



## Sex Workers Alliance Ireland updated shadow report information for CEDAW

January 2017

Sex Workers Alliance Ireland

Ireland

Submission can be posted publically

### Relevant paragraphs in list of issues

14. Please provide information on the prevalence of exploitation of prostitution in the State party and the existing measures aimed at preventing this phenomenon.
15. Please provide information on the studies that were conducted that led to the drafting of section 20 (now in Part IV) of the Criminal Law (Sexual Offences) Bill 2015, which criminalises the purchase of sexual services and how it addresses exploitation of prostitution.

Please provide information on measures taken to understand the impact that the criminalisation of sexual services will have on the State party's efforts to effectively combat HIV/AIDS transmission among women involved in prostitution.

### Introduction

The Sex Workers' Alliance Ireland (SWAI) is an organisation that promotes the health, safety, human rights and participation of female, male, cis and transgender sex workers in Ireland. SWAI believe a human rights approach to policy and laws around sex work is essential for the safety, health and rights of all people who sell sexual services. SWAI strongly believes sex workers themselves should be at the centre of the development of any policy or law which directly impacts their lives. SWAI is committed to supporting the participation and leadership of sex workers to tackle stigma and campaign for their recognition, rights and protection in Ireland.

### Sex Work – an issue for CEDAW

Research commissioned by the Department of Justice in Northern Ireland into prostitution found that 68% of online advertisements over 7 days were for female sex workers.<sup>1</sup> The Government in

the Republic of Ireland has never commissioned a comparable study but we can say due to obvious geographic and cultural considerations that the majority of sex workers in the Republic of Ireland would also be women. Poverty, gender identity and immigration status are just some of the many complex factors that contribute to the different experiences of this marginalised group women. SWAI strongly believe that violence, abuse and human rights violations of sex workers is a serious women's rights concern for the Irish State.

SWAI are increasingly concerned that decisions made and the development of legislation that will directly impact a very vulnerable and marginalised group of women in Ireland, that is female sex workers, are severely lacking in evidence base and the participation of the very people who it will affect. Sex workers were not named in the National Sexual Health Strategy 2015 - 2020 nor in the Second National Strategy on Domestic, Sexual and Gender-based Violence 2016 - 2021. This is despite the Government's repeated stated commitment to the protection and safety of women in sex work.

<sup>1</sup> Huschke, S., Shirlow, P., Schubotz, D., Ward, E., Probst, U. and Ní Dhónaill, C. (2014) Research into Prostitution in Northern Ireland. Commissioned from Queen's University Belfast by the Department of Justice.

<https://www.justice-ni.gov.uk/sites/default/files/publications/doj/prostitution-report-nov-update.pdf>

## Legal Context to Sex Work in Ireland

The buying and selling of consensual sexual services in a private dwelling in Ireland is currently legal, but virtually all other activities associated with buying and selling sexual services are criminalised. It is illegal for more than one person to sell sexual services in a private place; it is illegal to buy sexual services on the street or in a public place and it is illegal to sell sexual services on the street or in a public place. It is illegal to hire someone to manage bookings, and it is illegal to hire someone to provide security services.

### Criminal Law (Sexual Offences) Bill 2015

Part 4 of the Criminal Law (Sexual Offences) Bill 2015 published by the Minister for Justice and Equality in 2015 set to be passed in Spring 2017 includes a provision which proposes to criminalise the purchase of sexual services in Ireland. Effectively this provision will make it illegal to pay a person for sexual services. This law presents further violations under Article 12. Part 4 of this Bill **does not** fully decriminalise the person selling sexual services. For example, a sex worker in Ireland will still be prosecuted for brothel-keeping if she is found to be working with a friend for safety. In fact sex workers found working together in groups of two or more indoors will face double penalties. Due to a lack of legal clarification in Section 11 of the Criminal Law (Sexual Offences) Act 1993, sex workers who work together indoors for safety are liable to be prosecuted, as the overly broad language in this section defines more than one person working together as a brothel. This results in workers being arrested, as opposed to the exploitative third parties for which the law was intended. Sex workers are therefore deterred from working together, have less control over their working environment and, thus, are more at risk from violent attack. According to recent analysis of CSO figures and media reports between 2008 and 2013, 92.2% of persons subjected to arrests, convictions, and judgements for “Brothel

Keeping” were identified as sex workers.<sup>2</sup>

One example of how this law is being misapplied is in regards to a married couple living in County Clare who recently reached out to SWAI for legal advice. They work as escorts, seeing clients together as a couple. They were recently raided, and arrested for brothel-keeping though they live alone. They are now in court, and have each been charged with pimping the other.<sup>3</sup>

The Government has said it intends remove a proposal in the Bill in order to fully decriminalise street based sex workers, which SWAI welcomes. However, we remain concerned that the majority of people selling sexual services in Ireland do so indoors and are still at risk of arrest and conviction. There were three cases in November and December 2016 of sex workers arrested and brought before courts for working collectively.<sup>4</sup> In two cases the workers were fined and in one case earnings were seized.

### Evidence of effectiveness

The Government stated that the intention of the proposals in PART 4 of the Sexual Offences Bill is to end demand for sexual services in order to eradicate the buying and selling of sex in the name of gender equality and to decrease exploitation and incidences of trafficking for sexual exploitation. **The State has never provided any evidence to support the effectiveness of the criminalisation of the purchase of sexual service in achieving these aims.**

Prior to the Criminal Law (Sexual Offences) Bill 2015 no empirical independent study into sex work and the experience of sex workers in Ireland was undertaken. The Oireachtas consultation into prostitution in 2012 and 2013 lacked balance, independence, a rigorous evidence base or

<sup>2</sup> Brothel Keepers Media Analysis (2016) UglyMugs.ie  
<https://uglymugs.ie/2016/10/07/brothel-keepers-media-analysis/>

<sup>3</sup> <http://www.irishtimes.com/news/crime-and-law/man-and-woman-appear-in-court-over-alleged-clare-brothel-1.2942091>

<sup>4</sup> Galway November 2016  
<http://www.irishtimes.com/news/crime-and-law/courts/district-court/four-women-plead-guilty-to-operating-galway-brothel-1.2849914> Donegal November 2016  
<http://www.irishexaminer.com/ireland/four-arrested-following-brothel-raid-in-donegal-432762.html> Donegal December 2016  
<https://www.donegalnow.com/news/pensioner-found-with-prostitutes-in-garda-raid-of-letterkenny-brothel/133792>

methodology and lacked the significant and meaningful participation of sex workers. Extensive submissions were made by various academics, service providers and NGOs. However, there was no meaningful attempt to outreach to sex workers and support their participation in the consultation.

The Government has said it intends to carry out a two year review of the law, and SWAI is concerned that this be specifically an assessment of the human rights impacts on sex workers, as opposed to changes of numbers of people engaged in the industry.

### **Sacrificing Safety**

Part 4 of the Criminal Law (Sexual Offences) Bill 2015 targets consensual sex work as opposed to trafficking for sexual exploitation which is already illegal under the Criminal Law (Human Trafficking) Act 2008. In countries where similar laws have been introduced such as Norway and Sweden, there is no independent coherent evidence that demand has been reduced or that exploitation and trafficking are decreased. For example, the Norwegian Government's own evaluation of the legislation, carried out by social research company Vista Analysis in 2014, found that the law was leading sex workers to have an increased dependence on traffickers and exploitative third parties.<sup>5</sup> Additionally, the number of cases of trafficking for the purpose of sexual exploitation reported nationally in Norway remained relatively stable between 2006 and 2014 with 34 reported cases in 2006 and 37 in 2014.<sup>6</sup>

Extensive independent research shows client criminalisation that does not reduce the prevalence of sex work or trafficking for sexual exploitation; rather, it increases the risk of exploitation, trafficking and abuse by pushing sex workers to work further underground, in more dangerous environments away from support

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<sup>5</sup> Amnesty International, Norway: The Human Cost of 'Crushing' the Market: Criminalisation of Sex Work in Norway, 43. <https://www.amnesty.org/en/documents/eur36/4034/2016/en/>

<sup>6</sup> Amnesty International, Norway: The Human Cost of 'Crushing' the Market, 77.

services.

In May 2016 Amnesty International produced an extensive report, based on two years field research, into the detrimental impact criminalisation of the purchase of sexual services had on the rights, safety and protection of sex workers in Norway.<sup>7</sup> In particular of note is the increase in abuse and violence suffered by sex workers under criminalisation and the poor relationship with the police. A similar field study by Dr. Jay Levy into the experience of sex workers in Sweden found that sex workers faced more dangerous working conditions and very poor relationships with the police under client criminalisation.<sup>8</sup> A 2011 progress report from Swedish police documenting cases from 2008-2010 from the district including Gothenburg - Sweden's second biggest city - showed an increase in human trafficking for sexual exploitation of 106% and an increase in sexual services sold by 569%.<sup>9</sup> Human Rights Watch, La Strada International, GAATW (Global Alliance Against Traffic in Women) have all spoken out against the efficacy of client criminalisation in decreasing the trafficking for sexual exploitation.

**The Government has consistently failed to acknowledge and consider the comprehensive evidence that criminalising the purchase of sexual services increases the risk of violence and abuse of female sex workers.** In addition the Government has never commissioned independent research into the situation and experience of sex workers in Ireland. SWAI believe it is unacceptable to design and develop policy and legislation without the contribution and participation of the people it will directly

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<sup>7</sup> Amnesty International (2016) Norway: The Human Cost of 'Crushing' the Market: Criminalisation of Sex Work in Norway. <https://www.amnesty.org/en/documents/eur36/4034/2016/en/>

<sup>8</sup> Levy, J. (2015) Criminalising the Purchase of Sex: Lessons from Sweden. Routledge: London

<sup>9</sup> Rikspolisstyrelsen (2011) Slutredovisning av regeringens uppdrag till Rikspolisstyrelsen att förstärka insatserna mot prostitution och människohandel för sexuella ändamål 2008-2010 [https://polisen.se/Global/www%20och%20Intrapolis/Rapporter-utredningar/01%20Polisen%20nationellt/Organiserad%20brottslighet/slutredovisning\\_prostit\\_manniskohandel.pdf](https://polisen.se/Global/www%20och%20Intrapolis/Rapporter-utredningar/01%20Polisen%20nationellt/Organiserad%20brottslighet/slutredovisning_prostit_manniskohandel.pdf)

impact especially when concerning a deeply marginalised group at risk of violence such as female sex workers.

### **The Impact of Criminalisation on Reporting Crime and Access to Justice**

Access to the justice system is dependent on being secure and safe and coming forward to report a crime. Criminalisation actually hinders sex workers' rights and their ability to use the law to protect themselves. Amongst sex workers there is currently a great distrust of Gardaí. With criminalisation, sex workers' relationship to the Gardaí will inevitably deteriorate further, as they don't want to be under scrutiny and risk losing their means of survival. Sex workers will therefore be even less likely to contact authorities and report crime. UglyMugs.ie, a peer safety database where sex workers share information about dangerous clients or incidents has seen a significant rise in violent reports in the last months of 2016. In November 2016, 97 incidents were reported to UglyMugs.ie and none of the sex workers who made the reports had also reported to the Gardaí.<sup>10</sup> This lack of trust in the Gardaí offers impunity to perpetrators. Traffickers prey on illegality, are able to make more money in countries where there is criminalisation, and take advantage of the criminalised landscape that leaves people vulnerable due to difficulty moving and working transparently. Because sex workers and clients will have reasons to avoid Gardaí, they will be less likely to liaise and help Gardaí to identify and tackle exploitation and trafficking.

### **The Impact of Criminalisation on Health and HIV Prevention**

With criminalisation, workers cannot properly carry out their screening, or negotiation of boundaries and condom-use, because the client is nervous, rushed and more likely to be the one to determine where the work will take place.

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<sup>10</sup> UglyMugs.ie (2016) November 2016 Ireland Crime Stats <https://uglymugs.ie/2016/12/01/november-2016-ireland-crime-stats/>

Outreach workers and health services find it difficult to engage and reach sex workers in these hidden criminalised settings. **UNAIDS**, the **World Health Organisation**, the **Global Commission on HIV and the Law** and the **Lancet** medical journal have all produced evidence and reports clearly showing the negative impacts on HIV prevention and public health policy when the buying of sexual services is criminalised. In Ireland there are ten new cases of HIV every week. We have seen a 40% increase of new cases of HIV so far in 2016 compared to the same period last year. National HIV organisations in Ireland, HIVIreland and Positive Now, also agree that the criminalisation of the purchase of sexual services is detrimental and against good practice in HIV prevention. The Lancet stated in their HIV and Sex Workers Series in July 2014 that **full decriminalisation, specifically, would avert new HIV infections by up to 46%** in the next decade.<sup>11</sup>

### **Voices and Participation of Sex Workers**

Sex worker-led organizations across the globe are united in opposition to criminalisation of sex work and the purchase of sexual services. In Ireland the voices of sex workers have been routinely dismissed and their views disregarded. Removing criminal sanctions is essential to tackling stigma and enabling female sex workers to be visible and participate in the laws developed to protect them. Women in sex work must have a voice in national structures and strategies on women's rights and violence against women.

### **Recommendations**

- SWAI recommend the State remove Part 4 of the Criminal Law (Sexual Offences) Bill 2015 and independent study be commissioned by the State into the experiences and needs of sex workers in Ireland before the Parliament continues legislating in this area.

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<sup>11</sup> Shannon, K. (2014) Global epidemiology of HIV among female sex workers: influence of structural determinants, in the Lancet Medical Journal. [http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(14\)60931-4/abstract](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(14)60931-4/abstract)

- SWAI recommend an outreach and participation process be funded to support sex workers to voice their concerns and opinions on law and policy surrounding sex work to ensure that any law or policy that will impact on the lives through community outreach with sex workers.
- SWAI recommend the repeal of sections in the original Criminal Law (Sexual Offences) Act 1993 that directly and indirectly criminalize sex workers and introduce legislative and other measures to protect the health and safety of sex workers, following consultation with sex workers to ascertain what is most appropriate and effective.