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Teagan Langseth-DePaolis  
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Not-So-Decriminalized: Consequences of Intersectional Identity for Migrant Sex Workers in

Switzerland

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Fall 2019

SIT Global Health and Development Policy

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# MIGRANT SEX WORKERS AND INTERSECTIONAL IDENTITY

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# MIGRANT SEX WORKERS AND INTERSECTIONAL IDENTITY

## Abstract

Sex work in Switzerland, which was decriminalized long ago, has been regarded as one of the most liberal systems of sex work in the world. However, this reputation is contested when factoring in the interaction between immigration and sex work policies. Migrant sex workers in Switzerland are put at a precarious intersection of decriminalized sex industry and restrictive migration policy and attitudes, and are not addressed or protected from violations of the law or violations of their human rights. Using databases containing Swiss legislation, I will critically examine the intersectional effects of migration policy and the treatment of migrants on the sex industry. Specifically, I will analyze how Swiss regulations of sex work serve to perpetuate the vulnerabilities of migrant sex workers given the context of labor migration and policy. This will be done using a discourse analysis of government regulations of sex work and migration, in conjunction with analysis of publications issued by advocacy organizations.

I find that despite having decriminalized sex work in the early 20th century, Swiss legislation fails to adequately and legislatively address the intersectional identities of sex workers. Despite acknowledging that the majority of sex workers in the Swiss sex industry are migrants—and that the number of irregular migrants has increased steadily alongside the rise of restrictive migration policy—the Swiss government chooses to continually criminalize migrant sex workers through repressive migration and sex work policies rather than offering them protections. Thus, migrant sex workers—as a result of their already precarious identities as migrants and sex workers, in conjunction with repressive policy-making—become utterly unprotected politically, legally, and socially in Switzerland. This study serves to highlight that (seemingly) liberal policy alone, for example decriminalizing sex work, is not enough to ensure the effective and safe functionality of the system. Instead, specific protections must be implemented that reflect the actual demographics of those affected by the legislation.

# MIGRANT SEX WORKERS AND INTERSECTIONAL IDENTITY

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## MIGRANT SEX WORKERS AND INTERSECTIONAL IDENTITY

### Key Definitions

**Migrant-** “A person who moves away from their habitual place of residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons” (IOM).

**Regular Migration-** “Migration that occurs in compliance with the laws or the country of origin, transit, and destination” (IOM).

**Irregular Migration-** “Movement of persons that takes place outside the laws, regulations, or international agreements governing the entry into or exit from the State of origin, transit, or destination” (IOM).

**Irregular Migrant** – “Those migrants who, for various reasons, do not have a valid permit to stay in the country where they live or work” (ICRSE 2016). This could be because they had never obtained the correct permit or because they simply overstayed the period of time allotted to them by the government (includes undocumented migrants) (IOM).

**Integration-** “The two-way process of mutual adaptation between migrants and the societies in which they live, whereby migrants are incorporated into the social, economic, cultural, and political life of the receiving community” (IOM).

**Labor Migration-** “Movement of persons from one State to another, or within their own country of residence, for the purpose of employment” (IOM).

**Migrant worker-** “A person who is to be engaged, is engaged, or has been engaged in a remunerated activity in a State of which he or she is not a national” (IOM).

**Sex Worker-** “People who receive money or good in exchange for sexual services, and who consciously define those activities as income generating even if they do not consider sex work their occupation” (WHO).

**Bilateral Agreement-** “Agreements concluded between two states which are legally binding and are essentially concerned with inter-State cooperation on labor migration” (IOM).

**Country of Destination-** “A country that is the destination for a person or a group of persons, irrespective of whether they migrant regularly or irregularly” (IOM).

**Country of Origin-** “A country of nationality or of former habitual residence of a person or group of persons who have migrated abroad, irrespective of whether they migrate regularly or irregularly” (IOM).

## **Not-So-Decriminalized: Consequences of Intersectional Identity for Migrant Sex Workers in Switzerland**

“Being in a country where prostitution is legal does not solve all problems associated with it”, explained Aspasia Co-Coordinator Isabelle Boillat when asked about the decriminalization of sex work in Switzerland. Conceptualizing the inadequacy of legislation when it comes to protecting the human rights of the groups for which the legislation was crafted is vital in the assessment of public policy. While laws and regulations may exist, and may even be framed as mechanisms of protection, without a deep understanding of the intersectional effects of the legislation it is impossible to adequately fulfill these protections. This is particularly true when it comes to the intersection of sex work legislation and migration legislation in Switzerland.

### ***Context and Background***

In order to effectively comprehend the impact of public policy—and importantly the interactions of different public policy areas—one needs to first understand the global context in which these policies are crafted. For this analysis, specifically, it is important to understand the context in which sex work and migration legislation are crafted.

The topic of sex work is particularly prevalent in discussions of Swiss politics because Switzerland decriminalized prostitution in 1942—a relatively revolutionary political move for that time period (TAMPEP 2015). Even contemporarily, the decriminalization of prostitution remains extremely controversial on a global scale. Those who argue *for* decriminalization (often referred to as pro-sex work feminists), assert that “sex work is work, and is a form of labor” (Davis) and that decriminalization is a “means of harm reduction” (Brown). They argue that prostitution is an occupational choice, increases financial autonomy, and improves working conditions and stigma



(D’Cunha). On the other hand, abolitionist feminists (those who oppose the decriminalization of prostitution) argue that decriminalizing sex work and regarding it as just another form of labor is a gift to sex traffickers, is not a genuine occupational choice, and simply perpetuates gender hierarchies and inequalities (Raymond).

Also important to formally introduce is the context in which international migration operates.<sup>1</sup> Most migrants move to take advantage of “economic opportunities out of genuine, free and informed choice” (TAMPEP 2015). This has always been the case globally, however there has been an increase in this mobility in the past few decades: “increased international migration is a direct result of the changing global structure of society and increased opportunities for mobility” (TAMPEP 2015). Now, temporary migration is the most common type of international migration—and specifically temporary *labor* migration (SDC 2019). The world has also seen a strong *feminization* of migration—seeing a “significant increase in the number of women who migrate alone, in search of new prospects” (TAMPEP 2015). This feminization has been prominent in Switzerland, where the “numbers of women entering the country have been increasing since 2000” (Wanner 2019). This statistic is important to keep in mind for later discussions of labor migration for sex work.

### ***Research Frame***

As noted by Isabelle Boillat, one of the two coordinators of Aspasia—Switzerland’s largest sex worker organizations—the simple decriminalization of prostitution in Switzerland is not enough to solve all of the intersectional issues that accompany sex work and sex workers. In particular, Swiss legislation surrounding sex work fails to address the prominent overlap between international labor migration and sex work. While legislation exists in the contexts of both

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<sup>1</sup> For the purposes of this analysis, I will not devote attention to the situation of refugees, asylum seekers, or trafficking victims even though they are relevant groups of migrants within the international context.

migration and sex work, the specific policies and regulations actually further *endanger* these groups, rather than protecting them. This presents significant problems for those effected by both sex work and labor migration, and is also the primary problem under investigation in this analysis: migrant sex workers are situated in a dangerous intersection of a restrictive labor migration policies and a decriminalized system of sex work that presents a strong fortuity for economic independence and autonomy. They are economically incentivized to enter Switzerland because of its decriminalized sex industry, but upon arrival they are left unprotected by sex work policy and vulnerable to regulatory authorities because of their status as migrants.<sup>2</sup> This analysis presents a critical analysis of how the intersection of international labor migration and decriminalized sex work is managed by the Swiss government and how effectively these regulations protect the migrant women effected by both migration and sex work.

My interest in this topic lies in Switzerland's global reputation as a human rights hub and a center for international humanitarian action. Initially, I wanted this research to investigate how this reputation was upheld while managing a system of decriminalized prostitution, and how the rights of migrant sex workers were protected. So, I began the research process with the question: *How does Switzerland, a country known as a champion of human rights and humanitarian action, protect the rights of vulnerable populations with intersecting identities—more specifically migrant sex workers?* I then refined the research question after conducting preliminary research because I realized that the lack of protections for migrant sex workers were not a matter of Switzerland's reputation, but rather the impact of legislation that inadequately accounts for the intersectionality of the issues at hand. Hence, I settled upon a refined research question: *How have policies been crafted to accommodate for the intersection between increased global labor migration and*

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<sup>2</sup> This vulnerability is exacerbated greatly for those who are irregular migrants (FDJP)

*migrant involvement in the Swiss sex industry? And additionally: how effective are these policies at protecting the human rights of migrant sex workers?*

This analysis will contribute to the field of study by examining migration and sex work legislation from a new angle—looking at how populations are left unprotected by Swiss regulations without regard for intersectionality, rather than simply examining the implementation or presence of policies themselves. This analysis is framed around the following hypothesis: decriminalized sex work in Switzerland prompts increased migration flows into the country, and accompanied by the sub-hypothesis: migrant sex workers are left vulnerable and unprotected by Swiss policy because they face intersectional barriers and repression of all parts of their identities— as women, as migrants, and as sex workers.

First, I will present the methodology of this study. In the analysis that follows I will delineate the logistical elements of both sex work and migration in Switzerland, as well as a presentation of the vulnerabilities faced by both of these groups. In second half of the analysis, I will outline the intersections between migration and sex work in Switzerland and the disproportionate effects of these intersections on migrant sex workers.

### **Methodology**

A mixed-methodological approach was implemented when collecting data for this analysis to provide a policy, advocacy, and evidence-based solution to the issues presented. A variety of secondary and primary sources were obtained, as well as some supplemental gray literature. These sources were both qualitative and quantitative, with scholarly and academic articles and publications from advocacy organizations/international organizations composing the qualitative sources, and studies/surveys conducted by international organizations or the Swiss government, as well as demographic studies on migrants and sex workers composing those

quantitative sources. This research is a specific case study of migrant sex workers in Switzerland, and is focused narrowly because this group lies at the intersection of labor law, criminal law, and immigration law in Switzerland (FDJP 2018 p.7). I made sure to balance advocacy-related materials with those issued by the Swiss government, and with the more general scholarly knowledge on the topics at hand. Both formal and informal interviews were also utilized and were obtained via email by reaching out to experts on migration and sex work in Switzerland, found on University websites or advocacy network websites. The selection of interviewees was based on their knowledge of either issues of migration or sex work in Switzerland, or about the intersection between the issues on a global scale. I used several focus areas to analyze the data collected: regulations, societal attitudes, legal/health barriers, economic perspectives, and migration flows.

Several ethical considerations were simultaneously integrated into my data collection methods. I was obliged to acknowledge that sex workers and migrants, regardless of status, are both considered sensitive populations in research terms. Thus, I chose not to directly contact people identifying as sex workers or migrants and instead chose to interact on a professional level with experts that work directly with these groups.

However, the strategic ethical choice that I made by not talking directly to sex workers or migrant populations also represents one of the biggest limitations of my methodology. Because of the sensitive/vulnerable nature of contacting these groups, my research lacks any primary account directly from sex workers, migrants, and migrant sex workers in Switzerland. I tried to make up for this deficit by using quotations from an array of scholarship that *did* consult directly with these populations, and by using videos and recorded testimony of sex workers. An additional difficulty that may be considered a limitation to my methodology is my focus on

Swiss *federal* policy and treatment. Had I focused my attention on specific legislation and treatment of migrant sex workers in a specific *canton*, it may have made analyzing exactly how certain policies affect migrant sex workers slightly more accurate. I chose this federal approach because the cantonal approach would be a much larger-scale and time-consuming undertaking.

### **Literature Review**

As outlined in the introduction, most of the literature that currently exists around the topic at hand is in fact isolated to *one* of the topics in discussion: either labor migration or sex work. There has not been a sufficient amount of scholarship crafted with the intersection of these two societal phenomena in mind, which is a gap that this research is attempting to fill. Despite the isolation of the topics, the body of literature still contributes greatly to the overall understanding of the phenomena, especially by highlighting how migration and sex work operate within the global context and within scholarly arguments. There were a select few publications that I came across while researching that actually *did* acknowledge the intersectional issues of migration and sex work, and the problems faced by migrant sex workers—these publications represent the most important and relevant sources for this research.<sup>3</sup> There are three overall areas around which most of the scholarship on migration, sex work, and migrant sex workers is oriented: international human rights, polarization, and specific scholarship on Switzerland.

#### *Point 1: International Human Rights*

The first topic overwhelmingly present in literature that critically analyzes migration, sex work, and the intersectional effects of these societal phenomena is the general concept of human rights. Present in official international documents and agreements issued by organizations like the United Nations Office of the High Commissioner for Human Rights (OHCHR) and

international labor agreements (ILO), the following human rights are continuously mentioned: the right to health (Davis), the right to work (ILO 2006), the right to freedom of choice (ICRSE 2016), and the right to migrate (IOM 2011). Mentioned in a variety of ways and throughout different types of literature (i.e. arguments that the right to sex work is imbedded in the internationally recognized right to work (Baldwin 1996), the argument that good working conditions should be accessible to all workers (D’Cunha 1992), or analyses of the accessibility of healthcare systems to marginalized populations like sex workers and migrant populations (Darling 2013) ), human rights appear to be inextricably intertwined with the topics under analysis for this research. Many pieces of scholarship consulted for this analysis stress the need for labor and migration issues to be handled using an international human rights framework—something that, as this analysis will later reveal—Switzerland does not necessarily do (D’Amato 2010).

### *Point 2: Polarizing Discourse*

Also prevalent in scholarly discussions is the polarization within the discourse surrounding both migration and sex work. In the context of migration, this polarization is embodied by a contemporary global rise in right-wing political parties and their accompanying hostile attitudes towards migration and migrants (Skenderovic 2007). These attitudes tend to frame migrants as economic burdens, resource drains, or even as criminals (Efionayi 2009). As a result, many of these countries have begun crafting policies that restrict migration—even legal migration—leaving migrants without opportunity when it comes to finding legal work or obtaining the proper permits for migrating safely within the rules of law (TAMPEP 2019). Many

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<sup>3</sup> These publications include all publications issued by Aspasie and TAMPEP, as well as the *Policy Brief and Recommendations on the Rights of Migrant Sex workers* issued by the International Committee on the Rights of Sex Workers in Europe (ICRSE) in 2016.

of these pieces of scholarship also outline the vulnerabilities faced by migrant populations in light of this right-wing rise (Riaño 2006).

Similarly, the scholarly discourses around sex work and prostitution also outline the vulnerabilities of the population in focus. However, these discussions are often framed as a polarized feminist debate surrounding whether or not decriminalizing sex work better protects those in the industry, by allowing for regulation and government interference (ICRSE 2016), or whether decriminalization just supports exploitation and the trafficking of women, leaving them even *more* unprotected and vulnerable (Raymond 2003). Ultimately, there is no consensus within this body of scholarship as to whether decriminalization is better for sex workers. However, there do seem to be some commonalities on both sides of the debate that may provide the ground upon which policies of compromise could be crafted that simultaneously protect sex workers and appease both sides of the debate.

*Point 3: Swiss Contextualization*

Within the pieces of scholarship that directly discuss migration, sex work, and intersectional identity in *Switzerland*, many of the discussions surround either the economic opportunity offered by the sex industry or offer analyses of the inflow of migrants into the country. Sex work in Switzerland is framed as one of the most liberalized sex industries in the world (Bondolfi 2018). Thus, sex work is very appealing to those who are struggling to find work or a reliable income, both within Switzerland and on a global scale (Cameron 2004). In government publications and legislation governing sex work, the Swiss government presents simple rules and guidelines for sex workers, like zoning laws limiting where sex workers can practice, work permit restrictions for sex workers, mandatory registrations, and mechanisms for regulating the sex industry (Federal Council 2015). Non-governmental publications, on the other

hand, often highlight the hardships faced by sex workers when it comes to zoning laws, limitations of where and when they can work, and the hazardous and potentially exploitative impact of regulations on the well-being of sex workers (French 2014) (TAMPEP 2015).

### **Analysis**

The first component of this analysis serves as an overview of the decriminalized sex industry in Switzerland, including the history of prostitution in Switzerland, the legal framework in which the sex industry operates, and mechanisms of regulating the industry. Then, a discussion of the tie between sex work and economic opportunity in Switzerland will be presented, followed by a delineation of specific vulnerabilities faced by sex workers.

#### **1. Decriminalization in Switzerland**

Within the body of scholarship about—and the debate surrounding—whether decriminalization is the solution to the hardships faced by sex workers, Switzerland falls somewhere in the middle: prostitution is legal and decriminalized in Switzerland, but due to regulations and conservative attitudes, the industry is still highly regulated and stigmatized.

*A. History/Reputation of Sex Work in Switzerland:* Sex work in Switzerland has been legal since 1942 and is considered a “lawful, for-profit activity exercised independently” (French 2014). Although there is no national legislation *explicitly* legalizing prostitution, there is also no legislation that explicitly prohibits the sex trade (Federal Council 2015).<sup>4</sup> So, prostitution has been *de facto* legalized since being recognized as part of the economic freedom guaranteed by the Swiss Constitution (Federal Council 2015).

Despite being “known today for its fairly liberal and pragmatic approach to the [sex] industry” (French 2014) and recognized as “one of the most permissive countries in the world as

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<sup>4</sup> Throughout this analysis, I will be using the terms “sex work” and “prostitution” interchangeably, as well as “sex worker” and “prostitute”.



far as the sex trade goes” (Bondolfi 2018), decriminalization in Switzerland, similarly to sex work legislation on an international scale, is not framed within the context of human rights. Meg Davis, a Senior Fellow at the Graduate Institute of Geneva, notes that “sex work has been historically left out of most human rights documents on both an international and a domestic scale. Like the International Covenant on Economic, Social, and Cultural Rights—for example” (Davis). Switzerland mirrors this by not legislating for the particular rights of sex workers, but rather framing sex work as a matter intertwined in the economic freedoms of the constitution rather than a matter of individual human rights. This viewpoint was also supported by Dr. Marylene Lieber—a professor of sociology at the University of Geneva—who stated in our interview that “Switzerland has legal sex work, but no rights for sex workers” (Lieber). Hence, the recognition of sex work as work in Switzerland was not necessarily a feminist victory. In fact, Agnes Földhazi—the current President of the Boulevards association in Geneva—suggests that “legalizing sex work in Switzerland has had nothing to do with being a feminist issue. It is more like the legalization of methadone projects; it has to do with the fact that it is best for the public health of the country” (Földhazi). This concept of decriminalization without the deliverance of rights and protections is very significant in this analysis and will be revisited shortly.

***B. Legal Framework:*** Given that the Swiss sex industry is not oriented around the rights of sex workers, decriminalization has to fall within the jurisdiction of another policy area. The decriminalization of prostitution in Switzerland is federally settled within the principles of economics and individual economic freedom (FDJP, 2018, p.10), and is defined in Swiss criminal law as “offering and indulging one’s body to the sexual pleasures of occasionally, or by trade, for money or other pecuniary benefits” (Federal Council 2015). On the federal level, sex work is protected by the economic principle provided in article 27 in the federal constitution,

where it is recognized as a “legitimate economic activity” (FDJP, 2018, p.10). This economic freedom imbedded in the Swiss constitution protects “economic actions by individuals as well as juridical persons under civil law from interference with the state and allows individuals to freely choose a profession in the private sector” (Federal Council 2015). Hence, Sex workers in Switzerland are theoretically treated like any other laborer, in the sense that they pay taxes and social security contributions (French 2014), are entitled to pensions (Federal Council 2015), and are compulsorily covered by insurance (Federal Council 2015).

Importantly, the legality of sex work is dependent on self determination: meaning, sex work can only be exercised on a “voluntary basis” in an independent manner, free of pressure or third-party influence (Cour Des Comptes, 2015, p.15). Because sex work has to be chosen independently, sex workers are not allowed to have contracts with their employer. Even if they choose to work in a brothel under a brothel manager, their work must be completely voluntary and free of any pressure that a contract with a manager might lead to (Cour Des Comptes, 2015, p.15).<sup>5</sup> Additionally, because sex work is regarded as part of the economic freedom granted to all Swiss citizens, “no law can restrict or eradicate prostitution and only certain excesses and secondary manifestations linked to prostitution can be repressed” (Cour Des Comptes, 2015, p.13). These specific “excesses and manifestations” are more thoroughly outlined in the next subsection.

***C. Limitations of Prostitution:*** Despite prostitution falling under the economic freedom offered by Article 27 of the Swiss Federal Constitution—thus rendering it immune from repression— there are some specialized restrictions that are allowed given the historically precarious nature of sex work. This is due to the condition that “in cases where state intervention is grounded on predominant public interest and relies on appropriate legal foundation, it is

possible to justify a restriction on economic freedom” (Federal Council 2015). These limitations are few, but they are present in the Swiss Federal Criminal Code, in cantonal legislation, and in one notable decision by the federal judiciary.

The six articles in the Federal Criminal Code that restrict prostitution are considered “offences against sexual integrity and crimes/offences against freedom” (Cour Des Comptes, 2015, p.14). Article 195 forbids the encouragement of prostitution, articulating that sex work activity must not be supervised or controlled by someone else and that prostitutes must be free to “determine the time, place, volume, and other aspects of work” (Aspasie 2018). Hence, under Article 195, sex workers cannot practice under a contract of employment because they would then be “considered a victim of exploitation of sexual activity” (Cour Des Comptes, 2015, p.14). The ramifications of this article would be discussed in a later section. Article 199 prohibits the “unauthorized practice of prostitution”, specifying that cantons and communes can enact specific legislation surrounding sex work and establishing that the regulation of the prostitution industry falls “within the competency of the cantons” (FDJP, 2018, p.11). Other articles include 182, which condemns the “deprivation of liberty” by human trafficking (Cour Des Comptes, 2015, p.15), and articles 187 and 188 which outline offences against the sexual integrity of minors and set the minimum age for prostitution as 18 years old (Cour Des Comptes, 2015, p.15).

Despite being legal at the federal level, the responsibility for regulating the sex industry falls to each of the 26 respective cantons. This responsibility is imbedded in Article 199 of the criminal code which specifies that “any person who violates the cantonal regulations on the permitted locations or times at which prostitution may be practiced or the manner in which it may be practiced, or the regulations on the prevention of related public nuisance is liable to receive a fine” (Cour Des Comptes, 2015, p.14). Prostitution laws at the cantonal level are

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<sup>5</sup> The issues with the lack of contractual protections will be discussed in a later section

typically oriented around: residency and work permits, forced prostitution, criminal records/previous violations of cantonal prostitution laws, mandatory registration with authorities, legality of sex work (no illegal activity or stay), cantonal authority's access to sex workers and establishments (FDJP, 2018, p.12). Because the responsibility to regulate falls to each canton individually, prostitution laws vary greatly from canton-to-canton. For example, the cantons of Bern, Ticino, Zurich, and Geneva all have specific laws on the exercise of prostitution, whereas some of the smaller or more rural cantons do not have any legislation on prostitution (Federal Council 2015).

***D. Demographics of Sex Work in Switzerland:*** The precariousness nature in which a sex worker operates is partially dependent on what *type* of sex work they practice. The four types of sex work typically recognized in Switzerland are: street prostitution, massage parlors, cabarets, and champagne bars (Cour Des Comptes, 2015, p.17). Street prostitution allows sex workers to choose their schedules, customers, practices, rates, and allows for a greater sense of independence (Cour Des Comptes, 2015, p.17). However, there is a severe lack of security in street prostitution, leaving street sex workers vulnerable to violent clients, difficult working conditions, and exposed to judgement by “passers-by” (Cour Des Comptes, 2015, p.17). The “profile of persons [workers] in street prostitution is very heterogenous” (Chimienti 2018). Massage parlors/salons, on the other hand, offer better protection from customer violence than street prostitution, in addition to providing “higher comfort and more discretion” (Cour Des Comptes, 2015, p.17). However, parlors can have very high renting rates for rooms, and sex workers practicing in massage parlors “run the risk of being subject to the criteria of the salon for fear of losing their place of work and housing” (Cour Des Comptes, 2015, p.17), thus becoming dependent on the salon manager (Boillat). Cabarets and champagne bars are not *officially*

recognized as places of prostitution—they “theoretically only provide barmaids and strippers, but they usually function as direct or indirect prostitution sites” (Bugnon 2009). Those working in these bars are most often women from Eastern European or African origin (Chimienti 2018).

Overwhelmingly, sex work is practiced by women, and the “majority of women in the sex industry are coming from new EU countries and other western European countries” (Federal Council 2015). Swiss women are highly underrepresented in the Swiss sex industry (Federal Council), and this high percentage of migrant sex workers causes significant issues when it comes to the regulation of sex work and distribution of work permits to migrants. Before delving into those complications, however, an explanation of the regulation of sex work and the context of migration in Switzerland is necessary.

***E. Regulating the Sex Industry:*** Because sex work is decriminalized, there are certain mechanisms in place for regulating the sex industry like any other labor industry. As mentioned, the implementation and enforcement of these regulations are the responsibility of the cantonal authorities. Some of the most common cantonal regulation procedures are mandatory registration, police checks/raids, and street checks (Aspasie 2018). In some cantons, sex workers are required to register their self-employed sex worker status with the authorities (much like the requirement in the Genevan LProst law already outlined) (Federal Council 2015). Under mandatory registration, women must register with the cantonal authorities before receiving their work permit and sometimes have to interview with the authorities to “make sure the sex is voluntary” (Federal Council 2015).

In addition to registration, two types of “control activities” are frequently utilized to monitor the sex industry: checks and raids. The control activity of the authorities “focuses on the authorization of residence and work permits, whether or not the canton has specific regulations

on prostitution” (Federal Council 2015). Police checks in indoor prostitution settings are carried out by either cantonal police or migration authorities and are usually characterized by a “verification of the license and documentation for the premises and the identity of the individuals found on site. Anyone without a valid work permit and/or BTPI registration is liable to fines” (Aspasie 2018). These types of checks are often referred to as “police raids” by sex workers advocacy organizations because of the manner in which the authorities intrude on the work setting to check documentation (TAMPEP 2015).

Street checks, on the other hand, are characterized by “inspectors doing rounds in plain clothes and randomly selecting sex workers to check their identification documents and work permits” (Cour Des Comptes, 2015, p.31). If a sex worker is unable to present the right permits or identification, they can be reported to the economic agency, cantonal authorities, and the Public Prosecutor’s office for criminal offences (typically violations of Article 199 of the criminal code or a work permit ordinance) (Cour Des Comptes, 2015, p.32). Police argue that street checks “limit the presence of illegal sex work or underage sex work”, but these checks do not actually allow police to fight against the risks associated with the industry (Cour Des Comptes, 2015, p.31). Some advocacy organizations point out that “the immersion of inspectors and police in prostitution presents a risk of collusion” (TAMPEP 2015). In spite of the precarious nature of sex work and the accompanying nuanced restrictions, the overarching government monitoring of the sex industry embodies how the sex industry is like any other economic market.

## **2. Sex Work as an Econ Opportunity**

Given that the decriminalization of sex work is imbedded in the economic principles of the constitution, sex work is inherently tied to economics—both of individuals and of the broader Swiss and European economies. In essence, prostitution is a labor market that contributes greatly

to the overall Swiss economy—likely one of the reasons Switzerland chose to decriminalize early in the 20<sup>th</sup> century. The Federal Statistical Office estimates that prostitution contributes three million francs per year to the Swiss economy, which represents 0.5% of Switzerland’s GDP (Federal Council 2015). They also estimate that the “total annual turnover generated by prostitution should be around 1 billion francs” (Federal Council 2015) and that the red-light industry (as a whole) in Switzerland brings in an estimated 3.2 billion francs annually (FDJP, 2018, p.10). However, “only the slightest profit goes to sex workers themselves, and the greater part is distributed to operators, taxes, and intermediaries of the sex industry” (FIZ 2017).

One critical component of the sex work industry in the economic context is that it represents an immense economic opportunity for unskilled or uneducated workers—namely, migrant workers. The country has very stable political and economic conditions, which both contribute greatly. “to the appeal of the Swiss labor market for non-Swiss nationals” (SEM 2018). Considering that “motivations for movement are increasingly complex as the search for protection is often entwined with the search for opportunity”, sex work in Switzerland presents a legalized low-qualification economic opportunity for international migrants seeking work (OCHCR 2013 p.18). As noted by TAMPEP, the largest advocacy organization focused on migrant sex workers in Europe, “sex work does not require any language proficiency, professional training or professional work permits, and is a practical solution to provide for the lives and families of migrant women” (TAMPEP 2019).

### **3. Sex Worker Vulnerabilities**

Because prostitution is legal in Switzerland, “the sex trade and all of its negative effects are [often] glossed over” (Bondolfi 2018). As articulated so eloquently by Dr. Meg Davis,

“sex workers, due to stigmatization and criminalization, have a lot of difficulties accessing health services they need. [...] they are stigmatized and discriminated against by health clinics and providers and are concerned about being

identified as a sex worker and potentially being subject to abuse, including police abuse, are at higher risks of sexual violence—including by police—and have so many different kinds of vulnerabilities” (Davis).

Aspasie reiterates this sentiment within the Swiss context specifically: “although legal, the profession exposes people who practice it to a variety of risks such as STIs, assaults, economic dependence, strong stigmatization and reconversion difficulties professionally” (Cour Des Comptes, 2015, p.3). Even in a decriminalized system, sex workers are disproportionately exposed to many legal and health barriers, to violence and exploitation, and to stigma.

**A. Stigma:** Despite operating in a system of sex work that is legal, sex workers often feel a sense of shame in their work. Sex workers are often exposed to strong stigma and “rarely open up and claim their status, and instead prefer to remain discreet on principal or occasional gainful activity” (Cour Des Comptes, 2015, p.16). In Switzerland, the stigma that frequently dissuades sex workers from registering with the authorities or proclaiming their status stems from the condemnation of sex work as “undermining the social order” (Földhazi 2008) and a “defiance of moral standards” (French 2014). As noted by Dr. Davis, this stigma causes significant barriers when it comes to access to healthcare, as well as contributing to other detrimental barriers.

**B. Health:** Sex workers, as a general population, are disproportionately exposed to countless health risks—STIs, drug use, poor mental health, unwanted pregnancy, physical and psychological violence (Federal Council 2015)—thus making access to healthcare all the more vital for this group. There are various factors that contribute to sex workers’ increased vulnerabilities to STIs, including low levels of education, “competitive pressure or lack of solidarity in sex work” (competition encourages less condom use), repressive laws, increased prevalence rates, and lower economic status (Bugnon 2009). Additionally, a study in Zurich revealed that sex workers had significantly higher rates of ill mental health when compared to the general population (Rossler 2010). In sum, sex workers face higher rates of health



complications, and yet are discouraged from seeking healthcare because of the stigmatization they face. This conceptualizes “one of the biggest problems facing the promotion of health for sex workers” (Bugnon 2009).

**C. Violence:** In addition to health complications, sex workers often face significantly higher rates of violence than the general population of women. In fact, “sex workers have a 45-75% lifetime prevalence of workplace violence and a 32-55% chance of experiencing sexualized violence in any given year because of stigma and criminalization” (ICRSE, 2016, p.24). Sex workers are exposed to “violent acts such as murders, rapes, threats, extortions, physical assaults, or emotional abuse”, notably encouraged by “media and policy that give perpetrators impunity and fuel discrimination and violent attitudes” (ICRSE, 2016, p.24). The Swiss Federal Council identifies several risk factors for violence among swiss sex workers: difficulty in selecting clients, an unusual place of meeting with a client, and restrictive legal framework that does not allow reporting in cases of violence (Federal Council 2015). However, despite acknowledging that restrictive legal framework can be dangerous in protecting the well-being of sex workers, the Swiss legal framework surrounding the sex industry, in fact, is quite restrictive. This is one of many hypocrisies revealed between the rhetoric of the Swiss government and the actual protections it offers for sex workers.

**D. Contracts:** The hypocrisy in the recognition of legal framework preventing reports of violence is revealed when discussing the matter of contracts. In the 1960s, the Swiss Federal Court decided that contracts between sex workers and clients/managers are immoral—and therefore rendered “null and void” (French 2014). The decision was imbedded in article 195 of the criminal code, which makes it impossible for sex workers to work in any sort of “dependent” state (French 2014). The intention behind the article was to protect sex workers from exploitation

and trafficking, but it instead serves as a way of complicating complaint procedures for sex workers (French 2014). As it stands today, sex workers cannot rely on the federal courts to “uphold their legitimate employment complaints”, and they are left “without the confidence that they will be backed up” judicially (French 2014). If sex workers were able to press judicial charges against someone who breaches contract through abuse, exploitation, or violence, sex workers would be significantly safer and less vulnerable. However, without judicial or legal protections through the enforcement of contracts, sex workers are “left vulnerable to exploitation even though they are working legally” (French 2014).

*E. Exploitation:* The lack of judicial or legal backing offered to sex workers, in addition to the health and societal vulnerabilities already discussed, further increases the vulnerability of sex workers when it comes to abuse and exploitation. Without legal protections or any type of contract outlining their working relationships, sex workers fall victim to the motivations of potentially abusive clients and salon/brothel managers (ICRSE 2016). Additionally, the stigma that sex workers face often encourages them to work underground, where they are exposed to increased risk of human trafficking and exploitation by ill-intentioned third parties (Raymond 2003).

The gravity of the contract situation, and all other vulnerabilities faced by sex workers in Switzerland, is elucidated when observing how labor migration is facilitated in Switzerland. To return to the opening quotation of this research, the resilience of these barriers and vulnerabilities even in a system of decriminalized prostitution proves that simply setting legal framework for the practice of sex work is not enough to protect sex workers. A similar legislative situation also occurs when discussing migration and immigration policy in Switzerland.

### 3. Profile of Migration in Switzerland

In order to grasp the effect of the intersecting phenomena of sex work and labor migration in Switzerland, an analysis of the legal and societal framework in which migration exists in Switzerland is necessary.

**A. *International Labor Migration:*** As articulated by the United National Office of the High Commissioner for Human Rights (OHCHR), “migration is an important economic and social phenomenon” that “dates back to the creation of borders themselves” (OHCHR, 2013, p.7). Economic opportunity is, quite possibly, *the* largest driver of migration. Typically, countries frame their immigration requirements and policies around the “needs of their labor market”, and Switzerland does the same. The Swiss Agency for Development and Cooperation (SDC) frequently acknowledges this relationship, articulating that “the majority of international migrants are motivated by the prospect of higher wages and better employment opportunities” and “migration is a deliberate and often successful livelihood strategy that has a positive impact on poverty reduction and on development” (SDC 2019).

**B. *Expectations for Labor Migration:*** The SDC also sets expectations for the Swiss government in its facilitation of labor migration in the *Global Program on Migration and Development* (SDC 2019). One of the overarching goals of the program is to maximize “the benefits of labor migration for migrants” and to involve the government in “designing and implementing sound migration policies and legal frameworks for a better protection of migrant workers” (SDC 2019). Additionally, the SDC adopts the ILO Multilateral Framework on Labor Migration for the Swiss government to use as guidelines for handling labor migration. These guidelines include creating “opportunities for all women and men to obtain decent and productive work in conditions of freedom, equity, security, and human dignity”, “expanding

avenues for regular labor migration, taking into account labor market and demographic trends”, and “promoting the human rights of all migrant workers, regardless of their status” (ILO 2006). Despite the recognition of these principles, however, the legal framework surrounding the admittance of migrant workers in Switzerland is quite restrictive to those who are unskilled, uneducated, and/or are not EU/EFTA citizens—making it near-impossible for these international labor migration and human rights standards to be upheld within the Swiss system.

**C. Legal Framework:** The legal framework for labor migration in Switzerland is oriented around the distribution of work and residence permits, and is highly dependent on the skill and country of origin of the foreign worker. To account for the demand for more labor and for increases in international labor migration, Switzerland has initiated the Agreement on the Free Movement of Persons (AFMP), which is a bilateral agreement signed by the European Union (EU) and Switzerland in 1999 (SEM 2019). The AFMP “lifts restrictions on EU/European Free Trade Agreement (EFTA) citizens wishing to live or work in Switzerland” (SEM 2019). Switzerland is not a part of the EU, but the decision for the AFMP is rooted in the fact that Switzerland is “ringed by member states and has strong economic ties with the EU” (The Local 2014). And, because of the AFMP, “gainfully employed nationals from the EU/EFTA states have easier access to the Swiss labor market” (SEM 2018)

Under the AFMP, EU/EFTA nationals only need a residence permit in Switzerland, which—for them—doubles as a residence and a work permit (SEM 2019). These residence permits are only issued if the Swiss government receives “written confirmation of employment”, such as a contract (SEM 2019). As a result of this facilitation of labor migration, EU/EFTA guest workers make up the largest group of foreigners in Switzerland: comprising roughly 90% of the registered foreign residents (SEM 2019). For both EU/EFTA nationals *and* third-country

nationals, immigration to Switzerland is closely regulated with various categories of residence (The Local 2014). These categories can be divided into regular labor migration for EU/EFTA nationals, regular labor migration for third-country nationals, and irregular migration.

(1) *Regular Labor Migration- EU/EFTA Nationals:* As mentioned, the AFMP facilitates regular labor migration for EU/EFTA nationals, allowing them to enjoy all of the benefits from the bilateral agreement—most notably getting priority access to the labor market over any third-country nationals (SEM 2019). There are various types of work permits that EU/EFTA nationals can obtain, depending on the length of their stay and their type of employment. The Type L permit is a short-term residence permit that applies to EU/EFTA nationals with a contract of less than 12 months. The Type B permit is for those with contracts of 12 months or an “unlimited duration while providing they are self-employed” (SEM 2019). This permit can be distributed to migrants that are not involved in traditionally accepted “gainful employment” *if* they can prove that they “possess sufficient financial means to support themselves and their family and have taken out adequate insurance policies” (SEM 2019). Type G permits are reserved for those living in EU/EFTA states, but commuting to work in Switzerland, and Type C settlement permits are for EU/EFTA nationals who have resided and worked in Switzerland for five continuous years, and they receive a permanent residency status that must be confirmed every five years (SEM 2019).

(2) *Regular Labor Migration-Non-EU/EFTA Nationals:* The Aliens Act (LEtr) serves as the principle piece of legislation guiding labor migration of non-EU/EFTA nationals. It was issued on January 1<sup>st</sup>, 2008, and it restricts access to the labor market to nationals of non-EU/EFTA countries (third countries) to people with “special professional qualifications” (SEM 2009). The goal of the LEtr, as articulated by the State Secretariat for Migration, was for Swiss

companies to “obtain from EU/EFTA countries the manpower they needed” and to “avoid an increase in unemployment and a heavy burden on social insurance” by restricting work permits of third-country nationals to “specialists” (SEM 2009).

Additional backing for the LEtr is offered by quotas set by individual cantons. These quotas reinforce the priority of EU/EFTA citizens when it comes to employment opportunities and are based on how “Switzerland’s key national economic interests remain well-served” (SEM, 2018, p.14). Under these quotas, third-country nationals are subject to conditions of admission and quantitative limits: qualification conditions for admission (i.e. only allowing “highly qualified persons” to be admitted), and proof that their activity must serve the economic interests of the country (Federal Council 2015). Thus, third-party nationals are left with minimal options for labor migration: they are forced to either chose another country with less-restrictive labor migration opportunities, to obtain the special skills required by Swiss legislation (which can be expensive), or to migrate and work illegally into the Swiss labor market.

(3) *Sex work and Permits*: Even though sex work is a legal labor industry in Switzerland, there are some specific conditions with work permits when one is practicing sex work as a migrant from the EU/EFTA. EU/EFTA sex workers with an “employee” L or B permit can work anywhere in Switzerland, and are free to change their job if they wish, but some may have to apply for an additional employment permit if they wish to work in a massage parlor or not in street sex work (Aspasie 2018).

Mirroring the previously discussed restrictions of non-EU/EFTA labor migration into Switzerland is the decision to alter the issuance of Type L permits. Until 2016, Type L permits were used as special permits for foreign strippers (overwhelmingly from non-EU/EFTA countries); the permit was created to protect “foreign women who wanted to work as dancers and

strippers from the unscrupulous players in the sex business”, allowing the admission of unskilled workers under an “artist status” (The Local 2014). However, the Swiss federal government decided in 2014 that the status did not actually have a protective role and was instead “enabling exploitation and human trafficking” (The Local 2014). This lack of substantive protection is likely a result of the L permit prohibiting “a dancer to perform any other professional activity, which put them in a delicate situation job-wise, with a lot of dependence on the employer” (The Local 2014). Beginning in January 2016, only women from EU/EFTA states could obtain the permit to work in night clubs (The Local 2014). Furthermore, another restriction was placed on which migrants have access to the sex industry in 2017, when a cap of the number of permits issued to nationals from Bulgaria and Romania was put into place. Interestingly, these are the two most common countries of origin for sex workers in Switzerland (Boillat).

As demonstrated, it is nearly impossible for non-EU/EFTA nationals to receive work permits for sex work in Switzerland. Specific legal restrictions on sex work for these third-country nationals are outlined by articles 18-25 of the LEtr: “by virtue of the legal basis, third-country nationals cannot be admitted to Switzerland to engage in prostitution because they do not fulfill the conditions of labor law” (Federal Council 2015). Because, in the opinion of the Swiss federal government, there are already enough sex workers in Switzerland from the EU/EFTA states, the admission of third-country nationals to the sex industry would not serve the economic interests of the country (Federal Council 2015).

Additionally, Article 115 of the LEtr asserts that third-country nationals who engage in prostitution “without authorization to stay and/or without work are punishable by custodial sentences or pecuniary penalties, along with prohibitions of entry and order for reference against them” (Federal Council 2015). However, the restrictions on access to sex work for non-

EU/EFTA nationals do not actually prevent these aspiring workers from entering the country for sex work—rather, they are forced to choose irregular pathways into Switzerland and into the sex work industry.

(4) *Irregular Migration*: “As global economic changes and the reinforcement of migration laws are likely to contribute to perpetuating and increasing irregular migration, the fact that illegal migration is a reality in Switzerland cannot be ignored” (Wanner, 2019, p.165). In his analysis of the integration of migrants in the Swiss labor market, Wanner consistently puts forth the idea that discussions of labor migration in Switzerland would be utterly incomplete without also addressing the irregular migration which occurs in search of labor in Switzerland. Switzerland has seen a rise in irregular migration since the 1990s, and scholars suggest that this rise could be a result of Switzerland’s “Two Circle Model” of inclusive labor migration for EU/EFTA nationals and contrasting exclusive attitudes towards the labor migration of foreign nationals (Chimienti 2007).

In conjunction with the continual restrictions on migration for non-EU/EFTA nationals that force them to migrate to Switzerland illegally, the country has also seen a rise in politically and socially hostile attitudes towards irregular migrants. According to Isabelle Boillat, one of the co-coordinators of *Aspasie*, “countries are closing their borders, and Switzerland is doing the same. It is all so political. Switzerland has a very strong extreme-right party that has a lot of power, so that does not help [matters of sex work or migration]” (Boillat). These conservative attitudes, specifically in the realm of migration, stem from the fact that “Switzerland is a country where the fear of being overrun by foreigners is deeply rooted in the public discourse” (D’Amato, 2010, p.137). As a result of these attitudes, the radical right-wing parties in Switzerland strategically “veto liberal government reforms and curb the presence of foreigners” (D’Amato,



2010, p.145) by “presenting immigration as a threat to the country” and “constantly evoking the danger of over-foreignization” (Skenderovic, 2007). In public policy, these attitudes are embodied by the steps taken in 2018 to improve the enforcement of removal orders (deportations) and the increased involvement of the federal government in arranging deportations for EU border control (SEM, 2018, p.10).

#### **4. Migrant Vulnerabilities**

This hostile rhetoric and attitudes towards immigration on behalf of the Swiss government compose a large part of what makes migrant populations so vulnerable in Switzerland. In the same way that migration itself is not a new issue, “the vulnerability of non-nationals is not a new phenomenon” (OHCHR, 2013, p.7).<sup>6</sup> Similarly to sex workers, migrant populations in Switzerland are faced with significantly more vulnerabilities than the average person. “Migrants face many obstacles to human rights: cultural barriers, language barriers, and health-related stigma” (Mattila). And, despite the SDC’s acknowledgement of these barriers to human rights, and that “the precarious living and working conditions of unskilled and female migrants put them at risk of discrimination, rights violation, exploitation, and abuse that erodes the potential benefits of migration and undermines its positive impact on development”, Switzerland still falls extremely short when it comes to the protection of the rights of migrant populations—and in particular, migrant women.

**A. CEDAW– Migrant Women:** The first vulnerability faced by migrant women lies in the lack of sufficient protections offered to them by the Swiss government. According to the Committee for the Elimination of All Forms of Discrimination Against Women (CEDAW), Switzerland does not adequately protect migrant women, because of a focus on their *integration*

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<sup>6</sup> Additionally important to note here is that not all migration paths or stories are the same. Some migrants face more barriers towards effective migration and employment and these migrants become more vulnerable.

into Swiss life rather than promoting their rights and the elimination of discrimination (Bailey 2013). According to CEDAW, Switzerland “inadequately takes effective measures to eliminate discrimination” against migrant women, fails to “increase women’s awareness of and access to education, health and social services, training and employment, and familiarization with their rights to gender equality and nondiscrimination”, and fails to “monitor the impact of its laws and policies on [...] migrant women” (Bailey 2013). All of these considerations from CEDAW prove that simply having migration policies in place with the *intent* of protecting migrant populations is not enough to offer substantive protections for their rights.

**B. Legal Barriers:** The insufficient recognition of the human rights of migrant women embodies the predominant legal barrier resulting from Swiss migration legislation. Migrant women are also often dissuaded from pursuing legal action against those who may commit crimes or acts of violence against them, due to fears surrounding either their legal status or stigma (D’Amato, 2010). Therefore, migrants are left without the substantive rights, and are highly discouraged from seeking any kind of legal retribution for crimes committed against them because of the conservative attitudes towards immigration and the subsequent shaping of restrictive immigration policies (TAMPEP 2019).

**C. Health Barriers:** In addition to the legal barriers that increase vulnerability to discrimination and exploitation, “the context in which migration occurs also influences *health* by negatively affecting the personal, social, economic, political, and legal aspects of migrant people” (EDI 2016). Migrants incur greater health risks for a variety of reasons—namely, because of precarious living conditions resulting from “legal restrictions related to their resident status”, socio-economic status, socio-demographics (Chimienti 2007), differences in the functionality of health systems (Mattila), and/or issues with malnutrition, trauma, or mental health issues from

the migration journey (Mattila). Additionally, migrant populations suffer from increased rates of STIs, HIV and AIDS (EDI 2016). The Swiss Department of the Interior (EDI) has identified specific factors of increased vulnerabilities to STIs and HIV for migrant populations which include difficulties in linguistic/language comprehension, cultural and religious influences affecting preventative behavior, social/economic precariousness, lack of education, isolation, experiences of violence, trafficking, detention, drug use, and uncertainty about the health system in the destination country (FOPH 2011).

Compared to the general population, migrant populations also face disproportionate health risks and burdens. However, compared to regular migrant populations, undocumented (UDM) or irregular migrants face even more exacerbated vulnerabilities and risks when it comes to health (SDC 2019). The root of health vulnerabilities for UDM lies in the fact that “health related issues are rarely considered a priority in the life of an undocumented migrant. As long as they feel healthy, prevention and screenings are frequently postponed (FOPH 2011). Most UDM fear that seeking healthcare could lead to a “high risk of discovery of their irregular status, and hence deportation” (Wyssmuller, 2011, p.19). In fact, a country report of the status of migrant healthcare in Switzerland revealed that all informants and literature show a “clear tendency to delay care” (Wyssmuller, 2011, p.20).

In Switzerland, even UDM have the right to health care and to health insurance—however, most UDM are unaware of this fact (Wyssmuller, 2011, p.21). And, even if the UDM is familiar with this right, they must “know how the local healthcare system functions” and be able to “effectively dispose of the financial resources necessary for the payments of premiums” (Wyssmuller, 2011, p.22). Given that most UDM are without regular status *because of* restrictive Swiss migration policies, immigration regulations themselves impede access to the basic medical

help that UDM are entitled to by creating stigma and barriers to access. This imitates the same problem found within Swiss legislation of sex work: although the policies are present that theoretically protect sex workers, they are still exposed to significant limitations and vulnerabilities. Given this pattern present in the implementation of both sex work and migration legislation, the circumstances of those who identify as both migrants and sex workers become extremely precarious.

## **5. Findings**

Throughout the previous analysis of decriminalized sex work and migration in Switzerland, several important points have surfaced: one, legislation around prostitution and migration in Switzerland insufficiently addresses the vulnerabilities of the groups involved. Two, simply legislating around prostitution and/or migration is not enough to protect the populations most effected by issues of sex work and migration from vulnerabilities. And three, a broad hypocrisy is revealed when analyzing issues within Swiss legislation around the topics in this analysis: although the Swiss government acknowledges the specific issues faced by migrants and sex workers, they do not reform legislation or offer additional protections for these marginalized groups. These recurring points are important to keep in mind during the following discussion of the findings of this research. The findings will be presented as a delineation of the interaction of sex work and migration in Switzerland and will ultimately reveal the disproportionate impacts of this interaction on migrant sex workers.

*A. Migrants in the Swiss Sex Industry:* The ever-increasing globalization of this world, coupled with labor migration and economic struggle has, as discussed, caused a massive influx of migrants coming to Switzerland. This has simultaneously led to a significant rise in the number of migrants coming to Switzerland for sex work. This rise in the migrant population

within the sex industry can be attributed to the general trend of labor migration, but more specifically is attributable to the AFMP, an increase in global economic crises, another capitalist issues (FIZ 2017). The number of registrations of sex workers in Switzerland has been “rising sharply since 2008—and an 81% increase in the amount of sex worker registrations were seen in 2009 (Cour Des Comptes, 2014, p.21). This drastic increase in the amount of registrations—majority of which were registrations from EU/EFTA nationals that are women—is predominantly attributable to the Agreement on the Free Movement of Persons.

After the passage of the AFMP, Switzerland saw an 46% increase in the number of immigrants coming from EU countries (Wanner 2019). The AFMP facilitated such large changes in the sex market and in migration flows because it *specifically* allows EU citizens to enter any labor market in Switzerland—a country with legal sex work industry that is fairly simple to join (no qualifications, language or social mandates, etc.) (Cour Des Comptes, 2014, p.21). The AFMP explicitly allowed these EU citizens to join the Swiss sex market, which was previously restricted to only holders of permit C (Cour Des Comptes, 2014, p.21).

In addition to the AFMP, global economic crises and capitalist issues have also driven migrant laborers into the sex industry in Switzerland. The 2008 global financial and economic crises were highly felt in Europe, and “led more people to prostitution because of financial difficulty” (Cour Des Comptes, 2014, p.21). Switzerland’s reputation of a country with a stable and strong economy—in addition to its decriminalized sex industry—offered a shining beacon of economic hope to migrants during that crisis. Hence, the 2008 economic crisis likely contributed to the aforementioned 81% increase in the amount of sex worker registrations in 2009 (Cour Des Comptes, 2014, p.21). A continual increase was felt even after the recovery of the European economy: in 2013, there were 11,188 sex worker registrations (in contrast to the mere 385

registrations prior to the economic crisis in 2008). A Zurich-based sex-worker organization (FIZ) articulates this intersection of economy and sex work, as well as the economic dependence on migrants in sex work as follows: “The sex industry is a booming industry in Switzerland, and without migrant women it would no longer be conceivable. Business owners and investors live off of the sex industry. As do bartenders, security staff, taxi drivers, property owners, lawyers, doctors, agencies, media, telephone companies, and others” (FIZ 2017).

There are many ramifications of the increase in migrant sex workers. The most prominent and potentially harmful, however, is the resulting surplus of sex workers in the industry. The tie between sex work and the economy is rooted in the fact that prostitution represents a market, and this has to follow the rules of the market” (Federal Council 2015). One of the rules of the market includes surplus. The Swiss Federal Council articulates that “the strong temporary immigration from Eastern Europe for the purpose of prostitution has created an imbalance—the supply of sex work is in surplus” (Federal Council 2015). This surplus “increases competition and put pressure on the price of benefits, practices performed, and the number of jobs/housing available” (Cour Des Comptes, 2014, p.3). This competition allows for “easier manipulation from clients” (Cour Des Comptes, 2014, p.34), “price drops”, “increased work security”, and an “increased in unprotected sex” because of client demand (Federal Council 2015). Additionally, the surplus is problematic because the federal/cantonal level governments cannot limit the supply of sex markets due to the number of migrants entering without documentation or registration. Although there are more migrants than ever coming into Switzerland and the sex industry, Swiss legislation regulations have not adequately accounted for this increase.

***B. Restriction of Migration: Implications for Switzerland:*** Switzerland faces an interesting and conflicting duality of policy areas: decriminalized and reputationally liberal sex

work, paired with restrictive labor migration policies.<sup>7</sup> Rather than accommodating for the increase in migrant sex workers by expanding protections, the Swiss government has instead initiated *stricter* migration policies. According to the International Committee on the Rights of Sex Workers (ICRSE), “In Europe, and in Switzerland, the rising influx of migrants has resulted in stricter immigration policies” that serve to criminalize migrants as a result of conservative discourse, which then only “creates more stigma and more undocumented immigrations” (ICRSE 2016).

Contrary to the intention of the Swiss government, implementing stricter migration policies does not stop the inflow of migrants. Rather, these restrictions simply encourage labor migrants to pursue irregular routes into Switzerland. Resorting to irregular migration patterns is something noted across the whole of Europe as the “politics of admission have become progressively more restrictive; [...] a phenomenon that has effectively served to increase the number of people migrating illegally or having to face uncertain legal situations” (Chimienti 2007). This is not a new phenomenon: “if you prohibit something that people want or need to do, whether that’s drinking alcohol or crossing borders or getting an abortion or selling sex, you create more problems than you solve. Prohibition barely makes a difference to the amount of people actually doing those things. But it makes a huge difference as to whether or not they’re safe when they do them” (Mac).

This phenomenon is actually *explicitly* noted by the Swiss State Secretariat for Migration: “strengthening security along particular sections of the border or blocking a migratory route will not deter migrants from leaving their country” (SEM, 2018, p.11). Not implementing policy to accommodate for their increased presence— and rather implementing restrictive policies that the SEM specifically acknowledges are bad—represents the neglect on the part of the Swiss

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<sup>7</sup>(Restrictive to those not from the EU/EFTA)

government for the protection of the rights of these UDMs. The ICRSE notes this denial of rights to migrant workers by stating that “even though the migrant population is growing, that growth does not translate into legal changes facilitating migrant’s access to legal and safe employment options”, including in the sex industry (ICRSE 2016).

Specific to labor migration for sex work, former sex worker Juno Mac notes in her TED talk that when sex workers, including migrant sex workers and those who are undocumented, “are forced to choose between obeying the law and feeding yourself or your family, you’re going to do the work anyway” because “the law forces you to keep selling sex, which is the opposite of its intended effect” (Mac). The ICRSE also notes that “both domestic and migrant sex workers are denied the right to work and subject to heavy punishment” when it comes to the lack of legal changes in response to the shifting migration patterns (ICRSE 2016).

Importantly, even if aspiring sex workers are EU/EFTA nationals that attempt to migrate legally under the AFMP, there are an internal administrative conflicts that prevent them from actually getting a work permit to work in the Swiss sex industry. The lack of federally recognized contracts between sex workers and their employers/clients give rise to the following consequence: migrant sex workers—even those from the EU/EFTA, a group of migrants that *should* easily have access to the labor market given the AFMP—causes an even further increase in the amount of undocumented migrants in the sex industry. According to Agnes Földhazi, President of the Boulevards Association, restricting the inflow of migrants into the Swiss sex work industry only causes those seeking the work to “find solutions to circumvent the limitations of the law” (Földhazi 2008). In sum, the increase in overall migration to Switzerland, increasing migrant sex worker population, and the restrictions placed on migration have only served to



increase the number of irregular migrants in the sex industry—leaving them doubly vulnerable because they are both working and living illegally.

*C. Inadequacy/Absence of Protective Policy:* “The precariousness of sex workers, especially given the increase of regular and irregular migrants in the sex industry warrants additional precautions and protections to be implemented within the sex industry. However, this is not the case in Switzerland: “prostitution is legal in Switzerland, and yet it is highly controlled” (Chimienti, 2018). As highlighted by Chimienti, the mere presence of sex decriminalized sex work in Switzerland is not enough to guarantee the rights and freedom of sex workers (especially those who are migrants). In fact, the vast majority of legislation around prostitution in Switzerland actually serves to create *more* issues and barriers for sex workers, rather than facilitating a safer and more economically productive work environment.

This lack of substantive protection of sex workers stems from the fact that laws regulating sex work are centered around protecting the public from the sex industry, rather than oriented around protecting sex workers. As noted by Agnes Foldhazi, “regulations serve as much more of a strategy for tidying the streets” than for advancing the rights of sex workers (Földhazi). The nature of these regulations causes the perception of decriminalized sex work in Switzerland to encroach on that of criminalized sex work: “Criminalized sex work is what we are seeing now in Switzerland. We are in a context where there is no law that sex work is illegal. But, we see local regulations that are more and more criminalizing sex work. Focusing on the places they [sex workers] use and the context in which they work” (Lieber). Two of the primary examples of these local controls of sex work are mandatory registration and cantonal regulations—primarily, those that focus on the zoning of sex work.

The abusive and cyclical nature of zoning regulations is highlighted by former sex worker Juno Mac in her 2016 TED talk:

“The prohibition of street prostitution causes more harm than it prevents. Firstly, to avoid getting arrested, street workers take risks to avoid detection, and that means working alone or in isolated locations like dark forests where they are vulnerable to attack. If you’re caught selling sex outdoors, you pay a fine. How do you pay that fine without going back to the streets? It was the need for money that saw you in the streets in the first place. And so the fines stack up, and you’re caught in a vicious cycle of selling sex to pay for the fines you got *for selling sex*” (Mac).

When zoned into certain areas and criminalized for practicing sex work anywhere else, sex workers are “pushed to the margins of the legal labor market, and migrant sex workers are forced underground into hazardous and unfavorable conditions—making them vulnerable to violence, harassment, and discrimination” (ICRSE, 2016). One of the most prominent examples of zoning is in the city of Zurich, where the government created “sex boxes” along the outskirts of the city. The sex boxes are wooden structures where the client is invited to drive into the “box” and purchase services.<sup>8</sup>

***D. Sex Work Regulation or Immigration Enforcement:*** Similarly, to how sex work regulations actually leave sex workers *more* vulnerable and unprotected, the intersection of sex work regulation and migration policy does the same—embodied by the destructive model of sex work regulation as a mechanism for immigration enforcement. As briefly noted in the previous section, migrant sex workers are often not accounted for within cantonal prostitution provisions—leaving them unprotected by policies that are supposedly beneficial to the industry, but that ultimately push them into more clandestine work. The connection between regulation of sex work and immigration enforcement is born out of the “increase of legal restrictions and control

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<sup>8</sup> The government in Zurich framed the implementation of the boxes as a way to “provide sex workers with a place to practice their trade safely” and argues that the “boxes would stop people trafficking by criminal groups and help reduce the underground sex trade” (The Local 2018). However, sex worker advocacy organizations argue that this form of discrete zoning legislation in Zurich is a prime example of how zoning is motivated by a governmental will to “clean the streets”, and actually does not benefit or protect sex workers in any way. This type of zoning has a disproportionately negative impact on migrant sex workers: the fact that the boxes are under 24-hour surveillance by police serves as a deterrent to those with an irregular status, thus pushing them to “want to work discretely” and making the overall sex trade “less visible” (Federal Council 2015).

of sex work going hand-in-hand in Switzerland with the growth of migrants in the economic sector” (Chimienti 2018). In response to the rise in the population of third-country migrants with no legal status or permit of stay, “these policies aimed to control this population” of migrant sex workers (Chimienti 2018). The Swiss government frames these controls as mechanisms for reducing exploitation and sex trafficking (Chimienti 2018). In practice, however, “the controls focus on the legality and stay and work, and less on exploitation, because punishing undocumented residency and labor is easier” (Chimienti 2018). Hence, the decision to regulate the sex industry as immigration enforcement was likely a conscious decision on the part of the Swiss government out of convenience.

Raids and checks within the sex industry are completely oriented around the surveillance of residency and work permits. Hence, when cantonal police or immigration authorities (immigration authorities are often used as a regulating body within the sex industry) approach a sex worker or enter a salon, rather than checking the working conditions or surveying for signs of exploitation, the authorities instead pester sex workers for their work and residency permits (Isler 2018). Hence, migrant sex workers are at a constant threat of being arrested and deported (TAMPEP, 2015, p.5). Migrant sex workers are then situated at an intersection of oppressive immigration policy both within the greater legislative framework of Switzerland *and* within the sex work system itself—simultaneously impacted by the policing of sex work and immigration status (TAMPEP 2015).

So, not only are migrant sex workers marginalized because of their identity as a migrant and a sex worker— and not offered protections on behalf of the government for either of these precarious identities— but they are actually criminalized by the government *because* of this intersectional identity. The implications of intersectionality extend further than just the

implications of regulations/regulatory strategies: the next section problematizes the substantial consequences of the government's lack of consideration for the precarious identity of migrant sex workers.

***E. Migrant Sex Workers and Layered Vulnerabilities:*** The issues faced by sex workers and those faced by migrant women are layered for migrant sex workers—exposing them to serious intersectional vulnerabilities. The intersectional status of migrant sex workers, as revealed by the lack of policy protection for either of these identities, puts this population in an *extremely* precarious position. This precariousness is due to the conflation of health, violence, stigma, and legal issues faced by sex workers and migrants that are fused within the identity of a migrant sex worker.

Given that Switzerland has seen incredible increases in the amount of migrants seeking work in the Swiss sex industry *and* increases in the amount of irregular migrants in the country, there have to be considerations for the intersectional issues faced by migrant sex workers. The first issue that is exacerbated for migrant sex workers are political/legal issues. As discussed, labor migration is made very difficult for sex workers because of their lack of legally binding contracts and because of restrictions for non-EU/EFTA nationals seeking to work in the Swiss sex industry (SEM 2009). This, paired with prostitution legislation that makes freely and easily practicing sex work even *more* difficult (through zoning laws) or intimidating (mandatory registration and testing) to migrant workers places MSW at a dangerous crossroads of restrictive and marginalizing policy. They find themselves “in a complex web of anti-sex work and anti-immigration policies” (ICRSE 2016). So, even though MSW without status in Switzerland operate within a legal sex industry, their irregular status renders their work in that system illegal.

Thus, MSW are doing illegal work with a similarly “illegal” status, making virtually every aspect of their life vulnerable to criminalization and/or deportation.

In addition to being simultaneously repressed by both migration and sex work policy, MSW also are faced with a “double burden” of their identities because of disproportionate amounts of stigma, health issues, violence, legal barriers, and exploitation. This double burden is also dubbed “multiple discrimination” by FIZ, which is the discrimination faced by women, sex workers, and migrants intertwined in the identity of a female migrant sex worker (FIZ 2017). This issue of this extra burden is that “the combination of being a “woman” and “foreigner” and a “prostitute” induces exclusion and unequal treatment, which is at the root of violence and precariousness (Federal Council 2015).

Most of the barriers and issues faced by migrant sex workers stem from the mountains of stigma they face. MSW “are constantly stigmatized, they often have to hide their activity; they face risks of physical or psychological violence; they lack opportunities for socio-economic mobility and are subject to unequal treatment compared to the rest of the population” (Chimienti 2018). They are associated with “images of being immoral, endangering national security or the economy, as a threat to moral values, and are linked to criminality because of their irregular status” (ICRSE 2016). As a result of this stigma, MSW are forced to work in more precarious conditions because of shame or criminalization—where they face “extremely disadvantaged circumstances and even greater isolation, vulnerability, and social exclusion than other sex workers” (TAMPEP 2019). ). And, because of their precarious social and legal circumstances, it is “difficult for them to defend themselves against violence and exploitation. They are vulnerable and exploitable” (FIZ 2017).

Accessing the health system is also significantly more difficult for migrant sex workers than it would be for someone identifying with only one of those characteristics. As noted by Aspasia co-coordinator Isabelle Boillat, it is “very difficult” to access migrant sex workers for health purposes. “When one factors in the status of a sex worker that is *also* a migrant, the layered barriers to access make it near impossible to adequately treat migrant sex workers” (Boillat). As discussed, the repressive laws governing both sex work and immigration in Switzerland “push migrant sex workers into irregular migration situations” (ICRSE, 2016, p.20). The main obstacle to health cited by prostitutes of foreign origin is their “illegal residence status”, which “affects the range of health services available to them in their host country” (Federal Council 2015).

***F. Conflict within Public Policy– Restrictive Migration and Liberalized Sex work:***

Resulting from the decriminalized nature of Switzerland’s sex industry, migrant women are attracted to the industry as an economic opportunity. However, upon arrival, they are repressed as a result of migration legislation and immigrant attitudes that ultimately makes sex work just as dangerous for them as it would be in a country where sex work is officially criminalized.

Herein exists a paradox within the legislation: regulations are put in place masquerading as protections for sex workers, but the regulations actually tend to make it much more difficult for sex workers to practice freely and fail to acknowledge the dangers posed by their intersectional identity. Chimienti illustrates this issue well when she articulates: “in the Swiss context, the legal framework of prostitution has represented a new migration opportunity for many migrant women whilst setting them up in a segregated and highly stigmatized labor sector” (Chimienti 2018). Juno Mac also articulates this paradox: “regulation sounds great on paper, but politicians deliberately make regulation around the sex industry [...] difficult to comply with. It creates a two-tiered system: legal and illegal work. We sometimes call it “backdoor

criminalization”. [...] In a two-tiered system, the most vulnerable people are forced to work illegal, so they’re still exposed to all of the dangers of criminalization” (Mac).

Hence, ultimately even though prostitution is federally decriminalized, the restrictive policies put in place serve to restrict sex work and migration in countless ways. Namely, restrictive migration policies lead migrants to seek irregular (and precarious) ways into the Swiss sex industry, which leads to a surplus in the sex industry where sex workers are pushed into unsafe practices. Then, the already vulnerable migrant sex workers are subject to checks and raids targeting their immigration status, all of the while combating/facing the layered vulnerabilities (in health, stigma, violence, and exploitation) of being a sex worker and a migrant. Therefore, for migrant sex workers in Switzerland, decriminalization is ultimately rendered obsolete. For them, sex work in Switzerland really becomes a system of the “backdoor criminalization” that is all too common in countries with theoretical decriminalization (Mac).

Throughout this analysis a discrete, but imbedded hypocrisy within the Swiss government has been revealed. The Federal government and its various departments have acknowledged the increased flow of migrants into Switzerland (SEM 2019) and into the Swiss sex industry (Federal Council 2015), have acknowledged the correlating increase in irregular migration and the harmful affects of criminalizing migration (SEM 2017), the fact that the majority of the sex work industry in Switzerland is composed of migrant women (SEM 2018), the lack of judicial protection to sex workers because of the contract decision (Federal Council 2015), the dangers of criminalizing sex work (SDC 2019), and have recognized the vulnerabilities and barriers faced by both migrants and sex workers (Federal Council 2015). Hence, the government is fully aware of the presence of destructive sex work and migration policies that marginalize and endanger MSW, but have refused to legislate based on these implications. There are policies and

agreements in place, but there is no adequate follow-through on behalf of the government to protect the groups regulated by this legislation.

This lack of substantive rights-granting or protections flies “under the radar” in Switzerland because of the liberalized reputation of Switzerland’s sex industry. This is why an analysis like this is so important: we must be critical of the intersectionality of policies in Switzerland or we will leave groups of intersecting identities (MSW) behind in a dust of stigma, marginalization, and criminalization.

### **Conclusion**

As touched upon in the previous section, there is an undeniable disconnect within Swiss public policy: Switzerland is a country where liberal decriminalization of prostitution is promoted, but repressive regulations and migration policies are in direct conflict with decriminalization. As a result, those who are in sex work—specifically those with migrant or irregular statuses—are criminalized and become one of the most vulnerable populations in Switzerland. The importance in this disconnect between policy and criminalization lies in the fact that “you can’t simply legislate a better world into existence. If someone needs to sell sex because they’re poor or homeless or because they’re undocumented and they can’t find legal work, taking away that option doesn’t make them any less poor or house them or change their immigration status” (Mac).

*Main Findings:* The regulation of sex work and regulation of migration in Switzerland are virtually inseparable and inextricably intertwined, making the situation of migrant sex workers extremely difficult. Although ultimately, having a system of legalized sex work is better than criminalizing the sex industry—because at minimum legalization offers some governmental protections for sex workers— if the intersectional issues of having a decriminalized sex industry



are not properly acknowledged by the government, the purpose of decriminalization is essentially defeated. This is the case in Switzerland: migrant sex workers are left unprotected as a result of restrictive labor migration framework and layered vulnerabilities of identity, despite only trying to capitalize on the economic opportunity presented by decriminalized sex work.

*Objectives:* Returning to the original hypotheses of this analysis, the objective of this research was to determine whether migration flows were related to the decriminalization of sex work in Switzerland, and additionally how the Swiss government protects migrant sex workers within this system. These objectives have been met by a delineation of regulations and the legal framework surrounding both sex work and migration in Switzerland, followed by an analysis of how this legal framework interacts differently with migrants in the context of global labor migration and economic opportunity. Then, a description of the implications of the decriminalized sex work system on migrant women within the sex industry was presented to prove the disproportionate impact of regulations and restrictive attitudes on migrant sex workers.

*Potential Future Research:* It is recommended that a similar analysis is executed, but one that focuses on *cantonal* level regulations regarding migration and sex work rather than federal. Given the decentralized nature of the Swiss government, the only way to achieve a comprehensive analysis of the impact of migration policy on decriminalized sex work and the resulting impacts on migrant sex workers is to execute an analysis of every canton's legal framework and the impact on sex workers in each proper canton. In addition, this study did not dive into the impact of migration policies on sex trafficking. Although this is a very relevant topic when discussing sex work and migration, this analysis focused on the root of the issue within legislation/regulation rather than on the broader implications of migration and sex work—one of which is trafficking.

*Policy Recommendations Based on Findings:* The most important factor when considering policy recommendations for sex work and migration is the inclusion of sex workers and migrant women in the shaping of such policies (TAMPEP 2015). This collaboration was proved most effective in New Zealand, where the legislation around decriminalized prostitution “was written in collaboration with sex workers” (Mac), creating one of the most successful decriminalized systems in the world. And, given the demographics of the sex industry and the overwhelming number of migrants in the Swiss industry, this sample of advisors *must* be a demographic sample that also includes migrant sex workers.

Additionally, one of the main issues with addressing the vulnerabilities of migrant sex workers is that they are virtually unreachable. Hence, a decriminalized outreach program for migrant sex workers with an irregular status is suggested. In the Swiss context specifically, there needs to be more possibilities within the legal framework for migrant labor for migrant sex workers to get work permits and residency, in order to increase their autonomy and independence, to prevent exploitation, and to treat them like any other laborer within the labor market—as originally intended by the concept decriminalized prostitution. The “migration policies should be better aligned with the actual and projected labor market needs and addressing other relevant issues,” Switzerland must implement evidence-based migration policies that account for the presence of migrants in the country and in the sex industry (Bailey, 2013). Overall, decriminalization cannot be fully successful when criminalizing one of the most prominent groups working in the sex industry. Hence, the protection of sex workers of *all identities* needs to be a priority of any government who considers decriminalizing prostitution.

## Abbreviation List

AFMP- Agreement on the Free Movement of Persons

CEDAW- Convention on the Elimination of All Forms of Discrimination Against Women

EDI- Swiss Department of the Interior

EFTA-European Free Trade Association

EU- European Union

FDJP- Swiss Federal Department of Justice and Police

FOM- Swiss Federal Office of Migration

GDP- Gross Domestic Product

GProst- Geneva Sex Work Police Force

HIV- Human immunodeficiency virus

ICRSE- International Committee on the Rights of Sex Workers in Europe

ILO- International Labor Organization

IOM- International Organization for Migration

LEtr- The Aliens Act of 2008

LProst- Prostitution Act (Geneva)

MSW- Migrant Sex Worker

OHCHR- United Nations Human Rights Office of the High Commissioner

SDC- Swiss Agency for Development and Cooperation

SEM- Swiss State Secretariat for Migration

TAMPEP- European Network for the Promotion of Rights and Health Among Migrant Sex Workers

UDM- Undocumented Migrant

UDMSW- Undocumented Migrant Sex Worker

UN- United Nations

WHO- World Health Organization

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