



Submission to the Department of Justice and Equality public consultation on Review of the Operation of Part 4 of the Criminal Law (Sexual Offences) Act 2017

18 September 2020

Amnesty International submits the following observations to the Department of Justice and Equality 's public consultation on its review of the operation of Part 4 of the Criminal Law (Sexual Offences) Act 2017.¹ In this submission, we urge that the review is not limited to section 7A of the Criminal Law (Sexual Offences) Act 1993 - that is the provisions criminalising the purchase of sexual services introduced in 2017 - as prescribed in the 2017 Act.² Amnesty International recommends that the review also considers the related provisions in the Criminal Law (Sexual Offences) Act 1993 and their impact on the human rights of sex workers (including male and transgender sex workers), and the particular implications they may have for migrant sex workers. We also urge that the review consider the impact and adequacy of legal and policy measures to identify and prosecute violence against and exploitation of sex workers, and trafficking for the purposes of sexual exploitation. We also recommend that the review recognise the importance of ensuring the participation of sex workers in the development of laws that affect their lives and safety; and consider and make recommendations on what may lead to entry into sex work, stigmatise sex workers and prevent exit for those who wish to stop.

Background on Amnesty International's position

Sex workers³ are among the most marginalised groups in the world, and often face a range of human rights abuses and violations, including rape, violence, harassment, extortion, trafficking, discrimination, arbitrary arrest and detention, forced eviction from their homes and exclusion from health services. Far too often they receive no, or very little, protection from the law or means for redress. For these reasons, in August 2015, Amnesty International's decision-making forum, the International Council Meeting (ICM), adopted a resolution calling upon the organisation's International Board to adopt a policy that seeks the attainment of the highest

¹[http://justice.ie/en/JELR/Pages/Review_of_the_Operation_of_Part_4_of_the_Criminal_Law_\(Sexual_Offences\)_Act_2017](http://justice.ie/en/JELR/Pages/Review_of_the_Operation_of_Part_4_of_the_Criminal_Law_(Sexual_Offences)_Act_2017), accessed 18 September 2020.

² Section 27 (Report on operation of Act) of the 2017 Act states:

(1) The Minister for Justice and Equality shall, not later than 3 years after the commencement of this Part, cause a report to be prepared on the operation of section 7A of the Act of 1993 and shall cause copies of the report to be laid before each House of the Oireachtas.

(2) The report shall include – (a) information as to the number of arrests and convictions in respect of offences under section 7A of the Act of 1993 during the period from the commencement of that section, and (b) an assessment of the impact of the operation of that section on the safety and well-being of persons who engage in sexual activity for payment.

³ We use the term 'sex work' or 'sex workers' only for consensual exchanges between adults.

possible protection of the human rights of sex workers through measures that, on the basis of international evidence, include the decriminalisation of sex work.⁴

In November 2015, based on this new ICM resolution, Amnesty International submitted observations to the Department of Justice and Equality on the Scheme of the Criminal Law (Sexual Offences) Bill 2014. A copy of this submission is enclosed. We noted that the then proposal to criminalise those who purchase sexual services runs counter to increasing evidence that such an approach puts sex workers at risk and leads to human rights violations. We also noted the lack of data and research on the circumstances and needs of sex workers in Ireland and urged the Government to refrain from criminalising the sale and purchase of consensual adult sex and related activities.

In 2016, Amnesty International published its policy on state obligations to respect, protect and fulfil the human rights of sex workers,⁵ a copy of which is enclosed with this submission. The policy was the culmination of extensive worldwide consultations, a considered review of substantive evidence and international human rights standards and first-hand research, carried out in four countries over more than two years. Also enclosed is the Explanatory Note published with this policy.⁶

States' human rights obligations

Amnesty International's policy sets out states' obligations to respect, protect and fulfil the human rights of sex workers. It also details the actions by states that Amnesty International believes will best address the barriers that sex workers routinely face in realising their rights. This policy is grounded in the principles of harm reduction, gender equality, recognition of the personal agency of sex workers, and general international human rights law principles. In particular, the policy sets forth that states must:

- Address underlying harmful gender and other stereotypes, discrimination and structural inequalities that drive marginalisation and exclusion and lead to individuals from marginalised groups selling sex in disproportionate numbers, and to discrimination against sex workers;
- Comply with their obligations with respect to all people's economic, social and cultural rights, in particular guaranteeing access for all to education and employment options and social security to prevent any person from having to rely on selling sex as a means of survival due to poverty or discrimination;
- Combat gender-based and other forms of direct and indirect discrimination and ensure that the human rights of all individuals, including women and girls, and those at risk of discrimination and abuse because of their sexual orientation or gender identity and expression, race, caste, ethnicity, Indigenous identity, migrant status or other characteristics of their identity, are equally respected, protected and fulfilled;
- Repeal existing laws and refrain from introducing new laws that criminalise or penalise directly or in practice the consensual exchange of sexual services between adults for remuneration;

⁴ The resolution is available at <https://www.amnesty.org/policy-on-state-obligations-to-respect-protect-and-fulfil-the-human-rights-of-sex-workers>.

⁵ Amnesty International policy on state obligations to respect, protect and fulfil the human rights of sex workers, 26 May 2016, Index: POL 30/4062/2016, available at <https://www.amnesty.org/en/documents/pol30/4062/2016/en/>

⁶ Explanatory note on Amnesty International's policy on state obligations to respect, protect and fulfil the human rights of sex workers, 26 May 2016, Index: POL 30/4063/2016 available at <https://www.amnesty.org/en/documents/pol30/4063/2016/en/>

- Refrain from the discriminatory enforcement against sex workers of other laws, such as those on vagrancy, loitering, and immigration requirements;
- Ensure the meaningful participation of sex workers in the development of law and policies that directly affect their lives and safety;
- Refocus laws away from catch-all offences that criminalise most or all aspects of sex work and towards laws and policies that protect sex workers' health and safety and that oppose all acts of exploitation and trafficking in commercial sex (including of children);
- Ensure that there are effective frameworks and services that allow people to leave sex work if and when they choose; and
- Ensure that sex workers have equal access to justice, health care and other public services, and to equal protection under the law.

Amnesty International calls for the decriminalisation of all aspects of adult consensual sex work due to the foreseeable barriers that criminalisation creates to the realisation of the human rights of sex workers.

This policy does not argue that there is a human right to buy sex or a human right to financially benefit from the sale of sex by another person. Rather, it calls for sex workers to be protected from individuals who seek to exploit and harm them and it recognises that the criminalisation of adult consensual sex work interferes with the realisation of the human rights of sex workers.

Review's scope and process, including meaningful participation of sex workers

Section 27 of the 2017 Act provides for a review of the operation of Part 4 within three years of coming into force, and that it include information on the number of arrests and convictions in respect of the new offence of the purchase of sexual services, and "an assessment of the impact of the operation of that section on the safety and well-being of persons who engage in sexual activity for payment".

It will be critical that measures are in place for this review to ensure meaningful participation of and consultation with sex workers, including in particular current sex workers. Sex workers have a right to meaningfully participate without discrimination in decisions affecting their lives and this right must be respected. Participation must involve sex workers from marginalised groups and those facing discrimination on the basis of, for example, sexual orientation, gender identity, race, ethnicity and migrant status. To be effective, such consultation must allow participation of sex workers in a way that permits anonymous engagement and other measures required to protect them from criminalisation, retaliation or harm. The consultation process should also ensure effective access to information and resources to allow meaningful engagement.

In August 2020, in addition to its call for submissions to the review, the Department of Justice and Equality launched an online, anonymous survey.⁷ Amnesty International notes concerns stated by Sex Workers Alliance Ireland (SWAI) and brought to the Department's attention that they have received feedback from sex workers that the language in the survey is inaccessible. SWAI has additionally stated concern that some of the questions in this survey are quite leading. Amnesty International also considers that this is a potential issue to examine. For example, Questions 4, 5 and 6⁸ are framed in such a way that they could generate responses

⁷ <https://www.surveymonkey.com/r/WBJTF3B>, accessed 17 September 2020.

⁸ Question 4. Do you think that to date Section 7A of the Criminal Law (Sexual Offence) Act 2017 has been proactively enforced by An Garda Síochána?
Yes / No / Not Sure / Don't Know

that imply that the key issue with this law is simply that it is not being implemented, We are further concerned that the survey questions are not sufficiently centred on the rights of sex workers, as they are the rightsholders in this context; and appear to assume that arrests and prosecutions of sex buyers mean better conditions for sex workers.

It is vital that this review address not only the impact on sex workers of the new offence of purchasing sexual services introduced in 2017 but also of the related offences of ‘brothel-keeping’ and ‘living on the earnings of prostitution’ in the Criminal Law (Sexual Offences) Act 1993 (see below).

In addition, this review should consider the levels of arrests, prosecutions and convictions for violence against, and exploitation of, sex workers under relevant criminal laws, since these laws too should be enforced to ensure sex workers’ safety and redress. Without considering these statistics it will be impossible to assess any impact that the 2017 Act may have had on sex workers’ reporting abuse or exploitation to and seeking protection from police. This will require the collection and analysis of detailed data and information on the implementation and impact of these laws in the course of this review; and it will be particularly critical that such data is disaggregated, including on the basis of immigration status, ethnicity and gender identity, and include male and transgender sex workers.

Criminalisation of purchase of sexual services

The 2017 Act criminalises the buyers of consensual sexual services by amending section 7 of the Criminal Law (Sexual Offences) Act 1993. In 2013, the Oireachtas (parliamentary) Joint Committee on Justice, Defence and Equality, at the request of the then Minister for Justice and Equality, produced its “Report on hearings and submissions on the Review of Legislation on Prostitution” recommending inter alia the criminalisation of the purchase of sexual services.⁹ Amnesty International is concerned at the potential unintended impact this new offence in the 2017 Act has on the safety and human rights of sex workers, and the specific consequences it may have for migrant sex workers.

While the law may be intended to shift police focus, and therefore blame, from the sex worker to the client, in practice Amnesty International has found from research in other countries that such laws can lead to sex workers having to take risks to protect their clients from detection by law enforcement, such as visiting locations determined only by their clients.¹⁰

Amnesty International considers that to protect the rights of sex workers, it is necessary not only to repeal laws which criminalise the sale of sex, but also to repeal those which make the buying of sex from consenting adults or the organisation of sex work (such as prohibitions on renting premises for sex work) a criminal offence. Such laws have been found to force sex workers to operate covertly in ways that compromise their safety, prohibit actions that sex workers take to maximise their safety, and serve to deny sex workers support or protection from

Question 5. Why do you think Section 7A of the Criminal Law (Sexual Offences) Act 2017 is being proactively enforced?

Question 6. In your opinion, are those purchasing sexual services being prosecuted?

Yes / No / Not Sure / Don't Know

⁹ Available at <https://www.oireachtas.ie/parliament/media/committees/justice/1.Part-1-final.pdf>

¹⁰ See for instance Amnesty International’s research report, *The human cost of ‘crushing’ the market: Criminalization of sex work in Norway*, 2016, Index: EUR/36/4034/2016, p53, available at <https://www.amnesty.org/download/Documents/EUR3640342016ENGLISH.PDF>

government officials. They therefore undermine a range of sex workers' human rights, including their rights to security of person, housing and health.¹¹

The review is required by law to include data on the arrests and convictions under Section 7A of the 1993 Act, i.e. the offence of paying for sexual services. While it is important that such data be published and assessed, the level of such arrests and convictions cannot be equated with the level of protection of sex workers. Therefore, measuring this alone will yield little information about the impact of the 2017 Act on the rights and safety of sex workers. Furthermore, international evidence increasingly demonstrates that criminalisation of the purchase of sexual services puts sex workers at greater harm of human rights violations and abuses, including at the hands of clients.¹² This must be robustly considered in this review.

There have been some reports of increased violence against sex workers in Ireland. For instance, Ugly Mugs, an online reporting scheme and application where sex workers can confidentially report incidents of violence, has stated that comparing totals for the two years before and the two years after the offence of buying sexual services was introduced, reports of crime against sex workers increased by 90 per cent, and violent crime by 92 per cent.¹³ However, these figures are for the whole of the island of Ireland, including Northern Ireland.

A recent study has analysed reports to Ugly Mugs for the Republic of Ireland for four years between 2015 and 2019 and reported similar increases, finding that when comparing the two years before and the two years after the 2017 law reform, sex workers reported 91 per cent more crime incidents to Ugly Mugs and 92 per cent more violent crime.¹⁴ The authors note: "Whilst our preliminary analysis cannot prove direct causation, these increases are a concern in terms of sex workers' safety and raise issues around wider public protection from crime."¹⁵

Amnesty International considers that decriminalisation can help ensure that the police are adequately focussed on protecting, rather than directly or indirectly punishing sex workers. Also, criminalising the purchase of sex can actually increase the stigma and marginalisation experienced by sex workers and at the same time not achieve the stated aim of reducing demand for sexual services. In Northern Ireland, for instance, a sex buyer criminalisation law was enacted in 2015 with the intention to reduce demand for sexual services. In 2019, upon the review it commissioned of this law, the Department of Justice "concluded that there is no evidence that the offence of purchasing sexual services has produced a downward pressure on the demand for, or supply of, sexual services".¹⁶ On the other hand, the review indicated that

¹¹ See Amnesty International policy on state obligations to respect, protect and fulfil the human rights of sex workers, 26 May 2016, Index number: POL 30/4062/2016, available [at https://www.amnesty.org/en/documents/pol30/4062/2016/en/](https://www.amnesty.org/en/documents/pol30/4062/2016/en/);

¹² For information on existing research, see Amnesty International policy on state obligations to respect, protect and fulfil the human rights of sex workers, *ibid*, and the accompanying Explanatory Note, 6 May 2016, Index: POL 30/4063/2016, at <https://www.amnesty.org/en/documents/pol30/4063/2016/en/>

¹³ Ugly Mugs, "Crime has almost doubled in the two years since new law came in", 26 March 2019, <https://uglymugs.ie/wp-content/uploads/um-statement-26-mar-2019.pdf>

¹⁴ R. Campbell, L. Smith, B. Leacy, M. Ryan and B. Stoica, "Not collateral damage: Trends in violence and hate crimes experienced by sex workers in the Republic of Ireland", in *Irish Journal of Sociology*, 2020, p 15, available at: <https://journals.sagepub.com/doi/full/10.1177/0791603520939794>.

¹⁵ *Ibid*.

¹⁶ "Report published on impact of sex purchase offence", Department of Justice press release, 18 September 2019, available at www.justice-ni.gov.uk/news/report-published-impact-sex-purchase-offence. The report of the review commissioned from Queen's University Belfast and the Department's own assessment report are available at www.justice-ni.gov.uk/publications/assessment-impact-criminalisation-purchasing-sexual-services

there had been an increase in instances of anti-social and abusive behaviours against sex workers since 2016. The Department concluded: “This has led to a heightened fear of crime, and the report suggests that the legislation has contributed to a climate whereby sex workers feel further marginalised and stigmatised.”¹⁷ This aspect of the likely impact of section 7A of the 1993 Act must be robustly reviewed.

Impact on “trafficking and exploitation”

Amnesty International supports the criminalisation of forced labour and trafficking into the sex sector. These are serious crimes, and all allegations and reports of crimes against individuals in the sex sector should be promptly and impartially investigated and those found responsible (through a fair trial) brought to justice. At the same time, States have a duty to ensure that the laws they use to address these issues are appropriately focused on harm, are not overly broad and do not violate the human rights of sex workers.

Conflation of human trafficking and sex work creates numerous problems in practice: it creates confusion amongst practitioners, media and the public and can lead to harmful laws and policies that negatively impact trafficked persons, migrants, and sex workers among others.¹⁸ Anti-trafficking responses must not create or exacerbate situations that cause or contribute to trafficking or further undermine the human rights of anyone, especially women and people belonging to other marginalised groups.

Amnesty International notes the stated aim in enacting Part 4 of the 2017 Act, that of “addressing the very real and tragic crimes of trafficking and exploitation associated with prostitution”.¹⁹ Amnesty International remains concerned at the lack of comprehensive data and research in Ireland on the experiences of sex workers, and on exploitation or forced labour of sex workers or other abuses they experience.²⁰

Amnesty International urges that the projected impact on trafficking and exploitation of reducing demand through criminalising the purchase of sex be interrogated in this review. In other states there is a lack of compelling evidence that buyer criminalisation has reduced trafficking. For example, the abovementioned 2019 review of Northern Ireland’s 2015 law criminalising the purchase of sexual services found that it “has had minimal effect on the demand for sexual services; and due to the absence of any evidence that demand had decreased, it was unable to determine how the offence could have impacted on human

¹⁷ Department of Justice’s assessment report, para 15, available at www.justice-ni.gov.uk/publications/assessment-impact-criminalisation-purchasing-sexual-services

¹⁸ UNAIDS, Guidance note on HIV and sex work (2012), www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2009/JC2306_UNAIDS-guidance-noteHIV-sex-work_en.pdf

¹⁹ “Minister Fitzgerald publishes the Criminal Law (Sexual Offences) Bill 2015”, Press Release, Department of Justice and Equality, 23 September 2015, available at <http://www.justice.ie/en/JELR/Pages/PR15000487>

²⁰ Amnesty International notes the following recommendation made by the Oireachtas Joint Committee on Justice, Defence and Equality in its 2013 Report: “The State should commission appropriate independent studies to increase its understanding of prostitution and trafficking. Further such studies should be undertaken at regular intervals to independently evaluate the effectiveness of legal and policy measures concerning prostitution and trafficking and to recommend changes where required.”

trafficking”.²¹ Indeed, some research indicates that decriminalisation of consensual sex work may in fact help victims of trafficking, and lead to more effective anti-trafficking efforts.²²

Amnesty International is also concerned at the lack of data and information on the implementation and impact of pre-existing laws and other measures aimed at identifying, investigating and prosecuting exploitation, human trafficking or forced labour for sexual exploitation purposes; child sexual exploitation; and violence, abuse or exploitation of sex workers by third parties or buyers.²³ When the 2017 Act was being enacted, the organisation had recommended that the Government first conduct research, including through consultation with sex workers, on the circumstances, needs and views of sex workers and how best to safeguard their safety and human rights.

In its 2017 Concluding Observations on Ireland, the UN Committee on the Elimination of Discrimination Against Women recommended that Ireland provide information in its next periodic report on its impact in addressing the “exploitation of prostitution”. The Committee also stated its concern that Ireland remains a source and destination country for the trafficking of women and girls for purposes of sexual exploitation, noting its particular concern at the low prosecution and conviction rates in cases of trafficking in persons.²⁴

Trafficking is an abhorrent human rights abuse. States must have laws in place which criminalise trafficking, and use them effectively to protect victims and bring traffickers to justice. The Department of Justice and Equality noted in its 2012 Discussion Paper published before enacting Part 4 of the 2017 Act, that in Ireland “there is strong criminal legislation in place to deal with those who traffic persons for the purposes of sexual exploitation”.²⁵ Under the Criminal Law (Human Trafficking) Act 2008 and the Criminal Law (Human Trafficking) (Amendment) Act 2013 it is an offence to traffic in adults or children including for the purpose of their sexual or labour exploitation. It is also an offence under the legislation for any person

²¹ “Report published on impact of sex purchase offence”, Department of Justice press release, 18 September 2019, available at

www.justice-ni.gov.uk/news/report-published-impact-sex-purchase-offence

²² R. Weitzer, “The mythology of prostitution: Advocacy research and public policy”, *Sexuality Research and Social Policy*, 2010, pp. 23-25, 239. When not threatened with criminalisation, sex worker organisations have collaborated with law enforcement to identify women and children who have been trafficked, and to refer them to the necessary services. See, for example, Durbar Mahila Samanwaya Committee, *Innovative approaches to combat trafficking of women in sex trade by Durbar Mahila Samanwaya Committee (Kolkata)*, available at www.sexworkeurope.org/sites/default/files/resource-pdfs/dmsc_innovative_approaches_trafficking.pdf; Open Society Foundations, *10 reasons to decriminalize sex work: A reference brief*, p. 6, available at www.opensocietyfoundations.org/sites/default/files/decriminalize-sex-work-20120713.pdf; UNAIDS, *Guidance note on HIV and sex work*, 2012.

²³ Amnesty International considers that recognising gender and intersectional concerns around sex work; tackling human trafficking, coercion, exploitation, forced labour and gender-based violence; and addressing human rights abuses against sex workers through decriminalisation of sex work are not mutually exclusive. Human trafficking, forced labour, the involvement of children in commercial sexual activity, and violence, abuse or exploitation of sex workers by third parties or buyers should be/remain criminalised in line with their gravity, and those criminal laws should be effectively implemented.

²⁴ Concluding observations on the combined sixth and seventh periodic reports of Ireland, CEDAW/C/IRL/CO/6-7, para 30.

²⁵ Department of Justice and Equality Discussion Document on Future Direction of Prostitution Legislation, p8, available at <http://www.inis.gov.ie/en/JELR/Discussion%20Document%20on%20Future%20Direction%20of%20Prostitution%20Legislation.pdf/Files/Discussion%20Document%20on%20Future%20Direction%20of%20Prostitution%20Legislation.pdf>

to “knowingly solicit or importune a trafficked person, in any place, for the purpose of prostitution”.

Despite this framework being in place, the US State Department in its 2020 Trafficking in Persons Report downgraded Ireland’s status from Tier 1 to Tier 2 on the basis of its efforts since the previous reporting period.²⁶ While recognising measures such as increased funding for NGOs for victim assistance, and increased number of police and immigration officers that received anti-trafficking training, the report noted that the Government has not obtained a trafficking conviction since the law was amended in 2013, which weakened deterrence, contributed to impunity for traffickers, and undermined efforts to support victims to testify. It noted that systematic deficiencies in victim identification, referral, and assistance continued, as did the lack specialised accommodation and adequate services for victims.

It is of concern that this pre-existing legislation has not resulted in significant levels of prosecutions or convictions.²⁷ Therefore it will be important that the review determine why this has been the case; and establish whether the new provision in the 2017 Act making it an offence to pay for sexual activity with a trafficked person - and indeed the new offence of paying for sexual services - has impacted the prevention and prosecution of trafficking and violence.

Under section 9 of the Criminal Law (Sexual Offences) Act 1993, it is an offence if a person “coerces or compels a person to be a prostitute”.²⁸ The degree to which this provision has been enforced in order to protect sex workers is also unclear, and this too should be considered in this review.

Retained pre-existing offences

The Department of Justice and Equality’s online public consultation notice states: “One purpose of the measures introduced in the Act was to provide additional protection to persons involved in prostitution, especially vulnerable persons and victims of human trafficking. The Act allows them to provide information to the Gardaí, for instance where they have been subjected to violence by clients, without fear of prosecution for selling sexual services.”²⁹

Amnesty International is concerned that any such potential outcome from the 2017 Act’s decriminalising aspects of sex work³⁰ is undermined by retaining criminal measures and

²⁶ *2020 Trafficking in Persons Report: Ireland*, available at <https://www.state.gov/reports/2020-trafficking-in-persons-report/ireland/>

²⁷ The 2020 US State Department Trafficking in Persons Report on Ireland reported that in 2019 trafficking prosecutions were initiated for five suspects (of which two were for sex trafficking), none in 2018, three in 2017, and nine in 2016. It also reported that there had been no trafficking convictions since 2013 even though the government has reported identifying 471 victims in that period. It further noted that its 2017 report, GRETA expressed concern about the inadequate criminal justice response, noting the failure to convict traffickers and the absence of effective sentences could contribute to impunity and undermine efforts to support victims to testify.

²⁸ <http://www.irishstatutebook.ie/eli/1993/act/20/section/9/enacted/en/html>

²⁹ [http://www.justice.ie/en/JELR/Pages/Review_of_the_Operation_of_Part_4_of_the_Criminal_Law_\(Sexual_Offences\)_Act_2017](http://www.justice.ie/en/JELR/Pages/Review_of_the_Operation_of_Part_4_of_the_Criminal_Law_(Sexual_Offences)_Act_2017), accessed 18 September 2020.

³⁰ The 2017 Act removed the offering of sexual services from the pre-existing offence of soliciting for the purposes of prostitution under the Criminal Law (Sexual Offences) Act 1993. Also, At committee stage of the Bill in Dáil Éireann on 7 December 2016, the Minister for Justice and Equality clarified that the retained existing offence of loitering for the purposes of prostitution, to retained, is not directed at sex workers but “only applies to those who loiter for the purpose of soliciting another person for the purpose of obtaining that person’s services as a prostitute where a person ultimately is seeking

increasing penalties for third-party offences that could continue to be used against sex workers, and migrant sex workers in particular, rather than against those exploiting, abusing or coercing sex workers.³¹

However, other provisions in the 1993 Act have been retained that may directly or indirectly criminalise sex workers and potentially their families. Section 10 of that Act continues to make it a criminal offence if a person “knowingly lives in whole or in part on the earnings of the prostitution of another person and aids and abets that prostitution”. Section 11 on ‘brothel-keeping’ continues to make it an offence to keep or manage or act or assist in the management of; to be a tenant, lessee, occupier or person in charge of; or to be a lessor or landlord of, any premises deemed a ‘brothel’. By amendment in the 2017 Act, significantly increased penalties now apply: on summary conviction, ‘brothel-keeping’ now carries a possible fine of €5,000 or imprisonment up to 12 months or both, and prior to the 2017 amendment the maximum penalties were €1,000 and 6 months respectively.

No distinction is made in these provisions between exploitation, abuse and coercion by third parties involved in sex work, and third party involvement that is consensual and does not cause harm, especially where it is practical, supportive or for the purposes of safety. They can also be used to target those who lease or rent accommodation to sex workers. Furthermore, Section 11 of the 1993 Act on ‘brothel-keeping’ had been and continues to be used to directly criminalise sex workers themselves, as the definition applies to two or more sex workers selling sexual services from the same premises; and can thus prevent sex workers from working together or with others, even for safety reasons.

In an analysis conducted in 2020 of Ugly Mugs’ reports from the Republic of Ireland has argued that the data indicates that in most cases, sex workers do not report the crimes they have reported to Ugly Mugs to the Gardaí. It stated:

“Our data seem to call into question the argument that because sex workers are no longer criminalised through soliciting laws but their clients are, they will be empowered to come forward and report crimes to the police. ... It ignores the reality that other laws and policies that remain in place around activities such as brothel keeping, renting premises for prostitution, advertising sexual services and immigration policies place sex workers in positions of greater precarity and vulnerability to violent and other crimes.”³²

Sex workers may also be at increased risk of forced eviction where renting property together, as this could be deemed a ‘brothel’. Amnesty International’s research on the situation under Norway’s similar law, found that sex workers have been subjected to forced evictions as their landlords can be prosecuted for renting property to them if they sell sex there. This is another concern that this review of the impact of Ireland’s law should investigate and report on.³³

to purchase sexual services”. However, it is unclear what measures were taken to ensure this is how loitering is interpreted by the police and judiciary in practice.

³¹ Amnesty International, *The human cost of ‘crushing’ the market: Criminalization of sex work in Norway* (Index: EUR/36/4034/2016).

³² R. Campbell, L. Smith, B. Leacy, M. Ryan and B. Stoica, “Not collateral damage: Trends in violence and hate crimes experienced by sex workers in the Republic of Ireland”, in *Irish Journal of Sociology*, 2020, p 28.

³³ *The human cost of ‘crushing’ the market: Criminalization of sex work in Norway*, 2016, Index: EUR/36/4034/2016, available at <https://www.amnesty.org/download/Documents/EUR3640342016ENGLISH.PDF>

The lack of publicly available data and research on how these laws have impacted sex workers, disaggregated including on the basis of immigration status and ethnicity, is also a key concern.

Disproportionate impact on migrant sex workers

There is anecdotal information from Sex Workers Alliance Ireland that the ‘brothel-keeping’ offence has been primarily used against migrant sex workers, reportedly resulting in their being deported, prosecuted or ordered to leave the country to avoid prosecution.³⁴ However, the particular impact on migrant sex workers is not clear because of the lack of publicly available data on the operation of the law. In one case given widespread media coverage, two young migrant women from Romania, one of whom was pregnant, were sentenced to nine months imprisonment for ‘brothel-keeping’ when found by the police to be working together in an apartment.³⁵

In Norway, purchasing sex is illegal but the direct act of selling sex is not; other activities associated with sex work are criminalised including “promotion of prostitution” and letting premises used for selling sex. Amnesty International’s research on the impact of Norway’s law has found that migrant sex workers are often deported or threatened with deportation when caught by police selling sex on the street or while working together indoors.³⁶ Furthermore, it found that the deportation of many migrant women who sell sex, some of whom may be victims of trafficking, also led to failures in the detection of trafficking and identification of victims and leaves individuals at risk of re-trafficking. It also means that perpetrators in these cases were not brought to justice. We strongly urge that data and information, including from migrant sex workers and migrants’ rights NGOs, be collected in this review and analysed to determine the degree to which this is a concern in Ireland too.

Regulation of sex work

Amnesty International would like to point out that decriminalisation of sex work, as the organisation recommends, does not mean the total absence of any regulation of sex work. Rather it means that laws should be refocused away from catch-all offences that criminalise most or all aspects of sex work towards laws and policies that provide protection for sex workers from acts of exploitation and abuse. States have an obligation to ensure that all persons, including sex workers, have access to just and favourable conditions of work (which includes matters of safety)³⁷ and are protected against exploitation, including those who are self-employed or who make their living in informal settings.

Regulation should respect the agency of sex workers and guarantee that all individuals who undertake sex work can do so in safe conditions, are free from exploitation, and are able to

³⁴ “But we know from figures gleaned from Ugly Mugs, an app sex workers use to keep ourselves safe, that over the past 2 years the laws have seen sex workers being deported, arrested or forced to leave the country to avoid prosecution for working together for safety. [...] As far as we know everyone who has been prosecuted of so-call brothel-keeping in Ireland has been a migrant.” “Today’s actions will decrease trust in Gardaí for already marginalised sex workers”, press release, 27 September 2019, available at <http://sexworkersallianceireland.org/press-release/todays-actions-will-decrease-trust-in-gardai-for-already-marginalised-sex-workers/>

³⁵ “Jailing of sex workers keeping brothel shows law ‘not fit for purpose’”, *Irish Times* newspaper, 10 June 2019 available at <https://www.irishtimes.com/news/social-affairs/jailing-of-sex-workers-keeping-brothel-shows-law-not-fit-for-purpose-1.3921149>

³⁶ The human cost of ‘crushing’ the market: Criminalization of sex work in Norway, 2016, AI Index: Index: EUR/36/4034/2016, available at <https://www.amnesty.org/download/Documents/EUR3640342016ENGLISH.PDF>

³⁷ See CESCR, General Comment 23 (right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), 2016, UN Doc. E/C.12/GC/23, 2016, paras. 25-30.

continue or stop selling sex when and if they choose. In the context of regulating sex work, states must:

- Respect and protect the right of sex workers to just and favourable conditions of work;
- Ensure that regulatory frameworks comply with international human rights law and that the safety and fulfilment of sex workers' human rights is the paramount objective for any such regulations;
- Ensure the meaningful participation of and consultation with sex workers, including those facing multiple forms of discrimination, in the development of any regulatory frameworks; and
- Recognise the rights of sex workers to associate and to form and/or join trade unions.

Overarching policy measures

State responses to sex work that rely principally on enforcement of criminal laws against sex work to discourage and/or penalise involvement in sex work have a detrimental impact on the human rights of sex workers and do not offer support, alternatives or choices to people who do not want to engage in sex work.

We urge that the review recommend the development and implementation of effective initiatives and policies guided by human rights standards and principles to help ensure that no person enters sex work coercively or is obligated to rely on it as their only means of survival. It is important for states to not only focus on ensuring that people can leave the sex work sector, but also take measures to increase their rights, safety and well-being while in the sector.

Where states try to reduce the numbers of people engaging in sex work they should do this by ensuring appropriate support, employment and educational options that reflect the various reasons why people choose to enter sex work. They must actively empower marginalised individuals and groups, and take all necessary measures to eradicate discrimination against marginalised individuals and groups who are commonly represented in sex work, including lack of access to or discrimination in employment.

In all circumstances, states must ensure their laws and policies respect individuals' agency and do not violate sex workers' human rights. Taking a human rights respecting approach to decriminalisation of sex work requires acknowledging and addressing the very real impact that punitive regulation has on the human rights of sex workers. Guaranteeing human rights without discrimination is the most effective way to ensure the empowerment of people involved in sex work and the protection of individuals from discrimination, violence and coercion.

RECOMMENDATIONS

Amnesty International urges that this review commissioned by the Department of Justice and Equality consider recommending the following:

- Ensure that research is conducted, including through consultation with sex workers, on the circumstances, needs and views of sex workers, including the particular situation of individuals based on gender, sexual orientation, gender identity, ethnicity, or other status, and how best to safeguard their safety and human rights.
- Collect and analyse data and information, including from people who are migrant sex workers and migrants' rights NGOs, to determine the specific concerns in Ireland and the adequacy of the current framework in respecting and protecting migrant sex workers' human rights.

- Repeal section 7A of the Criminal Law (Sexual Offences) Act 1993 as introduced by the Criminal Law (Sexual Offences) Act 2017, which criminalises the purchase of consensual adult sex.
- Remove the retained pre-existing offences of ‘brothel-keeping’ and ‘living of the earnings of prostitution’ in sections 11 and 10 of the Criminal Law (Sexual Offences) Act 1993. Instead, focus on ensuring that sex workers can enjoy equal protection under the law and specifically from violence under general laws on assault, rape and intimidation. This approach ensures that the criminal law is used to protect the rights of sex workers instead of obstructing, interfering with and criminalising their attempts to make their working environments safer, and preventing them from reporting crimes to police.
- Investigate and ensure that criminal laws to prevent forced labour, human trafficking, abuse and violence in the context of commercial sex, and the involvement of children in commercial sex acts, are adequate and respect human rights; and that victims are identified and provided with protection and all appropriate supports, cases are thoroughly investigated, and perpetrators are prosecuted and punished.
- Ensure that sex workers enjoy full and equal protection under the law as well as effective remedies, including for offences involving rape and sexual violence, abuse of authority, assault, extortion and all other crimes.
- Introduce all necessary measures to ensure the effective investigation, prosecution and punishment of violence against sex workers without discrimination, including legal or procedural reforms where appropriate, such as standards of good practice which reflect policing that is consistent with human rights; and provide training and monitoring measures for law enforcement officials and health and social service providers to help protect the human rights of sex workers.
- Ensure that individuals who undertake sex work do so voluntarily and in safe conditions, free from abuse and exploitation, and are able to stop engaging in sex work when and if they choose, including by making legal protections pertaining to health, employment and discrimination accessible to sex workers and effective in protecting them from abuse and exploitation.
- Identify specific economic, social and cultural law and policy measures needed in order to address the intersectional discrimination, harmful gender stereotypes and denial of economic, social and cultural rights that may lead to entry into sex work, stigmatise sex workers and prevent exit for those who wish to stop selling sex.
- Ensure the participation of sex workers in the development of any relevant policies and programmes, or further regulatory frameworks, and that the varying lived experiences of sex workers play a pivotal role in determining what form they take.

ENDS//

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