

Submission to the review of Part 4 of the Criminal Law (Sexual Offences) Act 2017

by Sex Workers Alliance Ireland (SWAI)

1. Overview of Organisation

Sex Workers Alliance Ireland (SWAI) is a sex worker-led organisation focused on advancing the human rights, health, safety, participation and dignity of female, male, cis and trans sex workers in the Republic of Ireland (hereafter Ireland). SWAI's purpose is to act as a national and international focal point for sex workers' needs in Ireland, and to support their rights and justice claims. SWAI supports over 200 sex workers in key areas, for example, housing, legal support and emergency interventions.¹ The SWAI board and staff members comprise 75% sex workers. We have varied experience in different sectors of the sex industry including escorting, domination, street-based sex work, and porn. SWAI incorporated in 2015 when the government debated this law. Since then, we have continued to fight to realise sex workers' rights across the island of Ireland and collaborating with our allies domestically and internationally to accomplish our aims for sex workers.

This submission draws on Irish and international research and our 'lived experiences' as service providers and sex workers of legislative change (Skilbrei and Holmström 2011; Levy 2014; Malloch, Robertson and Forbes, 2017; Ellison, 2019). We divide our response into three sections covering: (i) recommendation; (ii) the impact of the law on sex workers and (iii) impact of the law on trafficking for the purposes of sexual exploitation (hereafter sex trafficking). Through this, we will detail how this legislation has had a detrimental effect on the safety, health and rights of sex workers in Ireland. Moreover, we will show that the criminalisation of sex purchase does nothing to address neither the reasons why people engage in sex work nor why they may be vulnerable to exploitation and violence in sex work.

Recommendations

SWAI recommends, more broadly that:

- The Review Committee read our attached our Decriminalisation Bill, legislation with appropriate regulations, health codes, and licensing, it is this we suggest be put into place instead (See attachment in email of Sex Work Bill 2020). Which includes: **Repeal of sex purchase ban and Repeal of brothel-keeping law:**

We recommend, specifically in relation to the Act 2017, that the government repeal the following sections:

- Section 7A of the Criminal Law (Sexual Offences) Act 1993;
- (b) Section 7, 8, 9, 10, and 11 of the Criminal Law (Sexual Offences) Act 1993;

¹ For a complete account of SWAI's services see: <<https://sexworkersallianceireland.org>>

- (c) Section 23 Criminal Justice (Public Order) Act 1994.

We recommend, specifically that that the Law Reform Commission shall, as soon as practicable after the commencement of this Bill:

- Assess the number of persons working as sex workers in Ireland and any prescribed matters relating to sex workers or commercial sex work; and
- Report on its findings to the Minister for Enterprise, Trade, and Employment. No sooner than the expiry of 3 years, but before the expiry of 5 years, after the commencement of the Bill, -
- Review the operation of the Bill since its commencement;
- Assess the impact of this Act on the number of persons working as sex workers in Ireland and on any prescribed matters relating to sex workers or sex work;
- Assess the nature and adequacy of the means available to assist persons to avoid or cease working as sex workers;
- Consider whether any amendments to this Act or any other law are necessary or desirable, whether any other agency or agencies could or should administer it, and whether a system is needed for identifying the location of businesses providing commercial sexual services;
- consider whether any other amendments to the law are necessary or desirable in relation to sex workers or a commercial sexual services business;
- Consider whether any further review or assessment of the matters set out in this paragraph is necessary or desirable;
- Report on its findings to the Minister for Enterprise, Trade, and Employment.; and
- (viii) carry out any other review, assessment, and reporting required and regulations made under this Bill.

We recommend, specifically in relation to transparency and inclusion are the democratic process, that:

- The Law Review Commission centre and take direction from current sex workers in the development and decision-making process around policy that affects our lives

We recommend, specifically in relation to sex trafficking that:

- An independent body should be set up to receive and investigate complaints of trafficking;
- Gardaí should also be trained to deal with complaints in a dignified and appropriate manner. This should include anti-racist training and input from sex worker representatives;
- Any anti-trafficking response should seek the input of sex workers, migrants, and victims of trafficking across different sectors;
- Legal Aid should be provided for all immigration and international protection applications and appeals, including applications on behalf of victims of trafficking;
- Victims of trafficking must have access to appropriate accommodation and social supports and

- 'Firewalls' should be introduced strictly limiting the sharing of information with GNIB where sex workers, migrants and victims of trafficking apply for access to social welfare supports or social services.

2. Impact of the Law on Sex Workers

When the Act came into force in 2017 it exacerbated sex workers' working conditions. Immediately it impacted our ability to work safely. Sex workers are a diverse demographic and have to contend with multiple intersecting oppressions. Therefore, they have diverse needs and a one-size fits all approach will always be ineffective. Empirical research supports this view and demonstrates that the current legislation works in conjunction with Ireland's immigration laws, housing policies, drug laws and other social and legal regulations to create a very hostile climate in which sex workers must survive (FitzGerald and McGarry 2016). Now we have a situation where the law punishes and penalises sex workers for the mere act of our survival. This has dire consequences for our health and wellbeing and reduces our ability to fully participate and thrive in society (Sweeney and FitzGerald 2017). Below we will outline some of the most significant effects of this law on sex workers' lives.

2.1 Increase in Violence and Fear

Ever since the law changed the worst crimes - attacks, robberies, rapes - have increased. Potentially aggressive clients are more likely to call than genuine clients. (Female sex worker, Romanian, SWAI 2020).

The criminalisation of sex purchase in Ireland has led to a surge in violent attacks against sex workers. Empirical research support this claim, revealing that: '[C]omparing the two years pre and the two years post Ireland's legislative change in this area, sex workers' crime reports to Ugly Mugs (UM) increased by 91% and violent crime specifically increased by 92%' (Campbell et al., 2020: 15). During this same time period, the number of sex workers registered with UM and using its reporting system remained constant circa 6,000 and 7,000. Therefore, we cannot attribute the increased reports to more sex workers using the application. The empirical evidence shows that the majority of sex workers report crimes such as abusive/threatening calls and messages and in-person threatening behaviour regularly (Ellison et al., 2019). The two crimes categories that saw the largest percentage increase since 2017 were assault with a weapon (442%) and attempted robbery (367%) (Campbell et al., 2020). One of the stated aims of the sex purchase Act was to strengthen protections for sex workers; this is clearly not borne out for sex workers.

These findings correspond with international research examining how criminalisation impacts sex work regulations in different jurisdictions. A systematic review of 134 studies by Platt et al. (2018) found that 'repressive policing practices of sex workers were associated with increased risk of sexual/physical violence from clients or other partners'. By targeting clients, police disrupt sex workers' workspaces and impede their safety strategies, leading to hurried negotiations on

street, working in more isolated locations, and compromised screening procedures. Rather than providing greater security, criminalisation distracts from sex workers' safety planning.

Sex workers are a diverse group comprising migrant women, single mothers, people with disabilities, people in direct provision, those in addiction, homeless people and transgender individuals, all of whom encounter larger obstacles than the general populace when attempting to secure employment. Campbell et al observe: '(s)ex workers from other structurally marginalised groups and communities who experience prejudice and hate crime, such as black and ethnic minority communities (including migrant and Traveller and Roma communities) and the LGBT community, are targets of a range of hate crimes, and those forms of hate can intersect within the work-based victimisation they face as sex workers' (2020: 20). Recently, Ireland has witnessed a rise in reported crimes against transgender sex workers. For example, in 2018 migrant, trans sex workers were subjected to violent attacks. Research conducted by Haynes and Scheppe (2018) for Transgender Equality Network Ireland highlighted that levels of trust in Gardai were lower in the trans community when compared with the general population. In short, the Act risks severing ties completely between Gardaí and a marginalised and targeted community.

Street-based sex workers are another group who experience greater levels of violence (Weitzer, 2012; Deering et al., 2014). Currently, Ireland does not have an evidence base around the prevalence of violent crimes against street-based workers since the law came into force. We have, however, received numerous reports from street sex workers about serious crimes including rape, robbery and attempted abductions. Clearly, this is a particularly vulnerable group and current legislation has brought about no discernible improvements to their welfare.

Criminalising sex purchase does not deter dangerous and abusive people from targeting sex workers or shift the balance of power from the client to the sex worker (FitzGerald, O'Neill and Wylie 2020). The evidence shows that abusive clients continue to threaten to report sex workers to the Gardaí in an attempt to extort or frighten them, despite the fact that they are the ones engaging in criminal behaviour through this transaction. Incidences of this type of threat have actually risen by 98% in the post-2017 period (Campbell et al., 2020). The rise in violence is accompanied by an intensification in the levels of fear and vulnerability felt by sex workers who are not feeling more secure since the law was introduced. To cite some examples. One Irish female escort states: *'I feel like the nervousness I have is valid and I have to be vigilant'* (SWAI 2020). Similarly, an Italian genderqueer escort shared: *'More scared to see cops, scared of the cops showing up to my house because my flatmate and I share a lot with my money, fear of my trans partner ending up in jail from benefiting off of my salary'* (SWAI 2020).

The current law has not delivered on the promise of sex worker safety by those who championed it. Rather, as one senior Garda informed SWAI at a meeting in March 2020, the intention was 'disruption of sex work' at all costs. This attitude costs lives and threatens the wellbeing of Ireland's most vulnerable. Prior to the introduction of the laws at a meeting with Francis Fitzgerald in 2015, Minister for Justice at the time, she acknowledged to us that the law could increase violence against sex workers, saying that she hoped the risk of harm might deter

others from considering sex work as an option. What the Irish authorities did not consider in their haste to achieve legislative change are viable alternatives to sex work for those who chose it as last resort. A sex worker conveys this problem aptly: *“13 years out of sex work I can still remember the desperate feeling of needing a client to pick me on a lean night, and the powerful feeling of having had enough work and not needing to be chosen again. Once you’ve felt that “end demand” people sound like flat earthers”* (Saul, 2020).

2.2 Illegality of Working Together for Safety:

Working with another sex worker should not be seen as something illegal, you should be allowed do that because it's a lot safer if you aren't able to screen a client properly, it makes us feel a lot safer (Female sex worker, Romanian, SWAI 2020).

A recent case involving two Romanian sex workers in County Kildare reveals the plight of migrant sex workers. Although the judge admitted that there was no pimp involved, just two women working together independently out of the same location; the court found them guilty of brothel-keeping. One of the young women was pregnant when they were both originally given a nine-month jail sentence (Oppenheim, 2019). This high-profile case illuminates the harms that the brothel keeping law inflicts on sex workers, particularly migrants (FitzGerald, O’Neill and Wylie 2020). Moreover, the case demonstrates that current legislation is failing to penalise exploiters or ‘pimps’ and is criminalising sex workers. The ramifications of this law run deep. It enables housing discrimination and exploitation by landlords who threaten sex workers with rape, workers are overcharged or extorted and others who have been illegally evicted from their homes. Criminal records impair sex workers’ ability to source alternative employment and, being named in the media attracts stigma and lessens other opportunities. This focus on ‘brothel-keeping’ obstructs our ability to manage our safety strategies by working together. A 2020 SWAI survey found that 85% of participants would feel safer if they were legally permitted to work with another sex worker.

2.3 Enforcement of the Law

I think it would help if the Garda laid off the girls. They can be more of a hindrance than a help. They just hassle us. If they left the girls alone, they might be able to catch the men that hurt us (Street-based female sex worker, Irish, SWAI 2020).

Despite supporters’ claims that Ireland’s decision to adopt Swedish-style laws would not impact sex workers negatively, the reality of current legislation is that sex workers are not immune from prosecution. Historically, Ireland’s penal code did not criminalise the selling sex (Ward 2012). Legislative change in 2017, however, added a layer of criminality by banning sex purchase. As Amnesty International notes, *‘No other group in society has this much police attention and has to live with it – even though they are not doing anything illegal’* (2016: 12). The laws place an undue burden on workers to keep the source of their income (clients) safe rather than

themselves. The risk of being fined €500 (for a first offense) as a client does not outweigh workers' fear of potential eviction, imprisonment, deportation and loss of income.

Operation Quest is the Garda taskforce under the sex crimes division of the Gardai responsible for conducting raids of sex work premises and arresting clients. Our police liaison officers are also part of Operation Quest. As mentioned previously, Ugly Mugs has reported an increase in violent crimes against sex workers. This fact notwithstanding, the percentage of sex workers who gave their permission to Ugly Mugs to report these crimes to police has remained at, or below, 1% since 2017. This suggests that 'in Ireland, many sex workers feel unable and afraid to report to the police, and their rights to protection and justice are curtailed' (Campbell et al. 2020: 29). Research shows that the stigma of sex work has materiality for the treatment sex workers receive from the police when reporting crime (FitzGerald, O'Neill and Wylie 2020). This is backed by our own research where a worker stated:

Because it would be low on their priority list because of who we are, they wouldn't act and it would be a waste of time. I don't trust the police. In my experience enforce the law how they want and don't even know the law. I know they are trying to stamp out prostitution so I don't trust them to treat me as a victim. I have heard the liaison officers are part of operation Quest so why should I trust them not to take away my work or home? (SWAI, 2020).

Relations with law enforcement are further damaged by reports of clients committing the crime of impersonating police officers to extort, blackmail or threaten sex workers (Campbell et al., 2020; SWAI, 2020), demonstrating the potential for abuse of power which is enabled by criminalisation and is part of a continuum of structural violence faced by sex workers. For example in 2017, SWAI was the first point of contact for three workers who were raped by the same man. They contacted us because they felt safer talking to an organisation comprised of sex workers. We supported the women then and throughout criminal proceedings. Due to their bravery, their attacker is now serving prison serving a 20 year sentence (Brennan and McLean, 2019).

Many workers have intersecting identities which compound their trust of the Gardaí (e.g. their migrant status, their gender or sexuality orientation or their disability status) HIV Ireland, 2020 36). Undocumented migrants, in particular, feel they must remain invisible to the Gardaí even after becoming victims of a crime because they do not want Gardaí to know their immigration status because they fear deportation (Sweeney and FitzGerald 2017). Sex workers fear that they will become the target of Garda surveillance, and that this will eliminate their income source once the Gardaí are aware of their occupation leading to the arrest their clients (SWAI, 2020). This fear of surveillance determines how sex workers manage themselves and their clients.

Even though the law has decriminalised street work, often the police target and harass them (Elmes et al. 2019; Grenfell et al. 2019). During the COVID-19 lockdown, street-based sex workers reported that the Gardaí detained them overnight citing COVID-19 specific laws which

were in force at the time. This kind of surveillance curtails workers ability to negotiate and screen clients. It forces them to find more isolated spaces to work, and thereby increases their exposure to risk. We find evidence of a similar situation in Canada, where the Swedish Model operates and where research suggests that rather than protecting sex workers, the law place workers in danger because they have to focus more on avoiding detection than their personal safety (Belak and Bennett, 2016).

2.4 Adverse Health Impact

“[M]uch more crime activity - no healthy care” [sic] (Female escort, Hungarian, SWAI 2020)

Criminalising sex purchase restricts sex workers’ access to health and social care and social supports from families, peers and wider communities. This impairs sex workers’ right to health under international law (Lyon, 2014). The law and the related enforcement practices perpetuate multiple stigmas and inequalities which further entrenches sex workers’ marginalisation. This manifests in a multitude of ways that have a direct and detrimental impact on sex workers’ physical and mental health and wellbeing (Sweeney and FitzGerald 2017). When sex workers take mitigating action to avoid the attention of Gardaí to prevent their clients being arrested, this removes street sex workers from supports, such as outreach services. When they need to alleviate their clients’ fears of arrest, they have to go greater distances with them to avoid detection, placing them further out of reach of support (Platt et al., 2018). Gardaí presence on the street has reduced the condom negotiation time. This, in conjunction with a sex education system in our schools that has failed to impart on its students the importance of condoms, consent and the power imbalance resulting from client criminalisation, has contributed to Ireland having the highest rates of HIV in its history, having risen significantly in recent years (HIV Ireland, 2020; ECDC 2019).

Gardaí use condoms as evidence in court cases which is in direct contravention of international guidelines published by WHO, UNAIDS and Amnesty International (UNAIDS, 2015; Amnesty International, 2016). "Garda statements obtained through disclosure in criminal proceedings, confirm that Gardai regard condoms as evidence of prostitution" - Wendy Lyon, Solicitor, Abbey Law. We have been told by some sex workers that they are afraid to carry condoms for fear of having them used as evidence of engagement in sex work by Gardaí (SWAI 2019). At the same time, reports of clients requesting vaginal or anal sex without a condom has increased in the period 2017-2019 compared with the reports from two years prior (Campbell et al., 2020). Contrary to the narrative pushed during the Turn Off the Red Light (TORL) campaign that client criminalisation would somehow empower sex workers, the opposite seems to have materialised. In France, where a similar legal framework is in force, 38% of sex workers stated that they now found it increasingly difficult to insist on condom use; the balance of power in negotiations had shifted even more towards the client (Le Bail, Giametta and Rassouw 2019).

Migrant sex workers face additional challenges in accessing healthcare (Sweeney and FitzGerald, 2017). The difficulties that sex workers face in maintaining their wellbeing is further compounded for migrant sex workers by the need to remain invisible, the need to hide both their

work as sex workers and their migrant status (McGarry and Ryan, 2020). The secrecy is necessary for many migrant sex workers as their visas or asylum application could be jeopardised if it came to light that they are sex working. This invisibility combined with other factors, including working conditions that require constant mobility or staying inside an apartment for most of the day, have a negative impact on migrant sex workers' psychosocial experiences (Sweeney and FitzGerald, 2017).

When examining the barriers to sex workers accessing healthcare, stigma emerges as key (Sweeney and FitzGerald, 2017). Stigma inhibits their ability to be open and honest with healthcare providers when they do attend services which can prevent the provision of appropriate emergency care. We spoke to an undocumented sex worker who did not go to the police after being 'stealthed by clients (i.e. condom removed during sex without the prior consent of both parties). She told us that when she sought medical assistance healthcare professionals denied her access to PEP (Post Exposure Prophylaxis) because they consider her low-risk as a cis female. In reality, she was afraid to tell them she was a sex worker: *'I didn't go to the police because I didn't know the consequence so I prefer to stay at home ... But it's society, so we can't change their minds, the way they think about us.'* (HIV Ireland 2020: 17).

2.5. Lack of Alternative Options and Exiting

People engage in sex work for a plethora of reasons. The sex industry is a catch-all for marginalised individuals, including single mothers, migrants, people living with disabilities, drug-users, homeless individuals, LGBTQ, domestic violence victims, and - as the cost of living and housing skyrockets - an increasing number of students (FitzGerald and McGarry 2018). Criminalisation cannot address the economic disparity that is at the root of all of these issues. It exacerbates people's precarity and isolation. Research on the island of Ireland has shown that people motivations for taking up sex work are financial and circumstantial far more often than through force (Ellison et al., 2019, 43). One of the themes that emerges when exploring *why* people engage in sex work is a lack of workable alternative options. In our research, we found that sex workers identified a multitude of barriers to participating in other employment including mental health difficulties, transgender identity, being from a working class background, migrant status, disability and having a criminal record. As an example of best practice and something that could be rolled out across Ireland for to support alternative for sex worker SWAI has established an Exiting Group. The current legislation makes no provision for supports around exiting and viable alternatives for work.

2.6 Stigma and Exclusion

The law reproduces stigma and facilitates sex worker's exclusion from social life in multiple ways. 'Stigma in prostitution is not discrete but interacts with various structural factors to exacerbate sex workers' difficult psychosocial experiences" (Sweeney and FitzGerald, 2017, 427). As previously explained, many sex workers have intersectional identities which are already stigmatised and their sex worker identity adds another layer. Claiming a sex worker identity means that sex workers feel that society represents them as victims and insists that the

way to shed that 'victimhood' status is to exit sex work (HIV Ireland 2020: 30). Stigma discourages sex workers from self-advocacy. On this question, Kay reflects: 'I think that is something that would be helpful here, is people recognising that this is their life and their right, and they can stand up and speak out, and obviously it's not made easy, and the people who do need to be heard the most are told to shut up the most' (HIV Ireland, 32). Allied to this, Ireland has a sizable section of the sex industry that comprises male sex workers. Many do not identify as 'sex workers' and use the virtual world of Instagram and apps such as Grindr to connect with clients in gyms and saunas. The sex industry is undoubtedly gendered in general, but to ignore the existence of this group makes it difficult to address their unique challenges, which are more heightened concerns around chem-sex and HIV transmission (Ryan 2019).

"Those I interviewed don't always see themselves as sex workers, but see sex as a way to earn money....In the policy context, these men don't exist. And yet, you can find them online, often casually exchanging sex for money or goods. Are they less vulnerable? Are they equally at risk of exploitation? There is an element of paternalism here." (Ryan 2019)

2.7 Effects of Covid-19 - Exclusion from Government Supports Led to the Health Risk of Continued Work

During the Coronavirus pandemic, we glimpsed the reality of what an 'End Demand' model might look like. There was no significant support available for us although numbers of clients decreased significantly for many workers. The Irish government is still recommending social distancing as COVID-19 cases are continuing to rise, yet numbers of sex workers advertising in Ireland have risen almost to pre-Coronavirus levels. Due to the quasi-legal status of our work, few sex workers are registered as sole traders. The authorities refused us access to PUP and we were reduced to crowdfunding a Hardship Fund that amounted to €26,000 so that we could place payments of €100 each to individuals on two occasions each. The following is the response we received from the Department of Justice when we enquired about funding that was made available to prohibitionist organisations:

On the sexual violence side, funding from the Department is available for organisations that support our values and objectives and that are aligned with wider Government policies. As you know, domestically Ireland has taken the approach of criminalising the purchasers of sex, on the basis that prostitution is inherently exploitative of vulnerable persons, mainly women and girls. In addition, the Department's understanding of prostitution in Ireland is informed by strong advice from An Garda Síochána, which is that it is inextricably linked with human trafficking ... I want to make it clear that funding is not available for NGOs whose objectives and philosophy is opposed to these values and principles. If your organisation considers that you do share our understanding of prostitution as inherently exploitative of vulnerable people, then it is of course open to you to submit a formal application for funding" (Department of Justice 18th May 2020).

Contrast Ireland's response based on identity-thinking and morality to the social justice approach the Government of New Zealand has adopted around sex work. The New Zealand

Prostitutes Collective (NZPC) work with government institutions and actors to ensure that sex workers can apply for its emergency wage subsidy—which is available to all New Zealand workers just by providing a national identification number and basic personal information when their earnings fall by at least 30% due to coronavirus. Dame Catherine Healy, a campaigner, former sex worker and founding member of the NZPC says applications for both the emergency wage subsidy and job-seekers benefits are processed within days, thanks to assistance from government outreach workers who, until the coronavirus crisis struck, regularly made in-person visits to a sex worker community centre in Auckland. Similarly, Joep Rottier, a researcher at Utrecht University told *The Guardian* newspaper that trust between the NZPC and the police means that police officers have taken over outreach activities from NZPC, finding sex workers who are working in the street and directing them to groups like NZPC who can help them get financial assistance.

In recent months it is clear that the economic hardships that many people on the Ireland of Ireland are experiences is compounded if one is a sex worker. We have had daily conversations with over 160 workers who were new to us, encouraging them to consider moving to virtual and non-contact work, but this was not a viable reality for many as they either live with partners, family or had concerns about sending out their images for fear they might fall in the wrong hands and be used against them in the form of ‘revenge porn’. Yet we found that out of necessity roughly 50% of the people we spoke to were still seeing clients, and roughly 80% were still getting requests from clients to meet in person. Workers told us that in some instances clients were threatening that unless the worker met with them they would not remain a client post-pandemic. Some clients were offering twice as much money to meet, a coercive act which highlights again how the law has not empowered workers. Furthermore, a legal regime where client hold the upper hand over sex workers who are experience financial hardship to the point of exposing themselves to a potential deadly virus for themselves, their families and wider community demonstrates, and where the state demonstrates an ideological rather than a public health approach to the realities of sex workers’ lives in a pandemic, then surely this is an apt moment for legal reform and a repeal of the current legislation.

3. Impact of the Law on Trafficking

Human trafficking is a crime. Current legislation in Ireland around human trafficking conflates trafficking for the purposes of sexual exploitation (hereafter sex trafficking) and voluntary sex work (Ward and Wylie 2014). While the 2017 Council of Europe’s Group of Experts on Action against Trafficking in Human Beings (GRETA) Evaluation Report on Ireland acknowledged Ireland’s progress in this area, it found that Ireland had not sustained these efforts, and identified areas requiring immediate government action to ensure victims’ rights and protections. Allied to this, the 2018 United States Department of State Trafficking in Persons Report (the TiP Report) echoes these concerns, stating ‘the Government of Ireland does not fully meet the minimum standards for the elimination of trafficking: however it is making significant efforts to do so’.² Significantly, the TiP Report observed that Ireland did not ‘report any convictions in 2017

² Available at: <https://www.state.gov/j/tip/rls/tiprpt/countries/2018/282676.htm>

for sex trafficking ... under the anti-trafficking act'.³ Thus, the State Department downgraded Ireland to a Tier 2 country.⁴

Sex Trafficking exists on the far end of the spectrum of exploitation in all industries including food production and care work in Ireland. The gendered nature of sex trafficking is well-established rooted as it is in women and girls socio-economic marginalisation, vulnerability to violence and poverty in their home nations (FitzGerald 2016). The international community, including Ireland, lacks credible baseline data on this issue, leading many policymakers to continue to conflate sex trafficking and sex work (Weizer 2010). Consequently, Ireland has reformed its penal code partly because the TORL campaign and its supporters involved a discourse based on the assumption-not borne out by any empirical data-that if the government criminalise sex purchase it will eradicate sex trafficking. Uncritical appeals to the criminal law around prostitution will not address the separate crime of sex trafficking. It will simply further marginalise already marginalised people (McGarry and FitzGerald 2017).

Unfortunately, as sex work is not the largest avenue for human trafficking, Ireland has allowed itself to be blinded by morality policing while ignoring all academic research on the subject save for that paid for by religious orders. The majority of human trafficking (47%) is in construction, manufacturing, mining, agriculture or hospitality with only 14% involved in sex trafficking (Human Rights First, 2017). Independent research from Queen's University Belfast showed that client criminalisation had little or no impact on sex trafficking in Northern Ireland. Incidentally, Northern Ireland is the only jurisdiction to have implemented the Swedish model of client criminalisation that boasts extensive research from both before and after implementation of the law (Ellison et al. 2019: 167). Moreover, a representative of the Oslo police force stated: 'We deport trafficking victims. Many of them don't know that they are victims, but they are according to the law' (Amnesty International, 2016). In fact findings from our recent study show that 40% of migrant sex worker are afraid to report crimes against the to the Gardaí for fear that the Gardaí will assume they have been trafficked and deport them (SWAI 2020).

Commercial sexual exploitation of children - mainly in state care - is another area that the TIP report identified where Ireland failed in its obligations to prevent and protect trafficking victims (US Department of State, 2020). Current legislation does not help in identifying at risk youth and intervening to provide support. Through our work with sex workers who are in prison, we have supported women who have been victimised in this way as teenagers but have been incarcerated themselves after falling through the gaps in state supports. The system punishes young people who are traumatised by their experiences of commercial sexual exploitation as they struggle with addiction or mental health issues. This may lead to their involvement in criminality. We are aware of another woman in the prison who is serving a custodial sentence

³ Ibid.

⁴ See report the Country Report on Ireland presented by Dr. Sharron FitzGerald to the European Commission's EU Mutual Learning Programme in Gender Equality Combating trafficking in women and girls for the purpose of sexual exploitation. Madrid, 30-31 October 2018

for crimes committed while she was a victim of trafficking. 'I met a woman in prison who had been trafficked into the sex industry in Ireland' (Street-based sex worker, currently incarcerated, SWAI, 2020). The law is failing to prevent these situations from occurring or to provide support for victims

3.1 National Referral Mechanism

The National Referral Mechanism (NRM) is the framework through which State agencies interact with victims of trafficking. When the authorities identify a potential victim of trafficking, they refer them to the Human Trafficking Investigation and Co-ordination Unit within the Garda National Protective Services Bureau. Through the Garda National Immigration Bureau, the Gardaí enforce immigration law including deportations, border control and investigations into persons who are within the State without permission. Victims of trafficking are likely to have a history of negative interactions with the police due to immigration offences, sex work or homelessness. Victims of trafficking are further deterred from reporting trafficking or approaching the Gardaí if they are afraid of being deported.

3.2 Immigration System and Victims of Trafficking

The current emphasis in Ireland on criminalising sex purchase and targeting voluntary prostitution to tackle sex trafficking is unlikely to generate the scale of change needed to end sex trafficking in Ireland. Current provisions give victims of trafficking leave to remain in Ireland for 60 days. After that, the State may grant them a six-month renewable temporary residence permission if they assist An Garda Síochána or other authorities in any investigation or prosecution of their traffickers. If a trafficked person is not granted permission to remain and does not leave the State after 60 days, then they may be deported. It is unjust that a victim of trafficking be required to assist a criminal process to gain permission to remain in Ireland. It is well-documented that trafficked persons fear reprisals from their traffickers to their families or loved ones for assisting the authorities (Goodey 2004; Brunovskis and Surtees 2007; FitzGerald 2012) . Ireland must create legal routes to regularisation and citizenship for all victims of trafficking irrespective of individuals cooperation with a Garda investigation.

Many trafficked persons live in crowded Direct Provision centres which are inappropriate, gender-insensitive for people who have experienced torture, abuse or exploitation. The Direct Provision system should be dismantled and replaced by appropriate own-door accommodation that respects the dignity and privacy of residents, including victims of trafficking.

3.3 Alienation of Sex Workers and Migrants from Anti-Trafficking

Sex workers and migrants are the best sources of information about potential victims of trafficking, and for solutions to locate and assist trafficked persons. This valuable source of information is lost if sex workers or migrants are afraid to approach the Gardaí, in fear they will face prosecution themselves.

4. Conclusion

Prostitution is an economic activity often borne out of financial necessity. SWAI recommends that together with other feminists and organisations we focus on supports that address the concerns of these marginalised individuals to ensure that people have viable alternatives to sex work. Ireland requires law and policy interventions that can provide the best protections for people who meanwhile remain engaged in sex work. Focussing on preventative measures such as affordable/free childcare, addictions services, secure housing and employment, regularised immigration status etc combined with a harm reduction model would mean that fewer people would find sex work the best, best-worst, or only option available to them. Appropriate state support and the institutionalising of a strict anti-discrimination ethos that would recognise sex workers personhood as members of society and not banish them to the shadows would have the effect of empowering them to manage their lives as they see fit. It would create a structure that would enable them to benefit from a more regulated, transparent and, therefore, safer industry to work by automatically decrease sex workers' dependency on criminals and vulnerability to violence and exploitation.

As mentioned above, the Government of Ireland refused SWAI assistance during the Coronavirus pandemic, assistance that another less trusted organisation received because they were ideologically aligned with the Department of Justice and the police stance on sex work. At a time of heightened public health and financial hardship for many in Irish society, but especially those on the margins of society this shines a light on the degree to which the relationships between the State, the police and sex workers has deteriorated due to legislative change.

Allied to this, it came to our attention that the government was in the process of forming a national trafficking committee, SWAI contacted the relevant authorities expressing our desire to contribute to the process. This reply provides a good example of how government actors and powerful groups continue to change the parameters of the debate to exclude and silence us. While Irish policy continues to promote the view that sex worker and sex trafficking are inextricably linked, the committee justified excluding us from the meeting because it be focused on 'human trafficking and not prostitution'. This was a shocking revelation considering the TORL campaign and the government's decision to instigate legislative change hinged on the conflation of sex work and human trafficking (FitzGerald and McGarry 2016; McGarry and FitzGerald 2018; Ward 2020; FitzGerald, O'Neill and Wylie 2020). SWAI and active sex workers continue to live with the consequence of this reasoning.

Countries that have implemented variants of the Swedish Model of client criminalisation, (Northern Ireland, Iceland, Israel, Norway, Sweden and Canada) have all promoted the law. Each jurisdiction has increased bylaws and penalties for sex workers working in pairs or groups, and added the criminalisation of the client. The law has failed to decriminalise the lone worker. In 2017, SWAI approached Ruhama to suggest that we collaborate to add an amendment to the law that would decriminalise street-based workers. Thus providing the first case of Swedish Model that would actually realise decriminalisation. Unfortunately we know that the police are dispersing street-based sex workers in Ireland during client stings, arrested on drugs charges

and told falsely that they are working illegally. Consider the following statement by the Department of Justice:

“The Act allows them [sex workers] 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.” (Department of Justice website, 2020)⁵

shows a presumption that can only have been made in the absence of actual sex worker voices. It shows a lack of awareness and understanding of our realities. As we have stated and described here, workers are in the very least now more wary to report due to repercussions of lost income via alerting Gardai to the presence of criminals they might arrest. In the worst we are rightfully concerned we will be disbelieved, mistreated, or arrested ourselves under the increased penalties contained in the current law’s bylaws that criminalise us as workers.

Let us be clear: we are under no illusion that sex workers living in a decriminalisation environment would magically have chaos and precarity wiped from their lives. Furthermore, we do not live under the illusion that decriminalisation would eradicate injustice and pave the way for us to access our social and human rights and give us access to justice and safer options around regulated work. We do not perceive full decriminalisation as the end of our struggle but instead as the beginning, as a holding place that can better protect this community daily in the here and now. What we do ask is for recognition of our rights and personhood through access to the democratic process around law and policy that has a direct bearing on our lives as human beings. Ultimately, SWAI recommends that we be included as peers to find workable solutions to the currently situation through **full decriminalisation of sex work through a harm reduction model**.

⁵ Available at: [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) Retrieved on 11th September 2020

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