRE 04/06/2008 – 28; European Parliament Debates (19 January 2010), CRE 19/01/2010 – 10; European Parliament Debates (14 December 2010), CRE 14/12/2010 – 7;

the development of origin countries to decrease the wave of sex workers and general migration to the EU.⁹³

National level narratives and their impact on the legality of sex work(ers)

A change in perspective can create new targets, new victims, and new perpetrators. The shift from abolition to the restriction of specific aspects of the sex industry was translated into a focus on supply decreasing measures at the national level in the Netherlands unlike the demand focused measures at the EU level. As the Dutch government had been getting many requests from municipalities to legalize sex work in the 1980s abolition as put forth in the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others was no longer a viable option. The Dutch Minister of Justice at that time, E. Hirsch Ballin of the Christian Democratic Appeal party, saw demand as an issue and believed that by cutting off the supply-demand would be put out of play.⁹⁴ Therefore, he drafted a proposal where supply could only be provided by EU citizens that fulfill further requirements to work in the Dutch sex industry from 2000 onwards. He explicitly excluded the non-EU sex workers from the legal circuit through this proposal. His reasoning was based on a victim narrative, where all migrant sex workers are essentially human trafficking victims. Hirsch Ballin believed that only the migrant sex workers were indivisible from human trafficking victims.⁹⁵ Thus, he had a more focused group compared to the generalized scope of the EU.

Furthermore, Hirsch Ballin also saw the problem of supply being in the underdevelopment of poorer countries in East Europe. He believed that these workers would take advantage of the Dutch economy and negatively impact it.⁹⁶ For this reason and the aforementioned victim narrative, the brothel ban repeal proposal of 1993 had two goals: protecting vulnerable women and girls and decreasing the number of migrant sex workers.⁹⁷ Aside from the two aforementioned narratives, a third one can also be identified;

European Parliament Debates (19 April 2012), [CRE 19/04/2012 – 5](#); Schulze et al., *Sexual exploitation and prostitution*, p. 18.

⁹³ (INI) 2013/2103

⁹⁴ *Handeling I* 1993, 3, p. 174.

⁹⁵ *Ibidem*.

⁹⁶ *Idem.*, p. 171.

⁹⁷ International Institute of Social History (further IISH), Archief Stichting Man/Vrouw en Prostitutie (further MVP), inv. 7. Tussentijds bericht vreemdelingencirculaire, p. 1.

a criminal narrative. Migrant sex workers were framed as having a higher probability of being connected to crimes because it is believed that if someone is involved in one illegal situation they are bound to be involved in multiple.⁹⁸ As they are officially excluded from the legal circuit they are forced to work in the illegal circuit, making them more vulnerable to these crimes believed to surround sex work. Moreover, the exclusion of migrant sex workers does not lead to a decrease in illegal businesses. As the parliamentary representative, G. Holdijk of the Reformed Political Party noticed, the sex industry is interconnected with crimes, thus illegal sex business will still exist parallel to the legal circuit.⁹⁹ This understanding of the sex industry as a crime and a pull factor for criminal activities puts sex workers of all backgrounds in an unfavorable position. This position becomes more precarious if the sex worker is of migrant background. Due to the excluding nature of the 1999 bill to legalize sex work in the Netherlands, migrant sex workers are criminalized instead of the sex industry as a whole. Thus, there is a thin line between victim and criminal, and the brothel ban repeal of 1999 erased said line.

Although politicians like senator H. P. Talsma of the People's Party for Freedom and Democracy noted that criminalizing all migrant sex workers because some might be victims will not improve the trafficking issue, the proposal remained unchanged.¹⁰⁰ The effect of criminalization is that the illegal circuit will expand as more workers fearing prosecution and expulsion will go underground.¹⁰¹ In an attempt to improve upon the 1999 bill, NRMSGK advised the Ministry of Justice in 2009 and again in 2014 to increase the minimum working age for sex workers from 18 to 21 years. As they had found through several yearly reports that the primary bill did not succeed at providing “clean, legal, prostitution sector” (*schone, legale, prostitutiesector*) rid of exploitation, they addressed the ministry with several measures of which the age minimum.¹⁰² Although aware of the possible shift to the

⁹⁸ Nicole Keusch, 'Migration and prostitution', in: Magaly Rodríguez García, Lex Heerma van Vos and Elise van Nederveen Meerkerk (eds.), *Selling sex in the city: a global history of prostitution, 1600-2000s* (Leiden 2017) p. 707-729, p. 723; Brants, 'The Fine Art of Regulated Tolerance,' p. 622.

⁹⁹ *Handeling I* 1993, 3, p. 148.

¹⁰⁰ *Idem*, 143

¹⁰¹ *Handeling II* 1987, 66, p. 3480; *Handeling I* 1993, 3, p. 156.

¹⁰² Corinne Dettmeijer-Vermeulen, *Landelijk kader voor prostitutiebeleid* (2013)

<https://www.nationaalrapporteur.nl/binaries/brief-aan-min.venj-landelijk-kader-voor-prostitutiebeleid_tcm23-56417.pdf> [accessed 30 March 2020]; Corinne Dettmeijer-Vermeulen, *Voer Prostitutiewet snel in, maar stel prostituee niet strafbaar* (2014)

<https://www.nationaalrapporteur.nl/binaries/nationaal-rapporteur.voer-prostitutiewet-snel-in-maar-stel-prostituee-niet-strafbaar.reactie-op-novelle_tcm23-17559.pdf> [accessed 30 March 2020]; Corinne

illegal circuit, this advice resurfaced in a 2016 debate titled: Wijziging van de Wet regulering prostitutie en bestrijding misstanden seksbranche.¹⁰³ In the race against human trafficking, increasing the minimum age is foreseeable. Looking at it from the victim narrative, where young women are often the prey of traffickers, it seems like quite a sensible requirement for working in the sex industry.

Nevertheless, the impact of this narrative-guided requisite may backfire. In 2014 the bureau NRMSGK suggested adhering to a transitional period, where the sex workers under 21 could make a career change to minimize the aforementioned negative impacts.¹⁰⁴ Looking back at senator A. Vrisekoop of D66's statement regarding the effectivity of exclusion and protection of a vulnerable group during the 1999 bill, it can be estimated that this kind of victim protection does not work.¹⁰⁵ Excluding a group from the legal circuit does not provide protection, but pushes them to the illegal circuit. As the sex worker representative from Y. Luhrs, a representative of the sex worker-led organization PROUD (formerly known as De Rode Draad), noted during the 2016 debate; youngsters between 18 and 21 are the most vulnerable group and will grow more vulnerable with this new age minimum.¹⁰⁶ The new age minimum will leave this group without legal protection instead of deteriorating the supply of young newcomers will only exacerbate existing issues.

Overlaps and domino-effect; local impact

In prior sections, the narratives used in both the EU as the Dutch national government were outlined. In figure 2 these narratives are displayed showing how connected all levels of governance are. Although this analytical chapter does not discuss many forms of governance, it takes the most important Intra-governmental organization (IGO) into account: the European Union. Although the EU has no executive power, as discussed in the Material and Methods section, they do have the power to effect change on different levels

Dettmeijer-Vermeulen, *Consultatie wetsvoorstel regulering prostitutie* (2009)

<https://www.nationaalrapporteur.nl/binaries/210109-brief-tk-van-min-bzk-consultatie-wetsvoorstel-regulering-prostitutie_tcm23-56418.pdf> [accessed 30 March 2020].

¹⁰³ Wijziging van de Wet regulering prostitutie en bestrijding misstanden seksbranche, *Kamerstukken I*, 2016/17, 33.885/34.091, B.

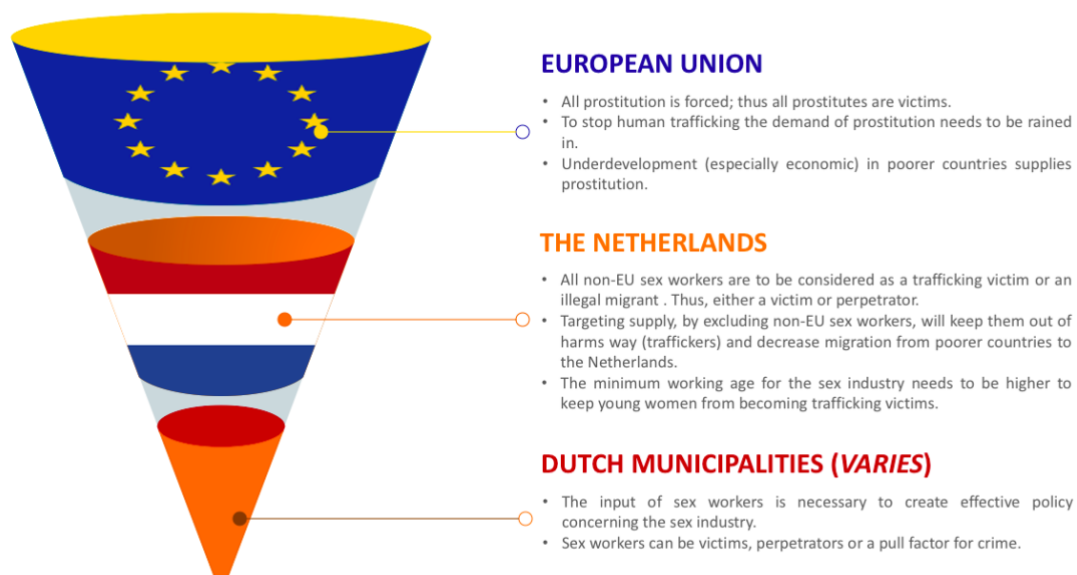
¹⁰⁴ Dettmeijer-Vermeulen, *Voer Prostitutiewet snel in*.

¹⁰⁵ *Handeling I* 1993, 3, p. 143.

¹⁰⁶ *Kamerstukken I*, 2016/17, 33.885/34.091, B, p. 22-23.

through advice, treaties and conventions. As seen in figure 2, the narratives have a continuous effect starting from the EU to the local governments. The problem statement is generally the same, although on the national level it becomes more focused. This focus makes for exclusionary means targeting already vulnerable groups as seen with the 2000 brothel ban repeal. On the EU level, the misconception of prostitution and the traffic in human beings being inherently connected led to the oversight of migrant sex workers in the legal documents. Meaning, aside from a brief mention of migrants being the most likely to become human trafficking victims in the 2020 report on *Concerted action against human trafficking and the smuggling of migrants* of the Council of Europe, the idea of migrants as sex workers did not come up.¹⁰⁷ There were no explicit articles in the consulted conventions on the rights of sex workers in the EU as there is no universal understanding of sexual services being an official job. As in some countries it is outlawed, the EU cannot make any specific or binding policies or treaties concerning sex workers. This would clash with the sovereignty of its Member States; thus, it cannot come to be.

Figure 2. Multi-level governance main narratives of prostitution



¹⁰⁷ Daft resolution A. 6 of Doc. 15023 report of the Parliamentary Assembly of the Council of Europe (06 January 2020), *Concerted action against human trafficking and the smuggling of migrants*.

Moreover, changes in the EU guidelines concerning the prevention of traffic in human beings led to a revision of national laws regarding human trafficking in 2013.¹⁰⁸ In the INI of 2013, the EU encourages its Member States to annul all legislations that repress “prostituted persons,” because such approaches did not result in the desired results.¹⁰⁹ This finding regarding the effectiveness of suppressive approaches to victims and possible witnesses is what encouraged the Dutch state to reformulate its judicial procedural approach to prosecute traffickers of human beings in 2013.¹¹⁰ Although it is clearly stated in the Dutch Aliens Act Implementation Guide (*Vreemdelingencirculair*) of 2000 and the reformulated version in 2013 that human trafficking victims or witnesses can get temporary residency under the B9-regulation, there are no specific annotations concerning non-prosecution before the 2013 reformulation of the judicial procedural approach.¹¹¹ Thus, in this aspect changes at the EU level appear to have positively impacted the protection and decriminalization of victims of traffic in human beings. Nevertheless, it takes significant time before these victims can get the B9 residency which has led many victims to leave the B9 permit to pursue refugee status because they have more rights and a longer residence permit that way.¹¹² Moreover, the road to getting a B9 permit can sometimes lead to the deportation of illegal individuals that try to report a trafficking case, and as exploiters are afraid of the legal consequences of having a victim of human trafficking working for them, these victims lose their only known source of income.¹¹³ In this context, it seems that the legality of the individual’s stay trumps their victimhood and that their victimhood is a stamp that keeps them from financial independence.

Enclosing, multilevel governance is a very complex structure that can lead to legislation-implementation gaps¹¹⁴ that increase the vulnerability of individuals working or living in this

¹⁰⁸ Aanwijzing mensenhandel (2013A012), (decreed by the College van procureurs-generaal of 21 May 2013, *Stcrt.* 2013, 16816.

¹⁰⁹ (INI) 2013/2103

¹¹⁰ (INI) 2013/2103; First paragraph of the Aanwijzing mensenhandel (2013A012)

¹¹¹ *Human Trafficking – ten years of independent monitoring*, p. 46-48.

¹¹² *Slachtoffermonitor mensenhandel 2014-2018* (Report by the Nationaal Rapporteur Mensenhandel en Seksueel Geweld tegen Kinderen), appendix to *Kamerstukken II 2019/20*, 28638, 179, p. 17-18; *Position paper* (TAMPEP February 2019) <<https://tampep.eu/wp-content/uploads/2019/02/TAMPEP-Position-paper-CEDAW-2019.pdf>> [accessed 2 May 2020], p. 3

¹¹³ *Human Trafficking – ten years of independent monitoring*, p. 52; *Onderzoek Maatschappelijke Positie Sekswerkers* (Report by the Wetenschappelijk Onderzoek- en Documentatiecentrum and the Ministry of Justice), appendix to *Kamerstukken II 2017/18*, 34193, 6, p. 26.

¹¹⁴ *Human Trafficking – ten years of independent monitoring*, p. 38.

context. These negative impacts from multilevel governance domino-effect are sustained by Den Heijer, Rijpma, and Spijkerboer, who noted that it is very difficult to formulate policies in this type of governance structure.¹¹⁵ And although this section does outline some overlaps and trickle-down effects, the connectivity between the different levels of governing authorities is still lacking as will be discussed in the following section. As noted by Eizaguirre et al. connectivity is a core element for effective multilevel governance.¹¹⁶ This missing connection explains why the measures devised to eradicate human trafficking through sex industry mediation have yet to provide the desired outcomes.

¹¹⁵ Den Heijer, Rijpma and Spijkerboer, 'Coercion, prohibition, and great expectations', p. 607.

¹¹⁶ Eizaguirre et al., 'Multilevel Governance and Social Cohesion', p. 2004.

Chapter 2: The right to have rights

As seen in the previous chapter, narratives play a big role in different governmental levels. In addition to multilevel impact, it also worked as a rationale to exclude migrants working in the sex industry. By combining the victim narrative and the idea that the sex industry is linked to crime, exclusion seemed like the best way to protect possible victims of human trafficking. This victimization of sex workers ultimately overshadows the labor rights and overall needs of professionals in the sex industry. In the end, blurring the lines between victims and workers did not result in the intended decline of human trafficking nor the decriminalization of sex work. In 2013 the NRMSGK estimated that 20,000 people were working in the sex industry in 2012, just as was the case in 1999 before the brothel ban repeal.¹¹⁷ Moreover, about 1000 people yearly have become victims of human trafficking for sexual exploitation, with a peak of 1,711 victims in 2012.¹¹⁸ These numbers are notwithstanding the unreported cases of human trafficking. Based on qualitative research, Central and Eastern Europe (including Baltic and Balkan states) (48 percent), Latin America (20 percent), and Africa (8 percent) are the most common immigration regions of migrant sex workers in the Netherlands. Excluding Latin America, the immigration regions are also the most common backgrounds for human trafficking victims following the Netherlands.¹¹⁹ As the Dutch nationality is the most common under trafficking victims, the rationale behind the exclusion of migrant sex workers is further weakened. If exclusion could protect sex workers from human trafficking Dutch sex workers would also have to be excluded from the legal circuit.

In addition to the ineffective impact of the blurred lines between traffic in human beings and the sex industry, it resulted in an increased vulnerability of migrant sex workers and stronger legal barriers. Due to the misrepresentation of sex work professionals and its

¹¹⁷ *Does legalised prostitution generate more human trafficking?* (Nationaal Rapporteur Mensenhandel en Seksueel Geweld tegen Kinderen 2013) https://www.dutchrapporteur.nl/binaries/dutch-rapporteur.does-legalised-prostitution-generate-more-human-trafficking.2013_tcm24-35348.pdf, p. 1.

¹¹⁸ *Slachtoffermonitor mensenhandel 2014-2018* 2020, p. 75.

¹¹⁹ Schulze et al., *Sexual exploitation and prostitution*, p. 27; *Prostitutie en mensenhandel* (Nationaal Rapporteur Mensenhandel en Seksueel Geweld tegen Kinderen 2016) https://www.nationaalrapporteur.nl/binaries/Prostitutie%20%26%20mensenhandel_Nationaal%20Rapporteur_interactief_tcm23-233408.pdf, p. 157; *TAMPEP National Mapping Reports*, p. 200; *Mensenhandel Zevende rapportage van de Nationaal Rapporteur* (Nationaal Rapporteur Mensenhandel en Seksueel Geweld tegen Kinderen 2009) https://www.nationaalrapporteur.nl/binaries/Zevende%20Rapportage%20Nationaal%20Rapporteur%20Mensenhandel%202009_tcm23-34825.pdf, p. 114.

connection to migration, a wave of restrictive policies have been implemented in Europe that leave migrant sex workers without *the right to have rights*. As the layered legal structure minimizes the accountability of states by basing their accountability on the absorption of regional and international laws, migrant sex workers are put in a precarious situation. To highlight some of the rights that can be threatened by this legal maze, to remind states of their obligations to safeguard human rights of all, and to provide states with advice on how to move towards policies that will guarantee the protection of sex worker, the Declaration of the Rights of Sex Workers in Europe was formulated in 2005.¹²⁰ Aside from the aforementioned elements, in table 1 a list of twelve rights that are threatened by restrictive policies are also provided in this nonbinding declaration. Out of these twelve rights, half are prominently disregarded (displayed in blue) in the Dutch national legislation concerning sex workers. Of these six rights, “the right to the highest attainable standard of physical and mental health” is especially important for sex workers as their work is mentally and physically very straining.¹²¹ In light of the strenuous access to health care and its impact on the individual’s livelihood, this chapter will firstly discuss the barriers migrant sex workers face on the local and national levels based on their intersectional identities and the narrative in play. Sections two and three will discuss the accessibility of the legal sex industry for EU and non-EU migrant sex workers concerning EU membership or lack thereof and how this impacts their access to one of the most fundamental human rights: “the right to the highest attainable standard of physical and mental health.” Lastly, section four will provide insight into the use of the human security approach and decriminalization to improve the right accessibility.

Table 1. Rights that can be threatened by discriminatory legislation and practice in Europe^{122,123}

1	The right to life, liberty and security of person
----------	----------------------------------------------------------

¹²⁰ *The Declaration of the Rights of Sex Workers in Europe*, p. 4.

¹²¹ *Onderzoek Maatschappelijke Positie Seksworkers 2018*, p. 44.

¹²² *Sex work migration health* (TAMPEP 2009) < https://tampep.eu/wp-content/uploads/2017/11/Sexworkmigrationhealth_final.pdf > [accessed 2 May 2020], p. 11; *The Declaration of the Rights of Sex Workers in Europe*, p. 5.

¹²³ These twelve rights are displayed in *The Declaration of the Rights of Sex Workers in Europe of 2005* identified by the International Committee on the Rights of Sex Workers in Europe as most threatened out of the various rights found in a collective of international treaties and declarations (p. 4-5).

2	The right to be free from arbitrary interference with one's private and family life, home or correspondence and from attacks on honor and reputation
3	The right to the highest attainable standard of physical and mental health
4	The right to freedom of movement and residence
5	The right to be free from slavery, forced labor and servitude
6	The right to equal protection of the law and protection against discrimination and any incitement to discrimination under any of the varied and intersecting status of gender, race, citizenship, sexual orientation etc.
7	The right to marry and found a family
8	The right to work, to free choice of employment and to just and favorable conditions of work
9	The right to peaceful assembly and association
10	The right to leave any country, including one's own, and to return to one's own country
11	The right to seek asylum and to non-refoulement
12	The right to participate in the cultural and public life of society

Intersectionality, policy barriers, and narrative in play

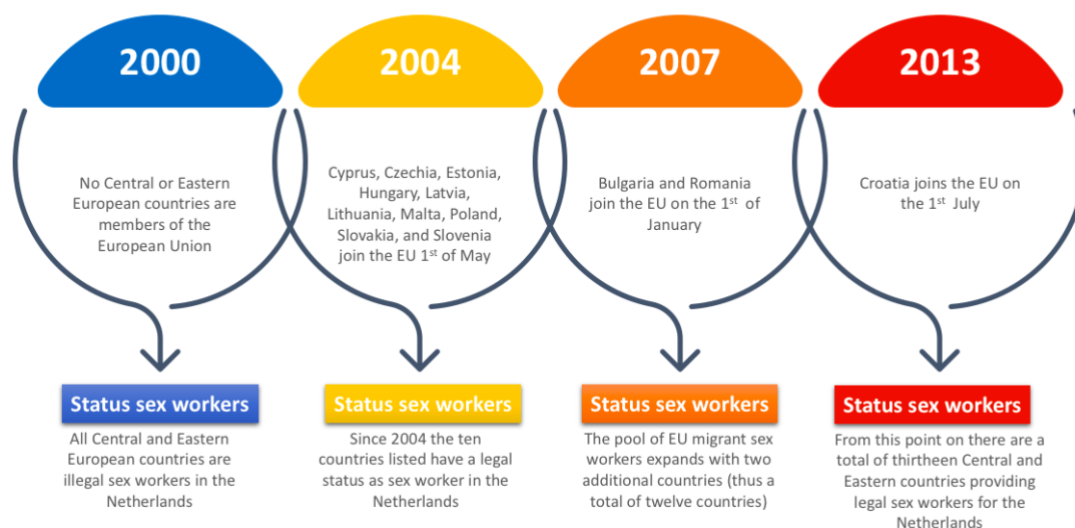
As previously discussed, multilevel governance creates spaces where migrants are not able to access their rights. The membership-based structure of the EU further intensifies the position of non-EU migrants. As membership to the EU implicates certain benefits, non-members will be lagging in comparison. Such differences can have negative impacts on individuals due to their layered identity structures that put individuals in a very unequal position.¹²⁴ This notion regarding the impact of an individual's layers of inequality, is known as intersectionality. It is an understanding that aside from independent identity markers, time and space can also put an individual in a precarious situation.¹²⁵ This understanding of a fluid identity is very important when trying to grasp the legality of sex workers in the Netherlands in the last decades. As previously mentioned, EU membership is quite beneficial. One such benefit is the freedom of movement and the right to work in any

¹²⁴ Bastia, 'Intersectionality, migration and development', p. 238.

¹²⁵ Tungohan, 'Global care chains', p. 9-10.

Member State as an equal.¹²⁶ Thus, this right made it possible for non-Dutch sex workers from the EU Member State to work legally in the Netherlands from 2000 onwards.

Figure 3. Stages of legality for migrant sex workers from Central and Eastern European countries after 2000



Nevertheless, during the period between the legalization of sex work in the Netherlands and today, several countries have joined the EU. Specifically, the biggest group of non-Dutch sex workers (Central and Eastern European migrants) in the Netherlands have been impacted by membership changes in the EU. From the 1st of May 2004 Cyprus, Czechia, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia joined the EU, Bulgaria and Romania joined on the 1st of January 2007, and Croatia joined on the 1st of July.¹²⁷ Hence, this group of migrant sex workers was not EU citizens before 2004, but suddenly became a part of the legal labor migration.

This shift from illegal to a legal sex worker significantly impacted the sex industry's human capital. TAMPEP noted a 16 percent increase in sex workers from Central and Eastern European countries in 2008 and stated that it was indeed a direct impact of the new EU memberships.¹²⁸

¹²⁶ Preamble paragraph two of the European Convention on the Legal Status of Migrant Workers (CETS) 1977/93 of the Council of Europe.; *Werken in de prostitutie in Nederland*; Europa.eu, 'Countries,' *European Union* (2020) <https://europa.eu/european-union/about-eu/countries_en> [accessed 29 June 2020].

¹²⁷ Europa.eu, 'Countries,' *European Union* (2020) <https://europa.eu/european-union/about-eu/countries_en> [accessed 29 June 2020].

¹²⁸ TAMPEP *National Mapping Reports*, p. 200.

Table 2. Nationality of sex workers reported in your country? Top 10 countries from which migrant sex workers come from:

2006		2008	
1. Hungary	6. Bulgaria	1. Romania	6. Dominican Republic
2. Poland	7. Lithuania	2. Hungary	7. Russia
3. Czech Republic	8. Estonia	3. Bulgaria	8. Nigeria
4. Slovakia	9. Colombia	4. Poland	9. Thailand
5. Romania	10. Ghana	5. Colombia	10. Slovakia

Source: TAMPEP National Mapping Reports 2010

As seen in table 2 Romania and Bulgaria went from the 5th and 6th place to the 1st and 3rd place, while Hungary and Poland went from 1st and 2nd to 2nd and 4th. This shift is representative of the 2004 and 2007 EU expansion, as the countries that placed slightly lower on the list enter the EU earlier than the countries that placed significantly higher in 2008. This shows how great the impact of becoming an EU Member State is to the number of migrant sex workers. This is also a perfect example of intersectionality, showing how the lack of a legal working status can negatively impact the income accessibility of some migrants. These membership shifts also led to an outflow of Romanian and Bulgarian sex workers before the observed increase in 2008. Due to their associate title before the 2007 official fusion, Romanian and Bulgarian sex workers were obliged to return to their countries of origin before the 1st of May 2004, to request legal permits to re-enter the Netherlands. While they could work in the sex industry in the desired form during the age of tolerance, after legalization in 2000 and the expansion of the EU later on, sex workers from these countries could only get a permit if they could show that they were going to work independently in the Netherlands.¹²⁹ This requirement is one expressed in the 2000 brothel ban repeal and later also applied to Croatian sex workers, because state officials feared that a middleman (pimp or madam) would exploit the sex workers.¹³⁰ With the middleman in mind, independence became a core value for a career in the sex industry.

¹²⁹ S. Biesma et al., *Verboden bordelen Evaluatie opheffing bordeelverbod: niet-legale prostitutie* (Wetenschappelijk Onderzoek- en Documentatiecentrum 2006) https://www.wodc.nl/binaries/1204c-volledige-tekst_tcm28-68252.pdf, p. 62-63.

¹³⁰ IISH, MVP, inv. 7, Tussentijds bericht vreemdelingencirculaire, p. 1.

This and other requirements to access the legal sex industry are listed in the 2015 *Werken in de prostitutie in Nederland – wie mag wat wanneer?* This state-sponsored document provides a clear understanding of who can or cannot work in the Netherlands as a sex worker, and under what conditions. The most important point discussed in this topic and by several researchers is that the government does not give working permits to sex workers.¹³¹ Thus, they cannot enter the country legally, simply based on job availabilities in the sex industry as is the case for other professions. The active Minister of Justice in 1993 Hirsch Ballin, actually stated that it was never his intention to provide migrant sex workers with a working permit. He said that this provision of work permits for migrant sex workers was a burden that he never wanted the government to deal with.¹³² Additionally, providing migrant sex workers with a work permit would have conflicted with the Senate's goal to decrease the number of migrant sex workers in the Netherlands,¹³³ thus eliminating work permits as a way into the legal sex industry. Therefore, it is quite difficult for migrant sex workers to enter the country primarily, and to work legally secondarily. The legal circuit is divided into three labor structures: independent, opting-in, and wage labor. The first labor structure is preferred and encouraged by the national government as aforementioned, while the second one was created to give sex workers more leeway and independence. The opting-in regulation was coined by the Dutch government in 2001 and can be understood as an in-between status to give sex workers greater flexibility and independence while working for a sex business or with a mediator. It combines elements of wage labor with independent working. Working under the opting-in regulation means that a sex worker works in a sex business but not for the owner. The owner of the establishment does receive the client's payment, but only uses it to pay the sex worker and to pay the sex worker's taxes.¹³⁴ Thus, the mediator is responsible for the administrative duties of the sex worker. In the complex legal and administrative situation sex workers work in, this proposal provided compromise although in practice it placed sex workers at the mercy of sex business owners as will be discussed below.

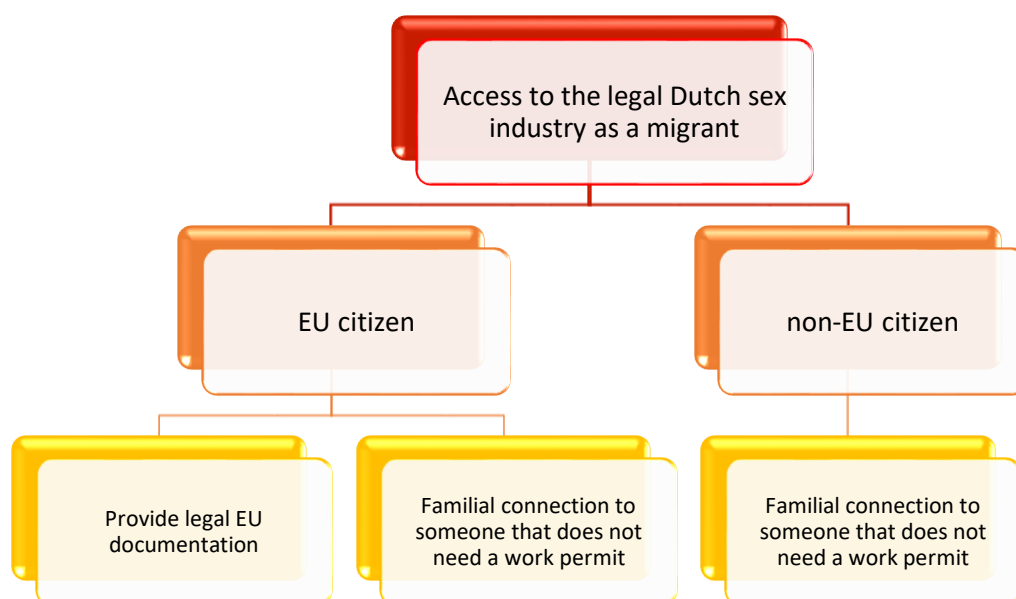
¹³¹ Ibidem; Schulze et al., *Sexual exploitation and prostitution*, p. 27 and 36; *Sex work migration health*, p. 21 and 33.

¹³² *Handeling I* 1993, 3, p. 171.

¹³³ IISH, MVP, inv. 7, Tussentijds bericht vreemdelingencirculaire, 1; *Human Trafficking – ten years of independent monitoring*, p. 27.

¹³⁴ *Kamerstukken II* 2000/01 27827, 3 (MvT); *Onderzoek Maatschappelijke Positie Sekswerkers* 2018, 2p. 0.

Figure 4. Requirements to work in the Dutch sex industry (2015)



The third structure most resembles mainstream labor relations between employees and employers. As a wage labor sex worker, the individual has the right to access social security laws as paid leave, to minimum wage, to vacation days, and paid pregnancy leave.¹³⁵ In comparison to the other possibilities, wage labor seems most beneficial regarding rights and social security. Nevertheless, only 3 percent of sex workers choose this type of work relation,¹³⁶ as it is the only one out of the three options that directly puts sex workers in an unbeneficial power relation with exploiters. In the figure below the requirements to work legally in the Dutch sex industry are illustrated showing a clear difference between EU and non-EU citizen access. Firstly, except for Croatia all EU migrants, including the 2004 and 2007 Member States, can work under any of the three work agreements (independent, opting-in, or wage labor) in the Netherlands as long as they have legal documentation to demonstrate their EU citizenship. Because Croatia still had an EU associate title when the requirements were laid out, their citizens could only work independently in the sex industry. The requirement document does state that unless decided otherwise, Croatia would also enjoy the benefits that other EU countries have after the 1st of July 2015.¹³⁷ As there is nothing stating otherwise, the aforementioned limitation expired in 2015.

¹³⁵ *Onderzoek Maatschappelijke Positie Sekswerkers* 2018, p. 20.

¹³⁶ *Ibidem*.

¹³⁷ *Werken in de prostitutie in Nederland*, footnote 1.

Moreover, sex workers from the EU Member States, including Croatia, can work independently or for a sex establishment if their residency is connected to someone that does not need a work permit (i.e. Dutch nationals and migrants with a residence permit). If they do not have such connections, they can only work as independent sex workers. These individuals are also prohibited to work under the opting-in regulation, although this regulation is supposed to sever most suppressive power relations between a sex business owner and a sex worker.¹³⁸ Secondly, as the previous requirement states non-EU sex workers can only work in the Dutch sex industry if they have a familial connection to someone that does not need a work permit.¹³⁹ Thus, without a familial bond to the country and its labor market, many migrant sex workers are unable to join the legal sex industry. Furthermore, non-EU migrants cannot work in the sex industry:

- If they have a residence permit that requires an additional working permit;
- they enter the country with a tourist visa;
- they are from a country that does not require a visa;
- or if they are independent sex workers without a free pass for working in the country.¹⁴⁰

Hence, it is difficult for migrant sex workers to work legally in the Netherlands because the requirements are tailored to push these workers to the independent sector, even though this only increases their vulnerability. Thus, the goal to decrease migrant sex workers supersedes the importance of accessing the legal sex industry and the access to “business services” (*zekelijke dienstverleningen*) that they are entitled to as legal workers.¹⁴¹ Based on this observation the “prohibition, prevention, and protection” approach used to regulate the sex industry is not accounting for the prevention of human rights violations against sex workers or sex workers’ overall protection.¹⁴² In addition to the boundaries aforementioned, there was a criterion called *regiobinding* that lawfully increased the disadvantage of the general migrant population but was prohibited in

¹³⁸ Idem.

¹³⁹ Ibidem.

¹⁴⁰ Ibidem.

¹⁴¹ *Onderzoek Maatschappelijke Positie Sekswerkers* 2018, p. 14-15.

¹⁴² *Sex work migration health*, p. 26.

2015.¹⁴³ This criterion states that individuals looking to access health care, welfare, or care indication (*zorgindicatie*) need to have a lengthy bond as specified by the municipality where they reside or work at the moment of their request. It can be through familial bonds or the individual's bond with a specific region.¹⁴⁴ Such a bond overlooks the increased mobility of migrants (sex workers) internally. As for migrant sex workers moving towards the available clientele or moving to more lenient municipalities is important, they are unable to create this bond or acquire the rights for which this bond is needed.¹⁴⁵ Thus, restrictive policies that focus more on the regulation of immigration instead of the improvement of working conditions for sex workers as previously discussed, lead to more possible victims of exploitation and have no significant effect on actual immigration flows.¹⁴⁶ Therefore, immigration regulation, and sex work conditions and sex workers' rights need to be separated if the government wants to see more improvement in either sector.¹⁴⁷

A good start is to change the narrative guiding their understanding of the sex industry and its impact on the broader social order. The fact that the focus of the brothel ban repeal is on fighting human trafficking and not improving working conditions for sex workers should have already been a red flag.¹⁴⁸ Such narrative-based policies negatively impacts migrant sex workers, because it takes their agency away by painting them all as victims, and it justifies restrictive and at times discriminatory approaches to safeguard possible victimhood.¹⁴⁹ The Policy Department C of the European Union Citizens' Rights and Constitutional Affairs and the NRMSGK reported that the brothel ban repeal did not provide the desired outcomes,¹⁵⁰ but instead it hampered sex worker's access to fundamental rights as the health law (*Ziektewet*).¹⁵¹ Therefore, separating the issue of trafficking from sex work is essential to create focused policies that will effectively protect migrant sex workers'

¹⁴³ This prohibition came into action on January 1st 2015 officially, but research shows that it was still being used after the prohibition <https://belangenbehartiger.nl/begrippenlijst/regiobinding/>. *Kamerstukken II* 2019/20, 29325, 107, p. 14, 20, 64; *Onderzoek Maatschappelijke Positie Sekswerkers* 2018, p. 37-39.

¹⁴⁴ *Onderzoek Maatschappelijke Positie Sekswerkers* 2018, p. 48-49 and 37-39.

¹⁴⁵ Keusch, 'Migration and prostitution', 708 and 714; *Landelijk kader voor prostitutiebeleid; Consultatie wetsvoorstel regulering prostitutie; TAMPEP National Mapping Reports*, p. 206.

¹⁴⁶ *Position paper*, p. 1.

¹⁴⁷ *Idem.*, p. 2.

¹⁴⁸ *Human Trafficking – ten years of independent monitoring*, p. 27.

¹⁴⁹ *Sex work migration health*, p. 28; *TAMPEP on the situation of national and migrant sex workers in Europe today* (TAMPEP July 2015) < https://tampep.eu/wp-content/uploads/2017/11/TAMPEP-paper-2015_08.pdf > [accessed 2 May 2020], p. 6.

¹⁵⁰ Schulze et al., *Sexual exploitation*, 35; *Slachtoffermonitor menenhandel 2014-2018* 2020, p. 17.

¹⁵¹ *Onderzoek Maatschappelijke Positie Sekswerkers* 2018, p. 12.

human security instead of using reactive policies to apprehend traffickers.¹⁵² The misguided focus on possible crimes surrounding the sex industry makes for ineffective policies and fails to improve the stigma surrounding this field of work.¹⁵³ Combatting trafficking should not be a synonym for combatting sex work, because it results in unsuccessful policies.¹⁵⁴

Accessibility of health care for EU and non-EU migrant sex workers

As aforementioned, there are several rights outlined in international treaties that all human beings should have access to but is sadly not the case for sex workers. This unequal access to their rights makes sex workers feel stigmatized based on their profession. They believe that it is unjust to ask them to fulfill several requirements to access the legal circuit while restricting their access to their rights.¹⁵⁵ A specific context where this mismatch between requirements and rights' access occurs is when sex workers are encouraged by the state to work (semi)independently. This element of independence although well-intended limits access to health care of migrant sex workers. As they do not work as wage labor, it is very difficult for a *legal migrant sex worker*¹⁵⁶ to get the necessary social security benefits. Although they can get health care like other independent workers, the stigma tied to their profession makes it difficult for them to get the right insurance to cover their health care needs.¹⁵⁷ Moreover, EU migrant sex workers that have insurance in the country of origin, are confused as to the need to acquire a Dutch one or not.¹⁵⁸ Thus, leaving them unprotected at times. This issue affects 95 percent of sex workers¹⁵⁹ and leads to much confusion.

Additionally, as mentioned in the prior section, opting-in was used to try and diversify the working relations and structures of sex workers by combining elements from complete independence to complete dependence of wage labor. Nevertheless, research done in 2006 concluded that opting-in would not provide sex workers with the rights they need:¹⁶⁰ more

¹⁵² *Onderzoek Maatschappelijke Positie Sekswerkers* 2018, p. 69-70; *Human Trafficking – ten years of independent monitoring*, p. 61; *Sex work migration health* p. 28.

¹⁵³ *Onderzoek Maatschappelijke Positie Sekswerkers* 2018, p. 69-70.

¹⁵⁴ *Position paper*, p. 3.

¹⁵⁵ *Onderzoek Maatschappelijke Positie Sekswerkers* 2018, p. 14.

¹⁵⁶ Sex workers that fulfill the requirements to work in the legalized sex industry.

¹⁵⁷ *Onderzoek Maatschappelijke Positie Sekswerkers* 2018, p. 61.

¹⁵⁸ *Idem.*, p. 28-29 and 53.

¹⁵⁹ Schulze et al., *Sexual exploitation*, 34; *Onderzoek Maatschappelijke Positie Sekswerkers* 2018, p. 16.

¹⁶⁰ *Onderzoek Maatschappelijke Positie Sekswerkers* 2018, p. 20.

rights or freedoms for sex workers. Instead, it gives the exploiter more power over the sex worker. In practice, this regulation puts sex worker's careers and livelihood in the hand of their exploiters. Because the exploiter can choose to make their establishment an opting-in working space without the consent of the people already working there, they have the power to choose sex worker's working conditions. Consequently, the sex worker's agency is jeopardized through opting-in. Moreover, opting-in limits access to health care as is the case working independently.¹⁶¹ Thus, neither regulation provides tools to balance these work structures and the accessibility of rights, because neither accounted for the boundaries sex workers would have to experience in practice. If the government encourages sex workers to work independently or semi-independently, they should make tools and regulations available to counteract these work conditions ensuring access to health care among other rights for sex workers.

Moreover, the United Nations' Committee on Economic, Social, and Cultural Rights (UN-CESCR) also notes that access to health care is an essential element of the right to good health.¹⁶² The universality of health care access is important because someone's status thus not change their need for health support. Nevertheless, it is commonplace that health care accessibility depends on an individual's residence and insurance status.¹⁶³ This is truly problematic because migrants' mobility increases their risk of contracting and spreading diseases, making them the most vulnerable residents.¹⁶⁴ In addition to being a migrant, being a sex worker also increases health risks. Research shows that sex workers have a greater chance than the general population to experience traumas, depression, physical abuse, and drug and alcohol abuse.¹⁶⁵ Migrant sex workers in the Netherlands stated that the "lack of access to health and social care services" is third on their list of career-related vulnerabilities.¹⁶⁶ Research by the Wetenschappelijk Onderzoek- en Documentatiecentrum (WODC) on the health of sex workers between 2001 and 2006, supports their statement. It reported a decline in the emotional wellbeing of sex workers in the Netherlands,¹⁶⁷ although

¹⁶¹ *Onderzoek Maatschappelijke Positie Sekswerkers 2018*, p. 20-21.

¹⁶² *Sex work migration health*, p. 38-39.

¹⁶³ *Sex work migration health*, p. 41.

¹⁶⁴ *Final report*, p. 44.

¹⁶⁵ Daft resolution A. 46 of Doc. 15023 report of the Parliamentary Assembly of the Council of Europe (06 January 2020), *Concerted action against human trafficking and the smuggling of migrants. ; TAMPEP National Mapping Reports*, p. 201-202.

¹⁶⁶ *TAMPEP National Mapping Reports*, p. 202.

¹⁶⁷ Schulze et al., *Sexual exploitation*, p. 34.

the Regioplan noted a slight improvement in 2014. Notwithstanding the observed improvement in 2014, health care accessibility needs to be improved because sex work is a very straining profession, physically and mentally.¹⁶⁸ Thus, the governments' facilitation of free STI screening and treatment¹⁶⁹ is not enough to protect the health of sex workers, for health is as quoted by TAMPEP and described by "the World Health Organization 'a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.'"¹⁷⁰ Untreated mental health and substance abuse will only trap sex workers in their current positions, while slowly diminishing their agency and eventually making them a victim.¹⁷¹ In 2010 TAMPEP recorded an increase in migrant sex worker vulnerability based on declining working conditions, greater social isolation, and exclusion, and continues substance abuse.¹⁷² Hence, their health issues remained untreated while their access to support networks withered and their work environment worsened. Thus, exacerbating the pressure experienced by this group and leaving them trapped in their precarity.

Towards human security-based sex work policies

This section builds upon the problem statement discussed in the previous section, linking victim narratives to human trafficking and using them generically for all migrant sex workers. This misconception feeds into the existing stigma of the industry and leaves migrant sex workers more vulnerable to exploitation. Therefore, "migrant sex workers should be considered as part of the labor migration of women rather than victims of trafficking."¹⁷³ By changing the governing narrative, the policies will better correlate with the targeted problem. But to do this the general approach to policy formulation of vulnerable groups also needs to be reformulated. As TAMPEP noted, involving sex workers in the debates concerning their wellbeing is essential for the success of said debates.¹⁷⁴ Moreover, involving sex workers in debates concerning their faiths also empowers them to

¹⁶⁸ *Onderzoek Maatschappelijke Positie Sekswerkers 2018*, p. 17

¹⁶⁹ *Sex work migration health*, p. 43.

¹⁷⁰ *Sex work migration health*, p. 38.

¹⁷¹ Daft resolution A. 46 of Doc. 15023 report of the Parliamentary Assembly of the Council of Europe (06 January 2020), *Concerted action against human trafficking and the smuggling of migrants*.

¹⁷² *TAMPEP National Mapping Reports*, p. 204.

¹⁷³ *Position paper*, p. 4.

¹⁷⁴ *TAMPEP on the situation of national and migrant sex workers in Europe today*, p. 5; Schulze et al., *Sexual exploitation*, p. 23.

come up for their rights.¹⁷⁵ Thus, giving them more agency and greater support in their personal development. These are all elements embodied by the human security approach as discussed in the theoretical framework.

Furthermore, human security also a very contested topic in debates concerning the sex industry: dignity.¹⁷⁶ Hence, human security is the most favorable approach to take stigmatization, individual human rights, and empowerment into account when formulating policies regarding the sex industry. Therefore, the national government of the Netherlands should seriously consider adopting this approach when coining future policies related to sex workers. In addition to the human security approach, and changing the guiding narrative, the Dutch government should also pursue full decriminalization of the sex industry. That is to say, all punitive laws concerning sex work should be annulled and regulations should be in play to make sure that the government safeguards sex worker's human rights regardless of their background or legal status. Through decriminalization, the legal barriers discussed in the previous section would be dismantled and the vulnerability of migrant sex workers will improve. The increased access to human rights and protection from criminalization will counteract restrictive policies and make sex worker's voices heard, while also decreasing their vulnerability concerning 'the right to have rights'.¹⁷⁷ Additionally, the application of the human security approach will support the growth of sex workers as empowered and self-determined individuals.

With the knowledge of the confusing nature of the policies and regulations surrounding sex work in the Netherlands, a new sex industry regulation called Act to regulate prostitution and combat abuses in the sex industry (Wrp) (*Wetsvoorstel Regulering prostitutie en bestrijding misstanden seksbranche*) was proposed to address the misunderstandings experienced by sex industry actors (including state authorities) in 2009. The Wrp is meant to provide more explicit regulations "to address abuses in the sex industry, to offer better protection for prostitutes, and to provide better support for combatting human trafficking, prostitution by minors, and forced prostitution."¹⁷⁸ Although this proposal has been on a shelf in the Senate since March 2011 causing a municipal level

¹⁷⁵ *Final report*, p. 2.

¹⁷⁶ *Ibidem*.

¹⁷⁷ *TAMPEP on the situation of national and migrant sex workers in Europe today* p. 1-2; Estrada-Tanck, 'Human Security', p. 156.

¹⁷⁸ Schulze et al., *Sexual exploitation*, p. 38; *Human Trafficking – ten years of independent monitoring*, p. 28.

impasse, it is a sign of change to come.¹⁷⁹ This policy has many positive aspects as well as several drawbacks. On the one hand, the Wrp embodies the understanding that there are many confusions regarding sex work regulations and that sex workers need better protection. On the other hand, the new elements of this policy are very focused on protecting possible victims of human trafficking, instead of improving the working conditions and safeguarding the rights of sex workers themselves. This victim narrative-based focus can become a reiteration of past mistakes, as it is once more focused on the wrong problem statement. Due to the focus on human trafficking, increasing the chance of prosecuting has come to supersede the importance of a good and reliable information source for sex workers. Particularly, when the Wrp is enacted municipal registration of sex workers will be annulled, and the provision of fundamental information on rights, career change, and so forth will be a task of sex businesses instead of municipalities. Thus, sex workers will lose an instance of contact with local governments, and the certainty of information provision.¹⁸⁰

Additionally, this new policy criminalizes clients if the sex worker is underaged, works in an unlicensed establishment, or is a trafficking victim.¹⁸¹ There was much criticism concerning its impact on the sex workers' safety by Luhrs of PROUD. She noted that making clients responsible for the irregularity of a sex worker or their workplace will rattle them, making them less willing to share traceable information. The absence of such information makes it difficult for sex workers to assess if it is safe to accept a client before their encounter.¹⁸² Moreover, the NRMSGK and a large group for NGOs and researchers also disagreed with this approach as it criminalizes the sex work in general and because criminalizing clients 'undermines sex workers' self-determination, drives them underground and heightens the stigma and discrimination which already marginalizes this group.'¹⁸³ Hence, the EU and its Member States are actively ignoring evidence-based advice from several actors by pursuing restrictive policy against the demand for sexual services.

¹⁷⁹ *Slachtoffermonitor mensenhandel 2014-2018* 2020, p. 45; *Onderzoek Maatschappelijke Positie Sekswerkers* 2018, p. 18; Brief van de Minister van Veiligheid en Justitie of 14 April 2015, kst/34193/1, p. 1; *Onderzoek Maatschappelijke Positie Sekswerkers*, p. 46.

¹⁸⁰ Dettmeijer-Vermeulen, *Voer Prostitutiewet snel in*, p. 2; Brief van de Minister van Veiligheid en Justitie van 14 april 2015, kst/34193/1, p. 10.

¹⁸¹ *Prostitutie en mensenhandel*, p. 98 and 114-115; *TAMPEP on the situation of national and migrant sex workers in Europe today*, p. 4.

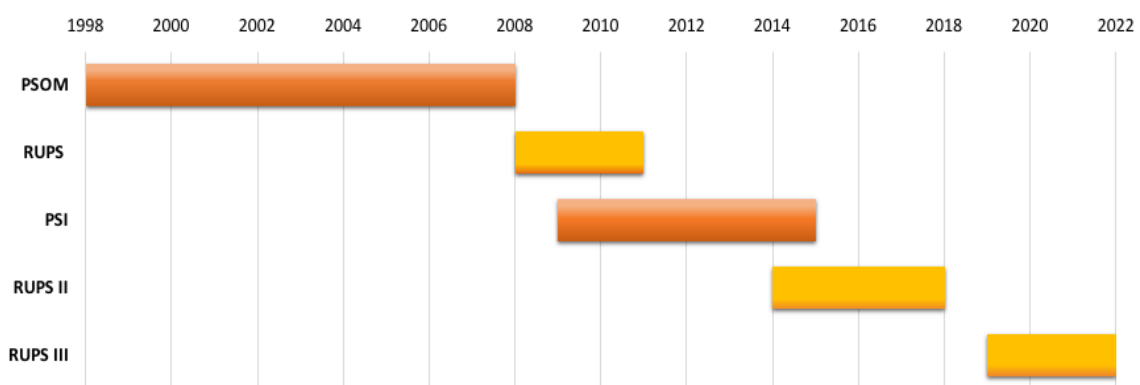
¹⁸² *Kamerstukken I*, 2016/17, 33 885/ 34.091, B, p. 6.

¹⁸³ Schulze et al., *Sexual exploitation*, p. 38-39.

Chapter 3: The impact of multilevel governance gaps on migrant sex workers

In the previous chapters, the narratives and policies were discussed, outlining the general connotations and their impacts on sex workers; particularly migrant sex workers. In chapter two the policies aimed at regulating the sex industry and in the influx of migrant sex workers (be it EU or non-EU citizens) were examined, along with the accessibility of the legal sex industry and access to human rights. Many barriers to accessibility were identified, but no information on the approach to counteract these shortcomings was discussed. This is the central topic of chapter three. This chapter will consider the two main approaches, provided by the state to address the issue of (migrant) sex work, and how accessible these tools are to EU and non-EU migrant sex workers. The first section will unpack and challenge the return migration rationale behind the exclusion of migrant sex workers espoused by the 2000 brothel ban repeal. Secondly, the RUPS will be analyzed to assess its access, impact, and shortcomings concerning non-Dutch sex workers.

Figure 5. Tools available to support the exclusion of migrant sex workers



Going back home

The brothel ban repeal as many debates and policies on trafficking and the sex industry hinges on the idea of ‘home’ and return to such a space. But what constitutes a home? Is it solemnly based on someone’s origins? Is it a static place or can it change throughout someone’s life? These questions all point to one thing: that the definition of home can take many forms and is therefore a very unstable concept to use in such complex and impactful

topics. The concept of *home* in a transnational context as described by Helen Taylor is unbounded by state borders or static notions tied to the place of birth.¹⁸⁴ Thus, an individual's home can be multiple, depending on the context and period looked at, and an individual's bond to a territory. Understanding this abstract definition of home is important in the context of return migration and the brothel ban repeal of 2000 that was greatly based on it. Although return migration is usually focused on other forms of labor migration, sex workers are also migrants that travel for work. Hence, this theory is also applicable to them. Especially in the context of refugee return migration similarities can be found (e.g. reintegration difficulties) that support the issue of *home*.

As aforementioned, the brothel ban repeal enacted in the year 2000 would only legalize sex work for EU citizens while excluding non-EU citizens. The premise guiding this policy was that exclusion would force non-EU sex workers to return to their countries of origin where they were believed to be safer from traffickers.¹⁸⁵ This argument, as previously discussed, is very controversial and was contested by the People's Party for Freedom and Democracy, N. Rempt-Halmmans de Jongh, F. Bolding of the GreenLeft party, and others.¹⁸⁶ The idea of return migration in such a context as in the context of refugees is very complex. In both cases going *home* might not be a viable option. For refugees, this may be due to the loss they suffered, and the bond they had to create to survive and move forward in their new living context.¹⁸⁷ This does not differ much from the migrant sex workers that were living and working in the Netherlands from the tolerance era until the legalization bill was enacted. These sex workers, as mentioned by several researchers, politicians, and the 1993 minister of Justice, Hirsh Ballin, moved primarily due to financial reasons and the accommodating sex scene in the Netherlands.¹⁸⁸ Looking at this economic reasoning, it seems highly unlikely that this group of migrants would want to return to their countries of

¹⁸⁴ Helen Taylor, 'Refugee, the state, and the concept of home', *Refugee Survey Quarterly* 32:2 (2013) p. 130–152, p. 132 and 134-135.

¹⁸⁵ *Handeling I* 1993, 3, p. 174.

¹⁸⁶ *Handeling II* 1987, 66, p. 3480; *Handeling I* 1993, 3, p. 156.

¹⁸⁷ Black, Richard, Khalid Koser, and Laura Hammond, 'Examining the Discourse of Repatriation: Towards a More Proactive Theory of Return Migration,' in: *The end of the refugee cycle?: refugee repatriation and reconstruction* (New York: Berghahn 1999) p. 227–244, p. 229-232.

¹⁸⁸ *Handeling I* 1993, 3, p. 171; European Parliament Debates (4 June 2008), CRE 04/06/2008 – 28; European Parliament Debates (19 January 2010), CRE 19/01/2010 – 10; European Parliament Debates (14 December 2010), CRE 14/12/2010 – 7; MacKinnon, 'Pornography as trafficking,' p. 995; Adelman, 'International sex trafficking', p. 389; Brants, 'The fine art of regulated tolerance', p. 622.

origin, especially without achieving their goals.¹⁸⁹ Thus, as Senator A. Vrisekoop of D66 said during the debates before the brothel ban repeal, it is illogical to believe that the 40 to 60 percent of migrant sex workers working in the Netherlands will undoubtedly leave because they are excluded from the legal circuit.¹⁹⁰ Their return may be a setback instead of a way forward, making the probability of sex workers moving *back home* after the repeal very slim. Although sex work often has a temporal essence to it, this does not mean that the timeline set by the sex workers excluded correlate with the legalization of sex work in the Netherlands.

Moreover, as P. Raghuram mentions in *Which Migration, What Development? Unsettling the Edifice of Migration and Development*, development or the lack thereof can impact migration.¹⁹¹ In the chapter on narratives, this idea was already introduced through the economic victimhood that is believed to have pushed migrants to move to the Netherlands to work in the sex industry. Thus, the lack of economic development in this context led to the migration of sex workers. This idea was also negatively highlighted by former minister of Justice Hirsh Ballin. He believed that Eastern European sex workers that arrived in the Netherlands after the fall of the Berlin Wall would abuse the Dutch economy.¹⁹² This fear of possible destabilization or decrease in assets due to an increase in immigrants is quite a popular one in regards to labor migrants.¹⁹³ Such positions guide restrictive migration policies that are aimed at limiting or slowing the influx of foreigners. The connection between development and migration is so important that the EU encourages its Member States to cooperate with regions where there are many developing countries to keep citizens from these regions to migrate to the EU.¹⁹⁴ Thus, understanding the impact development can have on migration the EU states are to invest in the development of less developed regions to create more opportunities for the citizens of said regions to stay. This

¹⁸⁹ Jean-Pierre Cassarino, 'Theorising Return Migration: The Conceptual Approach to Return Migrants Revisited', *International Journal on Multicultural Societies* 6:2 (2004) 253 -279, 257-258; Hein de Haas, Tineke Fokkema, and Mohamed Fassi Fihri, 'Return Migration as Failure or Success?', *Journal of International Migration and Integration* 16:2 (2014) p. 415–429 doi:10.1007/s12134-014-0344-6, p. 416-417.

¹⁹⁰ *Handeling I* 1993, 3, p. 143.

¹⁹¹ Parvati Raghuram, 'Which migration, what development? Unsettling the edifice of migration and development,' *Population, Space and Place* 15 (2009) p. 103–117 doi:10.1002/psp.536, p. 104.

¹⁹² *Handeling I* 1993, 3, p. 171.

¹⁹³ Betts, 'Global migration governance', p. 21.; Czaika and De Haas, 'The Effectiveness of Immigration Policies,' p. 490.

¹⁹⁴ Den Heijer, Rijpma and Spijkerboer, 'Coercion, Prohibition, and Great Expectations', p. 11 and 21.

approach and a need for increased cooperation with foreign countries led to the emergence of the Programme for Cooperation with Emerging Markets (PSOM) and later on the Private Sector Investment program (PSI).¹⁹⁵ The PSOM was an initiative formulated by the Dutch Ministry of Development Cooperation in 1998. It aimed to reduce poverty by injecting innovative businesses in a number of developing countries. By encouraging local and Dutch entrepreneurs to invest in these businesses many new ideas that would otherwise not have materialized came to be.¹⁹⁶

In 2008 PSOM was ended due to legal issues regarding the way the investments were made. The investments ticked all the boxes for a subsidy and could no longer move forward in such a framework. Therefore, in 2009 the PSOM was transformed into the PSI. This investment framework did not differ much from the former concerning the goal of poverty alleviation through innovative projects in developing countries.¹⁹⁷ This investment program lasted till 2015 when the Ministry of Foreign Affairs decided to stop it for good. During their 17 years of existence, these two programs made significant impacts in Africa, Asia, Latin America, and Central and Eastern Europe, with 69 percent of the projects ending successfully in 2010.¹⁹⁸ Nevertheless, based on the information provided by the Ministry of Foreign Affairs in *Final report evaluation PSOM/PSI 1999-2009 and MMF* and *Investing in Global Prospects For the World, For the Netherlands*, it seems that these investments are not directly linked nor have a strong correlation with the sex worker sending countries.¹⁹⁹ There are two reasons that could explain the lack of investment abroad to incentivize sex workers to stay in their countries of origin. Firstly, as aforementioned the idea was by excluding migrant sex workers this group would *return home* and the number of migrant sex workers would decline. Secondly, after several Central and Eastern European countries joined the EU in 2004, 2007, and 2013, they were entitled to EU support tools and services.²⁰⁰ Furthermore, the fact that they are now a part of the EU means that their

¹⁹⁵ *Final report evaluation PSOM/PSI 1999-2009 and MMF* (Triodos Facet July 2010)

<https://www.government.nl/documents/reports/2010/07/14/evaluation-psom-psi-1999-2009-and-mmf>, p. I.

¹⁹⁶ *Idem.*, p. 1.

¹⁹⁷ *Idem.*, p. 8.

¹⁹⁸ 'PSI', *RVO.nl* <<https://english.rvo.nl/subsidies-programmes/psi>> [accessed 29 May 2020].

¹⁹⁹ *Final report evaluation PSOM/PSI 1999-2009 and MMF*, p. 29 ; *Investing in Global Prospects For the World, For the Netherlands* (Ministry of Foreign Affairs May 2018) <https://www.government.nl/documents/policy-notes/2018/05/18/investing-in-global-prospects>, p. 18-19.

²⁰⁰ Europa.eu, 'Countries,' *European Union* (2020) <https://europa.eu/european-union/about-eu/countries_en> [accessed 29 June 2020].

citizens have the right to freely travel legally to and from the Netherlands. Thus, less need or possibility to mitigate the migration influx from these countries.

Exit programs and support on the ground: access, impact, and shortcomings

After it was evident that a very low percentage of municipalities had started or were planning to start an exit program for sex workers in 2006, the national government took the initiative to provide subsidy for municipalities and non-profit organizations that wanted to coordinate exit programs.²⁰¹ This subsidy is known as the RUPS and has been available since 2008. Although the initial idea was to provide a one-time fund of 15 million euros for the period between 2008 and 2011, the RUPS has been renewed twice after the first run: from 2014 to 2018, and from 2019 to 2022.²⁰² The subsidy is provided for three to four years at a time and is aimed at supporting actors guiding and supporting sex workers who want to do a career change.²⁰³ Even though there were some programs before RUPS in the municipality of, Amsterdam,²⁰⁴ Rotterdam and Zwolle,²⁰⁵ the RUPS was very important to expand these projects and pave the way for new projects in other municipalities.²⁰⁶

Due to this subsidy, there were a total of thirteen exit programs available in the Netherlands, of which one is meant for national access and the rest is either municipally or regionally coordinated.²⁰⁷ In table 3 all the programs are outlined with information on the target group and the number of participants from 2008 until 2013. Although the running period of the programs can vary greatly, one thing is still very interesting. In the table, it is noticeable that most participants attended programs in *de Randstad*²⁰⁸. This is a territory where the biggest cities in the Netherlands are situated, and thus most people. 75 percent

²⁰¹ *Besluit van de Minister van Justitie van 12 december 2008, houdende de bekendmaking van de subsidieregeling ter stimulering van de ontwikkeling van uitstapprogramma's voor prostituees (v/m)* (Ministerie van Binnenlandse Zaken 2008) <<https://zoek.officielebekendmakingen.nl/stcrt-2008-2737.html>> [accessed 29 May 2020]; *Wijziging begrotingsstaten Ministerie van Jus (VI) 2008 (Voorjaarsnota); Amendement van het lid Anker* (Tweede Kamer der Staten-Generaal 2008) <<https://zoek.officielebekendmakingen.nl/kst-31474-VI-6.html>> [accessed 29 May 2020].

²⁰² *Onderzoek Maatschappelijke Positie Sekswerkers, 13-14; Wijziging begrotingsstaten Ministerie van Jus (VI) 2008 (Voorjaarsnota).*

²⁰³ *Kamerstukken II 2013/14, 28638, 105, p. 1.*

²⁰⁴ *Idem, 10.*

²⁰⁵ *Kamerstukken II 2010/11, 32500-VI, 109, p. 13.*

²⁰⁶ *Kamerstukken II 2013/14, 28638, 105, p. 1; Kamerstukken II 2018/19, 34193, 7, p. 10.*

²⁰⁷ *Kamerstukken II 2013/14, 28638, 105, p. 10-34.*

²⁰⁸ 'Woon jij ook in de "Randstad"?,', *Net In Nederland* <<https://www.netinederland.nl/informatie/nieuws/2017/randstad.html>> [accessed 2 June 2020].

of all participants are from *de Randstad* cities: The Hague, Amsterdam, Rotterdam, and Utrecht, and amounts for five of the programs listed below. Furthermore, the programs in Groningen, Arnhem, Eindhoven, Nijmegen, and on the national level have very specific target groups limiting access to the programs. In fact, in the 2018 evaluation for the second RUPS subsidy, it is stated that even during the second run there are some target groups that are underrepresented in the programs. These groups are male sex workers, illegal sex workers, sex workers that work from home, and victims of sexual exploitation.²⁰⁹ Looking at table 3 it is quite interesting that although five programs focus on sexual exploitation and trafficking, this group is still difficult to reach.

Table 3. Exit programs using the first round of RUPS subsidies (2008-2013)²¹⁰

Coordinating organization	Geographical boundaries	Target group(s)	Number of participants from beginning RUPS
Het Scharlaken Koord	Local (Amsterdam)	Everyone living or working in the municipality	289
P&G 292	Local (Amsterdam)	Everyone living or working in the municipality	396
IrisZorg	Local (Arnhem)	Every sex worker primarily streetworkers	27
Fier Fryslân	National	Young woman in the Netherlands at risk of becoming a trafficking	139

²⁰⁹ Kamerstukken II 2018/19, 34193, 7, p. 10

²¹⁰ Kamerstukken II 2013/14, 28638, 105, p. 10-34.

		victim and trafficking victims	
IMW Breda, Samen naar Werk en GGD Breda SHOP/ Spot 46	Regional (Breda)	Everyone living or working in the region	29
Het Scharlaken Koord (later De Kern Maatschappelijke Leger des Heils	Regional (Deventer)	Everyone living or working in the municipality or region	53
Stichting Terwille (Perspectief+), Verslavingszorg Noord- Nederland (onderzoek)	Local (Eindhoven)	Every sex worker primarily streetworkers	26
Het Scharlaken Koord	Local (Groningen)	Sex workers living in the municipality and <i>loverboy</i> victims	46
GGD/Meldpunt Bijzondere Zorg (MBZ), IrisZorg en NIM Maatschappelijk Werk. De Kern	Regional (Haarlem)	Everyone living or working in the region	53
Maatschappelijke Dienstverlening, Verian en Zorggroep	Local (Nijmegen)	Street and child sex workers, and man and women at risk of entering the sex industry	37
	Regional (Region IJssel- Vecht)	Everyone living or working in the region	21

Oude en Nieuwe Land			
Humanitas Prostitutie Maatschappelijk Werk (PMW)	Local (Rotterdam)	Voluntary sex workers and victims of trafficking living or working in the municipality	243
De Tussenvoorziening	Regional (Utrecht)	Everyone living or working in the municipality and the care region (<i>zorgregio</i>) ²¹¹	195

Nevertheless, interview-based data from the *Regioplan* shows that although 56 percent of sex workers knew about these exit programs in 2014²¹² the hidden nature of the aforementioned groups make it very difficult to contact them and inform them about the programs.²¹³ Sex workers that have a more *chaotic life* struggle most with reaching support organizations,²¹⁴ such as the police, the health care organization Gemeentelijke Geneeskundige Dienst (GGD), or social workers. This limited access to these organizations is very disadvantageous to this group of sex workers, because these are the institutions that can point them in the direction of the programs.²¹⁵ Thus, if they do not come in contact with them they has a smaller chance of making a career change, or getting necessary support during their career as sex workers. Moreover, illegal sex workers are also difficult to contact due to their fear of deportation. They are afraid that when they contact the aforementioned

²¹¹ A *zorgregio* is defined as a network of organizations and institution within a given territory where 90 percent of residents can find an answer to their health care and welfare enquiries. Marina Koppenhagen, 'Wat is een regio?', *De Eerstelijns* (2019) <<https://www.de-eerstelijns.nl/2017/01/wat-is-een-regio/>> [accessed 19 June 2020]; 'Zorgregio,' *GezondNL* <<https://www.gezondnl.nl/p/96/Zorgregio>> [accessed 19 June 2020].

²¹² *Onderzoek Maatschappelijke Positie Sekswerkers* 2018, p. 13.

²¹³ Idem., p. 15; Nehemia Aipassa et al., *Stoppen met sekswerk: Belemmerende factoren voor een duurzame uitstap* (Regioplan December 2017) <https://www.regioplan.nl/wp-content/uploads/data/file/2017/17057-Eindrapport-RUPS-II-Regioplan.pdf>, p. 7.

²¹⁴ Aipassa et al., *Stoppen met sekswerk*, p. 7.

²¹⁵ *Kamerstukken II* 2010/11, 32500-VI, 109, p. 15.

institutions their illegal status will be uncovered and they will not be allowed to stay in the country anymore.²¹⁶ Some sex workers interviewed for different research also done by the Regioplan stated that a push factor for them during the contact phase is coordinating organizations that they cannot identify with.²¹⁷ Meaning, if an organization makes them feel like they might not fit in, they will be discouraged to contact the organization. Thus, if there is only identity specific organizations in certain municipalities or regions, there will likely be fewer participants in the programs. Leger des Heils was mentioned as having such an effect on sex workers. As seen in table 2 they have a significantly low number of participants, even though this number is also highly dependent on the program's target group.

Aside from this identity mismatch language and addiction have also been identified as an access barrier for sex workers. These two elements are particularly detrimental to the possibilities of migrant sex workers. Firstly, language has been a common denominator for the unemployment and stringent integration of many migrants. In the evaluation for the first RUPS the limited proficiency of the Dutch language was seen as a practical issue limiting the inclusivity advertised by the exit programs.²¹⁸ When it comes to addictions, most programs are not equipped to manage this topic and ask of sex workers that they first tend to this issue before being able to participate in the exit program.²¹⁹ But for migrant sex workers, especially illegal migrant sex workers, it is very difficult to acquire medical coverage as mentioned in chapter 2. Thus, they will be unable to work on their addictions to become a viable candidate for the exit programs. This shows the vicious circle that creates a space where migrant sex workers are unable to access the right support and will be more vulnerable to turn to drugs or alcohol to deal with the mentally exhausting job they have, which in turn makes them inadequate for the exit programs trapping them in the sex industry. Something that may have started as an independent empowerment move for many foreign sex workers, becomes their downfall because of insufficient support from the Dutch state.

Furthermore, a third intersectionality-based requirement that hampers migrant sex workers the opportunity to participate in the exit programs is the length of their stay. Due

²¹⁶ *Onderzoek Maatschappelijke Positie Sekswerkers* 2018, p. 37.

²¹⁷ Aipassa et al., *Stoppen met sekswerk*, p. 21.

²¹⁸ *Kamerstukken II* 2010/11, 32500-VI, 109, p. 20; *Sex work migration health*, p. 45.

²¹⁹ *Kamerstukken II* 2010/11, 32500-VI, 109, p. 20.

to the *regiobinding* regulation discussed in chapter 2, migrants residing in the country for the short term are unable to access certain amenities such as health care. This same requirement is used to assess the financial link of sex workers with the region where they live and the exit programs in that region.²²⁰ Thus, the term of residence puts them a step back in their journey towards a new career path. Aside from time constraints, governance level constraints also limit migrant sex workers' access to exit programs. As displayed in table 3, participant access is based on their municipal or regional residency. Thus, what happens when a participant of the program moves to a different municipality or region during the program? Can they continue with the program or do they have to start again from the beginning? Based on RUPS evaluations, moving is one of the reasons for dropping out of the programs. Therefore, they stress the importance of good coordination with housing companies and regional coverage instead of a municipal scope. This broadened scope is reflected in RUPS III Art. 2 (2), which states that only provincial or the Amsterdam region can apply for this subsidy.²²¹

Figure 6. Accessibility of exit tools based on RUPS evaluation of 2011



* Trafficking victims' right of temporary residence through the B9-regulation is also included in this category

²²⁰ *Onderzoek Maatschappelijke Positie Sekswerkers* 2018, p. 38.

²²¹ *Kamerstukken II* 2018/19, 34193, 8, p. 42; *Kamerstukken II* 2018/19, 34193, 7, p. 14 and 29; Article 2 paragraph 2 of the *Besluit van de Minister van Justitie en Veiligheid* of 27 May 2019, 2572671, *Stcrt.* 2019. 30583.

If the prospective participants manage to pass the first set of *tests* they will have to jump through the next set of hoops. After the contact phase, there is the orientation phase. In this phase, the aspiring participants will have to do an intake interview where they are assessed based on their legal status as sex workers in the Netherlands to estimate their viability as candidates for the program.²²² This assessment is broadly based on the depicted categories in figure 6. Unsurprisingly, the three categories in the figure align with the categories in figure 4. The only category that is not displayed in figure 4 is the illegal category. As figure 4 discussed the requirements to legally work in the Dutch sex industry discussing illegal sex workers would be contradicting and redundant. Looking at the accessible tools displayed in figure 6, it can be concluded that as the rights become slimmer, so do the options and available tools for sex workers. As the rights are directly connected to their residency status, it can be argued that the legal boundaries that limit their access to the legal sex industry also keeps them from accessing a way out of the sex industry.

Furthermore, although the figure may be based on the first RUPS that ran from 2008 to 2011, not much has changed because the fact remains the same; the state is using the sex work policy to manage migration flows. If this were not the case all migrants working in the Netherlands would have better access to welfare, health care, and programs that helps them grow and develop themselves. By setting so many boundaries the state seems to be trying to discourage migration and encourage return migration. And although there are non-profit organizations such as Huiskamer Aanloop Prostituees (HAP)²²³ and De Rode Draad/PROUD²²⁴ that provide sex workers with legal advice, housing, and classes online privacy and using the internet none has such in-depth support as the RUPS exit programs, nor do they provide structured exit aid. Hence, many sex workers are still quite dependent on the RUPS programs to acquire the necessary support to exit the sex industry. Nevertheless, the issue of intersectionality outlined in previous chapters is a persistent barrier in this context. Consequently, the recorded improvements in communication, cooperation and contact discussed in the evaluations of RUPS II,²²⁵ and the regionalization

²²² *Kamerstukken II* 2010/11, 32500-VI, 109, p. 19.

²²³ 'Over ons " Stichting De Tussenvoorziening,' , *Stichting De Tussenvoorziening* (2020) <<https://www.tussenvoorziening.nl/organisatie/>> [accessed 29 June 2020].

²²⁴ Webmaster, 'Welkom bij PROUD,' *PROUD* <<http://wijzijnproud.nl/>> [accessed 29 June 2020].

²²⁵ *Kamerstukken II* 2018/19, 34193, 7, p. 14.

of the programs expressed in Art. 2 of RUPS III²²⁶ do not tackle the access problems related to the migratory or legal identity marker of some sex workers. Compared to the recurring support provided by exit programs, only 33 percent include language courses, 31 percent include residents permit support, and 54 percent provide support for addicts.²²⁷ Thus, the areas where migrants need more support to become active participants in exit programs are either not provided by the programs or provided by a limited number of programs. This unavailability of support to exit the sex industry along with the previously discussed inaccessibility of health rights, considerably endangers migrant sex workers as it makes them more vulnerable and dependent on their exploiters.

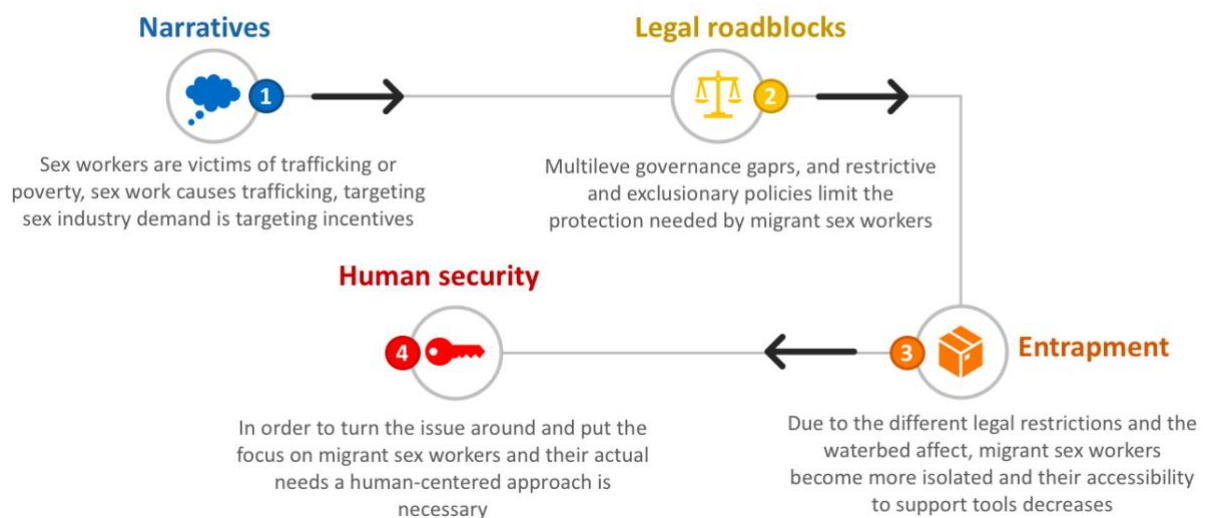
²²⁶ Article of the Besluit van de Minister van Justitie en Veiligheid of 27 May 2019, 2572671, *Stcrt.* 2019. 30583.

²²⁷ *Kamerstukken II* 2018/19, 34193, 7, p. 18

Conclusion

This thesis set out to answer the question: Why did the return migration approach guiding the exclusion of migrant sex workers from the 2000 legalization scheme fail to provide the desired outcome and instead increased the vulnerability of migrant sex workers? To answer this question several elements were taken into account including, multilevel governance, narratives in play, intersectionality, legal roadblocks, and human security. With the understanding that these elements combined lead to the entrapment and increased vulnerability of migrant sex workers, this thesis underwent the process described in figure 7.

Figure 7. Thesis summary



As seen in the illustration, there is a domino effect starting with the governing idea of what constitutes a sex worker and how they should be positioned in the legal sphere. The first two steps in figure 7 are the most influenced by multilevel governance. Due to the EU membership, decisions made on the EU level have a trickle-down effect that leaves migrant sex workers without *the right to have rights*. In addition to the disadvantage's experiences by this group due to multilevel governance, intersectionality places further pressure on their social, legal, and economic position. Their layered identities are a conglomerate of inequalities that intensifies when they interact. In the first three steps displayed in figure 7, this aspect of their identities led to their misrepresentation, limited access to rights, and

support on the ground, which led to their entrapment. Instead of gaining the freedom desired when choosing this career, many migrant sex workers in the Netherlands end up being trapped. Therefore, the last point offers a new way to understand sex workers to better frame them and provide them with the necessary tools to be self-sufficient.

Based on these factors and the way they interact, three answers for the aforementioned question can be formulated. Firstly, exclusion failed because it was erroneously based on the victim narrative and the idea that the legalization of the sex industry can be used as a tool to eradicate trafficking in human beings. As migrant sex workers are understood as victims through this narrative, voluntary sex work was unthinkable. Therefore, there were no tools in play for sex workers that chose this career path out of their own free will. The idea was that after legalization, all sex workers/victims would be compelled to return to the safety of their homes instead of remaining in the Netherlands. Thus, there would not be any migrant sex workers in the Netherlands after the legalization that would need the support of the Dutch state.

Secondly, the sex workers that stayed after legalization were more vulnerable than during the era of *regulated tolerance*. As many of the sex workers were not EU citizens before 2004, they had to work illegally in the country; leaving them legally unprotected. Although a total of thirteen Central and Eastern European countries joined the EU between 2004 and 2013, these sex workers still had limited access to their rights. Due to their intersectional identities, their vulnerability went beyond the sex work stigma. Their legal status before 2004 increased their vulnerability, while slightly decreasing it after 2004. Although they were allowed to work in the Netherlands, being a migrant added to their inequalities including access to health care among other rights. This health care inaccessibility negatively impacted migrant sex workers' access to exit programs. As they were unable to get the right health support to deal with their health issues, they had a slimmer chance of participating in these programs. Hence, they will be trapped in a straining job and at the mercy of exploiters. As a way out seems less likely to them, they will turn to what they know, making them more vulnerable to abuse from pimps, madams, or traffickers.

Thirdly, exclusion as an incentive to return failed because the state did not provide the right tools to facilitate this return. For return migration to work, the returnee should have something to look forward to in the returning country or should have had the success they

wanted when they migrated to the Netherlands. Nevertheless, both requirements are difficult to fulfill due to stringent access to rights and the lack of development projects in the countries of origin. As the Netherlands did not invest in the Central and Eastern European countries where the sex workers are from, the odds did not improve. Thus, making the Netherlands the most beneficial option for migrant sex workers.

By prioritizing the prosecution of possible traffickers instead of the rights and needs of the sex workers, their vulnerability increased. Thus, although the exclusion of migrant sex workers was not ill-intended, it ended up backfiring. The government ended up limiting the accessibility of a safer life for migrant sex workers through its restrictive immigration and sex industry policies. Although the Netherlands has been working on new legislation to improve the legal sex industry, they are keeping the same narratives that rendered the sex work policies ineffective in the past. By not taking intersectionality or the impact of multilevel governance gaps into account, the state's approach will remain ineffective. Instead, they should take human security into account and formulate policies that empower the sex workers and facilitates their access to their rights. Through this empowerment and increased accessibility, migrant sex workers will be able to work in a safer environment, be more open to providing information to the authorities, and will be less dependent on an untrustworthy middleman.

To conclude, this thesis has contributed to the historiographical debate on sex work and sex work legalization, by providing a contemporary analysis of recent developments. By taking (modern) elements such as multilevel governance, human security, and intersectionality, and applying these to the sex work and sex work legalization, this thesis has shown that changing external elements such as increasing the minimum age for working in the sex industry and encouraging independent work structures without looking at institutional inequalities is ineffective and dangerous. Moreover, this thesis can be understood as a steppingstone in the broader debate of sex work. It also is an incentive to do further research on the impact of access to rights and support tools, in more dire situations such as the corona pandemic. It would be an interesting new avenue as it can assess migrant sex workers' intersectional position during a pandemic in a foreign country where they cannot easily access the necessary protection to endure such hardship.