



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

Introduction

Migrant Rights Centre Ireland (MRCI) welcome's this opportunity to make a submission to the review of the Operation of Part 4 of the Criminal Law (Sexual Offences) Act 2017. MRCI notes a reference that the intent and goal of the legislation is to protect vulnerable persons, as is MRCI's, which we will address throughout submission.

MRCI is a national organisation working to promote the rights of migrant workers and their families living in situations of vulnerability throughout Ireland. In 2019, MRCI provided information and support on 2,283 cases to people from 116 different countries. Since the enactment of the Criminal Law (Sexual Offences) Act 2017, MRCI has been supporting a small number of women and men working as sex workers and in prostitution. The majority of those engaging with MRCI who work as sex workers are undocumented migrants. Many are currently supporting children, have limited English and reside in precarious living circumstances.

MRCI is extremely concerned about the exclusion of sex workers' voices in the development of this law. It is incumbent on this process to prioritise the inclusion of sex worker voices and make direct efforts to engage with this group, taking into account the impact of stigma and the need for confidentiality and anonymity of workers. For this review to have meaning, listening to the experiences of sex workers must be at the heart of its approach.

Mounting Evidence and Research

Our submission is based on both our first-hand experiences of working with sex workers and people engaged in prostitution. This is backed up by extensive evidence and research conducted by the World Health Organisation (WHO)¹, UNAIDS², Médecins du Monde – Doctors of the World³, Amnesty

¹ WHO, *Prevention and treatment of HIV and other sexually transmitted infections for sex workers in low- and middle-income countries: Recommendations for a public health approach*, December 2012

² UNAIDS, *The Gap Report 2014: Sex Workers*, 2014

³ Médecins du monde - Doctors of the World, *Harm Reduction. A public health approach based on human rights*, July 2018

International⁴, Platform for International Co-operation of Undocumented Migrants (PICUM)⁵, GAATW (Global Alliance Against Traffic in Women)⁶, International Committee for the Rights of Sex Workers in Europe (ICRSE)⁷ and HIV Ireland⁸.

Research from Queen's University on behalf of the Northern Ireland Department of Justice is highly relevant to both this submission and the wider context of sex workers in the Republic of Ireland⁹. Northern Ireland is the only jurisdiction where data exists both before and after the legislation was implemented, coupled with the fact that sex work takes place across the island of Ireland¹⁰. Further, the 2020 report, commissioned by HIV Ireland is cited and relevant to this submission, as the findings are from in-depth focus groups and interviews conducted with men and women (including transgender men and women) engaged in sex work in Ireland¹¹. This study also included members of the LGBTI+ community, migrants and asylum seekers.

Due to the lack of comprehensive and cumulative data on sex work populations in the Republic of Ireland, Ugly Mugs¹² - an application that allows sex workers to confidentially report incidents of abuse and crime and track persecutions- is also referenced throughout this submission, as it tracks trends and patterns within sex work in Ireland and therefore should be considered a core source of data and evidence for this review.

Both reports are based on hearing first hand experiences of people who work as sex workers. These identify the impact that legislation and criminalisation frameworks play in certain geographical areas and analyse the socio-economic and health impacts on sex workers. Both sets of data presents valuable evidence and insights, ultimately demonstrating that criminalising sex work makes sex workers more vulnerable to human rights violations, increases vulnerability to HIV, exacerbates inequality and discrimination and makes this group more vulnerable to high levels violence and abuse. Further criminalisation, impedes sex workers' ability to seek protection from local and State authorities and to their access to basic health care, legal and social services. The COVID-19 pandemic exacerbated the situation for migrant sex workers; the impact of stigma meant that many did not come forward to avail of any social supports, leaving them and their families in desperate situations.

Human Rights Approach

We note, that there are divergent views on how to respond to prostitution and to protect people working in this area. We further note that responses are often contested and highly politicised. On the one hand some actors see prostitution it is as a form of violence with the ideal response to protecting

⁴ Amnesty International, *Policy on state obligations to respect, protect and fulfil the human rights of sex workers*, May 2016

⁵ PICUM (Platform for International Co-Operation of Undocumented Migrants), *Safeguarding the human rights and dignity of undocumented migrant sex workers*, September 2019

⁶ GAATW (Global Alliance Against Traffic in Women), 'Sex Workers Organising for Change', 2018

⁷ ICRSE (International Committee on the Rights of Sex Workers in Europe), *Intersection Briefing Paper Surveilled. Exploited. Deported. Rights Violations against Migrant Sex Workers in Europe and Central Asia*, November 2016

⁸ P. Ryan, K.McGarry, 'Sex worker lives under the law: A community engaged study of access to health and justice in Ireland' 2020

⁹ Research into Prostitution in Northern Ireland Commissioned from Queen's University Belfast by the Department of Justice October 2014

¹⁰ Ellison, Graham ; Ni Dhonaill, Caoimhe ; Early, Erin. / A review of the criminalisation of the payment for sexual services in Northern Ireland. Belfast : Queen's University Belfast, 2019. 177 p.

¹¹ P. Ryan, K.McGarry, 'Sex worker lives under the law: A community engaged study of access to health and justice in Ireland' 2020

¹² UglyMugs. (2020). Retrieved from: <https://uglymugs.ie>

sex workers as endeavouring to eradicate sex work. On the other hand, other actors see sex work as complex, as encompassing rights, freedoms and choice for the individuals engaged in sex work, and promote the a response of protecting sex workers in the work they do.

MRCI acknowledges that there are a range of abuses associated with the sex industry, however we believes the best way to protect workers is through a focus on human rights and through adopting a social justice approach to minimise harm. We believe that Part 4 of the Criminal Law (Sexual Offences) Act does not recognise the realities and lived experience of women, men and transgender people who engage in sex work and is flawed in both its development and implementation.

Migration and Data

Globally it is identified that the groups most affected by discrimination and inequality are frequently those same groups over-represented in sex work¹³. Sex workers are amongst the most marginalised communities in the world, most vulnerable to human rights abuses and high levels of violence. Sex workers face multiple and intersecting discriminations, commonly linked to their occupation, gender identity, and ethnicity, race and migration status. This is compounded by pervasive stigmatisation, and further impacted in countries which criminalise sex work, including the criminalisation of the purchaser of sex.

Despite a lack of conclusive data on women carrying out sex work in Ireland, it is widely believed that a large proportion of them are of migrant background. Evidence suggests that migrant sex workers make up 65% of the sex work population in Western Europe¹⁴. In the Republic of Ireland, data on people working in prostitution and as sex workers is limited. A study¹⁵ carried out by Queen's University on behalf of the Northern Ireland Department of Justice identified 26% of respondents worked in the Republic of Ireland, 44% of the sex workers who took part in the survey and 26% of the interviewees were foreign nationals; people from across the world. The study went on to identify 23% of respondents between 26-30 years of age and 48% of respondents under the age of 30. Almost one third of the respondents had children of their own, with 8 in 10 identifying as the primary caregiver of their children¹⁶. The figures in respect of nationality and age remained broadly the same since the legislation was introduced according to the 2019 Queens study¹⁷, with the study also revealed that the majority of sex workers are female, foreign nationals, predominately not domiciled in Northern Ireland, and aged between 26 and 30 years of age.

Undocumented Migrants

It is important to note that rights are derived from a person's entry the State. Restrictive immigration frameworks impact on access to the labour market and social supports. MRCI estimates that are between 15,000 and 17,000 undocumented migrants living and working in Ireland. Undocumented

¹³ Amnesty International, *Policy on state obligations to respect, protect and fulfil the human rights of sex workers*, May 2016

¹⁴ ICRSE (International Committee on the Rights of Sex Workers in Europe), *Intersection Briefing Paper Surveilled. Exploited. Deported. Rights Violations against Migrant Sex Workers in Europe and Central Asia*, November 2016

¹⁵ Research into Prostitution in Northern Ireland Commissioned from Queen's University Belfast by the Department of Justice October 2014

¹⁶ Ibid

¹⁷ Ellison, Graham ; Ni Dhonaill, Caoimhe ; Early, Erin. / A review of the criminalisation of the payment for sexual services in Northern Ireland. Belfast : Queen's University Belfast, 2019. 177 p.

migrants face immense barriers in accessing basic services or decent work regardless of the sector they work in. Repressive immigration policies and employment regulations in Ireland block undocumented workers access to formal labour markets or secure forms of employment, leaving undocumented migrants with little choice but to work in informal and/or precarious sectors. Furthermore, discrimination particularly in the labour market, leads to the lack of employment opportunities, for both cisgender and transgender migrant women.

Sex workers who are undocumented face multiple layers of criminalisation due to their immigration status and the work in which they are engaged. Many fear reporting violence to the Gardaí, which is exacerbated by fears of deportation. Further actions like the implementation of the Criminal Law (Sexual Offences) Act 2017 and the lack of legislative protection places them at greater risk of violence, as clients coerce them with threats of immigration enforcement¹⁸.

When working as sex workers, undocumented migrants are placed in a doubly precarious situation vis-à-vis state authorities, facing additional discrimination and violence due to stigma and prejudice against sex work. The intersection of restrictive immigration policies, along with the criminalisation of undocumented migrants, and the criminalisation of sex work, increases the risks that undocumented sex workers face. Criminalisation frameworks undermine human rights and dignity and further marginalises an already marginalised group.

Enforcement + Disproportional impact on Migrant Women

Reports from Ugly Mugs— a reporting mechanism which allows sex workers to report incidences and tracks persecutions - identified that all individuals convicted for brothel keeping offences were non-Irish nationals¹⁹. The number of recorded prostitution or brothel keeping offences has jumped by more than 205% in the 2019-2020 period²⁰. The most common nationalities prosecuted were Romanian (55%), Brazilian (17%) and Spanish (9%)²¹. The Central Statistics Office (CSO) reported that the vast majority of those convicted were young migrant women (96%), with a small number of cases involving male and transgender sex workers²².

This coincides with the report released from the Irish Human Rights and Equality Commission, outlining that the Criminal Law (Sexual Offences) Act 2017 was applied in a discriminatory way against migrant women²³. The report outlines the prevalence of under-protecting and over-policing in minority ethnic communities, through tactics such as racial profiling²⁴. The jailing of two Romanian sex workers in 2019, for the keeping or being in charge of a brothel, further demonstrates that Irish laws around prostitution, are inappropriately used and disproportionately affect migrant women²⁵.

¹⁸ N. Vuolajärvi, *Governing in the Name of Caring—the Nordic Model of Prostitution and its Punitive Consequences for Migrants Who Sell Sex*, 2018

¹⁹ Brothelkeepers. (2020). Retrieved from <https://brothelkeepers.org>

²⁰ Irish Examiner Press Association, *Prostitution offences soar by 205% as homicides fall in a year*, March 2020

²¹ Brothelkeepers. (2020). Retrieved from <https://brothelkeepers.org>

²² Ibid

²³ IHREC, *Ireland and the Convention on the Elimination of Racial Discrimination*, October 2019

²⁴ Ibid

²⁵ S. Pollak, *The Irish Times*, *Jailing of sex workers keeping brothel shows law “not fit for purpose”*, June 2019

Safety and Wellbeing

We note the following statement of Minister for Justice Helen McEntee, “By reforming the law to criminalise the purchase of sex, we hoped to ensure that persons engaged in prostitution would feel free to provide information to Gardaí, for instance where they have been subjected to violence by clients, without fear of prosecution for selling sexual services”²⁶. Despite the intentions of the law, criminalisation has forced sex workers to operate in ways that jeopardise their health, safety, working conditions, access to basic health services and impacted access to justice²⁷.

From MRCI's experience we have seen that the introduction of the Criminal Law (Sexual Offences) Act 2017 pushed more sex workers to work alone, in order to avoid being targeted by Gardaí and further persecuted. Evidence of increased vulnerability to violence, forced sex workers into precarious working conditions resulting in higher incidences of violence against sex workers. HIV Ireland report²⁸ highlighted that when condoms are increasingly confiscated and used as evidence, sex workers are less likely to carry condoms. This undermines the right of sex workers to protect themselves from sexually transmitted infections, HIV and unwanted pregnancies. Furthermore, strong evidence from UNAIDS suggests that criminalisation of sex work increases susceptibility to HIV and other sexually transmitted infections, and impedes evidence-informed HIV responses from sex workers²⁹. Additionally, the World Health Organisation's modelling studies indicated that decriminalising sex work could lead to a 46% reduction in new HIV infections among sex workers over the next 10 years³⁰.

Sex workers of all genders and migrant status face significant legal and institutional discrimination, with both legal and health service providers neglecting to meet their primary needs. Similarly, UNAIDS identified that often police and law enforcement officials violate the human rights of sex workers opposed to protecting them³¹.

Unintended consequences

In the immediate year following the introduction of the Criminal Law (Sexual Offences) Act 2017, there was a spike in incidents reported to Ugly Mugs. In the 2017/ 2018 period, 53% more crime and 78% more violent crime was reported³². This new high level of crime was sustained in the subsequent years since the introduction of the Criminal Law (Sexual Offences) Act 2017. It is important to note, that only 1% of sex workers who have reported a crime to Ugly Mugs identified that they would be or would be willing to also report to the Gardaí³³.

This spike in crime also correlates to the attacks and robberies targeted at Brazilian transgender sex workers, immediately following the introduction of the 2017 Act³⁴. Gardaí identified that the attacks

²⁶ N. Michael, The Irish Examiner, *Sex Workers to be surveyed on review of prostitution Laws*, July 2020

²⁷ PICUM (Platform for International Co-Operation of Undocumented Migrants), *Safeguarding the human rights and dignity of undocumented migrant sex workers*, September 2019

²⁸ HIV Ireland, *Report Potential impact of the Swedish model on rates of HIV/ AIDS among sex worker and their access to healthcare*, September 2015

²⁹ UNAIDS, *The Gap Report 2014: Sex Workers*, 2014

³⁰ Médecins du monde - Doctors of the World, *Harm Reduction, 'A public health approach based on human rights'*, July 2018

³¹ UNAIDS, *The Gap Report*, 2014

³² UglyMugs. (2020). Retrieved from: <https://uglymugs.ie>

³³ *ibid*

³⁴ N. Baker, The Irish Examiner, *'Sex workers told to take care as arrest made following violent attacks'*, July 2017

were carried out by the same group, who targeted transgender sex workers because they are believed to be less likely to make a criminal complaint or report to the Gardaí³⁵. This is in line with various reports which have identified that the law and how it is enforced, directly correlates to and shapes the violence that sex workers experience^{36 37}. Moreover, the laws intended to protect sex workers by ending demand have instead, created a context of risk and heightened their exposure to harm³⁸.

Anti-Trafficking

We note the Minister for Justice Helen McEntee stated that *"A key purpose for the 2017 Act was to provide additional protection to persons involved in prostitution, especially vulnerable persons and victims of human trafficking"*³⁹.

As stated above, due to the fear and threat of arrest from the Criminal Law (Sexual Offences) Act 2017, and the risk of deportation, sex workers' reluctance to report to the Gardaí extends to instances where they have witnessed exploitation or human trafficking⁴⁰. On the contrary, many organisations have identified sex workers as the best tool to combat trafficking⁴¹. Recognising sex workers are key in helping to identify human trafficking for sexual exploitation and improve protections in unregulated labour sectors⁴².

We highlight that the treatment of all sex work as human trafficking, and vice versa, is counterproductive to efforts to reduce Trafficking for Sexual Exploitation and Trafficking for Labour Exploitation. MRCI's identification of victims of human trafficking is based on the Delphi Indicators - a mechanism which was specially developed to review and assess human trafficking cases⁴³. MRCI is a national assessment centre for Trafficking for Labour exploitation and has assessed hundreds of cases for Trafficking for Labour Exploitation, identifying over 200 cases in sectors such as domestic work, cannabis production, restaurants, entertainment and agri-food. During labour trafficking assessments we have identified a number of instances of Trafficking for Sexual Exploitation which occurred in other jurisdictions and limited action, but points to high levels of vulnerability. This then forms part of our assessment, based on indicators of vulnerability, abuse, deception and coercion.

It is important to highlight that since the introduction of the Criminal Law (Sexual Offences) Act 2017, Ireland has been downgraded on the Trafficking in Person report published by the US Department of State, from tier one in 2017, to tier 2 through 2018 and 2019, to the watch list in 2020⁴⁴. The IHREC further identified that since the introduction of the relevant framework in 2013, there has been no conviction

³⁵ C. Gallagher, the Irish Times 'Dramatic rise' in attacks on sex workers since law change', September 2017

³⁶ T. Sanders, R. Cambell, 'Criminalization, protection and rights: Global tensions in the governance of commercial sex', 2014

³⁷ P. Ryan, K. McGarry, 'Sex worker lives under the law: A community engaged study of access to health and justice in Ireland' 2020

³⁸ Ibid

³⁹ N. Michael, The Irish Examiner, Sex Workers to be surveyed on review of prostitution Laws, July 2020

⁴⁰ UglyMugs. (2020). Retrieved from: <https://uglymugs.ie>

⁴¹ GAATW (Global Alliance Against Traffic in Women), 'Sex Workers Organising for Change', 2018

⁴² N. Yingwana, R. Walker, and A. Etchart, 'Sex Work, Migration, and Human Trafficking in South Africa: From polarised arguments to potential partnerships', 2019

⁴³ The Delphi Indicators were developed through a participatory process among anti-trafficking experts from the European Union who participated in a two-round survey. These can be used to assess the situation of a potential victim of trafficking with respect to each of the six main elements of the definition of trafficking in human beings, as found in the TIP Protocol. Primarily, the Delphi indicators look for vulnerability, abuse, exploitation, deception and coercion.

⁴⁴ United States of America Department of State, 'Trafficking in Person', June 2020

for trafficking for sexual or labour exploitation⁴⁵. This highlights that the introduction of the Criminal Law (Sexual Offences) Act 2017 has not only increased vulnerability for sex workers, but had little to no effect on reducing trafficking.

Social Change

It is important to acknowledge the intent behind the Criminal Law (Sexual Offences) Act 2017, was to ensure the safety of individuals who engage in sex work and tackle all forms of human trafficking prevalent in Ireland. Yet following the implementation, this new criminalisation framework has created a repressive environment in which increased stigmatisation, exploitation and violence and in which human rights abuses have thrived, leaving access to justice severely impacted.

When examining the Criminal Law (Sexual Offences) Act 2017, it is crucial to understand the broad socio-economic context of sex work and recognise that the motivators for engaging in sex work are intersectional and nuanced. The motivators for sex work and survival sex work lie beyond the demand for paid sex. Regressive immigration policies, discriminatory labour markets, low paid and precarious work, and unequal access to basic services such as education, healthcare, housing and social supports are all factors which impact on the choice involved in making a living⁴⁶.

MRCI asserts that the introduction of the Criminal Law (Sexual Offences) Act 2017 has disenfranchised one of Ireland's most vulnerable groups, increased stigma and fear, and impacted on the ability to collectively organise. In this review of the Act and in legislative change, it is vital to listen to and identify the needs of sex workers and in doing so, to ensure they have agency on the decisions that affect them.

If we are serious about making people's lives better, then state policies and laws need to address the underlying conditions which lead to vulnerability. This type of holistic response includes addressing poverty and social exclusion; ending discrimination in the labour markets, in social policies and social services; promoting and upholding labour rights; creating better immigration policy and legislation, including the regularisation of undocumented migrants; enabling access to decent housing and promoting equal educational opportunities.

Suffice to say that no one policy measure is sufficient. Using the Criminal Law (Sexual Offences) Act 2017 to eradicate sex work and protect workers has simply not come to pass. It is therefore incumbent on this review to have an honest and open discussion on its failings and to take bold steps to amend the legislation. We would recommend a bi-yearly review of this legislation to ensure that it is responsive to the aims and responsibilities contained within.

Ends

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⁴⁵ IHREC, *Ireland and the Convention on the Elimination of Racial Discrimination*, October 2019

⁴⁶ PICUM (Platform for International Co-Operation of Undocumented Migrants), *Safeguarding the human rights and dignity of undocumented migrant sex workers*, September 2019