



**Submission to the Department of Justice and Equality on
Section 20 of the Criminal Law (Sexual Offences) Bill 2015**

13 November 2015

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Introduction

Amnesty International Ireland would like to take this opportunity to submit observations regarding section 20 of the Criminal Law (Sexual Offences) Bill 2015, published on 23 September 2015. Section 20 proposes to amend the Criminal Law (Sexual Offences) Act 1993 by the insertion of the following section 7A:

(1) A person who pays, gives, offers or promises to pay or give a person (including a prostitute) money or any other form of remuneration or consideration for the purpose of engaging in sexual activity with a prostitute shall be guilty of an offence and shall be liable on summary conviction—

(a) in the case of a first offence, to a class E fine, and

(b) in the case of a second or subsequent offence, to a class D fine.

(2) In this section “sexual activity” means any activity where a reasonable person would consider that—

(a) whatever its circumstances or the purpose of any person in relation to it, the activity is because of its nature sexual, or (b) because of its nature the activity may be sexual and because of its circumstances or the purposes of any person in relation to it (or both) the activity is sexual.

We also draw attention to certain provisions relating to sex work in the 1993 Act.

Amnesty International Ireland is cognisant of the research and hearings engaged in by the Oireachtas Joint Committee on Justice, Defence and Equality at the request of the Minister for Justice and Equality, culminating in its 2013 *Report on hearings and submissions on the Review of Legislation on Prostitution* recommending inter alia the criminalisation of the purchase of sexual services.¹ Amnesty International Ireland also notes that the Scheme of the Bill was published by the Department of Justice and Equality in 2014.

Since then, 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 possible protection of the human rights of sex workers through measures that include the decriminalisation of sex work.² Notably, sex workers are one of the most marginalised groups in the world, who often face a range of human rights abuses, including rape, violence, and exclusion from health services and legal protection. Amnesty International does not endorse or encourage sex work – it takes no position on this, and is solely concerned with the protection of sex workers’ human rights. Neither is Amnesty International’s approach advocating any right to buy sex.

In view of this ICM resolution, Amnesty International Ireland believes it important that it put on the record the organisation’s view that Ireland’s proposal to introduce measures criminalising those who purchase or seek to purchase sex runs counter to increasing evidence that such an approach puts sex workers at risk and leads to human rights violations.

In this submission, Amnesty International Ireland urges the Government to refrain from criminalising the sale and purchase of consensual adult sex and related activities. However, 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 are serious

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

² The resolution is available at <https://www.amnesty.org/policy-on-state-obligations-to-respect-protect-and-fulfil-the-human-rights-of-sex-workers>.

human rights violations must be criminalised. To that end, Amnesty International Ireland notes and welcomes the stated aim of the Government in introducing these measures of “addressing the very real and tragic crimes of trafficking and exploitation associated with prostitution”.³ Nevertheless, Amnesty International Ireland urges the Government to consider adopting laws and policies which respect the agency of sex workers and guarantee individuals who undertake sex work do so voluntarily and in safe conditions, free from exploitation, and are able to stop doing sex work when and if they choose.

Amnesty International Ireland also calls on the Government to review, and amend where necessary, relevant provisions in 1993 Act. Amnesty International Ireland welcomes the Minister for Justice and Equality’s statement that she is “examining the possibility of introducing proposals which would decriminalise a person offering sexual services from the existing offences of soliciting⁴ and loitering⁵ for the purposes of prostitution under the Criminal Law (Sexual Offences) Act 1993”. Amnesty International Ireland urges that these offences be repealed. However, certain other provisions in the 1993 Act ostensibly focussed on third parties may directly or indirectly criminalise sex workers. Section 11 of the 1993 Act on ‘brothel-keeping’ is a particular concern and may be used to criminalise sex workers who live or work together for their own safety. To avoid the risk of third party laws being used to target sex workers, such provisions should clearly apply only to exploitation, coercion or abuse by third parties. Amnesty International Ireland urges that sections 9, 10 and 11 of the 1993 Act are fully reviewed and amended to ensure that a clear and unambiguous distinction is made between exploitation, abuse and coercion by third parties involved in sex work, and third party involvement that does not cause harm, especially where it is practical, supportive or for the purposes of safety; and that these sections do not permit of the possibility that they will be used to criminalise the sex workers themselves.

The Government must guarantee sex workers’ rights to liberty, security, health, equality (including equal protection under the law) and nondiscrimination. Laws criminalising 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 effectively implemented. Additional measures such as human rights education and training for police and the criminal justice system may also be required. States can both simultaneously protect the human rights of sex workers and combat human trafficking into sexual exploitation. It is also essential for the Government to take appropriate measures to realise the economic, social and cultural rights of all people so that no person enters sex work against their will or is compelled to rely on it as their only means of survival, and to ensure that people are able to stop sex work if and when they choose.

Amnesty International Ireland 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.

³ Department of Justice and Equality press release “Minister Fitzgerald publishes the Criminal Law (Sexual Offences) Bill 2015”, 23 September 2015, at <http://www.justice.ie/en/JELR/Pages/PR15000487>

⁴ Section 7 of the 1993 Act makes it an offence to solicit (or importune another person) “in a street or public place for the purpose of prostitution”.

⁵ Section 8(1) of the 1993 Act empowers a member of the Garda Síochána (police) “who has reasonable cause to suspect that a person is loitering in a street or public place in order to solicit or importune another person or other persons for the purposes of prostitution may direct that person to leave immediately that street or public place”. Section 8(2) provides that “[a] person who without reasonable cause fails to comply with a direction under subsection (1) shall be guilty of an offence”.

Summary

Sex workers are highly vulnerable to human rights violations, and increasingly, Amnesty International is encountering evidence of these violations in our work around the world. The rationale for states to decriminalise the buying (and selling) of sex and related activities (not including acts of exploitation or abuse by buyers or third parties), is that evidence suggests that criminalising any aspect of consensual adult sex work makes sex workers more – not less – vulnerable to human rights abuses. Where criminalising the buyers of sex is being proposed in this Bill as way to reduce human trafficking and exploitation, there is a dearth of reliable evidence to suggest that such an approach is effective in achieving those aims or in addressing the overarching issues of economic inequality or intersectional discrimination that may lead many sex workers to sell sex. In fact, there is substantial evidence showing that when the purchasing of sex and other operational aspects of sex work – e.g. renting premises to sell sex in – are criminalised, this compromises sex workers' safety and leaves them even more vulnerable to abuse. They may have to take more risks to protect buyers from detection by the police. For instance, sex workers that Amnesty International's researchers interviewed in countries where buyers are criminalised regularly spoke about being asked to visit customers' homes to help them avoid police, instead of going to a place where the sex worker felt safer.

Amnesty International Ireland does not in any way suggest that human trafficking, forced labour or the exploitation of children should be decriminalised. Also, buyers and third parties that exploit, coerce or abuse sex workers must still be criminalised under the approach we are proposing.

Amnesty International Ireland recognises that individuals undertake sex work for a range of reasons, including because of limited options and financial and other crises. States must develop and implement effective initiatives and policies to help ensure that no person enters sex work coercively or is obligated to rely on it as their only means of survival. These initiatives and policies must be compatible with the realisation of sex workers' human rights. Guaranteeing human rights without discrimination is the most effective way to ensure the empowerment of people involved in sex work.

The factors underlying sex workers' vulnerability to human rights abuses and exploitation are manifold and intricately entwined with global and domestic economic inequalities and multiple forms of intersectional discrimination and oppression. Therefore, decriminalisation is not the only step governments should take to protect the human rights of sex workers. Preventing and providing redress for human rights violations against sex workers requires a range of actions by states beyond decriminalisation of sex work, including providing exit routes so people can leave sex work if and when they choose, and tackling the discrimination, gender inequality and marginalisation that so often leads people to engage in sex work.

Groups most at risk of discrimination and oppression are frequently overrepresented in sex work. Women face gender discrimination and often bear a disproportionate burden of poverty. They also make up the majority of sex workers. Lesbian, gay, bisexual, transgender and intersex people also account for a significant proportion of sex workers. People subject to discrimination on the basis of their ethnicity or migrants can also be commonly represented among individuals selling sexual services, as are people who live in situations of poverty.

While systemic factors and personal circumstances related to poverty, discrimination and gender inequality can have a bearing on some individuals' decisions to undertake sex work, such conditions do not inevitably render individuals incapable of exercising personal agency in these contexts. Approaches that categorise all sex workers as 'victims' actively disempower

sex workers by denying them personal agency and autonomy and placing decision-making about their lives and capacity in the hands of the state.

At a minimum, states must ensure that their legal frameworks respect and protect sex workers' human rights. As such, the decriminalisation of consensual adult sex work is a vital first step in preventing human rights violations against sex workers and an essential component of states' wider response to the abuse and exploitation they often experience.

Therefore Amnesty International Ireland urges the Government to decriminalise consensual sex work (sale and purchase) between adults and related activities.

What we mean by decriminalisation of sex work

“Decriminalisation” of adult consensual sex work means the removal of all laws and policies that make sex work a criminal offence (i.e. laws prohibiting selling, soliciting, manifesting, buying or facilitating sex work, living off the proceeds, etc.). Decriminalisation of sex work does not mean decriminalisation of violence or other human rights abuses that occur within sex work, or the decriminalisation of forced labour or human trafficking. It does not mean decriminalisation of abusive or exploitative acts by third parties or buyers, or of the involvement of children in commercial sexual activity.

Amnesty International Ireland does not call for “legalisation” of sex work. Legalisation involves not only decriminalisation, but enforcement of additional specific laws and policies aimed at regulating sex work, distinct from other employment industries.⁶

Amnesty International recognises that different contexts require varying responses and that some regulation of sex work will often be required. Amnesty International does not take a position on the exact form such regulation should take, or whether it is necessary for such measures to extend beyond the general laws that broadly regulate other businesses or employment practices in a country. Rather, this should be determined based on the specific regulatory and human rights situation within states.

At a minimum however, any laws or regulations relating to sex work should respect the agency of sex workers and guarantee that individuals who undertake sex work do so voluntarily and in safe conditions, free from exploitation, and are able to stop engaging in sex work when and if they choose. Additionally, such restrictions must comply with international human rights law (i.e. they must be for a legitimate purpose, appropriate to meet that purpose, proportionate and non-discriminatory). States should also ensure the participation of current sex workers in the development of any regulatory frameworks and that the varying lived experiences of sex workers play a pivotal role in determining what form they take.

The criminalisation of sex work and human rights

The criminalisation of sex work is increasingly being recognised as a human rights concern. The UN Special Rapporteur on the Right to Health has explicitly called for decriminalisation of sex work.⁷ The final report of the Global Commission on HIV and the Law, an independent

⁶ Legalisation involves direct state regulation and control of sex work, for example through the enactment of laws that limit the numbers involved or locations for commercial sex premises. In these systems, the police are most commonly used to enforce the legal framework. The regulatory requirements of some legalised systems can mean that many sex workers operating outside legalised settings such as on-street locations, are still criminalised and subject to policing and punishment, increasing their risk of human right violations. This creates a two-tiered system of legal and illegal sex workers. Similarly some regulations within legalised systems directly violate human rights, such as in the case of mandatory HIV and STI testing.

⁷ Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, U.N. Doc. A/HRC/14/20, paras 46-50.

body convened by the UN Development Programme (UNDP) on behalf of the Joint United Nations Programme on HIV/AIDS (UNAIDS), has made the same call.⁸ The Commission deliberated over a two-year period, undertaking extensive analysis and research, including seven regional dialogues, on the links between legal frameworks, human rights and HIV.

The criminalisation of sex work and related activities has increasingly been recognised as a major impediment in the global fight against HIV/AIDS⁹ because it prevents sex workers - and sometimes their clients - from taking necessary precautions to lower the risk of transmission, and it serves as a chilling factor to deter sex workers from testing or seeking treatment for fear of arrest. The UNAIDS Advisory Group on HIV and Sex Work has recommended:

“States should move away from criminalising sex work or activities associated with it. Decriminalisation of sex work should include removing criminal penalties for purchase and sale of sex, management of sex workers and brothels, and other activities related to sex work. To the degree that states retain non-criminal administrative law or regulations concerning sex work, these should be applied in ways that do not violate sex workers’ rights or dignity and that ensure their enjoyment of due process of law.”¹⁰

The World Health Organisation calls for all countries to “work toward decriminalisation of sex work and elimination of the unjust application of non-criminal laws and regulations against sex workers”.¹¹ The International Labour Organisation (ILO) has called on governments to recognise sex work as an economic sector and “a legal occupation with protection under labour law’ and social security and health regulations”.¹²

Human Rights Watch¹³, Open Society Foundations¹⁴ and Anti-Slavery International¹⁵ among other nongovernmental groups, have also called for the decriminalisation of sex work. Most significantly, a large number of sex worker organisations and networks, including the Global Network of Sex Work Projects¹⁶, support the decriminalisation of sex work as a means to realise sex workers human rights. In Ireland, we note, the Sex Workers Alliance Ireland are in favour of full decriminalisation.¹⁷

⁸ “Rather than punishing consenting adults involved in sex work, countries must ensure safe working conditions and offer sex workers and their clients access to effective HIV and health services and commodities. Countries must: Repeal laws that prohibit consenting adults to buy or sell sex, as well as laws that otherwise prohibit commercial sex, such as laws against “immoral” earnings, “living off the earnings” of prostitution and brothel-keeping. Complementary legal measures must be taken to ensure safe working conditions to sex workers.” Global Commission on HIV and the Law, *Risks, Rights and Health* (UNDP, 2012), p. 43.

⁹ UNDP, Global Commission on HIV and the Law, *Risks, Rights and Health* (UNDP, 2012) p.38.

¹⁰ *The Report of the UNAIDS Advisory Group on HIV and Sex Work*, p. 8. The report makes clear that its recommendation relates to buying as well as selling sex.

¹¹ HIV/AIDS Programme, *Prevention and Treatment of HIV and Other Sexually Transmitted Infections for Sex Workers in Low- and Middle-Income Countries: Recommendations for a Public Health Approach* (Geneva: World Health Organization, 2012), p. 8.

¹² Lin Lean Lim. *The Sex Sector: The economic and social bases of prostitution in Southeast Asia* edited by, International Labour Office (ILO), Geneva, 1998.

¹³ “Canada’s prostitution bill as step in the wrong direction”, Joseph Amon, Human Rights Watch. June 18 2014, at <http://www.hrw.org/news/2014/06/18/canadas-prostitution-bill-step-wrong-direction>

¹⁴ Open Society Foundations, *Ten Reasons to Decriminalize Sex Work*, (July 2012).

¹⁵ Bindman J., *Redefining Prostitution as Sex Work on the International Agenda*, Anti-Slavery International, (1997).

¹⁶ See: <http://www.nswp.org>

¹⁷ *Realising Sex Workers Rights in Ireland*, February 2015, at <http://sexworkersallianceireland.org/documents/Realising%20Sex%20Workers%20Rights%20SWAI%20Feb%202015.pdf>

There is no reliable evidence to suggest that the decriminalisation of sex work leads to higher rates of violence against sex workers or women and girls more generally. Findings from New Zealand indicate that since decriminalisation of sex work in New Zealand, sex workers report feeling more able to refuse potentially dangerous clients.¹⁸

Existing laws on the selling of sex

While the Bill does not currently provide for such, as mentioned earlier, Amnesty International Ireland welcomes the Minister for Justice and Equality's statement that she is "examining the possibility of introducing proposals which would decriminalise a person offering sexual services from the existing offences of soliciting¹⁹ and loitering²⁰ for the purposes of prostitution under the Criminal Law (Sexual Offences) Act 1993". Amnesty International Ireland urges that these offences be repealed.

However, the proposed new provision criminalising the buying of sex also has a direct impact on sex workers' human rights, including their right to liberty, security, bodily autonomy, health, and equality and non-discrimination.

Existing laws criminalising third parties

In addition, sex workers may be indirectly criminalised by remaining provisions in the 1993 Act, which ostensibly focus on third parties. To avoid the risk of third party laws being used to target sex workers, such provisions should clearly apply only in situations of exploitation, coercion or abuse by third parties.

Section 11 of the 1993 Act covers 'brothel-keeping', making it an offence if someone "(a) keeps or manages or acts or assists in the management of a brothel, (b) being the tenant, lessee, occupier or person in charge of a premises, knowingly permits such premises or any part thereof to be used as a brothel or for the purposes of habitual prostitution, or (c) being the lessor or landlord of any premises or the agent of such lessor or landlord, lets such premises or any part thereof with the knowledge that such premises or some part thereof are or is to be used as a brothel, or is wilfully a party to the continued use of such premises or any part thereof as a brothel". The maximum penalty is £10,000 or 5 years imprisonment. This can cause sex workers much difficulty in that if two or more sex workers use an apartment or house together, it can be considered a brothel. As a result sex workers either risk being the subject of a police investigation and charged with brothel-keeping, or must work alone and in riskier situations.²¹ Such third party provisions are also carry the risk of their being feared by landlords of sex workers or suspected sex workers, leading to sex workers' eviction from their homes or work places.

Section 10(1) of the 1993 Act makes it an 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 10(2) provides for the making of search warrants by the District Court where there "are reasonable grounds for suspecting that any premises or any part of a

¹⁸ Jordan J., *The Sex Industry in New Zealand: A Literature Review* 65 (New Zealand Ministry of Justice, 2005).

¹⁹ Section 7 of the 1993 Act makes it an offence to solicit (or importune another person) "in a street or public place for the purpose of prostitution".

²⁰ Section 8(1) of the 1993 Act empowers a member of the Garda Síochána (police) "who has reasonable cause to suspect that a person is loitering in a street or public place in order to solicit or importune another person or other persons for the purposes of prostitution may direct that person to leave immediately that street or public place". Section 8(2) provides that "[a] person who without reasonable cause fails to comply with a direction under subsection (1) shall be guilty of an offence".

²¹ Sex Workers Alliance Ireland, *Realising Sex Workers Rights in Ireland*, February 2015, at <http://sexworkersallianceireland.org/documents/Realising%20Sex%20Workers'%20Rights%20SWAI%20Feb%202015.pdf>

premises is used by a person for the purposes of prostitution, and that any person residing in or frequenting the premises or part of the premises is living in whole or in part on the earnings of the prostitution of another person”.²² Such a broad provision can carry the risk of potentially criminalising friends and family members who are not exploiting the sex worker.

In addition, it is not clear that subsections (a) and (b) of section 9 of the 1993 Act sufficiently distinguish that it is exploitation or abuse by third parties that should be criminalised. Section 9 makes it an offence if anyone “for gain (a) controls or directs the activities of a prostitute in respect of prostitution, (b) organises prostitution by controlling or directing the activities of more than one prostitute for that purpose, or (c) compels or coerces a person to be a prostitute”.

Amnesty International Ireland supports the criminal prosecution of any exploitation, abuse, coercion or violence by third parties involved in sex work. We also support the criminalisation of forced labour and human trafficking for the purposes of sexual exploitation. These are serious crimes that should be prosecuted accordingly. However, states have a duty to ensure that the laws they use to address these issues are appropriately focussed on harm and do not violate the human rights of sex workers.

States should also focus on ensuring that laws on assault, rape, intimidation, blackmail, deprivation of liberty, forced labour and human trafficking (among others) are used effectively to protect sex workers. This does not excuse or offer impunity to abusive third parties who coerce or abuse sex workers. Rather, it ensures that sex workers are offered equal protection from these abuses and that the criminal law is used appropriately to prosecute serious crime instead of obstructing, interfering with and criminalising sex workers’ attempts to make their working environments safer.

In this regard then, Amnesty International Ireland urges that sections 9, 10 and 11 of the 1993 Act are fully reviewed and amended to ensure that a clear and unambiguous distinction is made between exploitation, abuse and coercion by third parties involved in sex work, and third party involvement that does not cause harm, especially where it is practical, supportive or for the purposes of safety; and that these sections do not permit of the possibility that they will be used to criminalise the sex workers themselves.

Criminalising the purchase of sex

Section 20 of the Bill proposes to make it an offence if someone “pays, gives, offers or promises to pay or give a person (including a prostitute) money or any other form of remuneration or consideration for the purpose of engaging in sexual activity with a prostitute”.

The definition of “sexual activity” in subsection (2) of section 7A is quite vague and wide.²³ The international human rights principle of legality requires that the focus/target of the law

²² It provides that if a “judge of the District Court is satisfied on the sworn information of a member of the Garda Síochána not below the rank of sergeant that there are reasonable grounds for suspecting that any premises or any part of a premises is used by a person for the purposes of prostitution, and that any person residing in or frequenting the premises or part of the premises is living in whole or in part on the earnings of the prostitution of another person, he may issue a warrant under his hand authorising any member of the Garda Síochána, accompanied by other members of the Garda Síochána, at any time or times within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter, if need be by force, and search the premises and arrest that person”.

²³ “Sexual activity” is defined as “any activity where a reasonable person would consider that (a) whatever its circumstances or the purpose of any person in relation to it, the activity is because of its nature sexual, or (b)

should be laid out clearly in the law, and the human rights principle of proportionality that the law should not be overly broad and implicate a wider set of conduct than is necessary to meet the legitimate state aim.

Some assert that section 20 in the proposed Bill mirrors the so-called 'Nordic model' to sex work, as adopted by the Swedish Government in 1999. However, the 'Nordic Model' in general only directly criminalises those who purchase sex. To that end, the approach proposed in Ireland goes further: it retains existing legislative provisions which criminalise activities related to sex work (such as sections 9, 10 and 11 of the 1993 Act). Moreover, as the provision aimed at punishing the purchase of sex can be enforced against sex workers, section 20 of the Bill can effectively criminalise sex workers as well.

Both the Swedish²⁴ and Norwegian²⁵ governments have published reviews which identify reductions in street-based sex work. A review commissioned by the Swedish Government in 2008 claimed that street-based sex work in Sweden had been halved within a decade of the introduction of the purchasing ban.²⁶ The same report also cited statements by the Swedish police that the ban had deterred traffickers from establishing their operations in Sweden and findings from surveys which demonstrated a reduction in the numbers of men who report having paid for sex. The Norwegian Government evaluation also reported a reduction in levels of sex work following the introduction of their law in 2009.

However, detailed concerns have been raised by both academics working in this field²⁷ and sex workers²⁸ regarding the legitimacy of the findings of these evaluations and the negative impact of this legislative framework on the human rights of sex workers. Both evaluations have been criticised for their methodological approaches, the scope of their analysis and the limited mandate given to researchers.²⁹ In Sweden, critics have cited the terms of reference given to researchers as stating that the purchase of sex must continue to be illegal following the evaluation.³⁰

The conclusions of both reports regarding apparent reductions in the sex work market in Sweden and Norway have been specifically questioned. The Swedish report has been criticised for ignoring an apparent downward trend in rates of street-based sex work since the 1970s, and underestimating the impact of the internet on sex work markets in terms of moving sex work from street-based to indoor environments over the last 15 years; and instead attributing this apparent reduction in street-based sex work as a clear outcome of

because of its nature the activity may be sexual and because of its circumstances or the purposes of any person in relation to it (or both) the activity is sexual".

²⁴ Skarhead A., *Prohibition of the purchase of sexual services. An evaluation 1999-2008*. (2010).

²⁵ Vista Analyse. *Evaluering av forbudet mot kjøp av seksuelle tjenester*. Rasmussen et al. (August 2014).

²⁶ Skarhead A., *Prohibition of the purchase of sexual services. An evaluation 1999-2008*. (2010).

²⁷ Dodillet S. and Östergren P., *The Swedish Sex Purchase Act: Claimed Success and Documented Effects*, conference paper presented at the International Workshop: Decriminalising Prostitution and Beyond: Practical Experiences and Challenges, The Hague (March 3 and 4, 2011). See Jordan A., *The Swedish Law to Criminalise Clients: A Failed Experiment in Social Engineering*, American University, Washington College of Law, Issue Paper No. 4, 1 (2012). "The evaluation of the Sex Purchase Act brings us no closer to a conclusion", Anette Brunovskis, researcher, Fafo and May-Len Skilbrei, professor in criminology, University of Oslo (2014).

²⁸ Levy J. and Jakobsson P., *Sweden's abolitionist discourse and law: Effects on the dynamics of Swedish sex work and on the lives of Sweden's sex workers*, *Criminology and Criminal Justice* (2014). Bjørndahl U., *Dangerous Liaisons: A report on the violence women in prostitution in Oslo are exposed to* (2012).

²⁹ See for example Dodillet S. and Östergren P., *The Swedish Sex Purchase Act: Claimed Success and Documented Effects*, 2011 note 27 above, and "The evaluation of the Sex Purchase Act brings us no closer to a conclusion", Anette Brunovskis, note 27 above.

³⁰ Dodillet S. and Östergren P., *The Swedish Sex Purchase Act: Claimed Success and Documented Effects*, 2011, *ibid*.

legislation.³¹ Critics also cite evidence of an increase in covert sex work practices and dispersal of street-based sex workers as a result of clients' fears around criminalisation and increased police enforcement that they claim were not sufficiently considered in the evaluation.³² In 2007, the Swedish National Board of Health and Welfare highlighted the difficulty in drawing clear conclusions on any reduction in sex work, finding that the initial reduction in street-based sex workers had been short-lived and that numbers were returning to previous levels:

“It is also difficult to discern any clear trend of development: has the extent of prostitution increased or decreased? We cannot give any unambiguous answer to that question. At most, we can discern that street prostitution is slowly returning, after swiftly disappearing in the wake of the law against purchasing sexual services. But as said, that refers to street prostitution, which is the most obvious manifestation. With regard to increases and decreases in other areas of prostitution – the ‘hidden prostitution’ – we are even less able to make any statements.”³³

In Norway, leading academic researchers have cautioned that the reported decrease in sex work is limited by “substantial uncertainties”; expressing concerns that the authors of the evaluation failed to sufficiently explore their own findings that demonstrated that the market in Norway “may have changed because the people involved try to ‘stay under the radar’ and avoid arenas where they can be observed, and by implication, counted”.³⁴

In both Sweden and Norway, researchers have found evidence of increased risk-taking among sex workers in relation to their safety since the passage of the purchasing ban. Research in 2012 by Pro Sentret, Norway's national centre of expertise on sex work policy, indicated that since the introduction of the prohibition on purchasing sex, some sex workers have reported seeing a decrease in ‘good clients’ and that the remaining ‘bad clients’ now make up a greater proportion of available options. The report indicates that sex workers are taking greater risks in their interactions with clients such as agreeing to visit their homes, concluding negotiations with clients more quickly or in secluded spaces that are safer for the client, and agreeing to take more dangerous clients.³⁵ In Sweden, concern has been raised that this actually empowers those purchasers who are willing to take risks as sex workers have less bargaining power and are potentially forced to sell sex cheaper and offer unprotected sex.³⁶ Research also indicates that this increase in risk is felt most acutely by the most vulnerable, resource-poor, street-based sex workers who cannot relocate indoors and now face increased competition for ‘bad’ clients, more pressure to conclude negotiations quickly and covertly, and reduced bargaining power.³⁷

³¹ Dodillet S. and Östergren P., *The Swedish Sex Purchase Act: Claimed Success and Documented Effects*, 2011, *ibid.* See Jordan A., *The Swedish Law to Criminalise Clients: A Failed Experiment in Social Engineering*, American University, Washington College of Law, Issue Paper No. 4, 1 (2012).

³² Jordan A., *The Swedish Law to Criminalise Clients: A Failed Experiment in Social Engineering*, *ibid.* See also Bernstein E., *Temporarily Yours: Intimacy, Authenticity, and the Commerce of Sex* (2007), University of Chicago Press, Clausen, Vincent. *An Assessment of Gunilla Ekberg's Account of Swedish Prostitution Policy*, (2007).

³³ National Board of Health and Welfare (2008), *Prostitution in Sweden 2007*. P.63 http://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/8806/2008-126-65_200812665.pdf

³⁴ “The evaluation of the Sex Purchase Act brings us no closer to a conclusion”, Anette Brunovskis, at <http://www.faoarkiv.no/prostitution/140816-ABR-oped.html>

³⁵ Bjørndah, I U., *Dangerous Liaisons: A report on the violence women in prostitution in Oslo are exposed to*, Oslo, 2012.

³⁶ Dodillet S. and Östergren P., *The Swedish Sex Purchase Act: Claimed Success and Documented Effects*, note 27 above.

³⁷ Levy J. and Jakobsson P., *Sweden's abolitionist discourse and law: Effects on the dynamics of Swedish sex work and on the lives of Sweden's sex workers*, *Criminology and Criminal Justice* (2014), *The Swedish Sex Purchase Act: Claimed Success and Documented Effects*.

Both the Swedish and Norwegian government evaluations reported that sex workers felt less safe since the passage of the purchasing ban. For example, the Norwegian report stated that:

“[W]omen in the street market report to have a weaker bargaining position and more safety concerns now than before the law was introduced. At the indoors market, prostitutes express concerns for ‘out-door calls’. They prefer to have customers visiting them at their own apartment or own hotel room. The threshold for reporting a violent customer to the police also seems to be higher after the law. People in prostitution are afraid that such actions will come back to haunt them at later stages.”³⁸

Of their discussion with current sex workers in Sweden, the authors of the evaluation reported that:

“They describe having chosen to prostitute themselves and do not consider themselves to be unwilling victims of anything. Even if it is not forbidden to sell sex, they feel they are hunted by the police. They feel that they are being treated as incapacitated persons because their actions are tolerated but their wishes and choices are not respected. Moreover, they state that there is a difference between voluntary and forced prostitution.”³⁹

In both instances, the authors of the evaluation suggested that the increased fear and risk felt by sex workers was in line with the aims of the purchasing ban as it created a hostile environment and discouraged individuals entry into sex work. For example the Swedish evaluation stated: “The above negative effects of the ban that they describe must be viewed as positive from the perspective that the purpose of the law is indeed to combat prostitution.”⁴⁰

The criminalisation of the purchase of sex has also reportedly impacted on HIV prevention and harm reduction. Condom distribution to sex workers and clients has been publicly criticised for ‘encouraging sex work’ and running contrary to the law and has been scaled back in at least one area of Sweden since the passage of the law.⁴¹

There is also some evidence to suggest that the legal framework and associated police activities in these countries may serve to increase reliance on third parties among sex workers.⁴² For example, in Sweden researchers have reported that sex workers may now rely more on third parties to secure clients. In Norway, some sex workers report being discriminated against by landlords who, because of assumptions that they could be sex workers due to factors such as their nationality, refuse to rent flats to them for fear of repercussions from the police, forcing sex workers to rely on third parties to rent accommodation for them.⁴³

³⁸ Vista Analyse, *Evaluering av forbudet mot kjøp av seksuelle tjenester 2014* (English Summary). Available at <http://vista-analyse.no/site/assets/files/6813/eng1.pdf>

³⁹ Skarhead A., *Prohibition of the purchase of sexual services. An evaluation 1999-2008* (2010) p.34.

⁴⁰ *Id.* p.34.

⁴¹ Levy J. and Jakobsson P., *Sweden’s abolitionist discourse and law: Effects on the dynamics of Swedish sex work and on the lives of Sweden’s sex workers*. *Criminology and Criminal Justice* (2014).

⁴² See Dodillet S. and Östergren P., *The Swedish Sex Purchase Act: Claimed Successes and Documented Effects*, note 27 above.

⁴³ Bjørndahl, I U. *Dangerous Liaisons: A report on the violence women in prostitution in Oslo are exposed to*, Oslo, 2012.

A recently published research report commissioned by RFSU, the Swedish Association of Sexuality Education (an affiliate of International Planned Parenthood Federation), also raises concerns that the empirical basis which finds that the 1999 Swedish law reduced the demand for sex, one of the law's goals, is weak. It also indicates that the law has had negative consequences, including selling sex in more private arenas, resulting in putting sex workers in more vulnerable situations, as well as increased stigmatisation of sex workers.⁴⁴

The aims of purchasing prohibitions - to reduce or abolish sex work - mean that police still pursue sex workers as a means to detect and prosecute purchasers or third parties and to eradicate sex work. Media coverage and academic research in Norway, for example, indicate that raids, stings and surveillance of sex workers are a feature of Norwegian police approaches to detecting clients of sex workers and third parties involved in the 'promotion' of sex work. Research in Sweden also reports that sex workers "feel hunted" by the police and are subjected to "invasive searches and questioning".⁴⁵ Sex workers may also be made to testify in trials and therefore risk being exposed publicly as sex workers.

It is also worth noting that under these models sex workers can still be either directly or indirectly criminalised under 'third party offences'. For example, in Norway, police have actively targeted landlords of sex workers in a crackdown on third parties known as 'Operation Homeless'. This has led to the eviction of sex workers from their places of work and homes.⁴⁶ Similarly, the Northern Ireland Assembly recently introduced the criminalisation of the purchase of sex in 2014; and whilst solicitation charges were repealed, sex workers working with any other person in an indoor location for the purposes of safety will still be criminalised under brothel keeping prohibitions.⁴⁷

Some who seek to abolish sex work argue that criminalising buyers will reduce demand and subsequently reduce violence, will promote gender equality, and will reduce or eradicate sex work. There is no reliable evidence to confirm that current "end demand" initiatives actually reduce sex work or the sex industry more generally.⁴⁸

Child exploitation

Amnesty International Ireland welcomes the proposals in sections 3 to 8 of the Bill targeting the sexual exploitation of children, including engaging a child in prostitution.

International law is clear on the prohibition on the involvement of children (that is, anyone under 18 years of age) in commercial sex acts. This prohibition is spelled out in the UN Convention on the Rights of the Child, its Optional Protocol on the sale of children, child prostitution, and child pornography, and in ILO Convention Number 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. Under these treaties, states are obliged to protect children from economic exploitation, sexual

⁴⁴ Charlotta Holmström, *Förbud mot köp av sexuell tjänst i Sverige - en kunskapsöversikt om avsedda effekter och oavsedda konsekvenser* (2015).

⁴⁵ Dodillet S., Östergren P., "The Swedish Sex Purchase Act: Claimed Success and Documented Effects", 2011, note 17 above.

⁴⁶ Ibid. "The ban on the purchase of sex - have Norwegian prostitution markets changed?" Fafo, October 2012 at http://www.fafo.no/prostitution/ban_purchase.html

⁴⁷ Sexual Offences (Northern Ireland) Order 2008. Section 64.

⁴⁸ See UNAIDS Guidance Note on HIV and Sex Work, at Annex 2, 8. For example, the "end demand" approach adopted by the Swedish government has been shown to actively disadvantage sex workers who were unable to work indoors and were thus left on the street with the most dangerous clients and little choice but to accept them. See also Dodillet S. and Östergren P., *The Swedish Sex Purchase Act: Claimed Success and Documented Effects* [(citing D. Kulick, *Sex in the New Europe: The Criminalisation of Clients and Swedish Fear of Penetration*, 3 *Anthropological Theory* 2, 199-218 (2003)); see also NSWP, *Research for Sex Work*, No. 12 (December 2010), available at http://www.nswp.org/sites/nswp.org/files/research-for-sex-work-12-english-russian_0.pdf

exploitation, and any work that is likely to be hazardous or harmful to a child's health or physical, mental, or social development.⁴⁹ The "use, procuring, or offering" of a child for prostitution or pornography is considered a "worst form of child labour", for which states must design and implement action programmes to eliminate as a priority.⁵⁰ States are also required to criminalise "offering, obtaining, procuring or providing a child" for use "in sexual activities for remuneration or any other form of consideration".⁵¹ Importantly, states must "take all feasible measures" to ensure that all children who have been involved in sexual activities for remuneration or any other form of consideration receive "all appropriate assistance... including their full social reintegration and their full physical and psychological recovery".⁵² Such assistance should include the "necessary and appropriate direct assistance for the removal of children" from such work and ensuring "access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour".⁵³

Therefore, not only must any act related to the sexual exploitation of a child be criminalised, but recognising that a child involved in a commercial sex act is a victim of sexual exploitation, they should be entitled to support, reparations and remedies in line with international human rights law, and the state should take all appropriate measures to prevent sexual exploitation and abuse of children.

Human trafficking for the purposes of sexual exploitation

Human trafficking for the purposes of sexual exploitation is a grave human rights violation. Notably, it is not the same as sex work. Sex work refers to a contractual arrangement where consensual sexual services are negotiated between consenting adults with the terms of engagement agreed upon between the seller and the buyer.⁵⁴ Human trafficking is defined as "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability ... for the purpose of exploitation".⁵⁵

Victims of such crimes are entitled to protection and remedies, regardless of their sex, nationality, health status, sexual orientation, gender identity, prior work history, willingness to contribute to prosecution efforts, or other factors. Therefore, while we welcome Irish law criminalising human trafficking including for the purposes of sexual exploitation⁵⁶, and note that the Bill proposes to strengthen its criminal provisions regarding the sexual exploitation of victims of trafficking⁵⁷, it is important that this legislation is effectively implemented. It is

⁴⁹ CRC arts. 32(1) and 34.

⁵⁰ ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Worst Forms of Child Labour Convention), adopted June 17, 1999, 38 I.L.M. 1207 (entered into force November 19, 2000), arts. 3(b) and 6(1).

⁵¹ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, (Optional Protocol CRC SC), adopted May 25, 2000, G.A. Res. 54/263, Annex II, 54 U.N. GAOR Supp. (No. 49) at 6, U.N. Doc. A/54/49, Vol.III (2000), entered into force January 18, 2002, arts. 2(b) and 3(1)(b).

⁵² *Ibid*, art. 9(3).

⁵³ ILO Convention 182, arts. 7(2)(b) and (c).

⁵⁴ See UNDP, Global Commission on HIV and the Law, Risks, Rights & Health, 41 (2012), note 9 above.

⁵⁵ United Nations General Assembly. (2000) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, Art. 3 (2000).

⁵⁶ The Criminal Law (Human Trafficking) Act 2008 not only makes it an offence to traffic someone, but section 5 also criminalises soliciting or importuning a trafficked person for the purposes of prostitution, including importuning trafficked persons in brothels.

⁵⁷ Section 21 proposes to insert in the 2008 Act a section 2A that provides: "A person who pays, gives, offers or promises to pay or give a person (including the trafficked person) money or any other form of remuneration or consideration for the purposes of the prostitution of a trafficked person shall be guilty of an offence."

also important that the Government take all measures to prevent and combat human trafficking for the purposes of sexual exploitation and protect the human rights of victims of trafficking. This also applies to forced labour or other forms of labour exploitation.

Ireland is obliged under Article 6 of the Council of Europe Convention on Action Against Trafficking in Human Beings⁵⁸ to take all appropriate measures to discourage the demand that fosters all forms of exploitation of persons, especially women and children, including as regards sexual exploitation. This is a critical component in preventing and combating the trafficking itself. Regarding measures to address demand, the Convention's Explanatory Report advises that, among the minimum measures set out in Article 6, "[a]n essential one is research on best practices, methods and strategies for discouraging client demand effectively". However, the Convention does not require states to criminalise purchasing of consensual adult sex. Such measures have not been shown to be effective in combatting trafficking, as described below. Furthermore, given the human rights concerns that arise from criminalisation of the purchase of sex, such measures should not be considered "appropriate measures" to discourage demand.

There is little evidence demonstrating a causal relationship between a legalised or decriminalised sex industry and human trafficking.⁵⁹ Moreover, the conflation of trafficking into sexual exploitation and sex work has been criticised by UN bodies, human rights experts and sex worker rights advocates.⁶⁰ For example, as noted earlier, the UN Global Commission on HIV and the Law has recently recommended that states "enforce laws against all forms of child sexual abuse and sexual exploitation, clearly differentiating such crimes from consensual adult sex work [...] and ensure human trafficking laws are used to prohibit sexual exploitation, as opposed to consensual sex work."⁶¹

Additionally, anti-trafficking organisations such as the Global Alliance Against Traffic in Women (GAATW), La Strada International and others have documented the harm done to sex workers, migrants and people who have been trafficked by anti-trafficking laws, policies, programmes and initiatives that conflate consensual sex work and human trafficking.⁶²

⁵⁸ It is important to distinguish this treaty and the position of its oversight body, the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA), from the resolution adopted by the Parliamentary Assembly of the Council of Europe (PACE) in April 2014 (resolution 1983) which called on states to "consider criminalising the purchase of sexual services, based on the Swedish model, as the most effective tool for preventing and combating trafficking in human beings". Similarly, the European Parliament is also not a human rights body, and its resolution of 26 February 2014 on sexual exploitation and prostitution and its impact on gender equality (2013/2103(INI)), which supports the criminalisation of the purchase of sexual services and the 'Nordic model', is not based on international human rights standards.

⁵⁹ See generally Erin O'Brien, *Fuelling Traffic: Abolitionist Claims of a Causal Nexus between Legalised Prostitution and Trafficking*, 56 *Crime, Law and Social Change* 5, 547-565 (2011).

⁶⁰ See UNAIDS Guidance Note on HIV and Sex Work, at Annex 3; UNAIDS, UNFPA, UNDP, *Sex Work and the Law in Asia and the Pacific* 3, 16, 39 (2012), available at <http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/sex-work-and-the-law-in-asia-and-the-pacific/>; 2010 Report of the Special Rapporteur on the Right to Health, note 7 above, at paras. 32, 33; see also generally Global Alliance Against Traffic in Women, *Moving Beyond 'Supply and Demand' Catchphrases: Assessing the Uses and Limitations of Demand-based Approaches in Anti-trafficking* (2011), available at http://www.gaatw.org/publications/MovingBeyond_SupplyandDemand_GAATW2011.pdf

⁶¹ See UNAIDS Guidance Note on HIV and Sex Work.

⁶² See GAATW, *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World* (2007), available at http://www.gaatw.org/Collateral%20Damage_Final/singlefile_CollateralDamagefinal.pdf; see also LSI NGO Platform - United against human trafficking in Europe, Statement 17 December: International Day To End Violence Against Sex Workers, 17 December 2013, available at <http://lastradainternational.org/lsidocs/LSI%20statement%2017%20December%20-%20end%20violence%20against%20sex%20workers%20day%20def.pdf>

Evidence suggests that criminalisation of consensual sex work does not reduce trafficking, as recently noted by *The Lancet*.⁶³ Human trafficking is the result of multiple factors that promote vulnerability, including immigration laws that do not allow people to migrate legally, coercion, lack of gainful employment in particular countries, police corruption and inadequate border controls. Studies on the effectiveness of the buyer criminalisation approach - including on the Swedish model – vary too much for a sound argument to be made that it is effective in pursuit of respect for trafficking victims’ rights, protection of victims, and prevention and combating of trafficking.

Studies aiming to reach a definitive conclusion about the impact of the Nordic model on human trafficking have run into methodological challenges. For example, different countries may use different criteria to count who qualifies as a victim of trafficking.

The Swedish Chancellor of Justice’s report to the Swedish Government on the impact of the law acknowledged that data on the prevalence of trafficking is not completely reliable.⁶⁴ While police reported that they believe the law deters traffickers,⁶⁵ no other sources were consulted to corroborate this view. (With regard to the prevalence of commercial sex, the Chancellor’s report similarly concluded that despite many studies, there is “no irrefutable knowledge about the scope of and changes in prostitution during the period” after the law went into effect”.⁶⁶)

Amnesty International Ireland believes that human trafficking laws and policies should clearly reflect that trafficking is a crime and a serious human rights violation.

Sex work, gender inequality and intersectional discrimination

Some in the women’s rights movement, together with some individuals and groups that identify as survivors of sexual exploitation, argue that sex work is principally an expression of patriarchal domination, is universally harmful, and is inherently violence against women. This position underpins the role some consider that the criminal law should play in communicating societal messages around the acceptability of sex work.

This position is not supported by international human rights standards. Article 6 of the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)

⁶³ See *The Lancet*, Keeping Sex Workers Safe (2015), [http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(15\)61460-X/fulltext](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(15)61460-X/fulltext)

⁶⁴ Skarhed A., “Evaluation of the Prohibition of the purchase of sexual services” 2010: “Although it is hard to assess the exact scale of human trafficking for sexual purposes, in Sweden the establishment of this kind of crime is considered to be substantially smaller in scale than in other comparable countries. According to the Swedish Police, it is clear that the ban on the purchase of sexual services acts as a barrier to human traffickers and procurers who are considering establishing themselves in Sweden.” P.9. At p. 35 it says: “Nor do we have completely reliable knowledge about the occurrence of human trafficking for sexual purposes in Sweden; however, we believe that we can conclude that the scope is clearly more limited here than it is in other European countries.”

⁶⁵ Swedish National Police (2012), Situation Report 13, Trafficking in Human Beings for sexual and other purposes, 2011, RPS Rapport 2012, available at https://www.polisen.se/Global/www%20och%20Intrapolis/Informationsmaterial/01%20Polisen%20nationellt/Engelskt%20informationsmaterial/Trafficking_1998_/Trafficking_report_13_20130530.pdf

⁶⁶ Skarhed A., “Evaluation of the Prohibition of the purchase of sexual services”, 2010. English translation: “there is no irrefutable knowledge about the scope of and changes in prostitution during the period, in spite of the production of a vast number of reports and studies. However, in our opinion, the written material, together with the information we received from, among others, the police and social workers, offers a sufficiently reliable basis for stating that in any event, prostitution in Sweden has not increased to any great extent since 1999, even though the forms of prostitution have changed somewhat. Nor do we have completely reliable knowledge about the occurrence of human trafficking for sexual purposes in Sweden; however, we believe that we can conclude that the scope is clearly more limited here than it is in other European countries.” P. 35.

requires states to protect women and girls against “exploitation of prostitution”. CEDAW does not define the terms “exploitation” or “prostitution”. The language used in Article 6 suggests that not all instances of sex work are inherently exploitative. When the text of CEDAW was being drafted, a proposal for the amendment of Article 6 to call for the abolition of prostitution in all its forms was rejected.

By contrast, sex workers’ rights advocates, together with human rights organisations such as Human Rights Watch, Open Society Foundations, UN agencies, some academics and some feminist groups, have sought to highlight and evidence the significant harms and human rights violations associated with criminalisation of sex work, and have supported decriminalisation. This perspective outlines sex work as a complex issue that is influenced by a range of socio-economic forces that vary across time, location and context, rather than singularly one of gender oppression.⁶⁷ These groups cite the wide variations in sex workers’ experiences as evidence that harm is not inherent to sex work. Rather, it is related to specific negative circumstances and is a manifestation of the stigma and disapproval which society ascribes to sex work and sex workers; stigma that they argue is perpetuated by criminalisation.⁶⁸

Amnesty International Ireland considers that the use of the criminal law to prohibit aspects of consensual sex work does little to address or challenge macro socio-economic forces that limit the choices of marginalised people, and instead increases the vulnerability of the most marginalised within sex work. That in no way means that Amnesty International Ireland supports or condones the lack of action by states and the international community to address the limited options experienced by marginalised people around the world. States should protect, respect and fulfil the economic, social and cultural rights of everyone and take legislative measures and progressive actions to guarantee these rights. This applies equally to Ireland.⁶⁹

State obligations in regard to entry and exit from sex work

States must develop and implement 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. 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. 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 approach to criminalisation 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.

⁶⁷ See for example Agustin L.M., *Sex at the Margins: Migration, Labour Markets and the Rescue Industry*, 2008.

⁶⁸ Shaver F., (2005) *Sex work research: Methodological and ethical challenges*. *Journal of Interpersonal Violence*, 20. Vanwesenbeeck, I (2011). *Another decade of social scientific work on prostitution*. *Annual Review of Sex research* 12. Weitzer R., (2009), *Sociology of sex work*. *Annual Review of Sociology*, 35. Open Society Foundations, “Laws and policies affecting sex work” (2012).

⁶⁹ Amnesty International Ireland has been urging the Irish Government for a number of years to significantly increase its focus on guaranteeing economic, social and cultural rights, especially for the most marginalised. This is one of the best routes to ending the need for people to have recourse to survival sex. The Government has so far not acted on the February 2014 recommendation of the Constitutional Convention that constitutional protection of economic, social and cultural rights be strengthened.

Measures beyond decriminalisation of sex work

Amnesty International Ireland recognises that the decriminalisation of sex work alone will not end all human rights abuses against sex workers. Sex work is a highly stigmatised activity and sex workers routinely face prejudice and discrimination. Whilst we consider that decriminalisation can make a strong contribution towards reducing the vulnerability and prejudice that sex workers encounter, states may need to undertake further initiatives to directly address these issues. Further, Amnesty International does not take a position on the exact form that such measures should take - states will need to tailor these to address the human rights abuses evident in each country.

At a minimum however, states have a positive obligation to reform their laws and develop and implement legal frameworks and initiatives that work to eliminate stigma and discrimination against those engaging in sex work.

People of different genders, ethnic and socio-economic backgrounds undertake sex work for a variety of reasons and report a diversity of experiences.⁷⁰ For some, the decision to undertake sex work may be a reflection of limited options. For example, it may be one of few sources of earnings open to a transgender person facing discrimination in employment. For some sex workers the decision to sell sexual services is a matter of suitability or preference - it may offer flexibility and control over working hours or a higher rate of pay than other options. Other individuals may turn to sex work as a means of immediate survival because of extreme poverty or other forms of social exclusion.

With regard to entry into sex work, states must adopt and implement effective programmes, laws and policies that ensure no person is coerced into sex work and provide effective remedies to people who have been coerced. They must provide appropriate support, employment and educational options that 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 discrimination in employment. Moreover, they must develop relevant policies and programmes in participation and consultation with sex workers.

States must further 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. States should also ensure the participation of current sex workers in the development of any regulatory frameworks and that the varying lived experiences of sex workers play a pivotal role in determining what form they take.

Decriminalisation helps to ensure that the police are adequately focussed on protecting, rather than pursuing and directly/indirectly punishing sex workers. Beyond decriminalisation, states must also guarantee sex workers rights to security and equal protection under the law by ensuring that laws on physical and sexual violence, harassment, labour exploitation, forced labour, trafficking and child exploitation (among others) are used effectively to protect sex workers. Additional measures such as human rights education and training for police and other actors in the criminal justice system may also be required.

⁷⁰ Weitzer R., *The Mythology of Prostitution: Advocacy Research and Public Policy* (2010); Weitzer R., *Sociology of Sex Work*, *Annual Review of Sociology* (2009).

States must also ensure that sex workers have appropriate access to social protection and in particular to health services. The WHO, UNDP, UNAIDs and the Global Network of Sex Work Projects have developed extensive technical guidance on good practice in guaranteeing the human rights of sex workers, in particular the right to health.⁷¹ Their overarching recommendations are that:

- All countries should work toward decriminalisation of sex work and elimination of the unjust application of non-criminal laws and regulations against sex workers
- Governments should establish anti-discrimination and other rights respecting laws to protect against discrimination and violence, and other violations of rights faced by sex workers in order to realise their human rights and reduce their vulnerability to HIV infection
- Health services should be made available, accessible and acceptable to sex workers based on the principles of avoidance of stigma, non-discrimination and the right to health
- Violence against sex workers is a risk factor for HIV and must be prevented and addressed in partnership with sex workers and sex worker led organisations.

Finally, states must actively seek to empower marginalised communities, including through adopting socio-economic policies that guarantee the social, economic and cultural rights of marginalised groups including sex workers; and ensuring that all people have options in determining the type of work they engage in and that no person is obligated to rely on sex work as their only means of survival.

Conclusion

Amnesty International Ireland urges that section 20 of this Bill be removed, and that other laws criminalising consensual sex work between adults be repealed (i.e. buying and selling of consensual sex, and related activities). Amnesty International Ireland notes and welcomes the stated aim of the Government in introducing section 20 of this Bill of “addressing the very real and tragic crimes of trafficking and exploitation associated with prostitution”.⁷² However, criminalisation of any aspect of consensual sex work put sex workers at greater harm of human rights violations and abuses. Amnesty International Ireland 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 remain criminalised in line with their gravity, and those criminal laws be effectively implemented.

Amnesty International Ireland welcomes the Minister for Justice and Equality’s statement that she is “examining the possibility of introducing proposals which would decriminalise a person offering sexual services from the existing offences of soliciting and loitering for the purposes of prostitution under the Criminal Law (Sexual Offences) Act 1993”. Amnesty International Ireland urges that these offences be repealed.

⁷¹ See WHO et al, *Prevention and Treatment of HIV and other sexually transmitted infections for sex workers in low- and middle-income countries: Recommendations for a public health approach*, Geneva, 2013; WHO et al, *Implementing comprehensive HIV/STI programmes with sex workers: practical approaches from collaborative interventions*, Geneva, 2013.

⁷² Department of Justice and Equality press release, “Minister Fitzgerald publishes the Criminal Law (Sexual Offences) Bill 2015”, 23 September 2015, at <http://www.justice.ie/en/JELR/Pages/PR15000487>

However, certain other provisions in the 1993 Act ostensibly focussed on third parties may directly or indirectly criminalise sex workers. Section 11 of the 1993 Act on 'brothel-keeping' is a particular concern. To avoid the risk of third party laws being used to target or impact on sex workers, such provisions should clearly apply only to exploitation, coercion or abuse by third parties. Amnesty International Ireland urges that sections 9, 10 and 11 of the 1993 Act be fully reviewed and amended to ensure that a clear and unambiguous distinction is made between exploitation, abuse and coercion by third parties involved in sex work, and third party involvement that does not cause harm, especially where it is practical, supportive or for the purposes of safety; and that these sections do not permit of the possibility that they will be used to criminalise the sex workers themselves.

Should the Government proceed with the approach of criminalising the purchasers of sex, it would be imperative that the legislation includes an annual review clause so that the substance and operation of section 20 - and any additional amendments made to the 1993 Act to further decriminalise sex workers - are comprehensively reviewed after 12 months of the new legislative measures being in force. A report should be made to the Oireachtas on the implementation of the new measures, including on any unintended consequences of their introduction. In this regard too, the following recommendation made by the Oireachtas Joint Committee on Justice, Defence and Equality in its 2013 *Report on hearings and submissions on the Review of Legislation on Prostitution* is important to implement: "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."

ENDS//

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