

**Submission to Joint Oireachtas
Committee on Justice, Defence
and Equality:
'Review of Legislation on
Prostitution'**



(i) Introduction

Nasc, the Irish Immigrant Support Centre, is a non-governmental organisation working for an integrated society based on the principles of human rights, social justice and equality. Nasc (which is the Irish word for link) works to link migrants to their rights through protecting human rights, promoting integration and campaigning for change. Nasc was founded in 2000 in response to the rapid rise in the number of asylum seekers and migrant workers moving to the city of Cork. It is the only NGO offering legal information and advocacy services to immigrants in Ireland's second city. Nasc's legal team assist some 1,000 immigrants annually in navigating Ireland's protection, immigration and naturalisation systems. We also assist migrants and ethnic-minority Irish people who encounter community-based and institutional racism and discrimination.

Nasc welcomes the publication of the 'Discussion Document on Future Direction of Prostitution Legislation', and further welcomes the opportunity for organisations and individuals to make submissions and have an impact on the development of any future legislation. Nasc is a member of the Turn Off the Red Light Campaign and supports their call to criminalise the purchase of sex. The information we present in this submission is based on our experiences working with migrants, in particular cases where migrant women and children have been trafficked into Ireland for sexual exploitation. We are especially interested in how prostitution legislation will impact and affect victims of trafficking and sexual exploitation and address their long term needs for support and protection.

(ii) Information

As a migrant NGO, we focus our factual information on the situation of migrants in relation to trafficking, or more specifically, trafficking for sexual exploitation, as it relates to the review of

prostitution legislation.¹ Migration has had a significant impact on the sex industry globally and in Ireland and the existing legislation does not reflect this global reality. Migration and sexual exploitation are structurally linked, and woman and children bear the brunt of this violence worldwide. Numerous studies have shown that human trafficking for the purposes of sexual exploitation is a means of supplying the sex industry, as up to 80% of people trafficked worldwide are “destined for the sex services market.”² In Ireland, between 83-97% of people engaging in prostitution are thought to be migrant women and children.³ As Kelleher et al. note, ‘the trafficking of women into the sex industry and the recruitment and exploitation of migrant women into prostitution are intertwined and need to be understood in the context of global labour migration.’⁴

At Nasc, we have provided some supports to victims and suspected victims of trafficking and sexual exploitation. We also have extensive anecdotal evidence of the relationship between trafficking and sexual exploitation among migrant women and children in Ireland, particularly in Cork. From this work, we are well aware of the limitations of the current legislation on prostitution and trafficking in combating trafficking and sexual exploitation and in providing the necessary supports and protections for victims. Depending on their cultural and ethnic backgrounds and their previous experiences, migrant women and children (both trafficked and non-trafficked) can be particularly vulnerable to poverty, social exclusion and sexual exploitation. Victims of trafficking and sexual exploitation often do not know where to seek support, are fearful of disclosing their identities or situations, and in many cases go underground rather than seek out help from the authorities or support services. We believe the current conditions are not facilitating or promoting opportunities for identification and disclosure and thus extremely vulnerable women and children are not receiving the appropriate protection and support. Any changes to legislation must take these most vulnerable women and children into account and prioritise their needs, health and well-being.

Criminalisation of the Purchase of Sex

It is the buyer of sex who fuels the profits of traffickers and perpetuates the exploitation of women and girls. We believe that the criminalisation of the purchase of sex will act as a deterrent to those who purchase sex. Surveys of men who pay for sex confirm that the

¹ When referring to victims of trafficking, we include those who fall under the ‘Palermo Protocol’ definition of human trafficking as well as those who are smuggled or recruited under false or deceptive pretences that end up working in the sex industry. See Kelleher et al., *Globalisation, Sex Trafficking and Prostitution: The Experience of Migrant Women in Ireland* (2009), available at: http://www.immigrantcouncil.ie/images/stories/Trafficking_Report_FULL_LENGTH_FINAL.pdf.

² United Nations Economic Commission for Europe, *Economic Roots of Trafficking in the UNECE Region* (2004), available at: http://www.unece.org/press/pr2004/04gen_n03e.htm

³ Kelleher et al., 2009

⁴ Kelleher et al., 2009, p. 12

greatest deterrent to buying sex is criminal sanction and/or risk of exposure.⁵ Criminalisation will thus bring about a reduction in demand, which will lead to a decrease in the numbers of women and girls trafficked for prostitution. In Sweden, where the purchase of sex has been criminalised, studies have shown a significant reduction in trafficking and prostitution.⁶ The success of the law in Sweden has resulted in the introduction of similar legislation in Norway and Iceland, and the criminalisation of the purchase of sex is now also being considered in Northern Ireland, Scotland and other EU regions.

Research from Sweden has shown that the criminalisation of the purchase of sex will also have an impact on organised crime. The sex industry in Ireland is inextricably linked to organised crime – trafficking alone is one of the most lucrative international criminal enterprises worldwide. According to Kelleher et al., the demand from those who purchase sex, which fuels the trafficking of women and girls for sexual exploitation, profits an industry worth approximately €180 million a year in Ireland.⁷ Recent televised documentaries on RTÉ and TV3, and the well-publicised Carroll case made the connections between prostitution, trafficking and organised crime abundantly clear.⁸ The 2012 Trafficking in Persons Report, produced by the US Department of State, describes Ireland as a destination, source, and transit country for women, men and children subjected to sex trafficking.⁹ In contrast, the National Criminal Police in Sweden believe that the criminalisation of the purchase of sex has acted as a significant barrier to traffickers, and Sweden is now described as a ‘bad market for trafficking’.¹⁰ Thus, criminalising the purchase of sex will diminish the demand, lower rates of trafficking and reduce related criminal activities.

Further, legislation not only functions as a direct deterrent, but it can be an effective way to influence behaviours and norms. Since Sweden criminalised the purchase of sex and

⁵ Farley, Bindel, Golding, *Men Who Buy Sex: Who They Buy and What They Know* (2009), available at: <http://i1.cmsfiles.com/eaves/2012/04/MenWhoBuySex-89396b.pdf>; Macleod et al., *Challenging Men’s Demand for Prostitution in Scotland* (2008),

http://whiteribbonscotland.files.wordpress.com/2008/04/challenging_mens_demand.pdf

⁶ Ekberg, ‘The Swedish law that prohibits the purchase of sexual services: Best practices for prevention of prostitution and trafficking in human beings’ (2004) 10 *Violence Against Women* 1194; Swedish Ministry of Justice, *Evaluation of the Ban on Purchase of Sexual Services* (English Summary) (2010), available at:

<http://www.sweden.gov.se/sb/d/13358/a/149231>.

⁷ Kelleher et al. 2009

⁸ *Profiting from Prostitution* (RTÉ, 2012), *Ireland’s Vice Girls* (TV3, 2012); Brady and Harding, ‘Jail for couple who ran €70,000-a-week ring of 35 brothels’ (5 February 2010) *Irish Independent*, available at: <http://www.independent.ie/national-news/courts/jail-for-couple-who-ran-70000aweek-ring-of-35-brothels-2049569.html>.

⁹ US Department of State, *Trafficking in Persons Report* (2012), available at:

<http://www.state.gov/j/tip/rls/tiprpt/2012/>

¹⁰ Rogers, ‘Targeting Users Proves Successful’ (5 January 2011) *Irish Examiner*, available at:

<http://www.irishexaminer.com/ireland/targeting-users-proves-successful-141176.html>

decriminalised prostitutes in 1999, the majority of Swedish society has come to view prostitution as exploitative and incompatible with equality.¹¹ Changing legislation can impact societal attitudes and treatment towards women – the criminalisation of the purchase of sex would show that Irish society as a whole rejects the idea that is acceptable for women to be bought, sold and traded as commodities.

Decriminalisation of Prostitutes

To work effectively at targeting demand, the criminalisation of the purchase of sex must occur in connection with the decriminalisation of prostitutes. This includes the laws currently in place in Ireland under the 1993 Criminal Law (Sexual Offences) Act, which prohibits soliciting or loitering for the purposes of prostitution, living on the earnings of prostitution, and brothel keeping. Bindel and Kelly report that this law is currently being used to target prostitutes and not their clients.¹² Further, they suggest this tendency to criminalise prostitutes rather than the buyers under the current legislation has had a negative impact on women's willingness to approach the Gardaí and report abuse or other illegal activity. Deflecting policing away from prostitutes and towards buyers will potentially open up avenues for victims of trafficking and sexual exploitation to communicate with the Gardaí and access much-needed support services.

Decriminalisation as it relates specifically to migrant women is especially important, as migrant women are particularly vulnerable to incarceration based on a variety of factors such as forced involvement in criminal activities (such as prostitution) after being trafficked, fraud in relation to the immigration process, working without a proper work permit, and other factors. A recent study from the UK has shown that 56% of the migrant women in prison involved in the study (n: 58 out of 103) had been trafficked, and 20 of those women (19%) had been forced to work in prostitution.¹³ The study further noted that very few of the women, who according to the researchers had all of the key indicators of having been trafficked, had been identified as trafficked by the criminal justice system. This represents a significant failure on the part of the authorities to provide the appropriate response to trafficking. How many trafficked women and children are slipping through the cracks of the criminal justice and immigration systems in Ireland and not receiving the appropriate supports?

¹¹ Claude and the Swedish Institute, *Targeting the Sex Buyer: The Swedish Example: Stopping prostitution and trafficking where it all begins* (2010), available at: <http://www.turnofftheredlight.ie/wp-content/uploads/2011/02/Targeting-the-sex-buyer.pdf>.

¹² Bindel and Kelly, 'A Critical Examination of Responses to Prostitution in Four Countries: Victoria, Australia; Ireland; the Netherlands; and Sweden' (2003), available at: <http://www.glasgow.gov.uk/nr/rdonlyres/c19e010b-1a4f-4918-97bd-f96af7d7f150/0/mainreport.pdf>.

¹³ Hales and Gelsthorpe, *The criminalisation of migrant women* (2012), available at: http://www.crim.cam.ac.uk/people/academic_research/loraine_gelsthorpe/criminalreport29july12.pdf.

The Criminal Justice (Human Trafficking) Act

The introduction of the Criminal Justice (Human Trafficking) Act 2008 made it an offence to purchase sex from an indentified victim of trafficking. However, buyers of sex can only be held accountable when they knowingly purchase sex from a trafficked person. According to Section 5.4 of the Criminal Justice (Human Trafficking) Act, 2008, the buyer cannot be held accountable if they claim they were not aware they were purchasing sex from a person who qualified as a victim of human trafficking. This effectively lets the purchaser off the hook, and there have been no prosecutions to date for purchasing sex from a victim of trafficking.

Studies have shown that men are aware of the potentially coerced/trafficked status of the women from whom they buy sex, but this does not affect the men's decision to purchase sex from them.¹⁴ It is clear therefore that any criminalisation of the purchase of sex would also require reforms to the current legislation on trafficking. We suggest modelling it on the UK's Crime and Policing Act, 2009, which makes the purchase of sex from a 'controlled' individual illegal, even if the purchaser does not know the individual was 'controlled'.¹⁵ This would make Ireland's trafficking legislation more in line with international instruments in the tackling of human trafficking, especially for the purposes of prostitution.

Children

A 2009 report published by the Immigrant Council of Ireland looking at sex trafficking among migrant women found that 11 of the 102 studied cases involved girls under the age of 18.¹⁶ The Anti-Human Trafficking Unit's annual statistics show that out of 56 victims of sex trafficking identified in 2010, 15 were minors, and 8 out of 37 in 2011.¹⁷ As noted in the Department of Justice and Equality's 'Discussion Document', a number of international legal instruments address child prostitution.¹⁸ Any legislation on prostitution should include specific measures addressing child prostitution, child trafficking and child protection.

Trafficking a Human Rights Issue

Any changes relating to the criminalisation of prostitution must have a victim-centred approach that treats trafficking as a human rights issue, not as an immigration issue. This means focusing on the victim of trafficking and their complex needs in the aftermath of trafficking and exploitation, as opposed to focusing on the person's immigration status. According to Sarah

¹⁴ Farley, Bindel, Golding, 2009

¹⁵ According to Part 2, Sections 13 & 14 of the Act. See also Department of Justice and Equality, *Discussion Document on Future Direction of Prostitution Legislation*, p. 13

¹⁶ Kelleher et al., 2009

¹⁷ Anti-Human Trafficking Unit Annual Reports, 2010 and 2011, available at:

<http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/whatisbeingdone-datastrategy-en>.

¹⁸ Discussion Document, p. 24

Benson, the CEO of Ruhama, 'the over-reliance on the immigration system to detect victims of trafficking and the fact that most victims are forced to make their own escape from traffickers if they are to access help, results in a relatively low number of victims receiving assistance in Ireland.'¹⁹

Victims of trafficking require support in the aftermath of their experience. Victims experience profound physical and psychological trauma as a result of being trafficked, especially those who are put to work in the sex industry. Sexual exploitation can have a devastating impact on the physical and mental well-being of the victim.²⁰ Practicing prostitution can result in chronic beatings, rape, sexual assault and degrading treatment. It can cause infertility, unwanted pregnancy, STIs (sexually transmitted infections) and other gynaecological and health problems, including an increased risk of HIV. It can also erode self-esteem, self-confidence, cause depression, feelings of loneliness and isolation, and symptoms of post-traumatic stress disorder. Further, victims of trafficking are often originating from situations of extreme hardship caused or exacerbated by such factors as war, discrimination, poverty, natural disaster and internal conflicts.²¹ Types of necessary support for victims of trafficking and sexual exploitation include: medical help; psychological counselling; legal assistance; shelter and everyday care; education, training and work opportunities; and assistance with residency and/or repatriation.

Despite the positive efforts of the Anti-Human Trafficking Unit and NGOs working in this area, only very few victims of trafficking are identified and supported each year, which means that only these few individuals are receiving support and assistance in their recovery. And when victims of trafficking are identified by the Gardaí, these victims are often forced to cooperate in criminal investigations under risk of criminal sanction or deportation. Victims should not have support and assistance, or even long-term residency, contingent on cooperation with the authorities in criminal investigations. Victims of trafficking should not be detained or imprisoned as a result of immigration violations or criminal activities relating to prostitution – they should be identified as being trafficked and given the appropriate protections and supports. Repatriation should not be the default option for victims of trafficking; the opportunity to gain residency status in Ireland should always be considered, as it has been shown that victims of trafficking who are repatriated run a high risk of being re-trafficked.²²

¹⁹ Baker, 'Asylum System 'psychologically damaging' to children' (22 August 2012) *Irish Examiner*.

²⁰ Kelleher et al., 2009

²¹ Lehti and Aromaa, 'Trafficking for Sexual Exploitation' (2006) 34 *Crime and Justice* 133.

²² Jobé, *The Causes and Consequences of Re-trafficking: Evidence from the IOM Human Trafficking Database* (2010), available at: http://publications.iom.int/bookstore/free/causes_of_retrafficking.pdf.

Further to treating trafficking as a human rights issue, any legislative and other changes must have a victim-centred approach, and must incorporate ongoing consultation with victims of sexual exploitation and trafficking, as well as sex workers (i.e. individuals who sell sexual services as consenting adults who do not define themselves as trafficked, exploited or otherwise controlled). Taking a victim-centred approach and engaging in consultation in the institution and evaluation of any legislation and support services could function along the lines the New Zealand government's relationship with the New Zealand Prostitutes Collective,²³ but expanding that model to include a specific engagement with victims of sexual exploitation and trafficking. We must shift the focus away from dealing with victims of trafficking and sexual exploitation as issues for immigration or criminal control, and towards comprehensive support and protections that take into account victims' human rights and well-being.

(iii) Recommendations

Based on the factual information provided above, Nasc recommends the following in relation to a review of the prostitution legislation:

- Criminalisation of the purchase of all forms of sexual services along the lines of the 'Swedish Model', with the corresponding removal of any legislation which targets the prostitute or victim of trafficking/sexual exploitation
- Any changes relating to the criminalisation of prostitution must be victim-centred and provide any other necessary reforms to trafficking legislation
- Trafficking must be dealt with as a human rights issue, not as an immigration issue, particularly in relation to issues such as residency, repatriation and cooperation in criminal investigations
- Comprehensive and holistic support and protection for victims of sexual exploitation and trafficking
- Ongoing consultation directly with victims of sexual exploitation, trafficking and sex workers

The criminalisation of the purchase of sex is not a perfect response to the problem of human trafficking, but evidence from Sweden shows that it is certainly a good start. However it must be implemented in the context of other strategies to target trafficking, such as concerted international efforts to arrest and prosecute traffickers. Other necessary factors include those which we have discussed above, such as clarifying or amending the existing trafficking and

²³ See Discussion Document, p. 21

prostitution legislation, treating trafficking as a human rights issue and providing comprehensive support and protection for victims of trafficking and sexual exploitation.

Perhaps the greatest success of the criminalisation of the purchase of sex in Sweden to date has been the apparent shift in public attitudes around prostitution and trafficking. Prostitution and trafficking are not inevitable, unchangeable aspects of our society. We can and must make changes in legislation, support services, and attitudes with regards to the inhuman and degrading treatment of women and girls that comes from turning a blind eye to the purchase of women's bodies. Any changes in legislation must be part of a holistic, victim-centred approach that provides support and protection for victims of sexual exploitation, especially victims who have been trafficked into this country illegally and who have likely experienced tremendous physical, mental and emotional suffering.

(iv) Further Information

For further information or clarification of any of the above, please do not hesitate to contact Jennifer DeWan, Communications and Campaigns Officer, Nasc, the Irish Immigrant Support Centre at: (021) 4317411 or jennifer@nascireland.org.