



## Realising Sex Workers' Rights in Ireland

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### Sex work: A Social Justice and Human Rights Issue

Sex work is a contentious issue. Diverse views exist on how to 'deal with' prostitution and responses are contested and highly politicised. Some see it as a form of violence and see the ideal response to protecting sex workers as attempting to eradicate sex work. Others see sex work as a more complex issue encompassing rights, freedoms, and choice for the individuals engaged in sex work, and sees the ideal response as attempting to protect sex workers. Whilst acknowledging the reality of abuses associated with the sex industry, this approach moves beyond viewing sex workers as victims and instead acknowledges the full complexity of social identities involved.

This paper adopts a social justice response to policy on prostitution and sets out a vision for policy which promotes safety and the human rights of sex workers. Using such a framework allows us to promote and respond to sex workers' rights and minimise the harms that sex workers are exposed to. By recognising the realities of the lives of women, men and transgender people who make choices to engage in sex work, we can provide targeted supports where needed in terms of health, housing, justice, welfare and immigration. Crucially, prioritising the inclusion of sex worker voices in decisions that affect them is central to a human rights and social justice perspective on sex work.

### Right to Services and Supports

Focusing policy on criminalising aspects of sex work limits the degree to which sex workers have control over their own safety and also shifts responses to clamping down on sex work with a view to its complete elimination. Such a policy approach fails to consider the right to services, supports and harm reduction that sex workers who remain in sex work require access to. When policy fails to officially acknowledge the needs of those continuing to engage in sex work, exiting services are prioritised over other services and this lessens the availability of ongoing harm reduction and other supports to sex workers.

### Sex Workers Have Rights

Sex workers are often perceived and treated as if they do not have rights, for example, many see the only right of sex workers as the right to be protected from sex work itself. Human rights, however, rest on a number of fundamental principles. They are broadly understood to be universal, inalienable, interdependent, and non-discriminatory. For sex workers, this means that they are entitled to the same human rights as anybody else. They do not give up these rights when they enter sex work - nor should they have to "exit" to exercise them.

Ireland is party to many international and European human rights treaties. While not all are enforceable in the Irish courts, they bind us as a matter of international law. To comply with our international obligations, the Oireachtas seeks to legislate in a manner compatible with these treaties. A human rights-based approach cannot only aim to reduce or eradicate sex work. It needs to aim to protect the human rights of those who do not wish to exit, and those without a practical alternative.

Sex workers have the right to equal treatment, to dignity, to privacy and self-determination, to organise, to work under safe conditions, the right to access justice and the right to recognition of their capacity and autonomy.

#### Sex Work and the Irish Situation

Currently prostitution in Ireland is not illegal, but virtually all activities associated with sex work are criminalised. As a result sex workers are extremely vulnerable to coercion and violence in their daily work.

- Street based sex workers are liable to be moved on for loitering or prosecuted for soliciting, making it difficult for them to work overtly where they may be safer. This means they are often hidden from view, moved on from their normal working environments and away from outreach services.
- Under current laws, sex workers who choose to work together indoors for safety are liable to be prosecuted for operating a brothel and so are deterred from working together, with less control over their working environment and, thus, are more at risk from violent attack.
- Current legislation does have some provisions for targeting clients but these laws have not been effective in deterring demand. The reality is that in order to target demand it is sex workers who are routinely monitored and who, in order to avoid detection, often have less control over their work conditions.

## Criminal Justice Responses are Limited and Ineffective

Motivations for engaging in sex work are multiple and complex. The root causes lie beyond the narrow frame of male demand for paid sex. These include, unequal access to education, healthcare, housing and social supports; the normalisation of casual, low paid and precarious employment; discriminatory immigration policies which increase the vulnerability of certain migrants; as well as the choices made by many sex workers, without other external pressures or coercion, to take up an alternative form of work due to financial incentive.

Criminal justice responses such as the ‘Swedish Model’<sup>1</sup> do not adequately take these issues into account. Legislation that criminalises the buyer of sex individualises the issue by placing the blame, and also the solution, upon the buyer while ignoring other solutions. It also seeks to impose a ‘one-size-fits-all’ type solution to a complex social issue.

The concern with this approach is the potential negative impact it will have on the lived realities of sex workers. This includes greater risk taking, increased rates of exploitation, violence and harm as buyers and sellers move to more isolated areas and sellers disengage with outreach and social services<sup>2</sup>. Increased criminalisation simply puts sex workers lives at greater risk and moves the ‘problem’ from one geographical area to another. Such legislation prioritises punitive measures over practical strategies to improve the health and well-being of sex workers. This approach limits the scope for more holistic responses that could address underlying causes while promoting the safety of both street and indoor sex workers.

## Not all Sex Workers are Victims

To oversimplify people’s experiences, or present people as ‘victims’ incapable of consenting to sell sex under any circumstance is not only patronising but ignores and dismisses the complex lived realities of people’s lives. A significant body of research points to a continuum of experiences of those who work in the sex industry<sup>3</sup>. Irish-based and international research reveals the diversity of those who sell sex, and that lived experiences range from force and exploitation to varying degrees of autonomous choice<sup>4</sup>.

The Irish sex industry is multifaceted. Both Irish and migrant women work in this industry. While exploitation, violence, harm and safety issues clearly exist, not every woman who works in this industry would describe themselves as exploited. Often the discourse about migrant women in the sex industry is linked with the crime of human trafficking. Conflating human trafficking with all sex work only serves to marginalise and silence those best placed to report exploitative situations, and fails to acknowledge the choices women may make to migrate to engage in sex work. Strengthening identification procedures and prevention measures within the trafficking framework is paramount to tackling this crime and disaggregating trafficking and exploitation from consensual sex is the most effective way to do this.

### Why Targeting Demand is Dangerous for Sex Workers

Carmel is a current sex worker who has been working in the sex industry in Ireland as an independent escort for a number of years. She feels that criminalising men who buy sex will have a number of negative impacts on her life.

“I will have to reduce the amount of condoms I carry because they can be seen as evidence of sex work. This will obviously increase my risk of STD’s”.

“To gather evidence it is proposed that the Gardaí should have powers to take our phones off us. This would remove our safety tool and means of communication and all our important details on clients, good and bad”.

“We have sex worker buddies for safety, so we can check in with each other when a client leaves. I’ll be more fearful of doing this in case my phone is taken and it incriminates someone else”

“Instead of seeing the Gardaí as being there to protect us, I can see us developing new strategies to avoid them and being scared to report violence or rape”

“I will be more interested in protecting the client from being caught rather than protecting my own safety”.

“Given that landlords may be implicated for renting out premises to sex workers, we are at greater risk of homelessness”

<sup>1</sup> The Swedish model refers to the Sex Purchase Ban which was introduced in Sweden in 2000 focused on criminalising the purchase of sex whilst decriminalising sex work for the sex worker.

<sup>2</sup> Levy, J. (2014) *Criminalising the Purchase of Sex: Lessons from Sweden*. Abingdon: Routledge

<sup>3</sup> Kinnell, H. (2008) *Violence and Sex Work in Britain*. Cullompton: Willan Publishing; Sanders, T., O’Neill, M. and Pitcher, J. (2009) *Prostitution: Sex Work, Policy and Politics*. London: Sage; Ward, E. & Wylie, G. (2010) ‘Lap Dancing and Red Light Milieu: Conceptualising the Context for Sex Trafficking into Ireland’: in Wylie G. and Mac Redmond, P. (eds.) *Human Trafficking in Europe: Character, Causes, Consequences* Palgrave Macmillan

<sup>4</sup> Kinnell, (2008); Sanders et al, (2009); Ward and Wylie (2010)

## Sex Workers are not Homogenous

Pervasive media, policy and political messages reinforce the belief that the sex industry is made up of female sex workers. The situation is more complex than this as men and transgender people also engage in buying and selling sexual services. However in public and political discourse men, gay men and transgender people are often invisible.

There are specific issues however which arise for men and transgender people who sell sex. Addressing stigma, responding to homophobia and hetero-sexism in service provision is key. It is also important to recognise that not all men involved in sex work are gay and they may therefore be unlikely to access services that are specifically designed for gay men<sup>5</sup>. For these and other reasons a one-size-fits-all approach is impractical. To respond effectively to the rights and circumstances of all sex workers a diverse holistic policy and political response is required that takes all these issues into consideration.

## Including Sex Workers in the Design of Meaningful Solutions

Ensuring the participation of sex workers in policy decisions which affect their lives is central to developing pragmatic policy responses which promotes the health and safety of sex workers. Listening to a range of sex workers' experiences, from those working on the street to indoor workers, to Irish and migrant sex workers is essential. It is important to talk to both current and former sex workers. Current sex workers' experiences, however, should take precedence as they negotiate their lives under current laws and have the most recent knowledge of accessing services.

Failure to include and listen to the needs, lived experiences and recommendations of sex workers is counterproductive to effective policy formation. We have to listen to the most marginalised voices and create a policy which suits their needs. Promoting an approach which empowers sex workers to be visible in this debate takes time, resources and leadership. State support for organisations which promote this approach would ensure a balanced response to the complex and multiple needs of sex workers.

## Discrimination and Stigmatisation

Women, men and transgender people who sell sex suffer discrimination and stigmatisation on multiple levels. Selling sex has long been demonised. The term 'prostitute' has been constructed as deviant, with close ties to the historical and systematic denigration of sexuality, particularly women's sexuality. Cultural notions of the 'whore' further demonise women and reinforce societal prejudices.

Sex workers continue to be treated as subjects, ignored and objectified, rather than seen as autonomous agents. Current policies regard sex workers as a public nuisance to be moved on and 'out of sight' which reinforce discrimination and feeds into the stigmatisation of sex workers.

### Decriminalisation

Decriminalisation is not the same as legalisation of sex work. Decriminalisation refers to the removal of all criminal prohibitions and penalties on sex work, including laws targeting clients. Removing criminal prosecution of sex work goes hand-in-hand with protecting the human rights of sex workers.

International human rights, feminist, LGBTi and health organisations, i.e. the International Labour Organisation, World Health Organisation, UN AIDs, together with sex workers have all called for the decriminalisation of sex work in order to increase protections, improve access to health care and reduce incidents of HIV and other STIs.

### What does decriminalisation mean for sex workers?

- Respect for human rights and personal dignity
- Reduces violent incidences and fear of violence
- Increases sex workers' access to justice
- Increases sex workers' access to services and supports
- Promotes safer working conditions for sex workers
- Reduces health risks including risk of HIV
- Challenges stigma and discrimination against sex workers
- Does not increase numbers involved in sex work
- Facilitates more effective responses to trafficking and exploitation
- Recognises the choices that many women, men and transgender people make and provides protections for rather than limitations to those choices

(Ref: Open Society Foundations (2010) 10 Reasons to Decriminalize Sex Work: A Reference Brief. NY: Open Society Foundations Sexual Health and Rights Project

## Gender, Feminism and Sex Worker Rights

The discourse about sex work is not value free. Feminists and the broader women's and labour rights movement are challenged to acknowledge the values that prevail when engaging in debates and processes determining rights and policy related to sex work. Limiting options and imposing moral judgements on how people earn a living does not protect women in any way, rather it removes supports and safety mechanisms, creates instability and potential for exploitation in what is already a high-risk work environment.

<sup>5</sup> NACD (2009), Drug Use, Sex Work and the Risk Environment in Dublin, Dublin: National Advisory Committee on Drugs

Supporting sex worker rights is a feminist concern. Understanding sex work from a feminist perspective requires us to recognise that there is no homogenous type of experience that context is key to our understanding and blanket assumptions about and responses to women are always highly problematic. It requires us to rethink different types of labour; how we respect individual autonomy; the right to consent and for persons to make decisions for themselves that best suit their own circumstances. We must rethink how all women are supported and have as many options as possible to choose from, rather than restricting those choices that are available.

#### **What it is the New Zealand Model?**

The New Zealand model is the Prostitution Reform Act, 2003 introduced in New Zealand as a means to explicitly focus policy responses on the human rights, safety, welfare and occupational health of sex workers. Decriminalisation removes criminal sanctions from the sale of sex through brothels (allowing sex workers to work together), escort agencies and soliciting.

#### **What is the Impact for Sex Workers?**

When sex work is decriminalised, sex workers are empowered to realise their right to work safely, and to use the justice system to seek redress for abuses and discrimination. Decriminalisation means that sex workers' human rights and safety become an institutional priority and sex workers are less likely to seek 'protection' through corrupt or illegal associations (Harcourt, Egger and Donovan, 2005; Abel et al, 2010)

#### **What do the Statistics say?**

Decriminalisation does not result in an increase in the number of sex workers (Abel et al, 2009) but instead promotes safer working conditions for those engaged in sex work, increases sex workers' access to justice and other services and supports and also facilitates more effective responses to trafficking and sexual exploitation (ibid).

Harcourt, C., Egger, S., Donovan, B. (2005). Sex Work and the Law. *Sexual Health* 2(3), 121–8  
Abel, G., Fitzgerald, L., Healy, C., Taylor, A. (eds.) (2010) Taking the Crime out of Sex Work: New Zealand Sex Workers' Fight for Decriminalisation. Policy Press, Bristol

### **What this Means for Law and Policy**

Seeking to use the law to eradicate sex work introduces more inequality and oppression than it serves to address. Policy responses need to be intersectional, and recognise that class, 'race', sexuality and gender compound oppressions or privileges. Framing a law to tackle the demand for sex as a means to promote gender equality serves to marginalise an already vulnerable group of women, and fails to recognise that demand focused solutions are liable to be ineffective and counterproductive – not succeeding in eliminating

sex work, exposing sex workers to further harm and increasing the degree to which sex workers require protection. Policy responses to tackle inequality include access to quality employment, education and social protection, reform of immigration and the criminal justice system. Service delivery needs to respond to women, men, gay men and transgender people ensuring the health and safety of sex workers are central in the provision of services and supports.

It is only when we address structural inequalities and confront discriminatory attitudes that reinforce sexism, racism; classism, homophobia, transphobia and other oppressions will society create the conditions for transformative change and limit, if not, eradicate the demand for sex work. Criminalising the purchaser of sex will not address these complex structural inequalities; it will only serve to create the conditions for increased stigma, harm and violence for sex workers.

Before introducing any law that will impact on the lives of sex workers, more extensive Irish research is needed to inform policy and legislation. Centralising social justice policy responses rather than criminal justice responses to sex work allows for the rights of sex workers to be officially recognised and responded to. It allows for their protection and safety to be effectively legislated for; and acknowledges that there are wider, systemic issues of welfare and wellbeing that can only be fully addressed through decriminalised frameworks. Incorporating lessons learned from the New Zealand model into policy and legislative reform will allow sex workers to have their human rights recognised and protected and to be empowered to live with dignity and without fear.

#### **Northern Ireland Sex Workers' Survey - Key Findings**

- 98% of sex workers oppose new law criminalising clients
- 61% of local sex workers thought a Swedish style law directed at those who buy sex would make them less safe.
- 85% of those working in the trade locally said such legislation would not reduce sex trafficking
- Only 8% of the clients surveyed said it would make them stop paying for sex altogether
- PSNI voiced concerns that there were likely to be significant difficulties with enforcement and would be unlikely to be effective against exploitation.

Huschke, S. et al (2014) Research into Prostitution in Northern Ireland. Commissioned from Queen's University Belfast by the Department