

September 2020

Review of Part IV of the Criminal Law (Sexual Offences) Act 2017

Introduction

The National Women's Council

Established in 1973, the National Women's Council (NWC) is a feminist non-governmental organisation representing women and women's groups in Ireland. The NWC has 190-member organisations affiliated to it, representing an estimated 500,000 women. As the representative organisation of women in Ireland, our mission is to achieve women's equality, empowering women to work together in order to remove structural political, economic, cultural and affective inequalities. The vision of the NWC is of an Ireland where all women and men have equal power to shape society and their own lives.

Violence against women has always been one of the key priority areas in our work, recognising and highlighting that it is a cause and consequence of gender discrimination, and needs to be located and understood within a gender equality framework. Prostitution is one of the many forms of violence against women where women's rights are pervasively violated and it is the view of NWC that prostitution is incompatible with equality for women. NWC's 2020 Annual General Meeting overwhelmingly supported the motion "Reaffirming NWC's continuing commitment to advocate for laws and policies reducing the exploitation of prostitution and sex trafficking in Ireland and supporting calls for increased resources to support women who wish to exit prostitution".

Part IV of the Criminal Law (Sexual Offences) Act 2017 (hereafter Part IV) is an essential articulation of the Irish states' commitment to reducing levels of sexual violence and exploitation of women and girls and vindicating their rights to be safe and secure. This review of Part IV is of significant importance to the NWC membership, especially those who represent and advocate for victim-survivors of the highly profitable and exploitative sex trade.

NWC's expertise in informing the development of government policy and legislation has been widely recognised. We sit by invitation on the monitoring group for the National Strategy for Women and Girls 2016-2020. The national strategy acknowledges, in particular, the value our organisation provides 'by identifying the needs of [our] member organisations and their

members'. NWC are also a member of the Monitoring Committee of the Second National Strategy on Domestic Sexual and Gender Based Violence which is tasked with working to ensure the full implementation of the Istanbul Convention¹; including the review and monitoring the impact of significant legislative developments, such as the impact the introduction of the offence of coercive control has had on victims of domestic abuse; Second National Strategy to Prevent and Combat Human Trafficking in Ireland, and; Ireland's third National Action Plan on UNSCR 1325 - Women, Peace and Security

National Observatory on Violence Against Women

NWC chairs the National Observatory on Violence Against Women. The Observatory was established in 2002 and comprises 20-member organisations². The Observatory is an independent network of grassroots and national organisations that convene quarterly to monitor progress on violence against women in Ireland. Observatory members work on a broad range of violence against women (VAW) issues, from service providers such as Chrysalis Community Drug Project to representative bodies of women's groups operating in the community, such as the National Collective of Community based Women's Networks (NCCWN). Many members provide direct support to women experiencing violence in their communities, including through prostitution, providing the Observatory and NWC with an insight and evidence into the lived experiences of women.

The Irish Observatory is represented at the European Observatory on Violence against Women which is co-ordinated by the European Women's Lobby (EWL) and raises visibility of the phenomenon of male violence against women and monitors commitments at the local, regional, national and European level regarding violence against women as well as providing relevant data.

¹ The Council of Europe Convention on Preventing and Combatting Violence Against Women and Domestic Violence (the Istanbul Convention) which was recently ratified, is a significant, international legal instrument in combatting domestic and sexual violence. Its purpose is to protect women from all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence.

² The organisations in the Observatory are Women's Aid, Akidwa, Cork Sexual Violence Centre, Dublin Rape Crisis Centre, Galway Rape Crisis Centre, Immigrant Council of Ireland, National Women's Council of Ireland, Pavee Point Travellers Centre, Ruhama, Sonas, Haven Horizons, Longford Women's link, Aoibhneas, National Collective of Community-based Women's Networks (NCCWN), Consortium of Gender Based Violence Ireland, Ascend Domestic Abuse Service, Cairde, Action Aid, YWCA, Chrysalis Community Drug Project

NWC also established and chairs the National Advisory Committee supporting the Dept. of Higher Education's Framework *Safe, Respectful, Supportive and Positive – Ending Sexual Violence and Harassment in Irish Higher Education Institutions*.

Review Process

NWC welcomes the opportunity to contribute to the review of Part IV and, in particular, the focus in the Terms of Reference on the impact that Part IV has had on the most vulnerable in the sex trade – prostituted women and girls and people who sell sexual access. This recognition of the most vulnerable encapsulates the rationale for the introduction of Part IV and we welcome the focus being squarely on those who are victim-survivors of the sex trade. As confirmed by UCD Sexual Exploitation Research Programme's (SERP), forthcoming research, Ireland's indoor commercial sex trade is populated by largely vulnerable, often young, migrant women, including women trafficked for sexual exploitation, alongside a continued presence of smaller numbers of drug dependent and also very vulnerable Irish women on the streets.³

However, NWC is concerned that the review process is taking place in advance of any significant capacity to objectively determine its impact. Although there is a statutory requirement⁴ to report on the operation of Section 7A⁵, targeted Garda operations only began in April 2019. Therefore, section 7A has only been meaningfully operationalised for little over a year and a half. Undertaking a comprehensive review at this time is premature especially as this law is seeking to bring about a normative shift in understanding of the sex trade.

In addition the state has not progressed substantive public policy initiatives and funding for exit pathways for women and girls trapped in prostitution. Exit pathways are *integral* to Part IV meeting its intended aims. The absence of state supported exit pathways weakens completely the objective and purpose of Part IV. This lack of policy and investment capacity

³ 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 (SERP), UCD

⁴ As per S.27 of the 2017 Act.

⁵ 1993 Criminal Law (Sexual Offences) Act 1993 (as amended by the Criminal Law (Sexual Offences) Act 2017). Hereafter referred to as the 1993 Act and the 2007 Act respectively.

greatly constrains the Review of Part IV, most notably, as per the Terms of Reference: *in assessing the extent to which the objectives of the Act have been achieved*'.

With these caveats established, this submission will assess whether the objectives of the Part IV have been met. NWC will note other public policy and relevant social changes that have impacted upon stated objectives underpinning Part IV. The submission also considers whether and why the objectives have not been met and offers recommendations to ensure that they are in future. The impact of the enactment of Part IV on those who sell sexual access is also considered.

NWC further notes that the COVID-19 pandemic has exacerbated and compounded all forms of violence against women this, in turn, will have a long-lasting impact on society as a whole and will challenge the State⁶. In addition, the political choices that are made in response to the economic impact of the pandemic, particularly on those women and girls already in or at risk of poverty, disadvantage and social exclusion will have far reaching consequences that should be considered in this review. The state's current *legal* commitment to shifting the burden of criminality in this coercive and exploitative trade must be maintained and matched with policy commitments for the resources necessary to protect women and girls from any increased pressure and coercion through poverty or austerity.

Background

Part IV must be understood in a wide legal and social context to ensure the myriad of forces which shape the lives and experiences of predominantly women and girls are understood⁷. The sex trade is an explicitly gendered form of exploitation and gender-based violence. It is heavily gendered and migrant women make up an average of 84% of women in prostitution across 13 European countries.⁸ In the vast majority of cases the buyer is male, well-educated,

⁶ See Oireachtas Library and Research Service (2020) 'Domestic Violence and Covid-19 in Ireland', available at <https://data.oireachtas.ie/ie/oireachtas/libraryResearch/2020/2020-06-09_lrs-note-domestic-violence-and-covid-19-in-ireland_en.pdf>

⁷ SERP's forthcoming research highlights the vulnerabilities & risk factors including poverty, lone parenthood, struggles with gender identity, experiences of child sexual abuse and mental health issues, with some women first entering as abused children

⁸ United Nations Office on Drugs and Crime (UNODC) 2010. *The Globalisation of Crime: A Transnational Organised Crime Threat Assessment* Vienna: UNODC.

with medium to high income.⁹ Whilst men are also involved as sellers of sexual access, the vast majority of those prostituted in this sex trade are women, including trans women. This is an obvious and pertinent imbalance of power rooted in structural inequality and poverty. These women may find themselves in prostitution as a result of being coerced, compelled by extreme poverty, or lack of other means of financial survival, trafficked. NWC recognises that the inequality, disadvantage and poverty experienced by many women is a significant contributor to creating an enabling environment for predatory and exploitative individuals and groups. However, prostitution cannot be a de facto statutory answer to women and girl's poverty. The overwhelmingly gendered nature of the sex industry is coupled with high levels of violence which is endemic to it and has been long established by international research.¹⁰ SERP's forthcoming research confirms the unremitting nature of this violence in the Irish context.

This submission seeks to speak for those who do not have a voice in the 'sex work' lobby, a lobby primarily voiced by the minority of sex workers who can freely choose if and when they engage in prostitution and can also choose to speak openly about it. NWC and its member organisations represent the overwhelming majority of women who do not 'choose' to 'work' in prostitution, but rather are groomed, coerced, trafficked, or forced into it by personal circumstances and find themselves compelled, shamed, intimidated and socially excluded into silence. Migrant women make up between 80-90% of prostituted women in Ireland¹¹ and it is important to note that many migrant women in the sex trade are closely managed and frequently moved from brothel to brothel around Ireland. They have little interaction with any local community and limited opportunity to make contact with support services.

Silence is an established and common response to all forms of trauma. We do not require women who are victim-survivors of other forms of violence to speak about their experiences before a harm is recognised and responded to. Instead we collectively recognise that silence

⁹ Yonkova, N. & E. Keegan 2014. *Tackling demand for sexual services of trafficked women and girls*, Dublin: Immigrant Council of Ireland, Stop Traffick! EU Project.

¹⁰ 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

¹¹ O'Connor, M (2019), *The Sex Economy* (Agenda Publishing) p. 18

or an unwillingness to speak about traumatic events/experiences is a feature *of* trauma and requires us to act and speak in solidarity. The similarities that exist between victims of intimate partner abuse and victims of the sex trade are evident: the techniques of psychological and financial control used by abusive partners and pimps; homelessness; physical and psychological injuries; healthcare barriers, and; substance abuse.¹² These parallels have been acknowledged by scholars and specialist frontline services and are beginning to be recognised in laws that criminalise complex and sophisticated forms of gender-based abuses beyond the purely physical¹³. Although many women in Ireland and internationally have spoken about their experiences of sexual exploitation within the sex trade, they are increasingly silenced by a well-funded and well organised lobby protecting the enormous profits of the commercial sex trade¹⁴.

Summary of Key Recommendations

- The recommendations made in The Implementation of the Criminal Law (Sexual Offences) Act 2017, Part IV – **An Interim Review (2020)** to be actualised and implemented fully.
- The review should recommend the establishment of **state funded exit pathways** out of the sex trade and how these should be provided for in statute. Fully resourced services and supports for those who are in, or who wish to leave, prostitution is essential. The pathways should include *inter alia*: regularisation of immigration status; access to housing and social protection; education and training programmes; access to free healthcare including mental health supports, and; access to justice.

¹² Stark, C. Hodgson, C. (2004) Sister Oppressions, *Journal of Trauma Practice*, 2:3-4, pp.16-32

¹³ Women's Aid Review of Part IV Submission (2020); Criminal Justice (Victims of Crime) Act 2017; Domestic Abuse Act 2018; Criminal Law (Sexual Offences) Act 2017; Criminal Law (Human Trafficking) Act 2008 and the Criminal Law (Human Trafficking) (Amendment) Act 2013; O'Malley T (2020) Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences.

¹⁴ The Irish sex industry is highly lucrative and estimated to be valued in excess of €180 million a year, thus explaining why it is of such interest to many, see Clare Treacy: INMO submission on the future direction of prostitution in Ireland <https://www.inmo.ie/magazinearticle/printarticle/10204> ; It's estimated the sex trade is worth at least 7 billion a year worldwide, GBP750 million sterling a year in Britain. See Reynolds, Paul (2003) *Sex in the city: the prostitution racket in Ireland*. (Basingstoke: Pan Books);

- The review should recommend the need for **consistent interpretation and application of existing legislation** to mitigate against unintended consequences arising from inconsistent interpretation of as between, and within, different statutory provisions.
- The review should recommend **detailed guidelines relating** to Part IV be immediately drawn up. These should consider other statutory provisions that may have the potential to undermine the objective and purpose of Part IV. The guidelines should ensure that victim-survivors of the sex trade are not recriminalised by other statutory provisions. The guidelines should relate to community policing, investigation, prosecution and sentencing of crimes relating to the sex industry.
- The review should recommend that **education and training** be provided regularly to of all those who may come into contact with victim-survivors of the sex trade and prostitution; AGS, DPP, legal practitioners, health care professionals, and the Judiciary
- The review should recommend the need for a comprehensive, **systematic review** of how victim-survivors of the sex trade are treated within the criminal justice system. This examination should include exploring the provision of: specialised domestic, sexual and gender-based violence court systems; fast-tracking of gender-based violent crimes; anonymity provisions.
- The review should examine the need for a **National Rapporteur on Gender-Based Violence**.
- The review of Part IV should examine and incorporate **relevant learnings and recommendations outlined in the O'Malley report** and extend these to include victim-survivors of the sex trade. Of particular relevance: the provision of free legal advice; training for the judiciary and legal profession, and; the anonymity provisions being extended to include all victim-survivors of the sex trade.
- The review should recommend improved **data collection** by state bodies. Develop a common identifier system for all gender-based violent crime (including victims of the sex trade) for use by An Garda Síochána, Director of Public Prosecutions and the Courts Service that can feed into statistics gathered by the CSO. This identifier system should be capable of distinguishing all possible assault, harassment, false imprisonment, sexual violence, prostitution, trafficking, coercion offences that victims of the sex trade may experience.

- The review should consider the various ways that Part IV can be **better supported by other social policy reforms** in other government departments. Including *inter alia*: An awareness raising campaign that is needed to ensure that everyone is aware that the purchase of sexual access is incompatible with informed consent and that it is a criminal offence in Ireland; The Department of Education and the Department of Higher and Further Education mandatory policies on sexual consent education to include awareness of Part IV of the 2017 Act.

The Impact of Part IV on Arrest, Prosecution and Conviction Rates

As recognised by the High-Level Working Group in the Interim Review, 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’. This is a disappointingly low rate of enforcement of Part IV.

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’. This is a positive sign, 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. This indicates a significant increase in interest and growing awareness on the part of AGS of policing this area. Importantly for ensuring that the burden of criminality is falling in the correct place, 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.

An overarching aim of Part IV is to end demand for sexual access by criminalising the buyers. Given the short timeframe since enactment of Part IV, it is, as yet too early to say whether the high-profile operations undertaken by AGS have achieved the desired result of reducing demand. However, international research has established that operations that increase detection deter men from buying sexual access. 87% of sex buyers interviewed said that some form of public exposure, such as having their name or photo in a newspaper, would deter them from buying sex. 83% said jail time and 79% said a letter sent to their family would be a deterrent¹⁵. We can expect Irish buyers will be deterred from buying sex in line with their international counterparts. Operations undertaken by AGS, such as 'Quest', is welcomed and will, in time, act as a deterrent to those purchasing sexual access and will therefore reduce demand.

Recommendations:

- **AGS should increase the number of police operations to increase buyer detection.**
- **Nationwide research should be undertaken on the impact that a risk of detection has on Irish buyers of sexual access.**

Changes to the law can take a considerable amount of time to become imbedded in operational, institutional and social policy responses. This has always been the case for provisions that seek to challenge culturally engrained normative practices that are rooted in gender equality, such as those associated with the sex industry. Conviction rates alone will always be a crude measurement of a provisions 'success'. Sexual violence is widespread in Ireland¹⁶ and it took over a decade for the first successful conviction of marital rape in Ireland. The last comprehensive study on the subject of sexual violence, the 2002 Sexual Abuse and Violence in Ireland report, found that 42% of women had experienced some form of sexual abuse, but only 10% of sexual offences were reported. In 2009 – the last year for which we have figures – the conviction rate in rape cases in the Republic was 8%¹⁷

¹⁵ Durchslag, R. Goswami S. (2008), Deconstructing The Demand for Prostitution: Preliminary Insights From Interviews With Chicago Men Who Purchase Sex, available at <http://media.virbcdn.com/files/40/FileItem-149406-DeconstructingtheDemandForProstitution.pdf>

¹⁶ THE SAVI REPORT (2002) available at https://www.womensaid.ie/assets/files/pdf/savi_report.pdf

¹⁷ See Corr, M., O'Mahony, P., Lovett, J. & Kelly, L. (2009). Different systems, similar outcomes? Tracking attrition in reported rape cases in eleven Countries (country briefing: Ireland). London: Rape Crisis Network Ireland <https://www.rcni.ie/wp-content/uploads/Rape-and-Justice-in-Ireland.pdf>

This has not led to any suggestion that these laws be repealed due to shockingly low of prosecution and conviction rates. Instead, it is recognised that legal change is not enough to alter societal attitudes and behaviours. The state must make investment in education, awareness raising, and specialist supports to bring about the changed social conditions in which victim-survivors can feel safe reporting these crimes and our policing & judicial systems will respond with the due seriousness and attention they deserve.

Research has established that women in prostitution and those who sell sexual access suffer exceptionally high levels of violence and abuse¹⁸. The crimes are overwhelmingly at the hands of buyers and controllers, traffickers and pimps, and include multiple forms of sexual, physical and psychological violence¹⁹. Additionally, international research reveals rates of violence and mortality are much higher for this population compared to those not in prostitution. For

¹⁸ The risks for experiencing physical violence in prostitution are very high. An occupational survey noted that 99% of women in prostitution were victims of violence, with more frequent injuries “than workers in those occupations considered most dangerous, like mining, forestry and fire fighting. See Gibbs, Erin Van Brunschot, Rosalind A. Sydie, and Catherine Krull, ‘Images of Prostitution: The Prostitute and Print Media,’ (2000) 10 *Women and Criminal Justice* 4, pp. 47–72, In a study of Vancouver women in prostitution, 75% had suffered physical injuries from the violence in prostitution. These included stabbings and beatings, concussions and broken bones (broken jaws, ribs, collarbones, fingers, spinal injuries, and a fractured skull), cuts, and black eyes. Fifty percent of these women had head injuries resulting from violent assaults with, for example, baseball bats and crowbars. Many had their heads slammed against walls and against car dashboards. Sex buyers and pimps regularly subjected them to extreme violence when they refused to perform a specific sex act. Farley, Melissa, J. Lynne, and Ann Cotton, ‘Prostitution in Vancouver: Violence and the Colonization of First Nations Women,’ (2005) *Transcultural Psychiatry* 42, pp. 242–71, <http://prostitutionresearch.com/2005/06/04/prostitution-in-vancouver-violence-and-the-colonization-of-first-nations-women/>. There are a number of other associated health problems that arise for prostituted women and people selling sexual access which include but are not limited to: Impacts of prostitution’s violence include more severe health problems such as exhaustion, cervical cancer, sexually transmitted diseases (STDs) and human immunodeficiency virus (HIV), undiagnosed pelvic pain, complications from abortions, traumatic brain injury, headaches, high fevers, broken bones, cardiovascular symptoms, respiratory symptoms, gastrointestinal problems, and immune system compromise, see Farley, Melissa, ‘Risky Consumption. Risks of Prostitution: When the Person Is the Product’ (2017), *Journal of the Association of 3 Consumer Research* 1, <https://www.journals.uchicago.edu/doi/full/10.1086/695670?mobileUi=0&>

¹⁹ For example, 64% had been threatened with a weapon, 73% had been physically assaulted, and 57% had been raped (which, in this context, means unwanted sex for which they were not paid), see Farley M., Cotton A., Lynne J., Zumbeck S., Spiwak F., Reyes M.E., Alvarez D., Sezgin U. (2003), *Prostitution & Trafficking in Nine Countries: An Update on Violence and Post-Traumatic Stress Disorder*, *Journal of Trauma Practice* Vol 2, No 3/4, pp. 33-74. Another study in 2003 found that those selling sexual access experienced: Sexual assault (93%); Rape (75%); Forced or coerced sex with self-identified law enforcement (44%); Robbery (56%); Physical assault (82%); Threatened with weapons (83%) Dalla, R. L., Xia, Y., & Kennedy, H. (2003). You just give them what they want and pray they don’t kill you: Street-level sex workers’ reports victimization, personal resources, and coping strategies. *Violence Against Women*, 9, 1367-1394.

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'.²⁰

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.²¹

In the United Kingdom, a House of Commons report advised that, an estimated 152 prostituted women were killed between 1990 and 2015.²² Research produced by *Nordic Model Now*,²³ 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 the sixteen-year, 2002-2018. 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 at the hands of a sex buyer but was the result of a violent attack by an ex-partner.

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.'²⁴

²⁰ Ruhama (2019) *Annual Report 2018* P.29

²¹ Ruhama (2019) *Annual Report 2018* P.13

²² 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>.

²³ Available: <https://nordicmodelnow.org/facts-about-prostitution/fact-prostitution-is-inherently-violent/>

²⁴ 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

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.'²⁵

The violence and harm experienced by those in the sex trade continues to be a consistently inherent consequence of the trade in Ireland, as with everywhere else that the trade operates and NWC member organisations who work directly with victim-survivors of the sex trade have not reported any increase in violence or harm since the enactment of Part IV²⁶. The forthcoming SERP report notes that a surge in robberies and assaults in 2017 may have been associated with the then active inter-gang wars taking place in Dublin where women were seen as easy targets for violence and intimidation²⁷. There is an urgent need for an independent and objective nationwide research 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.

Member organisations have also consistently reported that many people, even those who are in the sex trade are not aware that the law has changed²⁸. If the objectives of the law are to be met there needs to be greater knowledge among everyone of the change to the law. This is especially so for prostituted women and those selling sexual access as they need to be assured that they are not criminalised. This will improve trust between those selling sexual access and the Gardai which is essential to protecting those in prostitution and in holding those who exploit or profit from the trade to account.

Recommendations:

- **A nationwide prevalence study of violence against people in prostitution to be undertaken.**

²⁵ 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

²⁶ Ruhama Annual Reports 2017 & 2018 available here <https://www.ruhama.ie/annual-reports/> ; Immigrant Council of Ireland Annual Reports 2017, 2018 & 2019 available <https://www.immigrantcouncil.ie/annual-reports>

²⁷ 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 (SERP), UCD

²⁸ Ruhama (2019) *Annual Report 2018*

- **AGS and other state bodies should collect disaggregated data so that cases that involve violence against prostituted women and people selling sexual access can be accurately tracked and assessed.**
- **Nationwide Awareness Campaigns should be resourced run continuously throughout the year.**

A Survivor-Centred Approach

The reality of prostitution in Ireland is starkly different to the picture presented by some of the most vocal advocates of legalisation/full decriminalisation of the sex industry. NWC recognises and respects the voices of all women and does not dispute the validity of any woman's account of her own experience. This does not alter the fact that the majority of women who are in the sex trade are coerced and exploited, making it harder, if not impossible for them to speak out. We do not ask of victim-survivors of other forms of violence and exploitation to speak openly and publicly of their experiences before we recognise their experience as valid. We must not revictimise and retraumatise women and girls through this expectation.

We do know the typical profile of women exploited in the sex trade in Ireland. It is estimated that there are around 1,000 women in indoor prostitution with over 800 women advertised on the internet with sexually explicit pictures and detailed lists of the sexual acts which can be bought; of these, 102 women identified as trafficked for sexual exploitation; 11% were girls at the time. 87% - 97% of those involved are migrant women aged between 18-58, with some evidence that girls as young as 16 years are involved; 51 different nationalities of women advertised; women are targeted by traffickers, pimps and prostitution ('escort') agencies from impoverished regions in Africa, Latin America and Central European countries. While a minority may operate independently, the Irish sex trade is for the most part highly organised with women being constantly moved from place to place. Prostitution agencies and pimps exercise different levels of payment, penalty, debt bondage, control and violence. Apartments and hotels are the main locations (19 of the 26 counties were named); 'call outs' to the home of the buyers are in frequent demand²⁹.

²⁹ Dr. Geoffrey Shannon, The Implementation of the Criminal Law (Sexual Offences) Act 2017, Part IV – An Interim Review (2020).

The Irish trade mirrors the international sex trade where the overwhelming majority of those selling sexual access are women who experience the intersection of multiple oppressions and/or vulnerabilities such as: gender, race, insecure migration status, youth, insecurity and poverty. We know that any one of these can lead to severe oppression and harm. Of particular relevance to the Review of Part IV are the accounts from women who remain in the sex trade in Ireland and how *they* perceive the change in law.

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".³⁰

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."³¹

Testimonials from women who have experienced the decriminalisation or legalisation of the sex trade offer yet more evidence of the harms they continue to endure.

Michelle Mara started in prostitution in New Zealand when the sex trade was illegal and she continued after it was fully decriminalised there in 2003,

³⁰ Ruhama (2019) *Annual Report 2018*. P.14

³¹ Pollak, S (30/07/2020) *Human Trafficking: I lived in fear...I was a broken person*, The Irish Times

“Since decriminalisation was introduced in 2003, the only illusion that’s left is the one women now tell themselves – that it’s real legitimate work. We know it’s not but that’s all that’s left to throw at the world. No woman in the sex trade will be able to say otherwise because you have to survive, and anyone who tries to say you are a victim is attacking the illusion. The vital illusion.

Like ‘battered woman syndrome.’ Protecting and legitimising the abuser – but now with the law saying so!”³²

Sandra Norak, was involved in prostitution in Germany for six years,

“But just as I was manipulated by his propaganda, I was also manipulated by the official line that prostitution is just a job, a service, and we shouldn’t be prudish, and we have to accept it.

Basically, the state says exactly the same thing as my trafficker did. So, the German state helped him to prostitute me. Our legislation helps traffickers push young women into prostitution, because by saying prostitution is a normal job, all the harm and violence becomes invisible”³³.

Organisations headed by people who have survived and escaped the sex industry, overwhelmingly support the criminalisation of the sex buyer, pimps and brothel-keepers and the decriminalisation of the individual who is prostituted. These include *Space International*, *GEMS*, *Survivors for Solutions*, *SexTrade 101*, and *Survivors for Solutions*, *Wahine Toa*, and *World without Exploitation*. These and countless other survivor organisations globally, advocate for the decriminalisation of the seller of sexual access and a recognition of prostitution as a sexually exploitative human rights violation.

³² <https://nordicmodelnow.org/testimonial/michelle-mara/>

³³ <https://nordicmodelnow.org/testimonial/sandra-norak/>

An Exit Strategy Model

A survivor centred approach to the ongoing implementation and success of this legislation requires the development of an Exit Strategy Model. This must include as a minimum

- Legal, psychological and medical support;
- Access to exit programmes;
- Emergency and social housing;
- Financial assistance;
- Regularised immigration status with the right to work;
- Access to training and to decent work

A study of statutory exit strategy models should be undertaken and an appropriate Irish model developed.

Recommendation:

- **Adequately resourced exit pathways out of the sex trade should be provided for in statute; access to housing and social protection; education and training programmes; access to free healthcare including mental health supports, and; access to justice**
- **There should be an incorporation of clear and rights-based pathways to legal immigration status as part of an exit strategy model³⁴**
- **A National Rapporteur on Gender-Based violence should be established**
- **Education and training should be provided regularly and on a mandatory basis to all those who may come into contact with victims of the sex trade and prostitution ; AGS, DPP, legal practitioners, health care professionals, and the Judiciary.**

Consistent Interpretation and Application of the Law

NWC and member organisations remain concerned by the continued criminalisation of prostituted women and people selling sexual access under other provisions of the 1993 Act. Although, the overall decrease in the numbers of prosecutions of brothel keeping offences is welcome, there appears to be disproportionate number of women, and migrant women who *prima facie* are not profiting from the exploitation of others yet are still being criminalised³⁵.

³⁴ Formalise a binding policy that ensures that undocumented individuals who are victims of or witnesses to a crime (this would include all prostituted women and all people selling sexual access) would not be investigated for immigration breaches.

³⁵Brothel Keeper.org <https://brothelkeepers.org/adina-c-and-elena-d/>

Offences that relate to brothel keeping under the 1993 Act serve to criminalise those who profit from the sexual exploitation of others. Whilst NWC supports the intention of these provisions, we are concerned that the law is being applied incorrectly in some cases. It is our view that brothel keeping laws should not be utilised to criminalise, pressurise or otherwise target prostituted women and those selling sexual access who may be operating together for their own safety and protection as the overarching aim of Part IV is to decriminalise those selling sexual access. Harmonious legislative interpretation requires the 1993 Act be read as a whole and that those who are legitimately recognised as vulnerable in Part IV are not recriminalised under other provisions of the same Act.

The complex position of some women being both victim-survivors and oppressor within the sex trade has been well documented³⁶. When society fails to provide clear exit pathways those who are exploited will find their own exit strategies, and this may involve the exploitation of others as a means of lessening their own exploitation. Recognising the role of the victim-perpetrator in the sex trade is undoubtably complex, yet necessary. It must be recognised that the ‘madams’ in the trade (those who themselves have entered as victims of trafficking or sellers of sexual access) are in the same exploitation trap that is controlled and operated by complex criminal networks. The criminal law and all guidelines should reflect this complex understanding of the victim-perpetrator status and should ensure that laws and policies focus on the true oppressors, exploiters and benefiter within the sex trade.

The understanding of the complexity of victims’ rights has, in recent times, evolved in Irish Jurisprudence through significant legislative reform. In many ways this represents the paradigm shift regarding victims’ rights that has occurred over the past 20 years. Examples of which include, the EU Victims Directive, Criminal Justice (Victims of Crime) Act 2017 and the Criminal Law (Domestic Violence) Act 2018 which have resulted in greater recognition of victims’ rights and, for the first time, victims of crime have become an ‘important stakeholder’

³⁶ Spaggiari, O (2020), Escape: the woman who brought her trafficker to justice, The Guardian, available at <https://www.theguardian.com/world/2020/aug/27/nigeria-italy-human-trafficking-sex-workers-exploitation-justice>
Witchalls, C, Sex trafficking’s tragic paradox: when victims become perpetrators, The Conversation, available at <https://theconversation.com/sex-traffickings-tragic-paradox-when-victims-become-perpetrators-115706>

in the criminal justice system. Part IV acknowledges, for the first time, the vulnerable position that the majority of prostituted women and those who sell sexual access occupy. This is a significant and important example of the law finally recognising the gendered victimisation that lies at the centre of the sex trade. These welcomed legislative reforms (including Part IV) have been significantly constrained by a lack of resources, an absence of political will, limited understanding of victims' needs and poor information provision³⁷.

Recommendations:

- **An Garda Síochána must formally adopt operational guidelines that prioritise the safety of prostituted women and those selling sexual access**
-including developing guidelines for raids and the seizure of property that minimise the negative impacts on women found in brothels
- **All guidelines that refer to victims of trafficking should be expanded to include prostituted women and those who sell sexual access. For example, The DPP Prosecutorial Guidelines (5th edition) should expand the example of trafficking to include prostituted women and those who sell sexual access as examples where the public interest is not served by commencement or continuation with a prosecution**
- **A comprehensive, systemic review of how victims of the sex trade are treated within the criminal justice system should be undertaken**

Consistent Interpretation and Application of Social Policy

Since the rise of #MeToo and other international and national movements sexual consent has been live in public debate and has ignited a broad and varied discussion about the nature of sexual consent in Ireland. What distinguishes the #MeToo movement is the widespread recognition that sexual coercion includes instances where a person's vulnerability is used against them in order to satisfy the sexual desires of another.

NWC recognises that there exists a continuum of agency and vulnerability along which there are a number of intersectional issues. If these are ignored a distorted view of prostitution as a process that is positively consented to is developed. This undermines completely the true meaning of consent, leaving vulnerable women, girls, men and trans people unsupported and unprotected by society, and free to be exploited with impunity. In particular, women of

³⁷ Kilcommins, S., Leahy, S., Walsh, K & Spain (2018), 'The Victim in the Irish Criminal Process', Manchester, Manchester University Press.

colour, marginalised women, poorer women, women from the global south, and women with disabilities have been most effected by the proposition that prostitution is a 'positive' choice. The highly profitable prostitution industry overwhelmingly relies on the economic, social and legal vulnerability of these groups to function.

The need for harmonious interpretation of legislation, is matched by the need for harmonious interpretation and application of emerging social policy. As Chair of the National Advisory Committee on Ending Sexual Harassment and Violence in third level education (ESHTE), NWC has been at the forefront of the 'consent' and 'bystander' debate in Ireland as driven by students and student unions. A broadly accepted definition of consent teaches third level students that it must be Ongoing, Mutual and Freely Given, OMFG³⁸. Prostituted sex does not meet these criteria; consent given in the context of sexual exploitation is by its very nature not wanted by at least one of the parties. Any decriminalisation of the exploiter in the dynamic of prostitution inherently undermines very new emergent public policy actions and behavioural norms working to ensure this crucial aspect of gender equality between women and men.

Recommendation:

- **All state funded sexual consent education should include modules addressing the exploitative dynamic of prostitution and raise awareness of the law around the criminalisation of the purchase of sex.**

Evidence-Based Support for the Equality Model

The evidence from Sweden shows that street-based prostitution has halved since the introduction of the law that decriminalised the selling of sex. Although, indoor prostitution has increased, the scale of this increase is less than in neighbouring countries such as Norway. There is no indication that there has been a greater increase in in-door prostitution than in these comparable countries. This indicates that the reform of Swedish law has not led to outdoor prostitution shifting indoors. It is possible to conclude that the decrease in street

³⁸ <https://www.nuigalway.ie/media/smartconsent/SMART-Consent-Report-2018-web-.pdf>

prostitution that took place in Sweden represents a real reduction in overall prostitution and that this reduction can be attributed to the criminalisation of the purchase of sex and it is reasonable to assume that prostitution would also have increased in Sweden if the law had not been reformed. Criminalisation can be said to have disrupted the sex trade in Sweden ³⁹.

The argument is often made that criminalising prostitution will drive it underground making it more dangerous. Prostitution can never really be 'underground' as it needs to exist in public in some form to connect buyers with prostituted women or people selling sexual access. The evidence does not support the assertion that criminalising the buying of prostituted sex pushes prostitution 'underground' but, instead, this phenomenon is better attributed to the increasingly online/digitalisation of society as a whole.

A study by Bristol University⁴⁰ in its review of the nature and prevalence of prostitution in England and Wales recognised that many individuals in prostitution were subject to acute exploitation and serious and sustained harm. Some participants in the research identified selling sex as a pleasurable and lucrative career choice, or as a therapeutic vocation. However, they found that a substantial proportion of individuals, mainly women and trans women are selling sex to get by financially, given different constraints in their lives around caring responsibilities; physical and mental health; lack of access to social security benefits and support services; workplace discrimination; or other reasons. Their situation is compounded by stigma and managing safety, and many find that the longer they sell sex, the harder it can be to leave completely. The authors recognise the structural economic and social context in which 'choices' are narrowed - or in the case of those coerced or forced into selling sex, removed. Due to methodological and ethical constraints the most vulnerable women, migrant sex workers, and British and non-British individuals who are/were forcibly coerced, who are/were trafficked, who are/were sexually exploited and/or who are traumatised in relation to their experience are underrepresented in the findings.

³⁹ Chancellor of Justice Anna Skarhed, 'Prohibition of the purchase of sexual services. An evaluation 1999-2008', (2010) Swedish Government Report, <https://www.government.se/articles/2011/03/evaluation-of-the-prohibition-of-the-purchase-of-sexual-services/>

⁴⁰ Professor Hester. Marianne, Dr Mulvihill. Natasha, Dr Matolcsi. Andrea, Dr Sanchez. Alba Lanau and Walker. Sarah-Jane, Nature and Prevalence of Prostitution and Sex Work (2019), Bristol University. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/842920/Prostitution_and_Sex_Work_Report.pdf

The Leeds project⁴¹ demonstrated that when prostitution is decriminalised, *in toto*, and despite substantial resources being made available to prostituted women and people selling sexual access they still faced significant harms, had to accept lower prices, sex without condoms and had to work longer hours. The ‘market’ values ‘new’ and ‘young’ women so prostituted women and women working in prostitution will, necessarily, be constantly replaced thus fuelling the expansion of the trade.

Recommendation:

- **Long term research must be funded to identify all the impacts of the Equality Model and to enhance the evidence base of the model**
- **There should be continued monitoring of the implementation of Part IV**

Conclusion

Part IV of the Criminal Law (Sexual Offences) Act 2017 and the Equality Model it has introduced to Ireland recognises prostitution and trafficking for sexual exploitation as a form of violence against women. Although NWC believes there has not been sufficient time since the operationalisation of Part IV to assess whether it has fully met its intended aims, it brings Ireland into alignment with progressive social and political values and supports our commitments under the Istanbul Convention and the EU Victim’s Right Directive. Part IV manifests a clear victim-survivor centred position on behalf the State. Based on the best available evidence and the extensive input from specialist frontline NGO experiences, NWC believes Part IV remains fundamental to the protection of women and girls from sexual exploitation and in holding perpetrators of this form of gender-based violence to account.

The recognition of prostituted women, people who sell sexual access, and victims of trafficking as victim-survivors is a first step. However, there is a need for consistent interpretation and application across legislative provisions that places them at the centre of

⁴¹ Every four weeks, [Safer Leeds](#) collates data about the zone into a report. According to the last three reports ([May](#), [June](#) and [July](#)), there have been no arrests of pimps in the zone – but police have served 30 warnings, 10 cautions and one ASBO on prostituted women, and they have arrested 23 buyers for not complying with the rules

those interpretations, with a concomitant need for education and training for all state actors to ensure this requirement can be met.

The long term success of the intention of Part IV requires the development of an Exit Strategy Model with sufficient resources and the provision of a supportive environment where alternatives exist. Given the overwhelming representation of migrant women in prostitution in Ireland, immigration supports must be a central part of a comprehensive exit strategy. This includes the need for awareness campaigns to highlight the decriminalisation of sellers of sex and the criminalisation of purchasers.

Awareness raising, education and a commitment to resourcing cultural change initiatives in education systems highlighting the importance of human and sexual relations based on consent, mutuality and respect will significantly contribute to ending the enabling environment of gender inequality that underpins the violence against women and girls that is at the heart of prostitution.

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