

**Written Submission to Joint Oireachtas Committee on
Justice, Defence and Equality**

Review of Legislation on Prostitution

**Submitted by: Dublin AIDS Alliance
27th July 2012**

1.0 Introduction

Dublin AIDS Alliance (DAA) works to improve conditions for people living with HIV and AIDS, their families and caregivers, while actively promoting HIV prevention and sexual health awareness in the general population. Services include HIV prevention, sexual health and drug awareness education and training, outreach services, advocacy and mediation, one-to-one support and counselling. DAA operates under an ethos of equality and is committed to making a positive contribution towards a humane and just society. Our ethos reflects a harm reduction model, which emphasises practical rather than idealised goals.

DAA consistently engages in policy development at national, regional and European level, and is represented on the National AIDS Strategy Committee (NASC), the Education and Prevention sub-committee of NASC, and the Education and Prevention Working Group developing Ireland's first National Sexual Health Strategy. We work in partnership with the North Inner City Drugs Task Force (NICDTF) in the delivery of services to at-risk population groups in Dublin's north inner city; with the All-Ireland Gay Health Network (GHN) in the delivery of HIV prevention and sexual health awareness aimed at men who have sex with men; and with the Sex Workers Alliance Ireland (SWAI) to promote the health and safety of sex workers, enabling access to health and social care services.

2.0 HIV in Ireland

The Health Protection Surveillance Centre (HPSC) is responsible for the collation and analysis of data on HIV in Ireland and the latest report issued in May 2012¹ shows that there is a cumulative total of 6,287 people diagnosed with HIV in Ireland since the early 1980's. 320 people were newly diagnosed with HIV in 2011 (235 males and 85 females). The highest proportion of new diagnoses in 2011 (42.5%) were among men who have sex with men (MSM). Heterosexual contact accounted for 34% of new diagnoses. Among the heterosexual cases, 43% were among individuals originating from countries with generalised epidemics, 11% had a high-risk partner or a partner known to be HIV positive and 7% had a partner originating from a country with a generalised epidemic. 5% of new diagnoses were among Injecting Drug Users (IDUs).

The presence of other Sexually Transmitted Infections (STIs) makes a person more vulnerable to HIV infection. The latest data from the HPSC² reports that there were 12,162 notifications of STIs in Ireland in 2010, 56.5% among men and 42.3% among women. This represents a 261% increase in STI notification in a 15-year period (3,365 in 1995 rising to 12,162 in 2010).

¹ HIV in Ireland, 2011 Report, Health Protection Surveillance Centre, May 2012

² Sexually Transmitted Infections in Ireland, 2010, Health Protection Surveillance Centre, May 2012

3.0 Sex Work in Ireland

Currently, there are no reliable estimates on the number of sex workers in Ireland. A study published by the Immigrant Council of Ireland in 2009³, estimated that there is a minimum of 1,000 women involved in indoor sex work in Ireland at any one time. The findings of this study show that some women operate independently although the proportion is not known. This estimate is exclusive of other types of sex work (e.g. on the street) and exclusive also of male and transgender sex workers.

The National Advisory Committee on Drugs (NACD) published research in 2009 on 'Drug Use, Sex Work and the Risk Environment in Dublin', as recommended by the National Drugs Strategy. The key findings of this report show that drug-using sex workers are exposed to multiple risks and harms in their living and working lives. Of the 35 drug-using sex workers (31 female, and 4 male) involved in the study, 78% (n=26) were Hepatitis C (HCV) positive, and 21% were living with HIV (n=7). Five of the participants were co-infected with HIV/HCV. While levels of reported contact with the health service were at 64%, only one of the women and none of the men who self-reported HCV infection were undergoing treatment, and only three of the women who self-reported a positive HIV status were receiving treatment. Barriers are noted in the study that can influence treatment considerations including homelessness and issues related to adherence to treatment regime, lack of information and mistrust of the medical community, and the risk of re-infection. Participants also spoke about the associated stigma of living with HIV.

Nationally, sex workers are identified as a priority population group for targeted HIV and STI education and prevention efforts. This is published in the current Department of Health Strategy on the prevention of HIV and AIDS in Ireland⁴ and includes a policy recommendation that "A review of the current legislation governing prostitution should be undertaken to ensure that access to health and social services is not impeded".

The study published by the Immigrant Council of Ireland also recommends the provision of support and the development of a protective environment for disclosure and identification. It states "All women in prostitution, regardless of whether or not they were trafficked, should be entitled to basic services where their physical and mental health needs can be addressed."⁵

Sex workers are already a marginalised group making it difficult for social and health services to reach them. The use of modern technology such as mobile phones and the internet has exacerbated this difficulty, with many sex workers now working indoors. As part of this public consultation process, we have an opportunity to ensure that the legal and policy framework encourages universal access to HIV (and other health) services for sex workers, and does not create additional barriers for sex workers in accessing services.

³ Globalisation, Sex Trafficking and Prostitution: The Experiences of Migrant Women in Ireland (Kelleher et al 2009)

⁴ HIV and AIDS Education and Prevention Plan 2008-2012, National AIDS Strategy Committee, Department of Health

⁵ Globalisation, Sex Trafficking and Prostitution: The Experiences of Migrant Women in Ireland (Kelleher et al 2009), p.25.

4.0 International Best Practice and Policy

In 2009 the Executive Director of UNAIDS constituted an Advisory Group to provide advice and guidance to UNAIDS on matters related to HIV and sex work, while paying particular attention to the human rights of female, male, and transgender sex workers and the goal of universal access to HIV prevention, treatment, care and support for sex workers.

The Report of the UNAIDS Advisory Group on HIV and Sex Work, published in 2011, recommends that States remove criminal penalties for the purchase and sale of sex to establish legal and policy environments conducive to universal access to HIV services for sex workers.

In relation to the 'Swedish Model', it states that "the approach of criminalising the client has been shown to backfire on sex workers." It also expresses the view that "in general, demonising and marginalising clients are approaches that create major barriers to effective HIV programming with sex workers." The report goes on to say that "these approaches are often adopted with the aim of reducing sex work and also trafficking, but they have not been shown to be effective in achieving these aims", and "should be avoided, from both a public health and a human rights perspective."

The report recommendations are in line with UN declarations and strategies as well as the International Guidelines on HIV/AIDS and Human Rights. As the international guidelines note, states have a responsibility to ensure that criminal law is reviewed with the aim of removing criminal sanctions on sex work and ensuring that any non-criminal regulations support safer sex in sex work and ready access of sex workers to comprehensive HIV services.⁶

5.0 Stigma and Discrimination

The Report of the UNAIDS Advisory Group on HIV and Sex Work notes that "Stigma and discrimination within society results in repressive laws, policies and practices against sex work." Sex work is highly stigmatised in many societies and most sex workers face some degree of stigma and discrimination. Male and transgender sex workers may face added stigma and discrimination. For sex workers living with HIV, the stigma surrounding HIV is compounded by the stigma associated with sex work, which often further diminishes their access to essential HIV services.

Stigma and discrimination are social drivers of the HIV pandemic and to promote such, even inadvertently, is counter to UNAIDS recommendations in HIV and AIDS programming. International priority actions for HIV prevention are cited in the UNAIDS Policy Position Paper 2005⁷, which includes ensuring that human rights are promoted, protected and respected, and that measures are taken to eliminate discrimination and combat stigma; and reviewing and reforming legal frameworks to remove barriers to effective, evidence-based HIV prevention, combat stigma and discrimination, and protect the rights of people living with HIV or vulnerable or at risk to HIV.

In addition, the UN Political Declaration on HIV/AIDS 2006 commits governments to "intensify efforts to enact, strengthen or enforce, as appropriate, legislation, regulations and other measures to eliminate all forms of discrimination against people living with HIV and

⁶ OHCHR/UNAIDS, International Guidelines on HIV/AIDS and Human Rights, 2006.

⁷ UNAIDS (2005) Policy Position Paper: Intensifying HIV Prevention. Geneva: UNAIDS.

members of vulnerable groups". Factors that commonly contribute to vulnerability of HIV infection include gender inequality, discrimination and social exclusion⁸.

Combating stigma and discrimination and removing barriers to accessing services should be central to any reform in legislation on prostitution in Ireland.

6.0 Sex Work and Trafficking

The Report of the UNAIDS Advisory Group on HIV and Sex Work 2011 expresses concerns about the impact that failing to clearly distinguish between sex work and trafficking has on sex workers. It states that "The frequent failure of policy-makers, religious leaders and society to distinguish sex work from human trafficking has sometimes led to involuntary displacement, harassment or detention of sex workers. Violence against sex workers is too often committed with impunity by state and civilian actors, exacerbating sex workers' HIV vulnerability." This was also noted in a recent statement by the Minister for Justice, Alan Shatter, T.D.⁹.

There are no confirmed figures for the number of people trafficked into Ireland for sexual exploitation. According to the 2011 Annual Report of Trafficking in Human Beings, compiled by the Department of Justice, there were 39 alleged victims of human trafficking for sexual exploitation – two were victims of both labour and sexual exploitation. Of these, 35 were female, four were male, and eight were minors.

In May 2012, a joint information gathering operation by the Gardai and PSNI revealed that all the young women who were detained or questioned self-reported working in the sex trade voluntarily. In a related Sunday Independent article 'Gardai disagreed with claims by Catholic and feminist groups that there are high levels of human trafficking involved in Ireland's sex trade. A senior source said that while there had been several prosecutions for "brothel keeping" in both the Republic and Northern Ireland, almost every case concerned young women who were working as prostitutes themselves'.¹⁰

However, claims from other campaigners, such as the Turn Off the Red Light Campaign, that criminalising the purchase of sex will "end prostitution in Ireland now"¹¹ and that "Very few women choose to willingly engage in prostitution"¹² are misleading and misrepresentative of sex workers in Ireland. Disingenuous reporting that ending sex trafficking in Ireland will end prostitution disregards the difference between the two.

For the purpose of any debate on, or review of, legislation on prostitution, there is a need to clearly distinguish between human trafficking for sexual exploitation, and those who choose to become involved in sex work. The commercial sexual exploitation of children or adults must be clearly separated from individuals who freely choose to engage in sex work and those who enter into sex work as a result of conditions that do not involve direct coercion and/or deceit by another; such conditions may include poverty, gender inequality, indebtedness, lack of employment opportunities, and dependent drug use. These issues should be dealt with through national policies and strategies such as the National Drugs

⁸ IPPF, UNFPA, Young Positives and Global Coalition on Women and AIDS (2007).

⁹ Statement by the Minister for Justice, Equality and Defence, Alan Shatter, T.D. Debate on Independent Senators' Private members' Motion on Criminalising the Purchase of Sex in Ireland to Curb Prostitution and Trafficking Seanad, 18 April 2012

¹⁰ 'Gardai target people who profit from prostitutes', Sunday Independent, 3rd June 2012

¹¹ www.turnofftheredlight.ie

¹² Ibid

Strategy, where sex workers are identified as an at-risk group, and not by further criminal sanctions on sex work.

7.0 Current Legislation

In an Irish context, effective and appropriate legislation in relation to trafficking already exists:

- The Criminal Law (Human Trafficking) Act 2008 criminalises the trafficking of persons for sexual exploitation.
- The Criminal Law (Sexual Offences) Act 1993 was amended in 1997 to specifically address child prostitution – Criminal Law (Sexual Offences) (Amendment) Act 1997.
- The Children Act 2001 also contains offences related to prostitution.
- The National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland 2009-2012 aims to set out the legislative and administrative structures that are in place or that will be put in place to address the crime of human trafficking.

In a report published in July 2012, the Global Commission on HIV and the Law recommends that “Anti-human-trafficking laws must be used to prohibit sexual exploitation and they must not be used against adults involved in consensual sex work.”¹³

Under the Criminal Law (Sexual Offences) Act 1993, it is already an offence to solicit in a street or public place for the purpose of prostitution. Many sex workers in Ireland now work indoors due to this law, and due to the increasing use of modern technology, making it difficult for social and health services to reach them. Changes in legislation, particularly further criminalisation, “drive people underground, away from essential health services and heighten their risk of HIV.”¹⁴

8.0 Consultation with Sex Workers

The proposal to reform the law to introduce the ‘Swedish Model’ in Ireland is not based on any consultation with sex workers or their clients. This is not consistent with the policy recommendation by the Department of Health that “Mechanisms should be put in place to build the capacity of sex workers to participate in relevant fora to represent the needs of this group to inform relevant policy and practice.”¹⁵ More information is required in an Irish context in relation to how laws can affect sex workers’ access to health services including HIV prevention, treatment and support. Research should be commissioned for this purpose and efforts should be made to include the participation of sex workers in this consultation process. The economic empowerment of sex workers is recommended by the UNAIDS Advisory Group on Sex Work which states “initiatives should aim to involve sex workers, reduce harm, increase options and respect choice”.

9.0 Political Responsibility and Accountability

Government representatives in Ireland have a responsibility to ensure that any reform in the law is in line with national policies and international best practice and guidelines and must be held accountable if they neglect to reconcile the disconnect between laws and policies around HIV.

¹³ Risks, Rights and Health, Global Commission on HIV and the Law, July 2012, p. 99, para 3.2.4

¹⁴ Press Statement by the Global Commission on HIV and the Law, 9th July 2012, www.hivlawcommission.org

¹⁵ HIV and AIDS Education and Prevention Plan 2008-2012, National AIDS Strategy Committee, Department of Health, p.49

National policy recommendations and International best practice guidelines on HIV and sex work should be reviewed and carefully considered to ensure that their effectiveness is not impeded by any change in legislation on prostitution, including:

- HIV and AIDS Education and Prevention Plan 2008-2012 (Department of Health)
- National Drugs Strategy (interim) 2009-2016 (Department of Health)
- Drug Use, Sex Work and the Risk Environment in Dublin, 2009 (National Advisory Committee on Drugs).
- National Sexual Health Strategy (Department of Health) (currently being developed)
- The Report of the UNAIDS Advisory Group on HIV and Sex Work, December 2011
- Risks, Rights and Health, Global Commission on HIV and the Law, July 2012

10.0 Summary of Considerations and Recommendations

- A review of legislation on prostitution in Ireland should adapt a human rights-based approach and seek to remove barriers for sex workers in accessing services including combating stigma and discrimination, ensuring that the legal and policy framework encourages universal access to HIV (and other health) services for sex workers.
- No further criminalisation of sex workers or their clients is required to address trafficking, as effective and appropriate legislation in relation to trafficking already exists in Ireland.
- A clear distinction is required between trafficking for sexual exploitation and adult consensual sex work.
- The Government must ensure that any reform in the law is in line with national policies and international best practice and guidelines and that their effectiveness is not impeded.
- Criminal laws that fuel the stigma and discrimination of population groups at risk of HIV (including female, male and transgender sex workers) should be removed.
- Research should be commissioned to garner more information to establish how laws in Ireland can affect sex workers' access to health services including HIV prevention, treatment and support.
- Sex workers should be afforded the opportunity to participate in this public consultation.