



EUROPEAN COALITION ON SEX WORKERS' RIGHTS AND INCLUSION

The European Coalition on Sex Workers' Rights and Inclusion¹

SPAIN

SUBMISSION TO THE UNITED NATIONS COMMITTEE ON THE ELIMINATION OF
DISCRIMINATION AGAINST WOMEN

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¹ The organisations who make up the Coalition are: **Aids Action Europe** (AAE), **Amnesty International**, **Correlation European Harm Reduction Network** (**Correlation EHRN**), **European Aids Treatment Group** (**EATG**), **European Digital Rights** (**EDRI**), **European Network Against Racism** (**ENAR**), **European Sex Workers' Rights Alliance** (**ESWA**), **Equinox - Racial Justice Initiative**, **Fair Trials**, **Human Rights Watch**, **International Planned Parenthood Federation European Network** (**IPPF EN**), **International Lesbian, Gay, Bisexual, Trans and Intersex Association Europe** (**ILGA-Europe**), **La Strada International** (**LSI**), **Platform for International Cooperation on Undocumented Migrants** (**PICUM**), and **Transgender Europe** (**TGEU**).



INTRODUCTION

The European Coalition on Sex Workers' Rights and Inclusion ("the Coalition") presents this submission to the UN Committee on the Elimination of Discrimination against Women ("the Committee") in advance of the review of Spain's ninth periodic report on measures taken to implement the Convention on the Elimination of All Forms of Discrimination against Women ("the Convention"). The submission has a specific focus on violations of human rights of sex workers. It should not be seen as an exhaustive account of the Coalition's concerns on the wider topic of discrimination against women and gender-based discrimination in the country.

The Coalition is particularly concerned that some of the pending proposed amendments to the Spanish Criminal Code would, if passed, result in a **framework that criminalizes some aspects of sex work**, namely buying sex (clients) and activities of third parties who contribute to organizational aspects of sex work. This framework would violate the human rights of sex workers, including their right to be free from any form of discrimination. It would have a disproportionate negative effect on women who are engaging in sex work, including trans, migrant and racialized women, as well as women living with disabilities. We believe that it would be at odds with the commitments that Spain has undertaken to combat all forms of discrimination against women, in line with the Convention, the implementation of which this Committee is tasked to monitor.

The Coalition emphasizes that the proposed measures to criminalize aspects of sex work are not necessary to combat trafficking for the purpose of sexual exploitation, forced labour or gender-based violence, which states have the duty to address. The Coalition calls on the Committee to make a distinction between sex work, which is based on the consensual provision of sexual services between adults in exchange of remuneration, and other instances where such informed consent is lacking because of coercion, threat and/or violence, which may amount to trafficking for the purpose of sexual exploitation, forced labour or gender-based violence. With a view to protecting, respecting and fulfilling the human rights of sex workers, it is of paramount importance that these distinct situations are not conflated in states' responses to trafficking in human beings for the purpose of sexual exploitation and forced labour or in any other laws and policies which may affect sex workers.



1. Current legal framework in Spain and proposed amendments

The selling and buying of sex among consenting adults are currently not criminally proscribed in Spain.² The Spanish Criminal Code proscribes conduct associated with “forced prostitution” (article 187), “prostitution of children or persons living with disability” (article 188), and “child pornography” (article 189).³

However, since 2005, several municipalities have adopted by-laws prohibiting conduct such as requesting, negotiating and offering sexual services in public places and punishing it with a fine.⁴ Moreover, the 2015 Citizens' Security Law penalizes the soliciting of sex and the clients who request or accept sexual services in public spaces, as well as in the proximity of areas and/or services for children, such as parks or schools.⁵ These provisions, which punish the proscribed conduct with a fine, have a similar negative effect as criminal laws in undermining the autonomy and human rights of sex workers.⁶

On 27 May 2022, the Socialist Party (PSOE) tabled a bill (*Proposición de ley orgánica para prohibir el proxenetismo en todas sus formas*)⁷ in Congress to amend the aforementioned legal framework. The PSOE justified it by arguing that the current legislative framework is ineffective to address “procuring”, which involves instances where third parties make profit out of “prostitution” but requiring a relation of “exploitation”. The Bill also emphasized the need to criminally proscribe an aggravated form of procuring, which involves the profitable provision by third parties of premises to facilitate “prostitution”, as well as the conduct of clients.⁸

Specifically, the Bill seeks to make three major amendments to the current legislative framework. First, it seeks to amend **article 187** of the Penal Code to expand the conduct proscribed by this article. The proposal punishes “*Whoever for profit promotes, favours or facilitates the prostitution of another person even with his/her consent*”. The proposal establishes a penalty enhancement for whoever makes use of violence, intimidation, deceit or abuse. Second, a new **article 187bis** would criminalize “*whoever, for profit and habitually, uses a*

² The Criminal Code that entered into force in 1995 decriminalized aspects of sex work. María Marta González Tascón, *Aspectos jurídico-penales de la explotación sexual de las personas adultas en la prostitución y de otras conductas relacionadas*, REPC 22-10 (2020), <http://criminet.ugr.es/recpc/22/recpc22-10.pdf>.

³ Spanish Criminal Code: www.boe.es/buscar/act.php?id=BOE-A-1995-25444.

⁴ European Parliament, The differing EU Member-States' Regulations and their cross-border implications on women's rights, section 3.1.26, [www.europarl.europa.eu/RegData/etudes/STUD/2021/695394/IPOL_STU\(2021\)695394_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2021/695394/IPOL_STU(2021)695394_EN.pdf).

⁵ Ley Orgánica 4/2015 de 30 de marzo de protección de la seguridad ciudadana, Articles 36.11 and 39, www.boe.es/buscar/act.php?id=BOE-A-2015-3442.

⁶ CEDAW, Concluding Observations: Russian Federation, UN Doc. CEDAW/C/RUS/CO/8, 2015, paras. 25-26. The Concluding Observations call upon the government to repeal the provision of the Administrative Code which penalizes prostitution and to establish an oversight mechanism to monitor violence against women involved in prostitution including by the police.

⁷ *Proposición de Ley Orgánica por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal, para prohibir el proxenetismo en todas sus formas*, www.congreso.es/public_oficiales/L14/CONG/BOCG/B/BOCG-14-B-250-1.PDF.

⁸ *Proposición de Ley Orgánica, exposición de motivos* (previously cited).



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

2. Human rights concerns

The Coalition is concerned that, by criminalizing clients and anyone supporting sex workers, the amendments to article 187 of the Criminal Code and the two new articles 187bis and 187ter would, if passed, result in violations of sex workers' human rights. As further detailed in the following sections of this submission, criminalization of all aspects of sex work, including of those who purchase and/or facilitate sex work, results in unsafe working conditions, greater levels of violence against sex workers, poor health outcomes and increased stigma and discrimination. The direct result of these amendments would be the increased likelihood of harm, violence, and precarity for the very communities that they purport to "protect".

The amendment to article 187 conflates "exploitation" with sex work, where sex workers exercise their informed consent in the provision of sexual activities between adults in exchange of remuneration. Article 187bis seeks to extend the punishment of third parties without meeting the requirements of coercion, violence and/or intimidation. This is likely to result in the criminalization of anyone supporting sex workers with housing and working spaces and could even consequently have a negative impact on family members, peers, healthcare providers, and friends.

2.1 The right to sexual and reproductive health (article 12: health)

The Convention establishes that states should take measures to eliminate discrimination against women in access to health care (Article 12). General Recommendation 24 acknowledges that "women in prostitution" are at particular risk of exposure to HIV/AIDS and other sexually transmitted diseases (STIs) and calls on states to ensure that all women have access to sexual health services without any discrimination.⁹

Evidence indicates that the criminalization of some or all aspects of sex work interferes with and undermines sex workers' right to health services and information, in particular the prevention, testing and treatment of STIs and HIV. Criminalization of sex work, including the criminalization of clients, has specifically been shown to directly undermine global HIV prevention efforts, as it is associated with a reduced access and use of condoms.¹⁰

⁹ CEDAW Committee, General Recommendation No. 24: Article 12 of the Convention (Women and Health), UN Doc CEDAW/C/CG/24, 1999, para. 18.

¹⁰ UNAIDS, HIV and Sex Work, Human Rights Fact Sheet Series 2021, www.unaids.org/sites/default/files/media_asset/05-hiv-human-rights-factsheet-sex-work_en.pdf.



According to a study in 10 sub-Saharan countries, the odds of sex workers of living with HIV are more than 7 times higher in countries that criminalize sex workers compared to countries that do not.¹¹

Spain has an immediate obligation to “repeal or eliminate laws, policies and practices that criminalize, obstruct or undermine [an] individual’s or particular group’s access to sexual and reproductive health facilities, services, goods and information”.¹²

The Coalition submits that this obligation extends to laws criminalizing all or some aspects of sex work as they constitute barriers to access sexual and reproductive health services.

2.2 The right to be free from gender-based violence (Article 1)

This Committee has recognized that provisions that enable, tolerate or condone forms of gender-based violence include those that criminalize women “in prostitution”, as well as those that disproportionately affect women.¹³ Its General Recommendation 35 further states that “failure to investigate, prosecute and punish and to provide reparation to victims/survivors of such acts [gender-based violence against women] provides tacit permission or encouragement to acts of gender-based violence against women. These failures constitute human rights violations.”¹⁴

There is ample evidence that laws criminalizing aspects of sex work other than the selling of sex, namely the purchase of sex and third parties’ activities, also expose sex workers to an increased risk of gender-based violence by both private individuals and law enforcement officials.¹⁵ Amnesty International’s most recent research on sex workers’ human rights, conducted in Ireland and published in January 2022, revealed that sex workers in the country, which criminalized the purchase of sex in 2017, have significant concerns for their safety.¹⁶ The

¹¹ Lyons, C.E., Schwartz, S.R., Murray, S.M. et al. *The role of sex work laws and stigmas in increasing HIV risks among sex workers*. Nat Commun 11, 773 (2020), <https://doi.org/10.1038/s41467-020-14593-6>.

¹² CESCR, General Comment 22 on the Right to Reproductive Health, UN Doc. E/C.12/GC/22, 2016, para. 49(a).

¹³ CEDAW Committee, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, UN. Doc. CEDAW/C/CG/35, para 29.c.i.

¹⁴ CEDAW Committee, General Recommendation No. 35 (previously cited), para. 24(b).

¹⁵ For more information, see for example: Global Network of Sex Work Projects (2011). *Briefing Paper: Criminalization of Clients*, <https://www.nswp.org/sites/nswp.org/files/Criminalisation%20of%20Clients-c.pdf>, Krüsi, A., Pacey, K., Bird, L., Taylor, C., Chettiar, J., Allan, S., & Shannon, K. (2014). *Criminalisation of clients: reproducing vulnerabilities for violence and poor health among street-based sex workers in Canada—a qualitative study*. *BMJ open*, 4(6), e005191; Amnesty International (2022), “We live within a violent system.” *Structural violence against sex workers in Ireland* (Index EUR 29/5156/2022) www.amnesty.org/en/documents/eur29/5156/2022/en/; The Global Network of Sex Work Projects (2015), *The Real Impact of the Swedish Model on Sex Workers*, <https://nswp.org/resource/nswp-publications/community-guide-the-real-impact-the-swedish-model-sex-workers>; Amnesty International (2016), *The Human Cost of “Crushing” the Market: Criminalization of Work in Norway*, EUR 36/4034/2016, <https://www.amnesty.org/en/documents/eur36/4130/2016/en/>; Global Network of Sex Work Projects (2018), *Policy Brief: The Impact of ‘End Demand’ Legislation on Women Sex Workers*; Human Rights Watch (2019), *Why sex work should be decriminalized*, <https://www.hrw.org/news/2019/08/07/why-sex-work-should-be-decriminalized>; Héléne Le Bail, Calogero Giametta, Noémie Rassouw, Médecins du Monde (2019), *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*, https://nswp.org/sites/default/files/web_en_rapport-prostitution-finale.pdf.

¹⁶ Amnesty International, “We live within a violent system” (previously cited).



overwhelming majority of sex workers interviewed (23 out of 30) told Amnesty International that they had experienced various forms of violence at different times while doing sex work.¹⁷ The majority of the sex workers interviewed also identified sharing premises with other workers as a useful strategy to improve their safety and limit potential risks of violence. However, criminalization of aspects of sex work such as the brothel keeping provision, has a “chilling effect” on sex workers’ exercise of their human rights by preventing them from working together in one apartment for safety.¹⁸ The evidence gathered by Amnesty International revealed systemic, structural and intersecting factors being at the very root of the violence and other human rights violations experienced by sex workers in Ireland.

Laws that criminalize the buying of sex or general organizational aspects of sex work, such as laws regarding brothel-keeping or solicitation, often force sex workers to work in ways that compromise their safety.¹⁹ Bans on buying sex criminalize the transaction between the sex worker and the client. While these laws are often intended to shift police focus, and therefore blame, from the sex worker to the client, in practice they can lead to sex workers having to take risks to protect their clients from detection by law enforcement, such as visiting locations determined only by their clients.²⁰ Laws prohibiting organizational aspects of sex work often ban sex workers from working together, renting secure premises, or hiring security or other support staff, meaning that they face prosecution and other penalties if they try to operate in safety. In prohibiting activities that help keep sex workers safe, criminalization denies sex workers their right to security of person.

In view of the above, the Coalition reiterates Spain’s obligation to address all aspects of gender-based violence, including by refraining from adopting laws, such as those criminalizing clients and organizational aspects of sex work, that expose sex workers to gender-based violence and prevent them from accessing justice.

2.3 The right to adequate housing (Articles 1, 3, 13, 14)

States should ensure that everyone can enjoy the right to adequate housing without any discrimination, including on the grounds of gender and social and economic status. The right to adequate housing entails the prohibition of forced evictions.²¹ The European Sex Workers’ Rights Alliance has cautioned that the criminalization of third

¹⁷ Amnesty International, “*We live within a violent system*” (previously cited).

¹⁸ A “chilling effect” for the purposes of international human rights law may be defined as “the negative effect any state action has on natural and/or legal persons, and which results in pre-emptively dissuading them from exercising their rights or fulfilling their professional obligations, for fear of being subject to formal state proceedings which could lead to sanctions or informal consequences such as threats, attacks or smear campaigns.” Laurent Pech, Open Society European Policy Institute, *The Concept of Chilling Effect: Its untapped potential to better protect democracy, the rule of law, and fundamental rights in the EU, 2021*, opensocietyfoundations.org/uploads/c8c58ad3-fd6e-4b2d-99fa-d8864355b638/the-concept-of-chilling-effect-20210322.pdf, p. 4.

¹⁹ See *Canada (Attorney General) v Bedford*, 2013 SCC 72 [2013] 3 S.C.R. 1101.

²⁰ Bjørndahl, U. (2012). *Dangerous Liaisons: A report on the violence women in prostitution in Oslo are exposed to. Report for the municipality of Oslo.*

²¹ Article 11.1. of the UN Covenant on Economic, Social and Cultural Rights (CESCR), CESCR General Comment No. 4: the right to adequate housing, 1991, E/1992/23.



parties who rent houses or premises to sex workers would also sex workers onto the streets and increase their risks of impoverishment and loss of adequate shelter.²² Amnesty International has also found evidence indicating that where sex work is criminalised, including the criminalization of clients, it 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.²³

The provisions in Irish criminal law which carry criminal penalties and fines for brothel keeping and “living on the earnings of prostitution” have very specific negative consequences on sex workers’ right to adequate housing. The potential for these provisions to be harmful to sex workers is particularly enhanced given the scarcity of adequate housing and people’s consequent heavy dependency on private housing provision in Ireland. The indirect criminalisation of sex work in this way impedes sex workers’ ability to access the private housing.²⁴

The Coalition submits that the use of criminal law to prohibit aspects of sex work does not address or challenge the macro socioeconomic forces and systemic discrimination that can lead people to do sex work, particularly individuals from already marginalized groups. It does not offer alternative employment options or improved rates of pay. Rather, criminalization compounds the marginalization of people in sex work, forcing them to sell sex in clandestine and dangerous conditions while limiting their access to their human rights, including economic and social rights and stigmatizing and punishing them for their decisions.

2.4 Meaningful participation in decision-making (Article 7)

Individuals and groups should be enabled to genuinely participate in decision-making processes which may affect their rights. This is a crucial component of the right to participate in the conduct of public affairs without any discrimination, including on grounds of gender, sexual orientation, gender identity and/or expression and sex characteristics, and economic and social situation.²⁵

This principle was mainstreamed into international law by the disability rights movement in the 1990s, which advocated for “nothing about us without us.” This campaign for meaningful involvement is now a unifying call for people and movements around the world who are fighting for the right to participate in policymaking,

²² European Sex Workers Rights Alliance, (2021). *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*, <https://www.eswalliance.org/don-t-outlaw-sex-workers-consent-policy-brief-in-response-to-law-proposal-to-criminalise-sex-work-in-spain>

²³ Amnesty International (2016). *The Human Cost of Crushing the Market: Criminalization of Sex Work in Norway* (previously cited), p.11. Amnesty International, “*We live within a violent system*” (previously cited).

²⁴ Amnesty International, “*We live within a violent system*” (previously cited).

²⁵ Article 25 of ICCPR, CCPR General Comment 25: the right to participate in public affairs, 1996, CCPR/C/21/Rev.1/Add.7.



research, and civil society, including sex workers. Regrettably, because of entrenched and intersectional forms of discrimination, sex workers are still often excluded from policy and decision-making processes that affect their rights, including in UN fora.²⁶

The Coalition emphasize that since people's reasons for doing sex work are often complex and intersecting, solutions that would improve people's access to their human rights without discrimination should acknowledge and holistically address these intersecting reasons first and foremost, and in consultation with sex workers themselves.

3.A NOTE ON TRAFFICKING IN HUMAN BEINGS AND FORCED LABOUR

In 2015, the Committee called on Spain to adopt comprehensive anti-trafficking legislation, a comprehensive approach to address the phenomenon of “exploitation of prostitution” and to adopt a comprehensive definition of pimping to ensure prosecution of individuals responsible for “the exploitation of prostitution”.²⁷

The Coalition emphasizes the importance of respecting the **principle of legality** in criminal responses to trafficking of human beings and other human rights violations. Specifically, the UN Working Group on Arbitrary Detention (WGAD) stated that the principle of legality is one of the main safeguards of criminal procedure and requires that laws be formulated with **sufficient precision** so that the individual can access and understand the law, and regulate their conduct accordingly.²⁸ The WGAD and the UN Working Group on Discrimination against Women and Girls (WGDAG) have emphasized that the principle of legality is a basic principle of criminal law, which is an ultima ratio measure that should be used to criminalize serious and harmful behaviour, rather than the status of a person.²⁹

Notions such as “exploitation of prostitution” and/or “sexual exploitation”, are vague terms that are not clearly defined in international human rights law and standards. The guidance regarding these terms provided by some

²⁶ Amnesty International, “There is no help for our community”: The impact of States' Covid-19 responses on groups affected by unjust criminalization, Index: POL 30/5477/2022, www.amnesty.org/en/documents/pol30/5477/2022/en/.

²⁷ CEDAW Concluding Observations on Spain, 2015, CEDAW/C/ESP/CO/7-8, paras. 22-23

²⁸ UN Working Group on Arbitrary Detention, Opinion No. 41/2017, UN Doc. A/HRC/WGAD/2018/62, para 57. UN Economic and Social Council, Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, UN Doc. E/CN.4/1985/4, Principle 17. UN Economic and Social Council, Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, UN Doc. E/C.12/2000/13, Principle 50.

²⁹ UN Working Group on Discrimination against Women and Girls, UN Working Group on Arbitrary Detention, Joint amicus curiae in the Federal High Court of Nigeria, Joy Moses & 5 ORS vs. THE MINISTER, 3 February 2020, www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/Amicus_Brief_1_Nigeria.pdf, p.11.



human rights bodies, such as for example the Working Group on Trafficking in Persons, which refers to “obtaining profit” from the “exploitation of prostitution of another person” without referring to coercion, threat or violence, risks conflating sex work and trafficking and thus criminalizing some aspects of sex work, in particular buying sex (clients) and third parties who contribute to organizational aspects of sex work.³⁰

The Coalition emphasizes the need to make a clear distinction between sex work (the consensual provision of sexual services between adults in exchange of remuneration) and other instances where the provision of sexual services for some kind of remuneration is not based on informed consent. The focus on informed consent is a crucial factor to distinguish **sex work** from **human trafficking**³¹, **gender-based violence**³² or **forced and coerced labour**.³³ Informed consent is the voluntary and ongoing agreement to engage in a particular sexual activity, in this instance to provide a sexual service in exchange of money or goods. While discrimination and socio-economic status may play a role in the decision to sell sex, constrained circumstances do not eliminate an individual’s ability to make decisions about their own lives, except under particular circumstances that amount to coercion – where an individual faces threats, violence or abuse of authority.

Human trafficking, gender-based violence and coerced and forced labour constitute clearly defined human rights violations in international human rights law, which requires criminal proscription on the part of the state. However, states’ responses to these human rights violations should comply with the principle of legality and should fully respect, protect and fulfil the human rights of sex workers.

RECOMMENDATIONS

To the Spanish authorities:

- Ensure the right of sex workers to consultation and meaningful participation in the development of any relevant laws or regulatory frameworks is respected, protected and fulfilled, including, in particular, through ensuring the involvement of sex workers and other marginalized groups in decision-making processes that affect their rights;
- Reject proposed amendment to article 187 of the Criminal Code, as well as two new proposed articles 187bis and 187ter;

³⁰ Report on the meeting of the Working Group on Trafficking in Persons held in Vienna from 27 to 29 January 2010, CTOC/COP/WG.4/2010/2, para. 11.

³¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000, Article 3.

³² CEDAW GR 35, para 9, CEDAW GR 19, CEDAW Article 1, Articles 1 and 2 of the Inter-American Convention on Prevention, Sanction and Eradication of Violence against Women, Article 3 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.

³³ ILO Forced Labour Convention (NO, 29), article 2.



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- Repeal by-laws prohibiting conduct such as requesting, negotiating and offering sexual services in public places;
- Repeal the provision in the 2015 Citizens' Security Law that penalizes the soliciting of sex and the clients who request or accept sexual services in public spaces, as well as in the proximity of areas and/or services for children, such as parks or schools;
- Ensure that laws and policies to address human trafficking and exploitation respect the principle of legality and avoid the harmful conflation of sex work with trafficking of human beings for the purpose of sexual exploitation and forced labour;
- Put in place specific economic and social measures in order to address the intersectional discrimination, harmful gender stereotypes and denial of economic and social rights of sex workers.

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