

AMNESTY INTERNATIONAL IRELAND
STAKEHOLDER POLICY CONSULTATION ON DECRIMINALISATION OF SEX WORK

Dear stakeholder,

Thank you for taking the time to input your views on Amnesty International's draft policy proposing the decriminalisation of sex work. The final decision on the policy will be made by the movement's International Board informed by the consultation undertaken by AI sections around the world.

Before completing this questionnaire, please read the consultation document entitled "Summary: proposed policy on sex work". This document outlines the proposed AI policy on sex work and summarises the background documents that review the terminology used in discussions of these issues, the principal justifications advanced for the continued criminalisation of sex work, the applicable human rights law, the consequences in practice of criminalisation and decriminalisation, and the approaches taken by other organisations and experts.

To input general feedback, please just answer Section A. However, if you have specialised interest/expertise/knowledge, please proceed to answer some or all of the more detailed sections and questions.

Please make sure to fill in your and your organisation's names and contact details as completed questionnaires missing such cannot be considered. We need to ensure that we are receiving the input of the stakeholders expressly invited to comment, in order to maintain the integrity of the consultation process. (Persons/organisations not expressly invited to input - or not a member of AI Ireland for whom there is a separate consultation process - may submit views to our international office by email to swc@amnesty.org.)

Please return this questionnaire by close of business **Monday 24 March 2014**, by email to swc@amnesty.ie.

Kind regards,

Colm O'Gorman
Executive Director

STAKEHOLDER DETAILS

* Mandatory Fields

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SECTION A – GENERAL FEEDBACK

Question 1 – The decriminalisation approach

This draft AI policy was drafted on the basis that criminal and other punitive laws related to the selling or buying of sex contributes to human rights abuses against sex workers. The cumulative effect of the vulnerable situation many sex workers are in is that women and men engaged in sex work are at increased risk of human rights abuses such as discrimination, physical and sexual violence, denial of legal due process and police protection or exclusion from public benefits such as health services, housing, education or immigration entitlements. Removing criminal laws and policies that impede sex workers from earning a living in a safe and dignified manner maximises their protection from violence and the exercise of their human rights. This policy is further based on the human rights principle that consensual sexual conduct between adults (which excludes acts that involve coercion, deception, threats or violence) is entitled to protection from State interference.

(a) What do you think of the approach outlined in the policy consultation document in favour of the decriminalisation of the sale and purchase of sex between consenting adults, and related activities?

(b) What are the main areas with which you agree, and why?

(c) What are the main areas with which you disagree, and why?

Sonás is an organisation that has worked with women and children impacted by domestic violence for the last 21 years. We work with around 700 women and children a year via a quantum of services – emergency refuge, out-reach, crisis intervention and court accompaniment, as well as supported housing. In the course of our work, we have worked and do work with women who have been affected by prostitution. Therefore our response is evidence-based within an Irish context.

In order to address these questions we have grouped our response to some.

We recognise that Amnesty International is an internationally renowned rights organisation with enormous influence and that in proposing this policy of total decriminalisation of prostitution it believes it is protecting the rights of those involved by emphasising the prostitution would be adult and consensual.

How desperately disappointing then that Amnesty would produce a policy that is naïve at best, highly selective in its presentation of the facts and in our view, if adopted, could actually jeopardise the safety and protection of women and children affected by prostitution. It is our belief that it also compromises Amnesty's credibility as an upholder of children's rights.

It does, however, offers a reassurance that:

This proposed policy does not change Amnesty International's longstanding position that human trafficking into forced prostitution, or any other aspect of non-consensual sex, should be criminalized as a matter of international law. Victims of such crimes are entitled to protection and remedies, regardless of their sex, nationality, health status, sexual orientation, gender identity, prior work history, willingness to contribute to prosecution efforts, or other factors.

As noted above, Amnesty International considers children involved in commercial sex acts to be victims of sexual exploitation.

Any analysis of prostitution reveals that in terms of sheer numbers it is primarily women and girl children affected by prostitution.

The Amnesty proposal does not adequately address the gendered nature of prostitution, appears to have little or no understanding of how prostitution actually works on the ground and that it almost always occurs in the context of violence against women and girls: directly to the women and girls themselves, implied against the girl or woman or her family, coerced through debt-repayment, development or exploitation of a substance misuse habit or in the context of abusive intimate relationships.

The Amnesty proposal ignores the fact that child abuse is endemic in organised prostitution:

Entry into prostitution is usually initiated before the age of 18. The market tends to be for young girls as they are generally what buyers prefer.

- Even when the over selling of the girl or woman is not specifically to paedophiles ie those with a particular sexual interest in children with the physical characteristics of children as opposed to children who have progressed through puberty and have secondary adult physical characteristics ie breasts, women and girls are generally groomed for prostitution in mid-teens.
- If a child is 16 and is prostituted at that age in a country where the legal age of consent is 16, where does Amnesty's policy apply which defines a child up until the age of 18

This is exempting where women and girls are duped into applying for jobs and are trafficked.

It ignores the fact that prostitution occurs not only in the organised commodification and exploitation of girls and women but also in the context of abusive intimate relationships.

The Amnesty proposal hinges on consent although it doesn't define what it means or defines the contextual parameters of that consent

For example, the meta context that prostitution occurs in: poverty, lack of education/ available alternative opportunities; low status of women and girl children. The micro context: age, mental capacity, history of abuse, history of the care system, substance misuse issues either a person's own or if under 18 in the context of family, domestic abuse either experienced as a child or in the context of own intimate relationships (all of these factors can render someone more vulnerable to being involved in prostitution). How does Amnesty propose that the issue of consent be considered, what are its criteria and how should they be employed.

For example, a woman with a substance misuse problem is begged by her boyfriend to go into prostitution to buy them both the drugs that they need, if she loved him she would do it. He doesn't hit her or tell her he will kill her but he will use the money she has made to buy himself drugs.

A girl dates a man when she is in her teens (in the country she is from she is the legal age for sexual consent). He takes her to clubs and then introduces her to other men, encouraging her to go with them and they will get her nice things. The things are money, she loves him so she carries on. She realises that her boyfriend has many girls doing this and that effectively her boyfriend is actually her pimp. It took her a while to realise this and when she tried to stop he beat her, he didn't have to do it a second time.

From our experience of working with women, coercion can take many forms and consent in reality can vary significantly. This is not to deny adult women's agency in their own lives since Sonas works from an empowerment model of practice or that the courts frequently have to decide on consent issues in the context of sexual violence rather than consent isn't the same thing as "she didn't say no" or she didn't object. There is also the issue of informed consent ie what does someone think they are consenting to and at the time of their decision-making, depending on capacity, were they in the position to foresee the outcomes that their initial consent would provide.

SECTION B – DETAILED FEEDBACK

Question 2 – International human rights law and decriminalisation

(a) What do you consider to be the main human rights arguments in favour of the decriminalisation of the sale and/or purchase of sex, and/or related activities?

(b) What do you consider to be the main human rights arguments against the decriminalisation of the sale and/or purchase of sex, and/or related activities?

Question 3 – Protection against exploitation

(a) What legislative or other safeguards should a State have in place to identify and guard against forced prostitution and other forms of exploitation of sex workers?

Sonas is in favour of the Nordic model which is also supported by the European parliament which does not criminalise the girl or woman selling sex, but does criminalise those that facilitate the process and those who buy sex.

We also wish to put on the record that we are appalled at the scant attention it received in the overview documents that accompany this consultation and the ready dismissal of the model "it wouldn't work in the majority of the countries where Amnesty works" was incomprehensible in the context that it evidence shows it is producing beneficial results; is favoured by the European parliament and the Oireachtas committee charged with reviewing the issue.

The case studies presented in the consultation documents appeared to infer that policies other than what Amnesty was proposing were misguided if not actually dangerous. Some case studies cited rescue efforts that were in reality punishment exercises which is worth doing in order to underline the hypocritical nature of legal systems that punish girls and women for prostitution; yet they ignored the reality of women's low status in many cultures and how this status is directly relates to general levels of sexual violence towards women and the low reporting of this crime. It is a cultural relativism that steam-rolls over inconvenient facts.

Girls and women who engage in prostitution in countries where they have low status due to gender/ ethnicity/ class or caste; few opportunities; and violence against girls and women is either expressly or tacitly condoned, are punished for transgressing cultural gender norms but we would view this as a continuum of gender discrimination.

Question 4 – Violence and sex work

While demanding that States taking seriously their duty to address the violence that sex workers often face, this draft policy is based on the human rights principle that consensual sexual conduct between adults - which excludes acts that involve coercion, deception, threats, or violence - is entitled to protection from state interference. This draft policy is also

based on principles of harm reduction: on balance, the available evidence indicates that the criminalisation of sex work is more likely than not to reinforce discrimination against those who engage in these activities, and to increase the likelihood that they will be subjected to harassment and violence.

(a) Do you agree/disagree, and why?

Please refer to our earlier comments regarding consent.

Our experience has been that coercion takes many forms actual and inferred in the case of violence; overt or implied in terms of other coercion. We disagree with the latter half of your premise for all the reasons given previously.

The model we support does not criminalise those who sell sex.

(b) Aside from criminalising/decriminalising the sale or purchase of sex, what should States be doing to better prevent, investigate, prosecute and redress the high levels of violence against sex workers or violence that occurs within the context of sex work generally?

Again due to the broadness of this policy and its one size fits all application across jurisdictions which states are we talking about. What is the context of sex work generally? Besides the fact that it usually involves girl children and young women being sold as commodities, generally by men and to men for a profit of which they are unlikely to every have a share in the proceeds.

SECTION C – WOMEN-SPECIFIC FEEDBACK

Question 5 – Women’s rights and sex work

(a) In promoting women’s rights and gender equality, AI focuses on supporting women’s autonomy. How can our policy on sex work as it applies to women achieve this?

By not decriminalising the men who groom girl children into the sex trade – the average age of entry into the sex trade tends to be before the age of 18.

By not decriminalising the men who buy children’s and women’s bodies as commodities, by not decriminalising the men that live off the organised exploitation of these women and children or the opportunistic ones who coerce their partners into prostitution in the context of substance misuse or homelessness.

(b) Given that many women sex workers reject the notion that sex work is in itself a form of violence against women, do you think AI is correct to promote the rights of every woman to autonomy in relation to making decisions about whether or not to enter into sex work?

Many women also support the practice of Female Genital Mutilation, the majority of whom have undergone FGM; is Amnesty going to change its position on FGM because some women who practice it and have undergone it believe it is a valuable cultural and health practice.

The fact that *some* women reject the notion that sex work, to use the term contained in this consultation document, is violence against women does not actually stop sex work being violence to women.

A subjective interpretation of an objective reality does not annihilate the reality – one of the central rationalist tenets of the Enlightenment which also gave us the concept of individual rights.

Question 6 - 'Prostitution of women' v 'exploitation of prostitution of women' and trafficking

- (a) The International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) does not call on States to suppress "prostitution", but to "take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women". Without seeking to suppress "prostitution" by criminalising the selling or buying of sex, or related activities, how can a State protect women from "exploitation of prostitution", trafficking and forced prostitution?

By criminalising those who sell women and children and those who buy women and children.

- (b) Given that many women sex workers reject the notion that sex work is in itself a form of violence against women, do you think it is okay to interfere with their human rights by criminalising the purchase of adult sex, in an effort to combat "exploitation of prostitution" or trafficking? Where do you think the balance should be struck by States?

Please refer to earlier statement regarding subjective interpretation, however valid to the individual not negating the objective reality. As an organisation that works with women and children experiencing domestic violence, we do not think it is *Okay*, to interfere with their human rights.

SECTION D – TRANSGENDER-SPECIFIC FEEDBACK

Question 7 – Transgender rights and sex work

- (a) In promoting human rights and gender equality, AI also focuses on supporting transgender people's autonomy. How can our policy on sex work as it applies to transgender people achieve this?

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