



Submission to the Republic of Ireland's Independent Review of the Operation of Part 4 of The Criminal Law (Sexual Offences) Act, 2017

18 September 2020

Introduction

Equality Now welcomes the opportunity to contribute to the public consultation on the Independent Review of the Operation of Part 4 of the Criminal Law (Sexual Offences) Act 2017, which deals with the Purchase of Sexual Services.

Equality Now is an international human rights organisation that works to protect and promote the rights of women and girls around the world in the areas of legal equality, harmful practices, sexual violence, and sex trafficking and sexual exploitation, with a cross-cutting focus on adolescent girls. Equality Now combines grassroots activism with international, regional and national legal advocacy to achieve legal and systemic change to benefit women and girls, and works to ensure that governments enact and enforce laws and policies that uphold their rights. Equality Now has offices in London, Beirut, Nairobi and New York, presence in Amman, New Delhi, Tbilisi and Washington DC and partners and members in almost every country in the world.

For over 28 years, Equality Now has worked on legal and policy advocacy towards ending sex trafficking and sexual exploitation globally. Notably, we advocated for the adoption of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (the Palermo Protocol), and have been campaigning for its ratification and implementation globally. We advocate for States to address gender and sex inequality as a root cause and consequence of sexual exploitation, and also work collaboratively with survivors of sex trafficking and the sex trade, and diverse stakeholders in civil society and governments to strengthen nuanced understanding on the range of actors including traffickers, pimps, madams and sex buyers who facilitate, gain and profit from the sexual exploitation of women and girls. By understanding the role of the range of offenders we can advocate for legal and policy accountability measures against their actions that take into account their varying levels of culpability and impunity.

Our Submission

Sexual exploitation is rooted in exploitation of vulnerabilities arising from gender and intersecting inequalities

"This human rights violation [trafficking for sexual exploitation] is driven by the demand for sexual services and the profit they generate; the commodification of human beings as sexual objects, and the poverty, gender inequalities and subordinate position of women and girls that provide fertile ground for human trafficking." Michelle Bachelet as Executive Director of UN Women, 2012¹

¹ "Fighting Human Trafficking: Partnership and Innovation to End Violence Against Women and Children", United Nations General Assembly Interactive Dialogue, 3 April 2012, available at :

Part 4 of the Criminal Law (Sexual Offences) Act (hereinafter called the Act) criminalises any person who purchases or attempts to purchase sexual activity from another person, and strengthens the provisions in relation to the buying of a trafficked person for sexual exploitation. At the same time, it ensures that those exploited in prostitution are decriminalised. It is an approach that recognises the inequality and exploitation in the exchange of sexual activity for money, between those who buy (majority men) and those who sell (majority women). There is often a vast power differential between the sex buyer and the woman he buys in terms of her poverty, social status, abuse history, and often immigration status. In decriminalising the seller of sexual activity and criminalising those who buy sexual activity, the law transfers the historic burden of stigma and criminality from those selling sex to where it correctly belongs, with the purchaser of sexual activity. Shifting the burden of the law from the seller to the buyer is an important step to ensure that those who are exploited can access justice and support services, including support to exit prostitution, without fear of punishment or judgment.

Equality Now unequivocally supports this legislative approach to address exploitation and coercion in prostitution, and to target the trafficking of persons into the sex industry by reducing demand. We support the central aim of law to help redress the imbalance of power that facilitated the exploitation of particularly vulnerable, predominantly migrant, women and girls in the thriving sex industry in Ireland. It set down a marker that as a society, Ireland would no longer tolerate this particular form of sexual exploitation.

In our experience of working with survivors of the sex trade, the vast majority of people in prostitution do not perceive their experiences in the sex trade as a 'job like any other'. They are often highly marginalised women who have been trafficked or coerced into prostitution, typically as a result of a range of vulnerabilities or adversities they have experienced in their lives including poverty, childhood abuse, domestic violence, physical and mental health problems, addiction, conflict in their home country, insecure immigration status, to name a few. There are also other forms of compounding marginalisation such as race, class and ethnicity. Sexual exploitation, including prostitution, is thus a result and consequence of gender and intersecting inequalities that generate vulnerabilities that those with power, mostly men, exploit for personal sexual gratification and/or profit. At the same time, trafficking and exploitation help to maintain and perpetuate these inequalities by keeping victims in a position of disadvantage, marginalisation and poverty, and by preventing them from accessing other opportunities and realising their full human rights.

At the core, driving both prostitution and trafficking, is the demand for paid sexual acts created by those who buy sex. Because of the inextricable link between trafficking for sexual exploitation and prostitution, the demand for the two is inseparable. Women and girls are trafficked to meet the prostitution demand in the sex trade. Research in Ireland has shown that although buyers often do recognise that the majority of women are not in prostitution by choice, but are rather coerced by traffickers, pimps, economic circumstances or a drug or alcohol addiction, this does not stop them from paying for sex with these women.² A 2008 Immigrant Council of Ireland research to examine the sexual exploitation of both trafficked and migrant women within the Irish sex industry³ revealed the existence of a criminal underworld in which international traffickers, Irish pimps,

<http://www.unwomen.org/en/news/stories/2012/4/fighting-human-trafficking-partnership-and-innovation-to-end-violence-against-women-and-children>

² See e.g. Yonkova, N. and Keegan, E. (2014) *Tackling demand for sexual services of women and girls*. Dublin: Immigrant Council of Ireland. Available at:

<http://www.stoptraffick.ie/wp-content/uploads/2013/03/STOP-TRAFFICK-full-report.pdf>. See also Jabbour, G. (2014) *Exploring the Demand for Prostitution: What Male Buyers Say about their Motives, Practices and Perceptions*. KAFA (enough) Violence & Exploitation. Available at:

<http://www.kafa.org.lb/StudiesPublicationPDF/PRpdf-69-635469857409407867.pdf>

³ Monica O'Connor, *The Sex Economy*, Agenda Publishing 2019 p. 18

prostitution agencies and buyers collaborate in the commercial sexual exploitation of women and girls. It indicated a highly lucrative industry worth approximately €180 million and easily accessible indoor prostitution in every part of Ireland. Other research has also revealed that migrant women make up between 80 and 90% of prostituted women in Ireland.⁴ A survey involving 1,000 women in street prostitution, of whom 800 advertised online, showed that 51 different nationalities of women were advertised; women are targeted by traffickers, pimps and prostitution (‘escort’) agencies from Africa, Latin America and Central European countries.⁵ These migrant women are closely managed (controlled) and frequently moved from brothel to brothel around Ireland. Thus pointing to an undeniable link between trafficking for sexual exploitation and prostitution in the Irish context.

Part 4 sets a high standard for addressing demand for paid sexual activity that drives sexual exploitation

By enacting Part 4 of the Act, Ireland set a high standard for addressing sexual exploitation and joined a growing number of countries that have criminalised the buying of sexual activity while decriminalising the selling of sex. This approach is compatible with international and regional legal obligations to uphold the dignity and recognise the vulnerability of the vast majority of those who are bought and sold for sex, and address demand that enables sexual exploitation to thrive. Part 4 of the Act substantively implements Ireland’s international obligations deriving from:

- **European Union’s Anti-Trafficking Directive:** Article 18 calls on Member States “...to make the preventing and combatting of trafficking in human beings more effective by discouraging demand, Member States are encouraged to consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation, with the knowledge that the person is a victim of an offence [of human trafficking].
- **Council of Europe Convention on Action Against Trafficking in Human Beings:** Article 6 calls on member states to adopt or strengthen legislative and other measures to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking and in Article 19 mandates member states to “consider adopting such legislative and other measures as may be necessary to establish as criminal offences under its internal law, the use of services of victims of exploitation....., with the knowledge that the person is a victim of trafficking in human beings”.
- **Palermo Protocol:** Article 9.5 calls on Member States to “..... adopt or strengthen legislative or other measures,....., to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking”.
- **UN Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW):** Article 6 calls on Member States “to take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”.

This legislative approach, first introduced in Sweden in 1999, has also been adopted in Iceland, Norway, France, Northern Ireland and Israel. Evidence of its implementation in some of these countries shows that it is a crucial step to tackling and reducing the system of prostitution and sex trafficking, and is the best response when prioritising the rights and needs of women and girls. For example:

⁴ Kelleher Associates, O’Connor M., and Pillinger, J. (2009) Globalisation, Sex Trafficking and Prostitution: The Experiences of Migrant Women in Ireland, Dublin: Immigrant Council of Ireland. Available at: <https://www.immigrantcouncil.ie/sites/default/files/2017-09/AT%202009%20Globalisation%2C%20Sex%20trafficking%20%26%20Prostitution%20Report%20SUMMARY.pdf>

⁵ Interim Report of the High-level Working Group: The Implementation of the Criminal Law (Sexual Offences) Act 2017, Part IV – An Interim Review (2020) at p. 6

- A Swedish Government report⁶ which was commissioned to assess the effectiveness of the law in Sweden showed that the buying of sex has decreased from 13.6% in 1996 to 7.9% in 2008, and since the law was introduced the rate of prostitution has been declining overall.
- When compared to Sweden, Denmark and Norway had significantly higher rates of prostitution prior to introducing similar law. Norway had 8 times more prostitution than Sweden before introducing the law.⁷
- In June 2020, the French Interministerial Evaluation Report⁸ on the 2016 French law was released and among other things showed overall increasing numbers of arrests for purchasing sexual activity. Some of the highlights are:
 - Nearly 5,000 sex buyers have been arrested since the implementation of the law. The number of persons charged for all offences of soliciting prostitution recorded by the courts increased from 799 in 2016, to 2,072 in 2017 to 1,939 in 2018;
 - Although the report underlines that this measure is unevenly applied on the territory as Paris counts 50% of the arrests, it appears that the law is easily understood and able to be implemented;
 - At the same time, the number of criminal investigations relating to trafficking for sexual exploitation increased by 54% in four years;
 - The number of criminal networks dismantled has increased since the implementation of the law from 38 in 2015 (a year before the law) to 69 in 2018, and the number of people prosecuted for pimping or trafficking for sexual exploitation increased by 66%, going from 667 in 2015 to 1,109 in 2018.

On the other hand, countries that have either fully decriminalised or legalised prostitution have seen a growth of the sex trade. For example, a research by the European Commission in 2016 found that Germany has the largest proportion of prostitution (for population size) compared to the Netherlands and Sweden - the other two countries covered in the study.⁹ Adjusted for population, the rate of prostitution in the Netherlands is estimated at 9 times that of Sweden while the rate of prostitution in Germany is estimated at 30-40 times that of Sweden. There are clearly articulated concerns that these legislative approaches have not been effective in creating a safe working environment for those in prostitution, but are rather contributing to the increase in sex trafficking and enrichment of pimps and brothel owners. For example, in the Netherlands, the Mayor of Amsterdam stated that legalisation had failed to prevent trafficking, saying "it appeared impossible to create a safe and controllable zone for women that was not open to abuse by organised crime,"¹⁰ with a 2007 government report noting that "pimps [i.e. traffickers] are still a very common phenomenon."¹¹ There are recent concerns on whether the legalised prostitution system really works for women with a number of

⁶ Swedish Government Offices (Statens Offentliga Utredningar) (SOU) 2010. Forbud mot köp av sexuell: En utvärdering 1999–2008 [Prohibition of the Purchase of Sexual Services: An Evaluation 1999–2008].

⁷ Ibid

⁸ Available in French at:

http://www.igas.gouv.fr/IMG/pdf/2019-032r-prostitution-d.pdf?fbclid=IwAR2fkGb6pXAIpBC0kudUe53RkJlq-UI8wUyc-XZYRNpiNXY1c1x_DVU3rNI

⁹ Walby, S. et al. 2016. The Study on the Gender Dimension of Trafficking in Human Beings. Luxembourg: European Commission Available at https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/study_on_the_gender_dimension_of_trafficking_in_human_beings_final_report.pdf p.19

¹⁰ Why streetwalkers are getting the boot," Expatica, 9 December 2003.

¹¹ Daalder, A.L., Prostitution in the Netherlands since the lifting of the brothel ban, WODC (Research and Documentation Centre, Dutch Ministry of Security and Justice), 2007

politicians and law enforcers now accepting that legalised prostitution has been an unmitigated disaster.¹² Indeed, discussion to amend the law to follow the model adopted by Ireland is gaining momentum in Germany and the Netherlands following concern at the abuse perpetrated under the current system and the need to ensure sex equality.

In New South Wales (Australia) a police officer who investigated sex trafficking commented on the effects of decriminalisation stating that “although the intention was to provide a safe working environment for sex workers the reverse has occurred in that pimps and brothel operators were empowered and enriched.”¹³ And in New Zealand the government noted that the law that decriminalised prostitution “cannot in itself prevent or address the causes of under-age prostitution.”¹⁴

Implementation of the Act in Ireland

The High Level Working Group in its *Interim Review of the Implementation of Part IV of the Criminal Law (Sexual Offences) Act 2017* provides a detailed summary of the implementation of the law including the number of arrests and prosecutions, 3 years after its passing.¹⁵ Whilst the implementation of the law indicates some positive steps, Equality Now supports the observations of the Chair of the Working Group that “it is critical that we are fully cognisant of the wide range of institutional mechanisms and measures that have been put in place by other jurisdictions to ensure the success of all the objectives of the law”.¹⁶

In many of the countries where this legislative approach to ending sexual exploitation was adopted, the passing of the law has been accompanied by a varied array of supporting policies and services working in tandem with the legislative system to promote its success in diminishing and disrupting the exploitation inherent in the sex trade. In France for example, the adoption of the 2016 law also provided statutory access to a range of services to support prostituted people to exit the sex industry. These include renewable temporary residence permits, support with housing, freedom from tax debt, financial aid, access to medical and mental health services and education and training support. The state supports people wishing to stop selling sex via a programme of social and financial aid delivered through accredited charities and women’s rights organisations and these agencies report that they have helped approximately 100 persons a year exit prostitution since the inception of the scheme, although it has also been commented that these schemes are underfunded and the numbers successfully exiting too low.

It is widely understood that the primary motivation for entry into prostitution for those who are not trafficked is financial, to alleviate dire poverty usually, and therefore no legal change will see results in reducing the numbers of women in prostitution unless it is accompanied by substantial measures to alleviate this poverty

¹² Julie Bindel, “The red light district of Amsterdam could soon be a distant memory – here’s why”, The Independent, 2018 available here:

<https://www.independent.co.uk/voices/amsterdam-red-light-district-failing-prostitution-sex-work-decriminalisation-does-n-t-work-holland-a8206511.html>

¹³“Licensing law to tighten screws on brothel chiefs,” The Sydney Morning Herald, 11 October 2011

¹⁴New Zealand Ministry of Justice, Report of the Prostitution Law Committee on the Operation of the Prostitution Reform Act 2003, May 2008, pg. 112, available at:

<http://www.justice.govt.nz/policy/commercial-property-andregulatory/prostitution/prostitution-law-review-committee/publications/plrc-report/documents/report.pdf>.

¹⁵The High-Level Working Group was formed in 2017 and comprises organisations and agencies, tasked with the implementation of the Criminal Law (Sexual Offences) Act 2017 with an emphasis on Part IV of the 2017 Act. The Committee comprises An Garda Síochána; Health Service Executive, SERP (Sexual Exploitation Research Programme, UCD), the Department of Justice and Equality (as observers), Ruhama, Men’s Development Network, Survivor activist – Mia De Faoite, the Immigrant Council of Ireland, the Dublin Rape Crisis Centre, Doras Lumní, the Children’s Rights Alliance and Dr Geoffrey Shannon as Chair

¹⁶

and social exclusion. It is also understood that many women are coerced into and entrapped in prostitution through drug addiction or other vulnerabilities and thus for legal change to be successful it should include statutory provision to support prostituted people to recover and exit the sex trade.

Conclusion

Equality Now strongly believes in the value of the legal change that was produced by Part 4 of the Criminal Law (Sexual Offences) Act 2017 and its effectiveness to address the demand that drives prostitution and trafficking for sexual exploitation. It has been in place for a very short time and we would encourage the Irish authorities to make a greater commitment to the necessary public awareness campaigns, training and education for relevant personnel, as well as the putting in place of an array of appropriate and necessary support for those wishing to leave prostitution, to allow the law to be fully effective. Such an holistic approach should also be of considerable normative value, exposing the root causes of sexual exploitation, focusing on the perpetrators of that exploitation, and offering a more equal vision of society free from harmful stereotypes, structural inequalities and entrenched practices of abuse.

Thank you for your consideration.