



Leaders of all political parties in the Congress of Deputies

Cc: The Government of Spain and the Council of Ministers

Unidad de Comunicación con la Ciudadanía

Gabinete del Presidente del Gobierno

Edificio Semillas, Complejo de la Moncloa

Avda. Puerta de Hierro, s/n. 28071, Madrid.

Subject: Concerns regarding amendments to the Penal Code (la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal) to ban all forms of procuring

Date: 8TH September 2022

Introducing SWIFA

The Sex Worker Inclusive Feminist Alliance (SWIFA) works to align rights-affirming positions on sex work across the UN system, support sex worker-led organisations' engagement with UN Treaty Bodies and Special Procedures, and facilitate engagement within women's movement spaces. SWIFA includes Amnesty International - International Secretariat, CREA, FEMNET, Global Alliance Against Traffic in Women (GAATW), Global Network of Sex Work Projects (NSWP), International Women's Rights Action Watch Asia Pacific (IWRAP Asia Pacific), and Women's Global Network for Reproductive Rights (WGNRR).

We understand the intention of the Government of Spain and Members of Congress to reduce exploitation and gender-based violence against sex workers. However, with this statement, we caution against enacting legal reforms that, in the name of protection of sex workers, cause harm, expose them to violence and discrimination and thus violate international human rights law and standards. These include the right to be free from discrimination and violence and the right to the highest attainable standard of health, also guaranteed by the Spanish Constitution.

In view of the right to participation in the conduct of public affairs, we call upon the Members of Congress to meaningfully engage with sex workers' communities and collectives and better understand their lived experiences and concerns. Their experiences and concerns should be taken into account while designing public policies that affect them to understand their impact on sex workers' lives and human rights.



The proposed amendments to the Spanish Penal Code will not protect sex workers, but harm them

On 27 May 2022, the Socialist Party (PSOE) tabled a bill in Congress to amend the current legislative framework regarding sex work.

The bill seeks to amend article 187 of the Penal Code to criminalize – ‘*Whoever for profit promotes, favors or facilitates the prostitution of another person even with his/her consent ...*’. The amendment will risk criminalizing anyone supporting sex workers, especially in conjunction with the new article 187 ter. The amendment indeed conflates exploitation with instances where sex workers exercise their informed consent.

The proposed amendments seek to extend the punishment of third parties¹ to the act of sex work, without meeting the current requirements of coercive acts or exploitation. A new Article 187 bis would criminalize “*whoever, for profit and habitually, uses a property, premises or establishment, open or not to the public, or any other space, to promote, favour or facilitate the prostitution of another person, even with their consent*”. In the absence of any requirement of coercive means or exploitation, such a provision will risk criminalizing anyone supporting sex workers with housing and working spaces, and could even bring family members, peers, healthcare providers, and friends into its ambit.

A new article 187 ter also risks punishing clients for agreeing to “*perform acts of a sexual nature in exchange for money or other financial consideration*”.

Though such a provision intends to protect sex workers from exploitation, evidence shows that such a framework would create an environment of *de facto* criminalization. Criminalization of all aspects of sex work, including of those who purchase and/or facilitate sex work, results in unsafe working conditions, poor access to justice, increased stigma and discrimination, poor health outcomes including impeded HIV/AIDS interventions, and greater levels of violence against sex workers.

We would like to take this opportunity to briefly address some underlying (and misplaced) assumptions behind such policy proposals, and provide evidence that demonstrates the inevitable harms from criminalization of clients of sex workers and third parties. We submit

¹ The Global Network of Sex Work Projects defines ‘third parties’ as “those individuals involved in commercial sex transactions who are neither sex workers nor clients” which includes a range of individuals, including but not limited to, managers, brothel keepers, receptionists, maids, drivers, landlords, hotels who rent rooms to sex workers, and website operators who run sites where sex work is advertised. See [Policy Brief: The Decriminalization of third parties](#), Global Network of Sex Work Projects (2016).



that these assumptions are not based on evidence; they expose sex workers to human rights violations, and fail to take into account the experiences of sex workers themselves.

Assumption 1: “All forms of sex work are inherently violent and sex workers are victims in need of protection”

Legal provisions that criminalize clients and third parties seen as supporting or ‘enabling’ sex work are based on the erroneous assumption that all sex work is a form of gender-based violence. This runs counter to the June 2021 decision of the Spanish Supreme Court, which acknowledged that sex workers do not always work for others but they may also work autonomously.² This ruling occurred after an appeal from OTRAS - Organización de Trabajadoras Sexuales, the first fully independent union led by sex workers, and the Supreme Court recognized the right to form a union for sex workers working autonomously (i.e. not working for others).³

Indeed, numerous studies and our own experience of interacting with thousands of women, men, trans and gender non-conforming sex workers in all regions of the world show that this assumption is not true: sex work is first and foremost a livelihood strategy and an income-generating activity.

Such criminal provisions would violate the right of sex workers to bodily autonomy and dignity, and their right to earn a living.

Assumption 2: “Criminalization of clients and third parties will reduce violence and exploitation”

These amendments, if enacted, will not protect sex workers from violence, coercion and exploitation. In fact, they will have the opposite effect, whereby sex workers will be harmed and *effectively* criminalized through the implementation of such a law.

There is no evidence that laws criminalizing some or all aspects of sex work reduce exploitation of sex workers or the scale of sex work or reduce HIV transmission, or improve the quality of life for sex workers.⁴ There is, however, ample evidence that sex workers working under this legal framework are more vulnerable to violence and human rights violations whilst their access to health services and justice is compromised.⁵

² [The Supreme Court recognizes the right of self-employed prostitutes to form unions](#), El Pais (2 June 2021).

³ https://www.eswalliance.org/spain_the_supreme_court_recognises_the_right_of_sex_workers_to_form_unions

⁴ P. 10, [The report of the UNAIDS Advisory Group on HIV and Sex Work](#) (2011).

⁵ See [Myth-Busting the Swedish Model](#), The evidence debunking 10 key claims on client criminalization, European Sex Workers’ Rights Alliance (2022).



Notably, evidence from implementation of such laws in Sweden and Norway is replete with rights violations including surveillance, raids, deportations, and evictions.⁶

In 2016, Amnesty International published its research on sex work in Norway,⁷ based on 54 interviews with sex workers, representatives of state agencies, and NGOs. It revealed that sex workers in the country faced high levels of policing leading to eviction, loss of livelihood and/or deportation, worsening attitudes towards sex workers among the general public, and increasing exposure to exploitation.

In a 2019 report by Médecins du Monde on the impact of criminalization of clients on sex workers in France⁸, out of the 583 sex workers interviewed, 63 percent had experienced deterioration of their living conditions, more isolation and greater stress, 42 percent were more exposed to violence and 78 percent had experienced a loss of income due to decrease in number of clients and fall of rates.

These two studies alone raise serious questions on how criminal laws that intend to ‘protect’ from exploitation in fact subject sex workers to human rights violations, with diminished security nets, and compound their vulnerability.

THE IMPACT OF CRIMINALIZATION (IN ALL FORMS) ON THE HUMAN RIGHTS OF SEX WORKERS

In this section we briefly note how criminalization of clients and third parties to sex work will violate rights of sex workers and expose them to violence, in complete opposition of the claimed intention to reduce violence against sex workers.

Criminalization, in all forms, violates sex workers’ right to health

Attempts to ‘end demand’ for sex work never eliminate demand, but they do create unsafe situations for sex workers, increase the risks of violence, reduce the likelihood of police reporting for fear of harassment, blackmail and extortion, and reduce the negotiating power to insist on practices such as condom use.⁹ For example, research on implementation of the ‘end demand’ model shows that possession of condoms are often considered as evidence of sex work, instilling a fear in sex workers that carrying condoms will invite police action thereby

⁶ [Twenty Years of Failing Sex Workers](#): A community report on the impact of the 1999 Swedish Sex Purchase Act, Fuckförbundet (2019); [The Human Cost of Crushing the Market: Criminalization of Work in Norway](#), Amnesty International (2016).

⁷ [The Human Cost of Crushing the Market: Criminalization of Work in Norway](#), Amnesty International (2016).

⁸ [What do sex workers think about the French Prostitution Act?](#): A Study on the Impact of the Law from 13 April 2016 Against the ‘Prostitution System’ in France, H el ene Le Bail, Calogero Giametta, No emie Rassouw, M edecins du Monde (2019).

⁹ Pp. 36-37, [Sex Workers- HIV and the Law: Risks, Rights and Health](#), The Global Commission on HIV and the Law (2012).



discouraging them from safe sex practices.¹⁰ Criminalization makes it incredibly difficult to engage clients in strategies for HIV prevention and counselling, which has globally been proven to be instrumental in HIV prevention efforts.¹¹ Criminalization also compounds already prevalent stigma and discrimination against sex workers in health settings. Evidence reveals that stigma and discrimination at a structural level dissuade sex workers from accessing basic medical services, including HIV prevention, treatment and care services¹², impacting their sexual and reproductive rights and health.

Decriminalization could reduce abusive policing, isolation, and abuse that make sex workers more vulnerable, and reduce vulnerability that results from increased risk-taking behaviour under criminalization.¹³ Decriminalization would also create an enabling environment for best practice HIV prevention and outreach such as peer education and community-led research and service provision.¹⁴

Criminalization, in all forms, increases violence against sex workers

Criminalization of clients and third parties, coupled with discriminatory attitudes against sex work prevalent in law enforcement, contributes to greater violence by clients, third parties and police officers.

Results of an Oslo survey from 2012¹⁵ show that sex workers faced increased violence after the ‘end demand’ law was introduced. As clients fear arrest, sex workers have fewer clients, less bargaining power and less income. Law-abiding clients may be deterred from approaching sex workers, and sex workers may have to accept violent clients.¹⁶ The ongoing danger of being caught may also leave sex workers with little to no time for their usual screening practices for potential clients.¹⁷ Sex workers may not have access to safe and secure working spaces, and often work in remote spaces, in isolation and disconnected from their peers, putting them at

¹⁰ P. 9, [The Human Cost of Crushing the Market: Criminalization of Work in Norway](#), Amnesty International (2016); P. 11, [The report of the UNAIDS Advisory Group on HIV and Sex Work](#) (2011).

¹¹ P. 14, Joint United Nations Programme on HIV/AIDS (UNAIDS), [UNAIDS Guidance Note on HIV and Sex Work](#) (2012)

¹² [Policy Brief: The Impact of Criminalisation on Sex Workers’ Vulnerability to HIV and Violence](#), Global Network of Sex Work Projects (2017).

¹³ P. 2, [Policy Brief: The Impact of Criminalisation on Sex Workers’ Vulnerability to HIV and Violence](#), Global Network of Sex Work Projects (2017).

¹⁴ P. 2, [Policy Brief: The Impact of Criminalisation on Sex Workers’ Vulnerability to HIV and Violence](#), Global Network of Sex Work Projects (2017); [Global epidemiology of HIV among female sex workers: influence of structural determinants](#), Shannon K, Strathdee SA, Goldenberg SM, Duff P, Mwangi P, Rusakova M, Reza-Paul S, Lau J, Deering K, Pickles MR, Boily MC, Lancet (2015) 3;385(9962):55-71.

¹⁵ [Dangerous Liaisons: A report on the violence women in prostitution in Oslo are exposed to](#), Ulla Bjørndahl (2012).

¹⁶ P. 5, [Briefing Paper: Criminalization of Clients](#), Global Network of Sex Work Projects (2011).

¹⁷ [Criminalisation of clients: reproducing vulnerabilities for violence and poor health among street-based sex workers in Canada-a qualitative study](#), Krüsi A, Pacey K, Bird L, Taylor C, Chettiar J, Allan S, Bennett D, Montaner JS, Kerr T, Shannon K, BMJ Open (2014 Jun), 2;4(6): e005191.



risk of danger and violence.¹⁸ Amnesty International's research has also found that many sex workers are subjected to high levels of surveillance by police as a means to enforce such laws, leading to police harassment, interrogations, raids, evictions from their homes, and other forms of penalization.¹⁹

We wish to emphasize that sex work is not inherently violent; it is criminalization, in all forms, that places sex workers at greatest risk of encountering violence.²⁰

Criminalization of third parties will increase exploitation of sex workers

The European Sex Workers' Rights Alliance has cautioned that the criminalization of third parties who rent venues and accommodations to sex workers would also push sex workers onto the streets and increase their risks of impoverishment and loss of adequate shelter.²¹

Amnesty International has also found evidence indicating that the criminalized nature of sex work (including criminalization of clients) leaves some sex workers vulnerable to potential exploitation by landlords, who may demand higher rent in exchange for not reporting them to police, among other things; or by associates who exploit their lack of safe shelter following their eviction under the law.²²

Criminalization, in all forms, prevents sex workers from accessing justice

Criminalization leads to consistent risk and fear of punitive laws, stigma and discrimination by law enforcement, and the experiences of physical, sexual and verbal abuse, extortion, blackmail and arbitrary detention by police officers. These collectively dissuade sex workers from seeking redress or remedies against harms and rights violations, such as denial of payment for services, or mistreatment by third parties and clients.²³ The lack of trust in law enforcement officials prevents sex workers from seeking remedies for violence and harassment by family members, landlords, healthcare professionals and service providers.

¹⁸ P. 3, [The Real Impact of the Swedish Model on Sex Workers](#), The Global Network of Sex Work Projects (2015); [Why sex work should be decriminalized](#), Human Rights Watch (2019).

¹⁹ P. 9, [The Human Cost of Crushing the Market: Criminalization of Work in Norway](#), Amnesty International (2016); [Policy Brief: The Impact of 'End Demand' Legislation on Women Sex Workers](#), Global Network of Sex Work Projects (2018).

²⁰ [Ten reasons to decriminalize sex work](#), Open Society Foundations (2015). See also [We live in a violent world: Structural violence against sex workers in Ireland](#), Amnesty International (2022).

²¹ [Don't outlaw sex workers' consent](#): Policy Brief in response to law proposal to criminalize sex work and calls for 'abolition of prostitution' in Spain, European Sex Workers Rights Alliance (2021).

²² P. 11, [The Human Cost of Crushing the Market: Criminalization of Sex Work in Norway](#), Amnesty International (2016).

²³ [Briefing Paper: Sex Workers' Lack of Access to Justice](#), Global Network of Sex Work Projects (2020).



Aggravated impact of criminalization on migrant sex workers

Although there is a lack of comprehensive data, it is estimated that many sex workers are migrants. According to the European Network for the Promotion of Rights and Health Among Migrant Sex Workers (TAMPEP), in 2009, migrants comprised 80% to 90% of the sex worker population in Spain.²⁴ As of 2021, in Western Europe, 75% of female, male and transgender sex workers are migrants of Romanian, Bulgarian, Hungarian and Latin American nationalities.²⁵

They are more likely to live in poverty because of their migrant status, face intersectional discrimination, and are especially vulnerable to exploitation as a result.

One of the purported aims of the ‘end demand’ model is to protect migrant sex workers by granting police increased powers to raid their workplaces under the guise of targeting human traffickers, third parties and clients. In reality, during raids, it is migrant sex workers who suffer police abuse, arrest, detention and deportation.²⁶

During COVID-19, migrant sex workers have faced increased impoverishment, precariousness of living situations, and weakened bargaining power to negotiate with clients and managers.²⁷ The proposed amendments will only expose them to violence and human rights violations.

Criminalization of clients and third parties does not contribute to anti-trafficking efforts

There is no evidence that the criminalization of clients or third parties has had any noticeable impact on the scale of human trafficking or the identification and protection of victims in the countries where it has been introduced.

Need to consult sex workers and treat them as partners in preventing violence and exploitation in the industry

Sex workers’ collectives are best placed to establish safe working norms, and influence other actors in the industry to ensure that trafficked adults and children are not retained in sex work.²⁸ Sex workers defend human rights, provide information and legal literacy, peer support, safe

²⁴ P. 16, [Sex work in Europe: A mapping of the prostitution scene in 25 European countries](#), European Network for the Promotion of Rights and Health Among Migrant Sex Workers (TAMPEP) (2009).

²⁵ [Survey: Migrant Sex Workers and the Covid-19 crisis](#), European Network for the Promotion of Rights and Health Among Migrant Sex Workers (TAMPEP) (2021).

²⁶ P. 8, [Challenging the introduction of the Nordic Model](#): The Smart Sex Worker’s Guide, The Global Network of Sex Work Projects (2017).

²⁷ Submission to OHCHR, [The situation for migrant sex workers due to Covid-19](#), TAMPEP, the European Network for the Promotion of Rights and Health among Migrant Sex Workers (9 June 2021).

²⁸ Para 24, Note by the Secretary-General, Trafficking in persons, especially women and children, UN General Assembly, A/70/260 (3 August 2015); p. 18, Joint United Nations Programme on HIV/AIDS (UNAIDS), [UNAIDS Guidance Note on HIV and Sex Work](#) (2012); [Sex Workers Organising for Change: Self-representation, community mobilisation, and working conditions](#), Global Alliance Against Traffic in Women (2018).



spaces, and a variety of other services, alongside actively identifying victims and providing referrals to specialised services.²⁹

Efforts to support and extend protection to sex workers should represent their perspectives and priorities, from planning and formulation stages through to implementation stage, and not restrict their rights.

Decriminalization of sex work will address exploitation and violence against sex workers

Decriminalization of sex work refers to the act of repealing all laws and policies that either make all or some aspects of sex work a criminal offence (such as those prohibiting selling, soliciting, buying or facilitating sex work or living off the proceeds or managing brothels) or have a similar punitive impact. It also means ending the discriminatory use of other laws, which are not specific to sex work, but have the effect of harassing, intimidating, exploiting, arresting or justifying the use of force against individuals engaged in sex work.³⁰ **This would include any laws criminalizing clients and third parties - as is being proposed.**

A wide range of international health rights, feminist and LGBTI organizations and experts have recommended the decriminalization of sex work involving consenting adults, such as the UN Special Rapporteur on Right to Health,³¹ Global Commission on HIV and the Law,³² UNAIDS,³³ European AIDS Treatment Group,³⁴ Amnesty International,³⁵ Human Rights Watch,³⁶ La Strada International,³⁷ Global Alliance Against Traffic in Women,³⁸ and ILGA World.³⁹ To proceed with the proposed amendments despite the recommendations of international rights bodies and organizations, empirical data and documented ground realities of the harms of criminalization would be a travesty to the rights of all those involved in sex work.

²⁹ [EU Anti Trafficking Day 2021](#), European Sex Workers Rights Alliance (2021).

³⁰ [Ten reasons to decriminalize sex work](#), Open Society Foundations (2015).

³¹ Paras 46, 49, 76, Anand Grover, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Human Rights Council, A/HRC/14/20 (27 April 2010).

³² P. 10, 40, [Sex Workers- HIV and the Law: Risks, Rights and Health](#), The Global Commission on HIV and the Law (2012).

³³ P. 8, [The report of the UNAIDS Advisory Group on HIV and Sex Work](#) (2011).

³⁴ [The impact of punitive sex work laws and regulation on human rights and public health](#), EATG Position Paper, Sex Work Policies (2018).

³⁵ [Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers](#), Amnesty International (2016).

³⁶ [Why sex work should be decriminalized](#), Human Rights Watch (2019).

³⁷ [Statement on Amnesty International's policy on sex workers rights](#), Le Strada International (2016).

³⁸ Written statement to the Human Rights Council, Global Alliance Against Traffic in Women, A/HRC/23/NGO/29 (2013).

³⁹ [LGBTI organisations from across the world call for decriminalisation of sex work](#), The International Lesbian, Gay, Bisexual, Trans and Intersex Association (2019).



Recommendations

We strongly urge the Members of Congress to consider the following:

- Refrain from introducing new laws that criminalize, or have the effect of criminalizing, any aspects of sex work, including the purchase of sex.
- Decriminalize all aspects of sex work by adults, including by repealing any administrative laws and punitive policies that are indirectly applied against, or have a disproportionate impact on, sex workers.
- Ensure the full, equal, meaningful and effective participation of sex workers in the development of laws and policies that impact their rights and affect their lives and safety.
- Ensure that sex workers have access to all economic, social and cultural rights, in particular their rights to favourable and just conditions at work, to a healthy and safe working environment, to an adequate standard of living as well as all other labour rights protected by international human rights law and standards, including those developed by the ILO.
- Ensure that laws or policies that address trafficking do not conflate consensual sex work by adults with trafficking in persons.

Kindest Regards,

The Sex Worker Inclusive Feminist Alliance (SWIFA)