

## Review Article

# Trafficking Policy, Meaning Making and State Violence

**Heather Berg**

*Department of Feminist Studies, University of California Santa Barbara*  
E-mail: [heatherberg@umail.ucsb.edu](mailto:heatherberg@umail.ucsb.edu)

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*This article reviews critical literature on sex trafficking policy through a cultural studies lens. It argues that the conflation of ‘trafficking’ and prostitution that pervades anti-trafficking policy makes trafficking victims out of sex workers. On another register, anti-trafficking policy creates ‘victims’ through curtailments on mobility and work eligibility that make workers more dependent on third party managers and less able to secure assistance when these parties abuse the power that the state has effectively granted them. The article calls upon policy makers to undertake the policy making process with sex workers’ continued experiences of the state as a primary source of violence and exploitation in view.*

**Key Words:** Sex work, trafficking, labour policy, state violence

### Introduction

This article takes as a point of departure an understanding of social policy as part of the story of how political identities come to be (Lewis, 2000). It examines sex trafficking policy as a producer of ‘victims of sex trafficking’. I mean this in two ways: sex trafficking policy produces sex trafficking victims to the extent that speaking of something brings it into existence, but also because sex trafficking policies themselves compound and sometimes create the conditions of exploitation and violence in which someone can become a ‘victim of trafficking’. The conflation of ‘trafficking’ and prostitution makes trafficking victims out of sex workers, while anti-trafficking policy creates ‘victims’ through curtailments on mobility and work eligibility that make workers more dependent on third party managers and less able to secure assistance when these parties abuse the power that the state has effectively granted them. State policy does not only permit violence, but is in itself a primary source of violence. A cultural studies lens makes clear the necessity to design and evaluate state policy within the particular context of sex workers’ experiences of the state as perpetrator.

In this article I review scholarly critiques of sex trafficking discourse and policy from varied disciplinary contexts and diverse regional and historical locations, but which share a critical focus on sex trafficking policy as itself a source of violence. I use ‘the state’ to refer to the matrix of local, federal and transnational governing bodies responsible for developing and carrying out social policy, but the term necessarily encompasses the wide range of non-governmental organisations (NGOs) with which state institutions act in concert. There are no neat distinctions to be made here, and this is particularly true in the context of sex trafficking policy, where NGOs continue to exert significant power in development and implementation. NGOs successfully lobby at the local, federal and global levels; train law enforcement; in a circular fashion often provide

the services mandated by the policies they have lobbied for; and receive state funds for such service provision.<sup>1</sup> Indeed, 'neo-abolitionists have successfully promoted their anti-prostitution agenda worldwide through targeted legal reforms' (Chuang, 2010: 1655). State and international political bodies' policies regarding sex trafficking vary, but, as the critics whose work I review here point out, these policies overwhelmingly share several limitations: imprecise definitions of sex trafficking that deliberately confuse it with other forms of paid sex exchange; reliance on evidence that lacks scientific rigour; ties to punitive legal structures in law enforcement and immigration control; a failure to address the structural factors that 'victims' identify as most pressing; and a dearth of provisions designed to improve the working conditions of those who work in the sex industries voluntarily.<sup>2</sup> Taken together, across various regional contexts, policy 'solutions' are at the core of the problem. In the differing legal contexts of Armenia, Bosnia and India, for example, anthropologist Susan Dewey 'was struck . . . by the way bureaucracy and social discrimination consistently hinder counter-trafficking efforts in almost the same ways they directly facilitate the traffic in women' (2008: 2). Again, there is no clear way in which to disaggregate the impacts of social policies from those of the social environments in which they emerge.

### **Anti-trafficking policy and the problems of definition and data**

Problems of definition and measurement have shaped the anti-trafficking movement since its inception in Victorian and Progressive era campaigns against 'white slavery' (Boris and Berg, 2014). The difficulty of defining 'sex trafficking' complicates researchers' efforts to quantify instances of it. The term's remarkable flexibility of meaning ensures that measures of prostitution on the one hand and migration on the other can be re-purposed as evidence of trafficking (Kapur, 2005: 29). Presumptions about consent (a static, dichotomised and totalising feature), and who has the capacity to give it (migrant men, but not migrant non-trans women and youths; factory and agricultural labourers, not sex workers; white, western vacationers, not migrants from the global south) are central here (Agustín, 2007: 18, 40). Consenting subjects are made and unmade through the vicissitudes of how consent is defined.

The definition (and hence production of) a 'worker' is similarly mercurial. According to the international anti-trafficking group, Coalition Against Trafficking in Women (CATW), 'Prostitution is not "work". It is violence against women and girls and a human rights violation . . . Prostitution is the end point to sex trafficking' (CATW, 2011).

The Polaris Project, a US-based anti-trafficking group, offers a list of warning signs that can help indicate whether 'you or someone you know is being trafficked': the individual in question is 'unpaid, paid very little, or paid only through tips', 'works excessively long and/or unusual hours' and 'owes a large debt and is unable to pay it off', are some examples (Polaris Project, n.d.). While these factors are understood to be regrettable but unremarkable features of life under global capitalism, in agriculture, manufacturing or domestic work, for example, they are taken as proof of a crisis of modern day slavery where commercial sex is concerned. Incidentally, these industries have much higher rates of labour trafficking than the sex industry (the International Labour Organization (ILO) found that, in 2012, only 22 per cent of forced labourers worked in sex industries) but such abuses receive far less attention in policy, scholarship and media (ILO, 2012). When instances of trafficking outside of sex industries are tracked, these data have been

appropriated in support of claims of the crisis of sex trafficking. For instance, the US National Organization of Women and the US House member sponsoring the Victims of Trafficking and Violence Protection Act (US Public Law, 2000) alike re-circulated the claim that 50,000 women and girls are forced into the 'sex trade' annually, a figure drawn from a study that measured forced labour into sweatshop, domestic, agricultural and sex work (Chapkis, 2003: 925–6).

The conflation of prostitution, migration and/or poor working conditions with trafficking impacts not only on data collection but also policy implementation, resulting in interventions focused on abstract problems of morality (should sex be sold or not?) rather than concrete ones of labour rights. Anti-trafficking laws make services, rights and recognition contingent on where one falls in the 'innocent victim'/'willing whore' dichotomy and require sex workers to claim victim status in order to avoid exposure to criminal charges and/or deportation (Doezema, 2010: 13). In the US context, for instance, The Victims of Trafficking and Violence Protection Act (US Public Law, 2000) provides access to public services and the possibility of applying for a T-Visa to undocumented migrants who can prove that they are victims of 'a severe form of trafficking' and are willing to assist law enforcement in the investigation and prosecution of trafficking perpetrators. 'Sex trafficking' here means 'the recruitment, harbouring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act', while severe forms of sex trafficking include the above with respect to those under the age of eighteen or, for adults, where 'force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery' exist (2000).

It is not only trafficking victims that are produced in and through state policy, but also traffickers. California's Proposition 35, approved by voters in 2012 and a model for copycat legislation across the US, significantly increases mandatory criminal charges for traffickers', requires convicted 'traffickers' to register as sex offenders, mandates law enforcement training on trafficking prevention (to be designed by anti-prostitution activists) and requires sex offenders to disclose their internet accounts (State of California, 2012). The Proposition exposes consenting sex workers to heightened state surveillance (through police raids and routine invasions of internet privacy) and further criminalisation; in addition, a sex worker's business associate, romantic partner, roommate or adult child could face criminal charges for 'harbouring' that person (Gira Grant, 2012). Sex worker activists insist that well-designed policy can support the needs of those impacted by trafficking without impinging on the rights of consenting sex workers; legislation such as Proposition 35 serves neither goal.

With a focus on the quotidian, local and particular, cultural studies scholars stress the importance of understanding how material realities emerge in social context. Likewise, sex work scholars and activists suggest that formulations of consent must be firmly rooted in social context. They articulate alternatives to the choice/force dichotomy, pushing instead for models that 'advocate taking women's agency seriously precisely in order to understand how power works' (Hemmings, 2011: 206) and support policies that enable rights gaining strategies that are not tethered to a performance of victimhood (Chapkis, 2003). Taking workers' agency seriously puts into relief the forms of creative resistance working people deploy to survive in a political economic moment that is toxic to their wellbeing. To the extent that migration can be understood as 'individual resistance by way of physical relocation' (Ruggiero, 1997), sex work itself can be seen as a way to resist poverty, the tedium of an office job or a foster care system woefully unable to support

youth in its care. Workers also, of course, resist labour regimes from within, and their actions do transform workplace relations on a daily basis. Policy can function to either support or undermine these efforts. This is, I argue, the metric against which sex work and trafficking policy should be evaluated.

### **The state as perpetrator, ally**

State policy does not only manage social life, but also produces it, and policy makers and those who ally with them cannot claim political distance from this meaning-making. The history of campaigns against sex trafficking is beset with stories of fraught alliances between anti-prostitution feminists and the state (Doezema, 2010). These relationships persist, today embodied in even more explicitly institutionalised coalitions (Agustín, 2007: 163; Bumiller, 2008: 15). But where analyses of previous iterations of feminist-state alliances in the fight against prostitution suggest that complicity with state power is an unintended by-product of feminist anti-trafficking campaigns, Elizabeth Bernstein revises such a reading in her elaboration of ‘carceral feminism’: a perspective in which ‘carceral politics and a securitized state apparatus’ become ‘anti-trafficking feminists’ preferred political remedies’ [emphasis added] (Bernstein, 2010: 54). The irony of this approach is particularly striking when we consider that, as Doezema points out, sex worker activists ‘place most emphasis on their struggles against the police and the state, rather than against clients’ (Doezema, 2010: 26, see also Chateauvert, 2014; Gira Grant, 2014). Any attempts to regulate sexual commerce at the level of state policy must contend with sex workers’ experiences of the state as a primary source of violence and exploitation.

Because of the enduring conflation of sex trafficking and prostitution, it becomes impossible to disentangle the damages of anti-trafficking policies from those of anti-prostitution policies. Anti-trafficking initiatives have proven to be successful avenues for increased surveillance and incarceration of consenting sex workers, enhanced state management of migration, the exclusion of sex workers from HIV prevention efforts and the promotion of urban gentrification, among other sites of policy impact. In practice, ‘much of what is pursued in the name of a war on trafficking has troubling consequences for poor people around the world’ (Kempadoo, 2005: viii), and, we might add, for sex workers, migrants and some queers and people of colour who find themselves targeted by anti-trafficking policy or caught in its dragnet. Beloso (2013) situates sex trafficking panics within the context of what Naomi Klein has described as the ‘shock doctrine’, wherein crises are exploited in the service of neoliberal economic and cultural intervention. Beloso suggests that sex trafficking panics operate as ‘warrant[s] of payment’ for elites seeking to consolidate their political power and ensure upward wealth distribution (2013).

### **Trafficking policy and global migration**

Indeed, anti-trafficking initiatives have long served as ‘warrants of payment’ for anti-immigrant policy. In the late nineteenth century US, for instance, the spectre of sex trafficking ‘became a justification for racist immigration legislation, culminating in the Chinese Exclusion Act of 1882’ (Chapkis, 1997: 45). Contemporarily, state managers have become interested in the crisis of trafficking precisely as concerns regarding illegal migration have mounted; anti-trafficking initiatives work to police migration as a whole (Agustín, 2007: 27, 40). In the Dutch case, for example, ‘the “trafficking debate” has

been a crucial force in reshaping Dutch prostitution policy in the service of a broader anti-immigrant agenda' (Bernstein, 2007: 162). That the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* is housed under the United Nations' 'Convention against Transnational Organized Crime' leaves no doubt as to the usefulness of anti-trafficking rhetoric for the punitive state (UN General Assembly, 2000). The problem with trafficking discourse is not only with the state actions it permits, but also with the inactions it excuses. Focusing attention on criminal border crossing, anti-trafficking frameworks can distract from systemic violence and work to release governments from their responsibilities to workers and migrants (O'Connell Davidson, 2006: 9).

While sex worker scholars and activists, like their anti-trafficking counterparts, are concerned with the human and labour rights abuses migrants working in sex industries encounter, they point out that trafficking policy focuses on mobility, while the abuses migrant sex workers face are concentrated in the labour market interactions that follow migration. Migrant sex workers overwhelmingly cross borders and enter sex industries willingly, but encounter coercive working conditions upon arrival; as one worker put it, the 'deceit is in the debt and the payback, not in the work' (Agustín, 2007: 34, see also Alexander, 1997: 91; Kempadoo, 2005: xxv; Doezema, 2010: 17). Anti-trafficking policies which police migration and sex exchange itself, rather than moneylending and labour practices, can, in pushing both mobility and sex exchange underground, do more harm than good both for sex workers who enter the industry willingly and those who do so under varying conditions of force (Alexander, 1997: 91). Such policies create circumstances under which migrants incur significant debts in locating assistance with illegal border crossing and securing work, housing and protection from police upon arrival. Workers become similarly vulnerable in legal regimes in which prostitution is permitted, but restricted to a country's documented residents, thereby rendering the potential benefits of legal and regulated systems unavailable to undocumented workers who cross borders in order to do sex work. Again drawing from cultural studies' focus on contingency, we can observe that processes by which policy itself produces extra-legal subjects.

Sex trafficking policy cannot be evaluated outside the context of state policy more broadly, and laws governing trade, wages and social supports may play more significant roles in shaping the conditions of 'sex trafficking' than interventions targeting the phenomenon. Filipina migrants, for example, choose 'between servitude and poverty', and they do so with 'critical self-reflection' (Parreñas, 2011: 41, see also Kempadoo, 1999:19, 2005: xi).

Some workers migrate and enter sex industries not in order to escape abject poverty, but because they prefer sex work to other waged labour (even that presumed to be of higher status). Prostitutes in Rio de Janeiro, for example, reported having access to a range of options, but found sex work 'more lucrative and often more agreeable' (Blanchette and Da Silva, 2011: 133). Migrant prostitutes in Spain described a range of desires leading to their decisions to travel and engage in sexual labour, including a wish to see the world, live in urban centres or secure access to luxury goods and services (motivations which, Agustín points out, trouble the dichotomies between migrant and tourist, worker and pleasure-seeking traveller (2007: 25)).

Sex work is both exponentially more lucrative and often more pleasant than the varieties of labour advocated by anti-trafficking activists in the wake of 'rescue', such as domestic service, piecework and factory labour. The Asia Pacific Network of Sex Workers

logo features a sewing machine crossed out, a gesture to the group's members who turned to sex work as a way to refuse the low pay and bad conditions in garment factories (Agustín, 2012). Rescuers and the objects of their intervention have very different ideas about what proper employment might look like for poor and working class women in the global south – one of the problematics that scholars and activists identify in their critiques of the 'rescue industry's' troubled racial politics (see, for example, Kempadoo, 2005; Agustín, 2007; Doezema, 2010). Laura Agustín calls the always, already racialised rescue efforts of anti-trafficking groups the 'soft side of imperialism', and reminds us that '[the] Rescue industry, like the war on terrorism, relies on an image of the barbaric Other' (2012).

### Trafficking policy, urban gentrification and tourism

Scholars and activists have explored the ways in which anti-trafficking campaigns work to re-fashion urban space, often in the service of gentrification, upward wealth distribution and the criminalisation of already marginalised populations. The spectre of sex trafficking at the 2012 Super Bowl served as an 'alibi' for Indianapolis city officials and business owners with a vested interest in the expulsion of poor and working-class residents from the urban landscape and subsequent privatisation of formerly public goods and spaces (Beloso, 2013). Urban revitalisation, carried out under the auspices of anti-trafficking campaigns, makes urban space comfortable for property owners and moneyed tourists at the expense of the working class, including sex workers.

Paul Amar explores the Egyptian state's efforts to build its reputation as a tourist destination while also managing anxieties about national identity. Here, policies 'maximizing touristic consumer mobility and minimizing female labor mobility' were designed to exploit tourism's profits as they minimised its disruptions to religious identity and the 'purity of gender orders and class hierarchies' (2013: 94). In San Francisco, crackdowns on street prostitution (and street prostitutes, who are more likely to be women of colour, gender non-conforming and undocumented) coupled with the *de-facto* decriminalisation of indoor sex work to '[map a] new geography of centrality and marginality' (Bernstein, 2007: 35, 37). Becki Ross describes anti-prostitution campaigns driven by Vancouver's organised residents, business owners, politicians and police to 'cleanse' the zones of the city known for street sex work in a process in which these areas were 'whiten[ed] and made safe for bourgeois (queer) capitalism, with lethal consequences for outdoor sex workers in the city' (2010: 198). As a result of these campaigns, street-based sex workers were forced to relocate to isolated industrial zones, where they were made vulnerable to violence. The state-directed closure of Rio de Janeiro's 'largest, safest and least exploitative commercial sex venue', which happened to sit on valuable beachfront property, created the very sort of 'chaotic and exploitative commercial sex scene that city officials say they wish to avoid' (Blanchette and Da Silva, 2011: 143). Again, policy produces social and economic vulnerabilities; the cure is the problem.

### Sex trafficking and age

The age at which one is deemed able to consent to sex, work or sex work<sup>3</sup> is a social construction that shifts dramatically across place and social context, yet international and regional policy overwhelmingly apply legal definitions to the age of consent imposed by the United States<sup>4</sup> and Western Europe. Policy approaches to child sex trafficking that

define complex issues of consent, childhood and economic need outside ecosystemic context misread the experiences of those they purport to assist. While qualitative data about underage sex trafficking is unreliable for the same reasons outlined above (including that all underage prostitution meets legal definitions of trafficking), ethnographic research suggests that 'child sex trafficking' policies do not speak to the needs and perspectives of impacted individuals and communities. Like trafficking policies focused on global migration and urban gentrification, child sex trafficking policy can also act as an 'alibi' for repressive state action (or gross inaction) in other areas.

The subjects of Heather Montgomery's research with Thai children engaged in paid sex, aged six to fourteen, were neither trafficked nor debt-bonded, but had entered commercial sex industries more or less autonomously<sup>5</sup> and sold sexual services in order to contribute to family economies. Most had access to other types of employment in sweatshops, street vending or scavenging, but found these options less remunerative than sexual labour (2011: 155). Montgomery's point is not that the interactions between child prostitutes and their managers (some of whom are also underage) and clients are not exploitative, but, rather, that child prostitutes are 'exploited in the "wrong" way', that is, in ways that make their experiences illegible in legal and helping discourse (2011: 158). Montgomery writes, 'For NGOs and governments there were tangible benefits to legislative change ... in terms of its impact on the actual children who worked as prostitutes, the picture was less clear' (2011: 157). Laws instituted under the auspices of aiding child prostitutes focused on prosecution of parents and clients, and would, if effective in these goals, lead to the breakup of the children's families and the removal of their primary sources of income. Left untouched are structures of poverty that induce children to choose to work in prostitution in order to contribute to family incomes in the first place, 'thus giving the state immunity by privatizing the issue and laying the blame at the feet of the family' (2011: 158).

Yasmina Katsulis, in her research with youth prostitutes working on the US Mexico border found, similarly, that young people enter into prostitution not as a result of force by individuals, but because structural conditions make prostitution the best of the options on offer. Patterns of global income inequality and labour migration coupled with tightened immigration law separate families and undermine social safety nets, all but ensuring that young people will need to find waged work in order to survive. Policies designed to combat child labour push these young people to pursue illegal avenues of work, of which prostitution is one of the more accessible, remunerative and, for some, dignified ways to survive (one of Katsulis' informants was proud that sex work meant he could survive without hurting anyone or stealing) (2010: 115). Legal prohibitions against prostitution in general, and underage sex work in particular, make it difficult for youth prostitutes to access services, including healthcare and sexually transmitted infection prevention education. Moralised and universalised debates about when exactly one should be able to sell sex and the policy approaches they engender do little to enhance options or support survival strategies for the youths they purport to help. In this case, as in others, they actively undermine these strategies.

### **Alternative solutions**

It is incumbent on policy makers to confront trafficking policy's failure to enhance targeted populations' wellbeing and to work toward better solutions in concert with affected

populations, rather than their self-appointed rescuers. In this spirit, I will close with a review of best practices recommendations put forth by sex work scholars and activists. These focus, broadly, on initiatives geared toward addressing poverty and precarity, and on harm reduction services and labour regulations in sex and other work. They begin from a place of respecting workers' capacity for self-awareness and informed decision making, and thus focus not on rescue but on supporting the various strategies with which workers resist structural inequality and exert control over their own labour processes.

As we have seen, a wealth of research suggests that extreme global income inequality, a paucity of employment opportunities and poor pay and working conditions in those jobs that do exist, rather than the ploys of deceitful individuals, push people to migrate and pursue sex work under potentially dangerous and exploitative conditions. Scholars call for a re-calibrated focus on these issues. Bernstein suggests a 'sober analysis of the global inequalities . . . that drive women into sexual labor, and of the ways these inequalities are themselves created through specific practices and policies' (2007: 185). Policies governing global trade, national debt and development may do more to shape the conditions of sex industries than prostitution-specific laws. In a similar vein, Kamala Kempadoo connects the low wages and poor working conditions in Free Trade Zones to the burgeoning informal sector in the Caribbean; Ratna Kapur directs our attention to the global economic patterns that make nations in the global south dependent on labour migrants' remittances; and Patty Kelly identifies the post-North American Free Trade Agreement (NAFTA) feminisation of debt as a central concern for sex workers in southern Mexico (Kempadoo, 1999: 94; Kapur, 2005: 27; Kelly, 2008: 5). National policy, too, bears out in sex workers' lives in ways that remain unaddressed in anti-trafficking paradigms. Rhacel Parreñas suggests that, in order to address abusive labour conditions, policy makers must confront the structures that undermine migrant workers' autonomy, criminalise their labour and leave informal labour sectors unregulated (2011: 24). Crumbling social safety nets (including foster care systems), labour policies that degrade wages and conditions in jobs across all industries, and repressive immigration law are policy areas that should be of interest to those concerned with exploitation in sex industries.

In addition to re-focusing our attention on structural issues that reach far beyond sex industries, scholars and activists recommend concrete shifts in policies governing commercial sex exchange. Research has long supported the conclusion that criminalised prostitution regimes compound the vulnerabilities that become re-packaged as evidence of 'trafficking', making workers less able to seek vital services and more dependent on managers and intermediaries in order to secure protection from police, locate clients, ensure payment and arrange for safe and discrete workspaces (see, for example, Walkowitz, 1983: 428; Agustín, 2007: 34; Kotiswaran, 2011: 199; Trotter, 2011: 92). As such, many sex work scholars advocate various models of legalisation and decriminalisation. While space does not allow for a full analysis of the impacts of various policy approaches on sex workers, it should be noted that legalised and decriminalised regimes do not eliminate labour and human rights abuses, and sometimes manufacture new avenues for harm. More often than not in legalised regimes, 'By placing sex workers under its watchful eye . . . the state asserts control in ways far more beneficial to the state than to those the state is regulating' (Kelly and Dewey, 2011: 12). Sex workers in legalised regimes remain, of course, vulnerable to the various abuses perpetrated by employers in the formal economy.

Social policy is a system of meaning making, producing realities as much as it manages them. Too often, anti-trafficking policy and the matrix of policies that intersect with it in unacknowledged ways make the precarious more so. The task is to develop state policy governing sexual commerce while attending to the reality that the state has been and remains a key perpetrator of violence against sex workers and other marginalised populations.

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### Notes

1 Phoenix, Arizona's Project ROSE, for example, works in concert with local law enforcement, publically funded Arizona State University professors and social service agencies, including the Catholic Charities Dignity program. The organisation conducts training for local police and healthcare workers, and conducts mandatory diversion programs for convicted offenders (SWOP PHX, 2014). Thanks to the organisation's efforts, as a local police lieutenant put it, 'Investigators have now come to view prostitutes as human-trafficking victims' (Hensley, 2012).

2 In the UN Trafficking and ILO Protocols and US anti-trafficking law, whether trafficking policy would encompass all prostitution was a central ideological struggle. The definitions of trafficking adopted by the ILO and UN Office of the High Commissioner for Human Rights, mark an explicit distinction between sex trafficking and voluntary prostitution (Chuang, 2010: 1655). Even here, though, slippery definitions of consent make possible the conflation of sex work and sex trafficking.

3 I use the term 'workers' here because, again, I do not find it useful to draw a sharp line between 'workers' and persons who are forced to undertake a given activity in the interests of another's profit.

4 Indeed, failing to do so can result in economic sanctions from the US government, which exerts considerable pressure on other countries as well as NGOs to adopt its approach to sex trafficking (Capous Desyllas, 2007: 66).

5 As addressed throughout this review, terms such as 'choice' and 'autonomy' are subjective, contingent and shifting. In this context, I use 'autonomous' to signal that the youth involved self-identified as having pursued prostitution of their own accord, rather than as a result of another person's force.

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