



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

8 September 2020

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INTRODUCTION

Congress welcomes the opportunity to contribute to the current Review of the Operation of Part 4 of the Criminal Law (Sexual Offences) Act 2017, being undertaken by the Department of Justice and Equality. It does so from a perspective that sees the experience of most women in prostitution, whether as victims of human trafficking or not, as one that risks physical and psychological harms. We see the business of commercial sexual exploitation as inimical to ideas of decent work, human rights and dignity, and, as such, a deep and pressing issue for any grouping whose mission involves equality.

Congress is the largest civil society organisation on the island of Ireland, representing and campaigning on behalf of some 800,000 working people. There are currently 55 unions affiliated to Congress, north and south of the border. Congress seeks to achieve a just society - one which recognises the rights of all workers and citizens to enjoy the prosperity and fulfilment which leads to a good quality of life. Quality of life embraces not just material well-being, but freedom of choice to engage in the arts, culture and all aspects of civic life. This vision applies in the context of Ireland, Europe and the wider world and challenges the existing economic order. We strive to achieve economic development, social cohesion and justice by upholding the values of solidarity, fairness and equality. Among our objectives is to ensure full equality in all aspects of employment and society and to oppose discrimination on any such grounds as race, colour, nationality or ethnic or national origins, politics, religion, sex, age, disability, marital status, family status, sexual orientation, membership of the Traveller Community.

Our engagement with the Turn off the Red Light campaign stems from these values and objectives. Horrified by the shocking accounts of the experiences of women highlighted in the Immigrant Council of Ireland 2009 report - GLOBALISATION, SEX TRAFFICKING AND PROSTITUTION: THE EXPERIENCES OF MIGRANT WOMEN IN IRELAND - the Technical Engineering and Electrical Union (TEEU – now Connect) brought a motion to our 2010 Women’s Conference which:

- Recognised that the trafficking of women and girls for sexual exploitation is a modern form of slavery.
- Noted that the Irish sex industry is worth €180 million a year – women and girls are being exploited for profit.
- Noted that the Irish sex industry is an industry that severely harms women and is a tangible form of human rights abuse.
- Noted that victims of trafficking have not made a free choice. They are frequently lied to and misled in order to bring them to Ireland and are often beaten and raped into submission. Furthermore, they are at risk of severe emotional distress and fear based trauma.
- Noted estimates that up to 1,000 women are involved in indoor prostitution on any given day in Ireland, and between 87 and 97 per cent of these women are migrants. It is important to dispel the myth that they are engaging in harmless commercial transactions.
- Committed Congress to be part of developing effective and appropriate responses.
- Noted that this industry which exploits and harms women would not exist if there was no demand from men who buy sex. As other countries, such as Norway and Sweden, criminalise

the purchase of sex, Ireland is in danger of becoming a sex tourism destination for men from abroad – further exacerbating the conditions that lead to trafficking.

- Called on the Government to adopt measures geared towards the elimination of prostitution.
- Urged the Irish Government to learn from those countries which have established good practise for dealing with sex trafficking, in particular Sweden and Norway. These countries have criminalised the purchase of sex and decriminalised the selling of sex.
- Noted that this approach has reduced the demand for prostitution and incidences of trafficking of human beings for the purposes of sexual exploitation, proving that tackling demand is central to tackling sex trafficking.
- Called on Congress to join the National Campaign to tackle the demand for paid sex in Ireland.

Congress has played an active part in the national campaign since that time and has taken the position that Prostitution is not a legitimate form of work and is in fact the very antithesis of decent work.

“Decent work sums up the aspirations of people in their working lives. It involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men”. (ILO)

We have done this because we view it in the context of violence against women and a human rights violation. The levels of physical and sexual violence experienced by women in prostitution are immensely higher than the general population of women and girls. There are devastating impacts on the physical, mental sexual and reproductive health of women and girls. We have listened to those who argue for harm reduction strategies and feel that a focus on getting women in prostitution to insist on condom use and safe sex practice fails to recognise the reality of power and victimisation. Legalisation simply makes the harm legal. We also believe that it is not an either/or in terms of health care or seeing prostitution as a form of VAW. Each contact with women through health care can be an opportunity to provide her with as much support and as many options as possible including exit strategies.

Women consistently indicate in research that prostitution establishments did little to protect them, regardless of whether the establishments were legal or illegal. For that reason we played a very active role in campaigning on this issue in Northern Ireland also and welcomed legislation there that criminalises the purchase of sex, while decriminalising the women selling sex. We also welcomed the passing of the Criminal Law (Sexual Offences) Act in the Republic of Ireland.

The objectives of Part 4 of the Act¹ are:

- To target the trafficking and sexual exploitation of persons through prostitution.
- Combat the wider exploitation of persons involved in prostitution outside of those trafficked such as those who are coerced or otherwise forced through circumstances to engage in the activity.
- To decriminalise the women and men involved in prostitution.

¹ Deputy Frances Fitzgerald, [Seanad Éireann debate - Tuesday, 6 Oct 2015](#)

Our work in Congress concerns itself with the struggle for a fairer and more just society. We are therefore supportive of the central aim of this legislation to combat exploitation and coercion in prostitution and to target the trafficking of persons into the sex industry by reducing demand. The significance of the 2017 amendment, which is now under review, was that it decriminalised the seller of sexual access and transferred the historic burden of stigma and criminality to where it correctly belongs, with the purchaser of sexual services.

AN EXPLICITLY GENDERED FORM OF EXPLOITATION

The sex industry is heavily gendered and migrant women make up an average of 84% of women in prostitution across 13 European countries.² In the vast majority of cases the buyer is male, well-educated, with medium to high income.³ This creates an obvious imbalance of power. These women may find themselves in prostitution as a result of being trafficked, coerced, compelled by extreme poverty, or lack of other means of financial survival, or, (we believe in a small minority of cases, and typically a choice made in highly constrained circumstances) through free choice. While it is of course understood that men are also involved as sellers of sexual access, the vast preponderance of those prostituted in this industry are women, including trans women. The overwhelmingly gendered nature of the sex industry coupled with the high levels of violence endemic to it,⁴ makes it an area of relevance and importance to all women. We affirm the right to bodily integrity and autonomy and we see the 2017 Act as key legislation in underpinning the rights of women and girls to live in a society that protects their equality, freedom and dignity.

Historically, and today the campaign to end violence against women in intimate relationships has been widely supported by individuals who may not themselves have had direct experience with such violence. Similarly, the struggle to close the gender pay gap garners support from many women regardless of their position within the labour market. So too, the challenge to end the sexual exploitation of persons in the sex industry is pertinent to everyone who believes that sex should always be consensual, and that different rules should not apply to any marginalised, migrant, undocumented, poor and socially excluded people in our society.

EQUALITY and Greater Supports NEEDED, LEGALISATION IS NOT THE SOLUTION

We are cognisant of the international campaign to fully legalise the sex industry which means also legalising pimps and brothel owners as well buyers of sexual access to persons. We can see from the experience of other countries that legitimising and normalising the physical sex trade repositions the state from defending equality and freedom to colluding with the business of abuse and exploitation. Legalising the sex trade creates a socially sanctioned veneer for increased illegal activity in associated areas such as money-laundering, illegal drug distribution and human trafficking. It

² United Nations Office on Drugs and Crime (UNODC) 2010. *The Globalisation of Crime: A Transnational Organised Crime Threat Assessment*. Vienna: UNODC.

³ Yonkova, N. & E. Keegan 2014. "Tackling demand for sexual services of trafficked women and girls". Dublin: Immigrant Council of Ireland, Stop Traffick! EU Project.

⁴ Deering et al 2015 examined 42 studies globally interrogating violence against women in the sex industry and found lifetime prevalence rates of up to 75% with up to 55% reporting they had experienced violence within the last year Deering KN, Amin A, Shoveller J, et al. 2015 *A systematic review of the correlates of violence against sex workers*. *Am J Public Health*. 2014;104(5):e42-e54. doi:10.2105/AJPH.2014.301909

effectively deregulates the industry, reclassifying illegal as unregistered or unlicensed with a commensurate reduction in penalties for business.

We can see this in places where prostitution is fully legalised and commercialised, for example, in the highly regulated Amsterdam red light district where pimping, trafficking and exploitation define the character of the region.⁵ Full legalisation would be in contravention of the State's obligations under Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to 'take all appropriate measures, including legislation, to suppress all forms of exploitation of prostitution of women'.⁶

The legislation under review has been in operation for a very short time, and we hope that the operation of certain elements can be improved in relation to the enforcement of the law and to public awareness which is currently very low. This will allow for greater success in achieving the objectives of the law of combating trafficking for sexual exploitation and the direct physical and psychological harms of prostitution. The 2017 Amendment was one aspect of an integrated strategy that is yet to be fully resourced or realised, but we believe that with further investment and a co-ordinated approach its original objectives can be achieved. We believe that it is possible to effect real change in the landscape of sexual exploitation in Ireland, reducing harms to individuals and reasserting Ireland's commitment to equality and human rights.

That is why Congress has been a supporter of the Equality Model, also known as the Nordic Model, meaning that women who sell sex can do so legally. This means that they have access to the protections of the law, for example if they need to report an assault. The Equality Model criminalises the buying of sex in an effort to deter men from seeking the services of prostituted women. It is also illegal to "pimp" a person for sex or to operate a brothel. This model has been adopted in other countries such as Sweden, Norway, Iceland, Canada, France and Israel. The goal of the Equality Model is essentially to protect women while deterring men from buying sex in an effort to reduce demand and ultimately end exploitation. The Equality Model was approved as the best model to address prostitution by the European Parliament in 2014⁷ and by The Council of Europe in 2014.⁸

Evidence shows that the Equality Model has been successful in reducing the demand for prostitution. A Swedish Government report was commissioned to assess the effectiveness of the Equality Model, and the results showed a clear positive impact. The buying of sex has decreased from 13.6% in 1996 to 7.9% in 2008,⁹ and since the Equality Model has been introduced the rate of prostitution has been declining overall. We can see this most clearly when we compare Sweden with neighbouring countries Denmark and Norway, both of which had significantly higher rates of prostitution prior to introducing the Equality Model themselves i.e. Norway had 8 times more prostitution than Sweden before introducing the law.¹⁰ Furthermore, contrary to statements from pro-prostitution lobbyists, there is no evidence to suggest that the Equality Model has led to increased violence against women in prostitution.¹¹ Indeed forthcoming research will show that reports of violence remained relatively steady during 2015-2018, with the exception of a series of

⁵ Verhoeven, M. & B. Van Gestel 2017. "Between visibility and invisibility: sex workers and informal services in Amsterdam". *Feminist Economics* 23(3), 110–33.

⁶ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, A/RES/34/180

⁷ sexual exploitation and prostitution and its impact on gender equality - A7-0071/2014

⁸ PACE - Resolution 1983 (2014) - Prostitution, trafficking and modern slavery in Europe

⁹ Swedish Government Offices (Statens Offentliga Utredningar) (SOU) 2010. *Forbud mot kop av sexuell: En utvärdering 1999–2008* [Prohibition of the Purchase of Sexual Services: An Evaluation 1999–2008].

¹⁰ Ibid.

¹¹ Ibid.

robberies and assaults against women perpetrated by rival crime gangs caught up in ‘turf wars’ during 2017, in which women in prostitution were clearly the ‘soft targets’.¹²

Changing public attitudes has been key to the success of the Equality Model in Sweden with 70-80% of people supporting the law.¹³ This change in attitudes is what has reduced demand for prostituted women and increased public support for measures to provide exit strategies and better care for prostituted or at risk women. In Ireland, it’s clear that much work is yet to be done on educating the public first and foremost about the existence of the law, and secondly about the impact the law can have. Only by increasing public awareness and support can the Equality Model be a success.

THE FALLACY OF “CHOICE” IN EXPLOITATION

The pervasive referencing of prostitution as the ‘oldest profession’ is a cliché often used to signal the obduracy and resistance to change of the sex trade. It’s a throwing up of hands in much the same way as saying ‘the poor are always with us’, their children need to work to boost the family income etc.. signalling a capitulation to the normalisation of poverty. Sexual exploitation is a cold, enduring, immutable, constant reminder that poverty remains a pressing social issue that defines the lives of many. We can see that when measures to address poverty are effective for a majority in society, exploitation moves to those who remain vulnerable to monetary coercion. In the case of Ireland, this is predominantly migrant women. This is borne out by data showing that the main reasons girls enter prostitution include: poverty, care giver strain, maltreatment, homelessness, prior sexual abuse, emotional abuse, parental substance abuse, early lone parenthood and family dislocation.¹⁴ By reducing the demand for commercial sex, we can reduce the demand for human trafficking for sexual exploitation. At the same time, we must provide an integrated network of social supports to ensure that no one is disadvantaged by these measures and that those who are vulnerable have real, substantive freedom to make choices about their livelihood.

We utterly reject the framing of prostitution as an economic opportunity for the individuals exploited in it, and we vehemently refute the suggestion of some commentators that being in the sex trade is an option that should not be denied the poor. Prostitution is not a solution to women’s poverty. Such a position turns a blind eye to the experience of migrant women, who now make up the majority of persons working in the sex industry in Ireland and seeks to pretend that their consignment to a life of exploitation in prostitution is a valid, and freely chosen economic opportunity.

LEGALISATION MEANS COMMERCIALISATION

The legalisation experiment, pursued in other jurisdictions, has demonstrated that there’s no such thing as controlled legalisation. It has been shown to have an enormous impact both on individuals and on society as a whole. Legalisation transfers benefits to pimps, brothel owners and other interested parties for whom prostitution is big business. Prostitution is currently a multi-billion Euro industry worldwide, the goal of which is making money for pimps and brothel owners at any cost to the individuals on the frontline of prostitution.

¹² O’Connor, M., and Breslin, R., (2020, forthcoming), *Shifting the burden of criminality: An analysis of the Irish sex trade in the context of prostitution law reform*. Dublin: The Sexual Exploitation Research Programme, UCD.

¹³ Ibid.

¹⁴ Monica O’Connor, *The Sex Economy*, Agenda Publishing 2019 p. 23

To use the language of the market, there is no ‘supply’ without ‘demand’. As with any business, latent demand may already exist, but will be stoked and increased by business leaders through advertising and other tactics. After all, businesses don’t just *respond* to demand, they *create* new products to boost sales.¹⁵ In the sex industry, this equates to bringing more women into prostitution and expanding the range of sex acts and ‘services’ they have to endure. We can already see this on websites where men leave ‘reviews’ of the women they have bought sex from, judging their looks and their willingness to engage in (often risky) sex acts such as sex without a condom. Pressure to get a ‘good review’ in order to get more clients in future leads many women to compromise their personal choices and bodily integrity.¹⁶ These business trends demonstrate the ways in which women are considered products rather than human beings in the context of prostitution. – and is clearly contrary to the ILO Philadelphia Declaration that states that “labour is not a commodity”.

The influence of big business means that the sex trade grows bigger, as we can see in countries where prostitution has been fully legalised and commercialised. 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.¹⁷ By legalising prostitution we create an environment where prostitution is actually incentivised, advertised to men looking to buy sex and to young women as a ‘job’, and which acts as a lure to sex tourists. Legalisation also implicitly creates an environment where the buying and selling of bodies is seen as socially sanctioned, an outlook which we believe is harmful and inhibiting to the values and achievement of gender equality.

SURVIVOR VOICES

This is a much contested issue In Ireland, as internationally. The campaign from those who would legalise brothel owners, pimps and sex buyers urges us to listen to the voices of individuals who have experience of the sex industry; the term they use for these persons is ‘sex workers’. However, it is important to remember that not all such individuals with experience of this industry speak as one, nor does any one grouping encompass all viewpoints and experiences. Congress also advocates listening to these voices.

The organisations headed by people who have survived and escaped the sex industry overwhelmingly support the criminalisation of the sex buyer, the pimps and the brothel-keepers and the decriminalisation of the individual who is prostituted. Rachel Moran for example, Irish author and activist who founded *Space International* is an outspoken supporter of the equality model. Mia de Faoite is another well-known voice and Congress and affiliate unions, including the INMO have directly engaged with these voices.

The *Irish Times* article of July 30th, 2020 marking World Day against Trafficking details the experience of ‘Laura’ who was trafficked into prostitution initially in Holland and then Ireland where she worked in the sex industry for five years.¹⁸ Laura has now exited the life through the help of *Ruhama* and is now at university in Dublin, but of her time trafficked in prostitution she said ‘*I lived in fear and darkness, not just for myself but for my kids back home. I was a broken person.*’ ‘*I did not want to do*

¹⁵ Jyrkinen, M. 2012. “McSexualisation of bodies, sex and sexualities”. In M. Coy (ed.) *Prostitution, Harm and Gender Inequality*, 13–32. Aldershot: Ashgate.

¹⁶ Holt, T. & K. Blevins 2007. “Examining sex work from the client’s perspective: assessing Johns using on-line data”. *Deviant Behavior* 28(4), 333–54.

¹⁷ Walby, S. et al. 2016. *The Study on the Gender Dimension of Trafficking in Human Beings*. Luxembourg: European Commission

¹⁸ Pollak, S, *Irish Times*, 30/07/2020 *Human Trafficking: I lived in fear...I was a broken person*,

anything that would annoy the smuggler; I was scared that if I tried to leave he would attack my family'.¹⁹

Very many women working in the sex industry have similar tales to tell. *Ruhama* (an Irish NGO supporting women in prostitution) report that *'the global epidemic of human trafficking for the purposes of sexual exploitation is now one of the most profitable criminal activities and has infiltrated every corner of Ireland'²⁰*, they worked with 122 victims of sex trafficking, from 29 countries in 2018 alone.²¹ Trafficked persons and others who have escaped this life tell of the enormous toll it has taken on their physical and psychological health. Forthcoming research will also show that support providers report that the mental health consequences of prostitution can also be severe – in addition to women using alcohol and drugs to numb or cope, they routinely support women experiencing hyper-vigilance, self-harm and other trauma responses resulting from their experiences in prostitution.²²

Women seeking to exit (leave) prostitution typically require a package of holistic supports, from crisis to longer-term interventions that are specifically tailored to their needs, goals and plans for a sustainable future beyond the sex trade. We must not abandon them to a future of violence, ill-health, on-going poverty and fear. We choose to listen to, and amplify their voices. We see this legislation as one essential element in an array of supports that will allow women to really choose to avoid the psychological and physical harms endemic in prostitution.

TRAFFICKING, PROSTITUTION AND COVID-19

Globally it is understood that the trafficking of human beings is an enormous and growing problem. Trafficking for the purposes of sexual exploitation is highly gendered with women and girls constituting 94 per cent of all detected victims.²³ Moreover, sexual exploitation is the predominant form of trafficking and 72 per cent of all victims identified worldwide are female.²⁴ This year Ireland received its lowest score from the US State Department's 2020 *Trafficking in Persons Report*, being downgraded to the Tier 2 watch list.²⁵ This puts us among the worst three performing countries in Europe when it comes to our approach to the crime of trafficking in human beings. While the Criminal Law (Sexual Offences) Act 2017 does not have a direct role in the prosecuting of traffickers, it was the intention that it would make Ireland a hostile market by reducing the demand for the purchase of sexual access. The vulnerability of women and girls to this particular form of criminality has been exacerbated by the COVID-19 pandemic, and it 'has had immediate and severe impacts on women in the sex trade who are already among the most vulnerable women on the

¹⁹ Pollak, S, Irish Times, 30/07/2020 *Human Trafficking: I lived in fear...I was a broken person*,

²⁰ Ruhama (2019) Annual Report 2018, P.7

²¹ Ruhama (2019) Annual Report 2018, P.12

²²

O'Connor, M., and Breslin, R., (2020, forthcoming), *Shifting the burden of criminality: An analysis of the Irish sex trade in the context of prostitution law reform*. Dublin: The Sexual Exploitation Research Programme, UCD

²³ UN Women (2020) *Addressing Emerging Human Trafficking Trends and Consequences of the COVID-19 Pandemic*, p.6 Available: <https://www.unwomen.org/en/digital-library/publications/2020/08/policy-brief-covid-19-and-conflict>

²⁴ UN Women (2020) *Addressing Emerging Human Trafficking Trends and Consequences of the COVID-19 Pandemic*, p.5 Available: <https://www.unwomen.org/en/digital-library/publications/2020/08/policy-brief-covid-19-and-conflict>

²⁵ US Dept of State (2020) *Trafficking in Persons Report*, Available: <https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf>

planet'.²⁶ It has increased the risk for women of being abused and trafficked or put at risk of contracting the virus.²⁷

While some in prostitution may be entitled to state social support, this does not apply to many domestic and most migrant women. 'In other parts of the world, restrictions of movement and economic hardship are forcing women into the sex industry, where they may engage in riskier behaviour to ensure food and shelter for themselves and their families, including lowering prices and engaging with potentially infected buyers.²⁸ *'Anytime there's this type of panic," said a prostituted woman, "clients [sex buyers] understand that as a shift in power."* For women with no alternatives, *"some clients try to take advantage of that. They will push for lower prices, they will push for not having to screen, they will push for unsafe work practices — whether that's bareback or meeting someone you don't know or meeting in an unsafe location or being forced to push your own personal boundaries of what you're willing to do," she explained.*²⁹ Now more than ever it seems, we need this legislation and we need the supports it requires to make it work.

PUBLIC AWARENESS OF THE LEGISLATION AND PUBLIC ATTITUDES TOWARDS THE PURCHASE OF SEX

Essentially, the purpose of the 2017 amendment to the Criminal Law (Sexual Offences) Act was to call time on tolerating the purchase of sexual access. Its aim was to significantly alter attitudes regarding the acceptability of buying sex, and this societal aspiration to make it an undesirable or objectionable activity must be kept in mind when looking at the enforcement and performance of this bill. Success cannot and should not be measured solely by the number of prosecutions for sex purchase (although this is extremely important), but also by a sea change in social attitudes and the establishment of a norm of the social unacceptability of buying sexual access to persons. The passing of this bill showed a strong commitment on the part of the government to furthering the advancement of women's equality, which should allow future generations to grow up with the clear knowledge that the purchasing of sexual 'services' is repugnant to society and that Ireland censures the sexual commodification of women and girls.

It was hoped that the decriminalisation of the seller of sexual access, which is the kernel of this bill would also herald new and more positive relationships between the women in the sex industry and the Gardaí. Decriminalised, the person selling sex should have nothing to fear from police and therefore should be comfortable reporting the violence and coercion they encounter in the sex industry, and claiming redress through the justice system. This is of course complicated by immigration status issues, particularly for victims of trafficking that add another layer of fear, disadvantage and increased poverty. Access to social welfare can be very complex and difficult to negotiate for migrants. The habitual residence requirement sometimes excludes individuals who might otherwise be entitled to state assistance, and many migrants particularly those in direct provision are not permitted to work. This poverty and social exclusion compounded by a historic

²⁶ Farley, M (2020) *Prostitution, the sex trade and the COVID-19 Pandemic*, Logos, Available: <http://logosjournal.com/2020/prostitution-the-sex-trade-and-the-covid-19-pandemic/>

²⁷ UN Women (2020) *Addressing Emerging Human Trafficking Trends and Consequences of the COVID-19 Pandemic*, p.6 Available: <https://www.unwomen.org/en/digital-library/publications/2020/08/policy-brief-covid-19-and-conflict>

²⁸ UN Women(2020) *Addressing Emerging Human Trafficking Trends and Consequences of the COVID-19 Pandemic*, p.6 Available: <https://www.unwomen.org/en/digital-library/publications/2020/08/policy-brief-covid-19-and-conflict>

²⁹ Farley, M Op cit

stigma around the sex industry means that those in this position are frequently unaware of agencies who might offer them help and they may be unwilling to seek help from the Gardaí.

Awareness of this change in the law is a basic prerequisite for an improved relationship with An Garda Síochána (AGS), along with changes in policing methods. *Ruhama*, stated in 2019 that ‘a number of women who were familiar with the Criminal Law (Sexual Offences) Act 2017, reported feeling safer to contact the Gardaí now that they are explicitly decriminalised. For those who were unfamiliar with the law, we made sure to inform them that they were now fully decriminalised for soliciting. A continuing part of the *Ruhama* outreach team’s work is raising awareness of this positive change in the law among the women affected’.³⁰ The fact that lack of awareness is still an issue, even at this early stage is disappointing. The bill cannot achieve the gains hoped for if the public at large, and those working in the sex industry remain in ignorance of it. ‘Public awareness ... should be central to government strategies which recognise the wider declarative and normative intentions and spirit of the purchase of sex laws which has gender equality at its core.’³¹

Ruhama’s 2018 Annual Report details the experience of ‘Emer’ who was raped by a sex buyer ‘I didn’t know the law had changed and that it wasn’t illegal any more for me to sell sex until the women in the van told me. I had been too afraid before to go to the Gardaí to tell them in case I got in trouble or they told me it was my own fault. It was stressful to report it but the Gardaí were okay, and I felt at ease telling them about my experience’.³² This initial nervousness about involving the Gardaí is echoed by ‘Laura’ who was trafficked into Ireland from Cameroon via Holland for sexual exploitation. She said ‘when I was in Holland I was always scared of the police; they don’t have empathy. I see that empathy with the Irish police. I would tell other women to trust the people here who are trying to help them. Even the police.’³³

Amongst the objectives of the 2017 Amendment, was an attitudinal shift on the part of the public towards the buying of sexual services, and improved relationships between the sex seller and AGS because they would no longer be criminalised and thus in a better position to seek their legal rights as victims of violence and coercion in the sex trade. Both of these objectives have been hampered by a lack of ongoing and large-scale public awareness campaigns. ‘It is...incumbent on the State, at the very minimum, to inform its citizens of a law change of this nature’.³⁴ In Sweden, where the purchase of sexual access has been illegal since 1999, there has been a huge shift in public attitudes to prostitution. In 1999 only 32% of those questioned felt that a man buying sexual services from a woman should be treated as a criminal, but in follow up studies in 2002 and 2008, the responses were different, on both occasions indicating that in excess of 70% felt that purchasing sexual access should be a crime.³⁵ It is clear from the Swedish experience that this kind of normative shift is possible, but requires public education and awareness campaigns that have not yet happened in Ireland. Forthcoming research also recommends that raising awareness amongst women and the

³⁰ *Ruhama* (2019) *Annual Report 2018*, P.13

³¹ High Level Working Group (HLWG)(2020), *Interim Report of the High-Level Working Group: The Implementation of the Criminal Law (Sexual Offences) Act 2017, Part IV – An Interim Review* p15, Available: <https://www.immigrantcouncil.ie/sites/default/files/2020-01/2020HLWGInterimReportSOA2017ByGeoffreyShannon.pdf>

³² *Ruhama* (2019) *Annual Report 2018*. P.14

³³ Pollak, S (30/07/2020) *Human Trafficking: I lived in fear...I was a broken person*, The Irish Times

³⁴ High Level Working Group (HLWG) (2020), *Interim Report of the High-Level Working Group: The Implementation of the Criminal Law (Sexual Offences) Act 2017, Part IV – An Interim Review* p.15

³⁵ Holmström, Charlotta & Skilbrei, May-Len. (2017). The Swedish Sex Purchase Act: Where Does it Stand? *Oslo Law Review*. 1. 82-104. 10.18261/issn.2387-3299-2017-02-02.

public of the law (including that women are decriminalised but buyer are criminalised) be prioritised.³⁶

ENFORCEMENT OF THE LEGISLATION

The chair of the High Level Working Group (HLWG)³⁷ which authored the *Interim Review of the Implementation of Part IV of the Criminal Law (Sexual Offences) Act 2017*, Dr Geoffrey Shannon, noted 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'.³⁸ The Equality Model is in place now in Sweden, Norway, France, Iceland and Northern Ireland as well as Ireland. In these regions 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.

The success of the operation of the law cannot be accurately assessed in the absence of these supports. In France for example, the adoption of the 2016 act criminalising the sex purchaser and decriminalising the seller also put on a statutory footing access to a range of services to aid the prostituted person exit the sex industry. This package includes (renewable) temporary residence permits, help with housing, freedom from tax debt, financial aid, access to medical and mental health services and education and training supports. It is widely understood that the primary motivation for entry into prostitution for those that 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 and social exclusion

There has been some criticism of the lack of supports provided in Ireland for women affected by prostitution and trafficking. 'According to *Ruhama* approximately 90% of women want to exit at some point but have a perception that there are not any viable alternatives for them.'³⁹ A number of barriers to exiting the sex trade have been identified including poverty, coercion by a third party (pimp, trafficker, intimate partner), homelessness or precarious housing and immigration status. Ireland's very poor showing in the 2020 Trafficking in Persons (TIP) Report recently sparked renewed calls for these issues to be addressed. The *Immigrant Council of Ireland* remarked that 'the identification (of trafficked persons) is still delegated to An Garda Síochána, which the US TIP Report identifies as problematic. It creates a potential conflict of interest between enforcing migration law on the one hand, and providing protection to often undocumented migrant victims on the other.'⁴⁰

³⁶ O'Connor, M., and Breslin, R., (2020, forthcoming), *Shifting the burden of criminality: An analysis of the Irish sex trade in the context of prostitution law reform*. Dublin: The Sexual Exploitation Research Programme, UCD.

³⁷ The High-Level Working Group was formed in 2017 and comprises organisations and agencies¹, 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.

³⁸ High Level Working Group (HLWG) (2020), *Interim Report of the High-Level Working Group: The Implementation of the Criminal Law (Sexual Offences) Act 2017, Part IV – An Interim Review*. P.7

³⁹ High Level Working Group (HLWG) (2020), *Interim Report of the High-Level Working Group: The Implementation of the Criminal Law (Sexual Offences) Act 2017, Part IV – An Interim Review*. P.8

⁴⁰ Immigrant Council of Ireland (2020), *Major Problems with how Ireland treats victims of trafficking* Available: <https://www.immigrantcouncil.ie/news/major-problems-how-ireland-treats-victims-trafficking-identified-annual-global-report>

This conflict is a huge barrier for migrant women, and those in direct provision who are engaging in the sex industry. This coupled with poor public awareness of the law decriminalising the seller of sexual service means that its potential impact is greatly reduced. There is also an urgent need for gender specific emergency accommodation for those wishing to exit as well as a specialist health service. Without wraparound services like this the objectives of the 2017 amendment cannot be achieved. 'Extra resources were promised and have not been delivered on – hence both State and NGO provider services are struggling to meet needs.'⁴¹

Reuters reported in 2017 that 'on average at least two people a day are arrested in France for buying sex'⁴² and that in the first year alone after the law was enacted a total of 937 people had been arrested for buying sexual access. In contrast, Ireland's response has been slow to get off the ground, the HLWG Interim Review⁴³, notes that as of July 2019 'there have been a total of four outcomes of criminal proceedings against buyers (three convictions and one where the Probation of Offenders Act was applied). There are 13 persons pending prosecution as per the latest official data available'. Even accounting for the vast difference in population this seems to be a disappointingly low figure.

However, an April 2019 press release from An Garda Síochána (AGS) detailed 'intelligence led operations across six of its divisions...nationally, urban and rural to target the demand for prostitution and to enforce legislation which criminalises the purchase of sexual services. These Days of Action, coordinated by the 'Operation Quest' team at the Garda National Protective Services Bureau, in liaison with local Detective Units',⁴⁴ are a positive step, as are the most recent recorded crime statistics published by the Central Statistics Office (CSO) for the first quarter of 2020, which indicate an increase of 171% in terms of recorded crime in areas related to the purchase of sex. The bulk of the rise in recorded incidents are related to 'payment for a sexual activity with a prostitute' which rose to 87 in the year to Q1 2020, from only 15 in the comparable period in 2019.⁴⁵ This indicates a significant increase in interest and growing awareness on the part of AGS of policing this area. The recorded incidents related to brothel keeping for the same period reduced from 19 in Q1 2019 to 12 in the year to Q1 2020.

The issue of brothel keeping has been discussed quite a bit in relation to the Criminal Law (Sexual Offences) Bill 2017. But it is important to understand that brothel keeping laws are not a recent introduction but date to Section 11 of the Criminal Law (Sexual Offences) Act 1993. This is the legislative approach to the sex industry in Ireland which stresses the importance of criminalising third party organisers of prostitution and it is central to this view that laws against brothel keeping are in place to indicate the unacceptability of profiting from sexually exploiting others and to act as a deterrent. However, there has been some concern that women who are not profiting from the exploitation of others have on occasion been incorrectly targeted by the law. This concern was most widely evidenced and discussed in relation to the June 2019 conviction of two young Romanian women for brothel keeping, one of whom was pregnant. The women were sentenced to nine

⁴¹ High Level Working Group (HLWG) (2020), *Interim Report of the High-Level Working Group: The Implementation of the Criminal Law (Sexual Offences) Act 2017, Part IV – An Interim Review*. P.8

⁴² Taylor, Lin April 13, 2017, *France arrests at least two people a day for buying sex*, Reuters

⁴³ High Level Working Group (HLWG) (2020), *Interim Report of the High-Level Working Group: The Implementation of the Criminal Law (Sexual Offences) Act 2017, Part IV – An Interim Review*

⁴⁴ An Garda Síochána, *Purchase of Sex National Days of Action: April 2019*, Press Release Available here: <https://www.garda.ie/en/about-us/our-departments/office-of-corporate-communications/press-releases/2019/april/purchase-of-sex-national-days-of-action-april-2019.html>

⁴⁵ CSO (2020) Recorded crime Statistics available: <https://www.cso.ie/en/releasesandpublications/ep/p-rc/recordedcrimeq12020/>

months in prison having pleaded guilty - they are appealing and have not to date served any time in jail.

Young, vulnerable women such as these were not the intended target of this law, and many expressed concern at their arrest and conviction, including advocates of this law. A spokesperson for *Ruhama* - strong proponents of the sex purchase ban as a means of tackling the harm and exploitation inherent to prostitution - said the charity was '*appalled by the sentencing of the women and that it "strongly opposed" the use of existing legislation against individuals working in prostitution themselves' ... 'legislation against brothel-keeping, which has been in Ireland for decades, should be used to target the organisers and criminal gangs who are controlling the bulk of the sex trade in Ireland'*.⁴⁶ The Irish Human Rights and Equality Commission (IHREC) in their submission to the UN Committee on the Elimination of Racial Discrimination recommended that the State review the operation of Section 11 of the Criminal Law (Sexual Offences) Act 1993 concerning the interpretation of 'brothel keeping'.⁴⁷ While the HLWG in commenting on this case said 'there is a need to work with those enacting and implementing the legislation to ensure the exploiters are the target of criminal sanctions and those exploited are protected'.⁴⁸

SAFETY, VIOLENCE AGAINST WOMEN AND LEGISLATION ON PROSTITUTION

'Individuals in prostitution are faced with exceptionally high levels of violence. Thousands of women... have reported multiple forms of sexual, physical and psychological violence from pimps, traffickers and buyers. International research reveals rates of violence and mortality are much higher for this population compared to those not in prostitution. For instance, a study of 854 people in prostitution in 8 countries revealed 71% experienced physical assault, 63% were raped and 68% experienced post-traumatic stress disorder'.⁴⁹ *Ruhama* in describing its interactions with the women it supports revealed that 'we heard reports of sexual and physical assaults, threats of the same, and robberies. 42% of these reports involved physical violence, and 42% reported sexual violence. The majority of this violence was experienced at the hands of sex-buyers'.⁵⁰

In Ireland, it has been widely reported in the media on foot of a statement from *Ugly Mugs* (a website and app which has the objective of improving the safety of persons who are members of the organisation, and who work in the sex industry) that the violence against women in prostitution has increased by 92% since criminalising the sex buyer. The details of this research do not seem to be accessible online, but an analysis of the data by Trinity FLAC found that '*it could not be seen as providing empirical data. There is no mechanism preventing multiple reporting of the same abusive act, no differentiation between legal and illegal abusive acts, and no control for the increase of reporting corresponding to the increase of the website's use by women in the sex industry.*'⁵¹ The app also allows the reporting of historic abuse so there is no way of telling if the incidents occurred before or after the change in the law. There is a real and urgent need for a nationwide research

⁴⁶ Pollak, S (10 June 2019) *Jailing of sex workers keeping brothel shows law "not fit for purpose"*, The Irish Times

⁴⁷ IHREC (2019) *Ireland and the Convention on the Elimination of Racial Discrimination Submission to the United Nations Committee on the Elimination of Racial Discrimination Ireland's Combined 5th to 9th Report*

⁴⁸ High Level Working Group (HLWG) (2020), *Interim Report of the High-Level Working Group: The Implementation of the Criminal Law (Sexual Offences) Act 2017, Part IV – An Interim Review* P.10

⁴⁹ *Ruhama* (2019) *Annual Report 2018* P.29

⁵⁰ *Ruhama* (2019) *Annual Report 2018* P.13

⁵¹ *Trinity FLAC, Mary Murphy, 2018 'Sexual Violence in Ireland', [Report], Trinity Free Legal Advice Centre, P.59 Available: <http://www.tara.tcd.ie/handle/2262/89729>*

project into the prevalence of violence against people in prostitution. It is vital that this is adequately resourced to allow people who do not speak English as a first language to participate fully. In the United Kingdom, according to a report published by the House of Commons, an estimated 152 sex workers were killed between 1990 and 2015.⁵² Research produced by *Nordic Model Now*,⁵³ shows that there were 43 murders of prostituted women, primarily by pimps and sex-buyers in Spain, where prostitution is completely decriminalised, over an eight-year period up to 2018. In Germany, where it is legal and regulated, there were 91 murders and 48 attempted murders of persons in prostitution by sex-buyers and pimps in a sixteen-year period. However, in Sweden, there was only one murder of a person in the sex-trade in the twenty-one years since the introduction of the equality model, and this tragic murder although it was of a woman in the sex industry, did not occur in the course of her work, but was the result of a violent attack by an ex-partner. Even controlling for the differences in populations, these results are startling.

Research cited by UNODC (2018) finds that 'female sex workers have the highest homicide victimization rate of any set of women ever studied'. Epidemiological studies based on United States data suggest that the likelihood of active female sex workers being victimized in a homicide is almost 18 times higher than that of women of similar age and race who do not engage in sex work. Other, less conservative estimates, point to female sex workers running a risk of being killed 60 to 120 times higher than that of non-female sex workers.'⁵⁴ This report also states that 'It should be noted that not all homicides of sex workers are gender related; sex work often takes place in a highly criminal environment. Research indicates that the vast majority of female sex workers are killed by clients.'⁵⁵

CONCLUSION

Congress remains convinced of the value of the legal change that was produced by Part 4 of the Criminal Law (Sexual Offences) Act 2017. It has been in place for a very short time and if there is a commitment to the necessary public awareness campaigns, training and education for appropriate personnel, as well as the putting in place of an array of appropriate and necessary supports for those wishing to leave prostitution, its original objectives may be achieved.

For Further Information – David Joyce, Congress Equality Officer

⁵² House of Commons, Home Affairs Committee, Prostitution, Third Report of the Session 2016-2017, p. 3. Available at <https://publications.parliament.uk/pa/cm201617/cmselect/cmhaff/26/26.pdf>.

⁵³ Available: <https://nordicmodelnow.org/facts-about-prostitution/fact-prostitution-is-inherently-violent/>

⁵⁴ UN ODC (2018) *Global study on homicide, Gender related killing of women and girls* P.36 Available: https://www.unodc.org/documents/data-and-analysis/GSH2018/GSH18_Gender-related_killing_of_women_and_girls.pdf

⁵⁵ UN ODC (2018) *Global study on homicide, Gender related killing of women and girls* P.36 Available: https://www.unodc.org/documents/data-and-analysis/GSH2018/GSH18_Gender-related_killing_of_women_and_girls.pdf