

AMNESTY INTERNATIONAL Q&A

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WE LIVE WITHIN A VIOLENT SYSTEM: STRUCTURAL VIOLENCE AGAINST SEX WORKERS IN IRELAND REPORT, JANUARY 2022

WHAT ARE AMNESTY INTERNATIONAL'S MAIN CONCERNS WITH REGARD TO VIOLATIONS OF SEX WORKERS' HUMAN RIGHTS IN IRELAND?

Amnesty International's research in Ireland has revealed that sex workers in the country, most of them women, experience a range of human rights abuses. Sex workers interviewed experienced physical attacks and threats, sexual violence, including rape, robberies, stalking, verbal abuse and harassment, mainly from people they meet as clients. These individual experiences are underpinned and facilitated by structural violence, which comprises several systemic factors, for instance, the legal and policy framework, policing practices, gender and economic inequalities and stigma. The report demonstrates that criminalization of aspects of sex work such as the brothel keeping provision in Irish law impacts on sex workers' safety by preventing them from working together in one apartment, creating a "chilling effect" on their ability to exercise of their human rights. The ban on buying sex in Ireland and the criminalisation of living on "earnings of prostitution" are also impacting sex workers' safety and livelihoods. The research also uncovered a profound lack of trust in the police and economic and social rights violations, for example a lack of adequate, affordable and accessible housing options and heightened risk of eviction because landlords can be prosecuted for renting premises to sex workers. For many sex workers, these factors add to the already high levels of intersecting discrimination and stigma they experience, for example on the grounds of race, ethnicity, gender, gender identity, disability, drug use, homelessness or migrant status.

WHY IS AMNESTY INTERNATIONAL CHOOSING TO RESEARCH THE SITUATION OF SEX WORKERS IN IRELAND? IS THE SITUATION IN IRELAND DIFFERENT THAN OTHER COUNTRIES?

Between 2016 and 2019, Amnesty International's [research](#) in [Argentina](#), [the Dominican Republic](#), [Hong Kong](#), [Norway](#) and [Papua New Guinea](#) found that sex workers experienced violent attacks, discrimination and injustice and that much of this violence and abuse was unreported, under-investigated and unpunished, with states failing to uphold their obligations towards sex workers. In recent years, worrying information about similar human rights concerns has begun to emerge from [Ireland](#), together with media reports of [arrests](#) and [convictions](#) of sex workers. The Irish government is currently conducting a review of the operation of Part 4 of the Criminal Law (Sexual Offences) Act 2017, which, for instance, criminalized the purchase of sex. In this context, the in-depth research that informed the report can provide valuable insights into sex workers' human rights in Ireland, in particular their right to safety and freedom from violence, at a crucial time.

WHY DOES AMNESTY INTERNATIONAL SUPPORT DECRIMINALIZATION?

Under this model there is better scope for sex workers' rights to be protected – whether that be:

- access to healthcare;
- their ability to report crimes to the authorities;
- their ability to organise and work together for increased safety;
- or the comfort of knowing that their family will not be charged for "living off the proceeds" of sex work.

Although decriminalization is one crucial step to protect sex workers, it is not a panacea for all violations and abuses facing [sex workers](#). For example, even in decriminalized jurisdictions such as [New Zealand](#), transgender sex workers are often still found working on the street as they are excluded from brothels. Similarly, [migrant sex workers](#) in New Zealand are vulnerable to violence and exploitation, and have reported to researchers they are afraid to report these violations to the police for fear of deportation. Other steps aiming at addressing discrimination and stigma and ensuring that people's economic, social and cultural rights are respected, protected and fulfilled are also crucial.

WHY DOESN'T AMNESTY INTERNATIONAL CALL FOR LEGALIZATION OF SEX WORK?

Legalization is different to decriminalization and it is not the model we are proposing. Instead of the removal of laws criminalizing sex workers, legalization means the introduction of laws and policies specific to sex work to formally regulate it. Different legal regulatory approaches to sex work pose different implications for human rights. Amnesty International's policy does not call for "legalization" that includes the development and enforcement of additional specific laws and policies aimed at regulating sex work, distinct from other employment sectors, such as in the Netherlands or Germany.

Legalization involves direct state regulation and control of sex work, and in these systems the police are most commonly used to enforce the legal framework, as opposed to protecting sex workers from violence and other crime. Notably, legalization of sex work does not necessarily permit all types of sex work. For example, legal sex work may be limited to brothels that are subject to licensing restrictions. The regulatory requirements of some legalized systems can mean that many sex workers that operate outside legalized settings, such as on-street locations, are still criminalized and subject to policing and punishment, thus exposing them to human rights violations. This creates a two-tiered system of legal and illegal sex workers.

HOW DO WE KNOW THAT SOMEONE IS A SEX WORKER AND NOT TRAFFICKED?

Trafficking in persons, including into the sex sector, is not the same as sex work. Sex work refers to a consensual exchange of sexual services between adults for some form of remuneration – money or goods – with the terms agreed between the seller and the buyer. Human trafficking is expressly nonconsensual.

The United Nations [Protocol](#) to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol) was adopted in 2000 and defines trafficking as constituting of three elements:

1. An "action": that is, the recruitment, transportation, transfer, harboring or receipt of persons;
2. A "means" by which that action is achieved (threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability, and the giving or receiving of payments or benefits to achieve consent of a person having control over another person); and
3. A "purpose" (of the action/means): specifically, exploitation.

All three elements must be present to constitute "trafficking in persons" under the Trafficking Protocol, unless the person concerned is a child.

WHAT IS AMNESTY INTERNATIONAL'S POSITION AND RECOMMENDATIONS ON HUMAN TRAFFICKING FOR SEXUAL EXPLOITATION?

Human trafficking is a grave human rights abuse and states have an obligation under international human rights law and standards to ensure that it is recognized as a criminal offence. Amnesty International supports the criminalization of human trafficking and calls on states to guarantee effective legal protections against it. States must investigate, prosecute and bring traffickers to justice and guarantee victims' right to access to justice and reparation, including with all necessary levels of support. Trafficking victims should not be criminalized. Anti-trafficking responses must not create or exacerbate situations that cause or contribute to trafficking or further undermine the human rights of anyone, especially women and people belonging to other marginalized groups. States should also adopt and implement – in consultation with sex workers, human

trafficking victims and others currently or previously involved in commercial sex – effective programmes, laws and policies, to ensure no one is coerced into selling sex and anyone can stop selling sex if they choose.

Decriminalizing sex work does not mean removing criminal penalties for trafficking. Trafficking is an abhorrent human rights abuse and states must have laws in place which criminalize trafficking and use them effectively to protect victims and bring traffickers to justice. There is no reliable evidence to suggest that decriminalization of sex work would encourage human trafficking. On the contrary, criminalization of sex work can hinder the fight against trafficking as, for example, victims may be reluctant to come forward if they fear the police will take action against them for selling sex. Some [research](#) indicates that decriminalization of sex work may in fact help victims of trafficking and lead to more effective anti-trafficking efforts.

Blanket criminalization of aspects of sex work such as, for instance, through the brothel keeping provision in Ireland, does not better protect trafficking victims but it endangers sex workers and puts them at an increased risk of violence, as evidenced in this report.

HUMAN TRAFFICKING IS AN ISSUE IN IRELAND – WHY DID AMNESTY INTERNATIONAL DECIDE TO RESEARCH SEX WORK AND NOT TRAFFICKING?

Amnesty International’s report focuses on sex workers as a group that experiences numerous and frequent human rights abuses, including due to marginalization, stigma and lack of protection, with criminalization exacerbating the risk of abuse and violations.

Human trafficking for sexual exploitation and labour is an abhorrent human rights violation and Ireland’s track record on addressing it [is concerning](#). However, the conflation of sex work with human trafficking has been identified, including by sex workers and experts interviewed for this report, as leading to both misconceptions and practical negative impacts on sex workers’ safety. In this research, Amnesty International has intentionally decided to focus on the rights of sex workers as one of the most marginalized and stigmatized groups in our societies.

ISN’T THE FACT THAT SEX WORK IS MAINLY DONE BY WOMEN NOT EVIDENCE THAT IT IS A FORM OF GENDER-BASED, PATRIARCHAL VIOLENCE?

Gender inequality can have a major influence on cis- and transwomen’s entry into sex work. It should be noted that there are also non-binary and male sex workers – many of whom are gay or bisexual – who experience discrimination and inequality.

There are many personal, social, political and macro-economic drivers of sex work. Economic, social, labour, and immigration policies work – at national, regional, and global levels and together with factors such as intersectional discrimination – to create the conditions in which individuals make decisions about how to earn an income. As such, particularly in contexts where economic and social rights such as adequate and accessible housing are not respected and protected, they may contribute to an individual’s decision to engage in sex work.

The framing of all sex work as a form of violence against women was identified by sex workers and experts interviewed for this report as leading to both misconceptions and practical negative impacts on sex workers’ safety, effectively facilitating the targeting and abuse of sex workers by perpetrators.

Any policies on sex work need to be situated within a realistic understanding of labour, economic, and social policy contexts. States must combat discrimination and harmful gender stereotypes, empower women and other marginalized groups, and ensure that no one lacks viable alternatives for making a living.

HOW CAN ANYONE CONSENT TO SEX WORK? IS THIS REALLY A CHOICE?

Decisions to sell sex can be influenced by situations of poverty and/or marginalization. Such situations do not necessarily undermine or negate a person's consent. Constrained circumstances do not eliminate an individual's ability to make decisions about their own life, except under particular circumstances that amount to coercion where an individual faces threats, violence or abuse of authority.

Consent, namely the voluntary and ongoing agreement to engage in a particular sexual activity, does not mean consenting to violence. Rather, sex workers, like everyone else, can change or rescind their consent to have or sell sex at any point and this must be respected by all parties (including clients, potential clients, third parties, police and other law enforcement officials).

Contrary to some misconceptions, sex workers can be raped, just as everyone else. Consent to a particular sexual activity, to have or sell sex can be changed or rescinded at any time. Where consent is not voluntary and ongoing, including when a person's changed or rescinded consent is not respected, this constitutes rape and is a human rights abuse and must be treated as a criminal offence.