

IN THE EUROPEAN COURT OF HUMAN RIGHTS

Application No. 63664/19, 64450/19, 24387/20 et al.

BETWEEN:

M.A. and Others

Applicants

- and -

France

Respondent

- and -

Amnesty International

Intervener

**WRITTEN SUBMISSIONS ON BEHALF OF THE
INTERVENER**

Introduction

1. These submissions are presented on behalf of Amnesty International (the Intervener) pursuant to the leave to intervene granted by the President of the Fifth Section on 27 August 2021, in accordance with Rule 44 § 3 of the Rules of Court. The Intervener has extensive experience researching state abuses of the human rights of sex workers globally. In particular, the Intervener has documented the impact of criminalization of the purchase of sex and legislation criminalizing other aspects of sex work on sex workers' human rights.
2. In 2016, the Intervener developed a policy and a detailed explanatory note on sex workers' human rights on the basis of extensive consultations and evidence gathered in the course of in-depth, country-based research.¹ The geographical scope of the research included: Buenos Aires; Hong Kong; Oslo; and Papua New Guinea.²
3. The Intervener also reviewed research conducted by the United Nations, government bodies, academics and other researchers in these locations and carried out an extensive review of existing human rights research globally, relevant jurisprudence, findings and recommendations from the international and regional systems for human rights protection.
4. During the course of this research, as well as during more recent research conducted in the Dominican Republic,³ the Intervener has gathered evidence of the impacts of criminalization and penalization of sex work on the rights to life, liberty, bodily autonomy and security of person, the right to equality and non-discrimination, the right to be free from torture or other cruel, inhuman or degrading treatment or punishment, the right to privacy, and the right to the highest attainable standard of health, amongst others.
5. These submissions will address the question of sex workers as victims of violations of human rights reflected *inter alia* in Articles 2 and 3 of the European Convention on Human Rights (thereafter "the Convention") as a consequence of the criminalization of the purchase of sex. They will summarize the Intervener's research findings in five jurisdictions, including in another Council of Europe Member State (Norway), on impacts of the criminalization of the purchase of sex between adults on the rights of sex workers guaranteed by Articles 2 and 3 of the Convention, present an analysis of a law criminalizing the purchase of sex in Ireland, as well as summarize the relevant international human rights law and standards, including global and regional jurisprudence.

¹ Amnesty International, *Policy on state obligations to respect, protect and fulfil the human rights of sex workers* (Index: POL 30/4062/2016), 26 May 2016, [amnesty.org/en/documents/pol30/4062/2016/en/](https://www.amnesty.org/en/documents/pol30/4062/2016/en/); *Explanatory note on Amnesty International's policy on state obligations to respect, protect and fulfil the human rights of sex workers* (Index: POL 30/4063/2016), 26 May 2016, [amnesty.org/en/documents/pol30/4063/2016/en/](https://www.amnesty.org/en/documents/pol30/4063/2016/en/).

² Amnesty International, *Sex Workers at Risk: A Research Summary on Human Rights Abuses Against Sex Workers* (Index: POL 40/4061/2016), 26 May 2016, [amnesty.org/en/documents/pol40/4061/2016/en/](https://www.amnesty.org/en/documents/pol40/4061/2016/en/); Amnesty International, "What I'm Doing Is Not a Crime." *The Human Cost of Criminalizing Sex Work in the City of Buenos Aires, Argentina* (Index: AMR 13/4042/2016), 26 May 2016, [amnesty.org/en/documents/amr13/4136/2016/en/](https://www.amnesty.org/en/documents/amr13/4136/2016/en/); Amnesty International, *China: Harmfully Isolated: Criminalizing Sex Work in Hong Kong* (Index: ASA 17/4032/2016), 26 May 2016, [amnesty.org/en/documents/asa17/4032/2016/en/](https://www.amnesty.org/en/documents/asa17/4032/2016/en/); Amnesty International, *The Human Cost of "Crushing" The Market: Criminalization of Sex Work in Norway* (Index: EUR/36/4034/2016), 26 May 2016, [amnesty.org/en/documents/eur36/4034/2016/en/](https://www.amnesty.org/en/documents/eur36/4034/2016/en/); Amnesty International, *Outlawed and Abused: Criminalizing Sex Work in Papua New Guinea* (Index: ASA 34/4030/2016), 26 May 2016, [amnesty.org/en/documents/asa34/4030/2016/en/](https://www.amnesty.org/en/documents/asa34/4030/2016/en/).

³ Amnesty International, "If They Can Have Her, Why Can't We?": *Gender-Based Torture and Other Ill-Treatment of Women Engaged in Sex Work in the Dominican Republic* (Index: AMR 27/0030/2019), 28 March 2019, [amnesty.org/en/documents/amr27/0030/2019/en/](https://www.amnesty.org/en/documents/amr27/0030/2019/en/).

I. Victim status of sex workers complaining about the “criminalization of clients”.

6. Much of the public debate and media focus surrounding criminalization of sex work focuses on the ban on buying sex, a legal approach known as the “Nordic Model”. This focus on the ban on buying as the defining characteristic of this legal regime obscures the fact that it is not the only law through which sex work (and as a consequence, sex workers) are criminalized and policed in countries implementing the “Nordic Model”.⁴ A variety of laws that criminalize the organization or promotion of sex work remain notwithstanding the absence of an outright ban on selling sex – meaning that activities such as advertising, “promoting prostitution” or letting premises where sex work occurs, are still illegal in most of these countries.⁵ For example, in Sweden, Section 6.12 of the Criminal Code makes it a crime to knowingly let a property where sex is being sold.⁶
7. In Ireland, Part 4 of the Criminal Law (Sexual Offences) Act 2017 criminalizes the purchase, and not the selling of sex.⁷ However, other provisions in the Act directly or indirectly criminalize sex workers and potentially their families. Section 10 of the Criminal Law (Sexual Offences) Act 1993, as amended by the 2017 Act, makes it a criminal offence if a person “knowingly lives in whole or in part on the earnings of the prostitution of another person and aids and abets that prostitution”. Under Section 11 on “brothel keeping”, it is an offence to keep or manage or act or assist in the management of; to be a tenant, lessee, occupier or person in charge of; or to be a lessor or landlord of, any premises deemed a “brothel”.⁸ When the 1993 Act was amended in 2017, significantly increased penalties were introduced: “brothel-keeping” now carries a possible fine of EUR 5,000 or imprisonment of up to 12 months or both; prior to the 2017 amendment, the maximum penalties were EUR 1,000 and six months respectively.⁹
8. No distinction is made in these provisions between exploitation, abuse and coercion by third parties, and third-party involvement that is consensual and does not cause harm, especially where it is practical, supportive or for the purposes of safety of sex workers. The provisions can also be used to sanction those who lease or rent accommodation to sex workers. Furthermore, Section 11 of the 1993 Act on “brothel-keeping” had been and continues to be used to directly criminalize sex workers themselves, as two or more sex workers selling sexual services from the same premises can be interpreted as “running a brothel”; and can thus prevent sex workers from working together or with others, even for safety reasons. In one case given widespread media coverage, two young migrant women from Romania, one of whom was pregnant at the time, were sentenced to nine months imprisonment for “brothel-keeping” when found by the police to be working together in an apartment.¹⁰ The Intervener recommended to the Irish government that its ongoing review of the legislation address not only the impact on sex workers of the offence of purchasing sexual services introduced in 2017 but also assess the consequences of the related offences of “brothel keeping” and “living on the earnings of prostitution”.¹¹

⁴ In some countries, for example Luxembourg, the “Nordic Model” was considered and rejected by the lawmakers. See: Kingston, S., Thomas, T. *No model in practice: a “Nordic model” to respond to prostitution?* Crime Law Soc Change 71, 423–439 (2019). <https://doi.org/10.1007/s10611-018-9795-6>, p. 430.

⁵ Norway, Penal Code 2015, S 315, lovdata.no/dokument/NLE/lov/2005-05-20-28/*#*; Sweden, Criminal Code, 1962: 700, riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Brottsbalk-1962700_sfs-1962-700/#K6; Ireland, Criminal Law (Sexual Offences) Act 2017, irishstatutebook.ie/eli/2017/act/2/enacted/en/print.html.

⁶ Sweden, Criminal Code, 1962: 700, riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Brottsbalk-1962700_sfs-1962-700/#K6.

⁷ Ireland, Criminal Law (Sexual Offences) Act 2017, irishstatutebook.ie/eli/2017/act/2/enacted/en/print.html.

⁸ Ireland, Criminal Law (Sexual Offences) Act 1993 as amended on 30 June 2017, S. 10 and 11, [justice.ie/en/JELR/CRIMINAL LAW \(SEXUAL OFFENCES\) ACT 1993 - REVISED - Updated_30_June_2017.pdf/Files/CRIMINAL LAW \(SEXUAL OFFENCES\) ACT 1993 - REVISED - Updated_30_June_2017.pdf](http://justice.ie/en/JELR/CRIMINAL LAW (SEXUAL OFFENCES) ACT 1993 - REVISED - Updated_30_June_2017.pdf/Files/CRIMINAL LAW (SEXUAL OFFENCES) ACT 1993 - REVISED - Updated_30_June_2017.pdf).

⁹ Ireland, Criminal Law (Sexual Offences) Act 1993 as amended on 30 June 2017.

¹⁰ Irish Times, “Jailing of sex workers keeping brothel shows law ‘not fit for purpose’”, 10 June 2019, irishtimes.com/news/social-affairs/jailing-of-sex-workers-keeping-brothel-shows-law-not-fit-for-purpose-1.3921149. The judgment, as it was made by a first instance court, is not published.

¹¹ Amnesty International, *Ireland: Submission to the Department of Justice and Equality’s Public Consultation on Review of the Operation of Part 4 of the Criminal Law (Sexual Offences) Act 2017*, 18 September 2020, amnesty.ie/wp-content/uploads/2020/09/AI-Submission-on-sex-work-law-review-18092020.pdf.

9. The Intervener's research on the situation under Norway's similar legal regime, introduced in 2009, found evidence of violations of sex workers' human rights in the country, for instance, where sex workers have been subjected to forced evictions as their landlords can be prosecuted for renting property to them if they sell sex there. The Intervener documented cases of sudden forced evictions and sex workers being made homeless as a consequence of police pursuing or a landlord fearing police pursuit due to renting the property to them.¹² The Intervener also documented a case where a forced eviction occurred as a direct result of a migrant sex worker reporting a rape and violent robbery that she was a victim of to the Norwegian police.¹³ In other cases documented by the Intervener, contacting the authorities about a violent attack resulted in deportations of the migrant sex workers from Norway, even before finishing their treatment for the injuries sustained during the attack.¹⁴ The research demonstrated that claims that individual sex workers are not criminalized or penalized under the "Nordic Model" in Norway and that the level of harm and stigma that sex workers experience is reduced, are not being realized on the ground. Many sex workers in the country remain subject to a high level of policing and are being targeted and penalized by police in multiple, intersecting ways.¹⁵ Migrant sex workers are often deported from Norway or threatened with deportation when caught by police selling sex on the street or while working together indoors.¹⁶
10. Further, while laws criminalizing the purchase of sex, such as those analysed by the Intervener in Ireland and Norway, may be intended to shift police focus, and therefore blame, from the sex worker to the client, in practice, the Intervener's research has shown that such laws can lead to sex workers having to take greater risks to protect their clients from detection by law enforcement. Such risks include visiting locations determined only by their clients, often their homes or unknown secluded areas where there is less opportunity to call for help, negotiating with clients quickly with insufficient time to assess risks or to screen out potentially dangerous clients, which ultimately put sex workers at increased risk of violence and being forced to engage in unprotected sex.¹⁷
11. The Intervener's research from jurisdictions where neither the sale nor the purchase of sex between adults is a criminal offence, but where aspects of the organization of sex work are, also found widespread violations of sex workers' human rights. For example, in the Dominican Republic, the Intervener found that criminalizing aspects of sex work had a punitive effect on sex workers by imposing a criminalized status on them, which in turn fuelled arbitrary detentions by police and enabled violence, including torture and other ill-treatment by police, and discrimination, with impunity.¹⁸ Similarly, in Buenos Aires, where the sale or purchase of sex by adults was not formally criminalized at the time of the research, the Intervener's research revealed that these activities are in fact criminalized on multiple levels through a range of laws that punish activities related to the sale and purchase of sex and communications around them, as well as a Federal Anti-trafficking Law and related initiatives that fail to distinguish between sex work and human trafficking for sexual exploitation. These have led to human rights abuses and violations against sex workers by police, state officials and medical providers.¹⁹
12. In Hong Kong, sex workers can be prosecuted for soliciting customers, sharing premises with other sex workers, and for living off the proceeds of prostitution. This has been documented by the Intervener as resulting in sex workers often being targeted by both the police and clients for abuse, and rarely reporting such violence to the authorities.²⁰ Similarly, in Papua New Guinea, the Intervener documented how the outlawed nature of sex work - despite the selling or purchasing of sex between adults not being criminal offences - makes it difficult for sex workers to report crimes that are committed against them and to seek

¹² Amnesty International, *The human cost of "crushing" the market: Criminalization of sex work in Norway* (previously cited).

¹³ *The human cost of "crushing" the market: Criminalization of sex work in Norway* (previously cited), p. 45.

¹⁴ *The human cost of "crushing" the market: Criminalization of sex work in Norway* (previously cited), p. 46.

¹⁵ *The human cost of "crushing" the market: Criminalization of sex work in Norway* (previously cited), p. 8.

¹⁶ *The human cost of "crushing" the market: Criminalization of sex work in Norway* (previously cited), p. 10.

¹⁷ A. Krüsi, and K. Pacey, et al., *Criminalisation of clients: Reproducing vulnerabilities for violence and poor health among street-based sex workers in Canada - A qualitative study*, BMJ Open, 2014.

¹⁸ "If They Can Have Her, Why Can't We?": *Gender-Based Torture and Other Ill-Treatment of Women Engaged in Sex Work in the Dominican Republic* (previously cited).

¹⁹ "What I'm Doing Is Not A Crime". *The Human Cost of Criminalizing Sex Work in the City of Buenos Aires, Argentina* (previously cited).

²⁰ *China: Harmfully Isolated: Criminalizing Sex Work in Hong Kong* (previously cited).

police protection. In many cases, police officers were themselves the perpetrators of abuses against sex workers.²¹

13. In 2013, the Canadian Supreme Court ruled on laws similar to those described in the above-mentioned countries, which criminalized activities around sex work, such as advertising, “living on the avails of prostitution” and brothel-keeping.²² It declared them unconstitutional and struck them down, finding that they violated sex workers’ right to security of the person in the Canadian Constitution, stating: “The prohibitions all heighten the risks the applicants face in prostitution — itself a legal activity. They do not merely impose conditions on how prostitutes operate. They go a critical step further, by imposing dangerous conditions on prostitution; they prevent people engaged in a risky — but legal — activity from taking steps to protect themselves from the risks.”²³
14. The Intervener submits that the Canadian Supreme Court’s judgment and the research findings outlined above demonstrate that even in countries where the sale of sex is not criminalized, criminalizing other aspects of sex work can violate sex workers’ rights, including the right to life and freedom from torture and other cruel, inhuman or degrading treatment. Consequently, the Intervener submits that sex workers are often victims of human rights violations and abuses caused by criminalization of sex work or particular aspects of sex work.

II. Documented impacts of criminalization of the purchase of sex between adults, and other relevant laws, on sex workers’ human rights to life and freedom from torture and other ill-treatment.

1. Norway

15. In Norway, in 2014 and 2015, the Intervener conducted in-depth interviews with 30 women who at the time or previously sold sex in the country, as well as with representatives of multiple agencies providing support services to people who sell sex, civil society organizations, lawyers, academics and government agencies. A significant proportion of the women interviewed reported that they had encountered violence, in some cases severe and life threatening, while selling sex in Oslo in the years immediately preceding the research.²⁴
16. The Intervener’s research in Norway revealed that the violence sex workers encounter came at the hands of a range of perpetrators, including clients, members of the general public, third parties involved in sex work and organized gangs who preyed on them, capitalizing on their isolation and marginalized status. However, criminal laws which sanction aspects of sex work even if they do not directly criminalize the selling of sex, impede sex workers from turning to police when they need help or to enforce their rights, and also frustrate police from building relationships to minimize marginalization and offer protection to sex workers from violence. Instead, many sex workers, depending on their circumstances, find they interact with police due to a forced eviction, surveillance, loss of livelihoods and/or deportation. It is not surprising then that many of the women interviewed by the Intervener reported being extremely reluctant to report crimes to police. Nearly all of them said that they would only consider engaging with police as a last resort – often only in extreme circumstances where there was an immediate threat to their life. An indoor sex worker interviewed during the course of the research told the Intervener: “If a customer is bad you need to manage it yourself to the end. You only call the police if you think you’re going to die. If you call the police – you risk losing everything.”²⁵
17. The Intervener also found that actions that sex workers themselves took to increase their safety were being compromised in Norway due to the criminalization of the purchase of sex and other aspects of sex work. Many street-based sex workers identified going to a buyer’s

²¹ *Outlawed and Abused: Criminalizing Sex Work in Papua New Guinea* (previously cited).

²² *Canada (Attorney General) v. Bedford* [2013] 3 SCR 1101, 2013 SCC 72, scc-csc.lexum.com/scc-csc/scc-csc/en/item/13389/index.do.

²³ *Canada (Attorney General) v. Bedford* [2013] 3 SCR 1101, 2013 SCC 72.

²⁴ For instance, Ulla Bjørndahl, *Dangerous Liaisons: A report on the violence women in prostitution in Oslo are exposed to* (hereinafter: Ulla Bjørndahl, *Dangerous Liaisons*), 2012, humboldt1982.files.wordpress.com/2012/12/dangerous-liaisons.pdf, p. 12.

²⁵ *The human cost of “crushing” the market: Criminalization of sex work in Norway* (previously cited), p. 58.

home as carrying a significant risk and as something they wanted to avoid. However, most of the women interviewed reported being asked to visit buyers' homes in order to protect the clients from detection by police. In the testimonies collected by the Intervener, this was strongly associated with violent incidents against street-based sex workers. None of the street-based workers interviewed owned their own properties and were most vulnerable to eviction if the police identified that they took buyers to their own homes. A Nigerian street-based sex worker interviewed during the course of the research told the Intervener: "Some customers can hurt you at their apartments. They can hurt you because they know we are too scared to go to the police. We have to obey their rules because we are in their house. We can't bring them to ours."²⁶ Several social service providers interviewed raised concerns that the purchasing ban had created a "buyer's market" which compromises sex workers' safety. A representative of the Oslo Police told the Intervener that he believed there had been a reduction in buyers who were most likely to respect the agreement with the seller: "Many of the good clients - those who respect the law, the younger generation - are no longer out there. But bad clients are still there."²⁷

18. Service providers and individual sex workers also reported that women who sell sex had been questioned by police for carrying condoms or felt apprehensive about carrying condoms in case it led to police action against them. A representative of Oslo police district confirmed to the Intervener that the existence of condoms in indoor premises would be considered contributory evidence that the sale of sex was occurring there. This approach can act as a *de facto* penalty on the possession of condoms by sex workers, creating a barrier to the realization of their right to sexual and reproductive health. The practices of the Norwegian police and the justice system in using condoms as evidence were interfering in the provision of HIV and STI prevention programmes with sex workers.²⁸

19. The legal model adopted by the Norwegian government in 2009 was promoted as one that encourages protection of people who sell sex, shields them from criminalization and instead shifts the criminal burden of blame to buyers of sex. Despite this, as described above, the Intervener has found evidence of human rights abuses against people who sell sex in Norway that were compounded by and, in some cases, directly caused by the legal framework. In terms of seriousness, in many cases, the threat and impact of forced eviction, deportation and loss of livelihood on people who sell sex far exceeded the implications of a 15,000 and 25,000 *kroner* (approx. EUR1,480–2,460) fine for buyers. The criminalization of sex work in Norway and the reluctance it creates among many sex workers to report crime to police also created a situation whereby perpetrators of violence against sex workers, including abusive clients, enjoyed relative impunity for serious criminal offences. The Intervener's research has shown that Norway is not implementing its international obligations to respect, protect and fulfil the rights of people who sell sex, including its positive obligations under the right to life and freedom from torture and other ill-treatment.

2. Ireland

20. In September 2020, the Intervener made a submission to the Irish government's three-year review of the Criminal Law (Sexual Offences) Act 2017, which criminalized those purchasing sexual services.²⁹ In it, the Intervener noted that the stated aim in enacting Part 4 of the 2017 Act, which criminalized the purchase of sex, was that of "addressing the very real and tragic crimes of trafficking and exploitation associated with prostitution".³⁰ However, the Intervener expressed concern at the lack of comprehensive data and research in Ireland on the experiences of sex workers, or on human trafficking for sexual exploitation. A 2019 government-commissioned review of a similar law in Northern Ireland, which included 13 interviews with sex workers and a survey of 199, found that the law "has had minimal effect on the demand for sexual services; and due to the absence of any evidence that demand had decreased, it was unable to determine how the offence could have

²⁶ *The human cost of "crushing" the market: Criminalization of sex work in Norway* (previously cited), p. 63.

²⁷ *The human cost of "crushing" the market: Criminalization of sex work in Norway* (previously cited), p. 66.

²⁸ *The human cost of "crushing" the market: Criminalization of sex work in Norway* (previously cited), pp. 50-52.

²⁹ Amnesty International, *Submission to the Department of Justice and Equality* (previously cited).

³⁰ Ireland, Department of Justice and Equality, "Minister Fitzgerald publishes the Criminal Law (Sexual Offences) Bill 2015", 23 September 2015, [justice.ie/en/JELR/Pages/PR15000487](https://www.justice.ie/en/JELR/Pages/PR15000487).

impacted on human trafficking".³¹ In fact, some research indicates that decriminalization of sex work may in fact help victims of trafficking, and lead to more effective anti-trafficking efforts.³²

21. The Intervener further noted that there have been some reports of increased violence or in reporting of violence against sex workers in Ireland. For instance, Ugly Mugs, an online reporting application where sex workers can confidentially report incidents of violence, has stated that comparing totals for the two years before and the two years after the offence of buying sexual services was introduced in the country, reports of crime against sex workers Ugly Mugs received increased by 90 per cent, and violent crime by 92 per cent (the figures apply to the whole island of Ireland, including Northern Ireland).³³
22. The Intervener is currently undertaking in-depth research into the human rights situation of sex workers in Ireland, in particular their experiences of violence, which it can share with the Court upon publication. However, a number of studies on some aspects of sex workers' human rights in Ireland are available. A 2020 academic study has analysed reports to Ugly Mugs from the Republic of Ireland only during the four years between 2015 and 2019, and reported similar increases in reports of violence to the application by sex workers to those observed on the whole island of Ireland. It found that when comparing the two years before and the two years after the 2017 law reform, sex workers reported 91 per cent more crime incidents to Ugly Mugs and 92 per cent more violent crimes.³⁴ The authors noted: "Whilst our preliminary analysis cannot prove direct causation, these increases are a concern in terms of sex workers' safety and raise issues around wider public protection from crime."³⁵ A 2020 report by Maynooth University scholars in conjunction with Sex Workers' Alliance of Ireland found that the 2017 law criminalizing the purchase of sex had negative impacts on sex workers' safety, health and well-being.³⁶ The research was conducted using peer-engaged and participatory methodologies and involved 20 sex worker participants.

3. **Argentina**

23. The sale and purchase of sex between adults was at the time of the research not formally criminalized in Buenos Aires, Argentina. However, a range of laws, for instance those around communications around and advertising for sex work, and those governing business premises, and the way they are enforced, criminalized sex workers. The Intervener's 2014-15 research, which focused on the city of Buenos Aires and was based on testimonies from 15 sex workers and 30 key stakeholders, as well as other evidence, revealed that, for example, while enforcing the law, police and other state officials conducted violent raids on apartments, profiled and arbitrarily detained sex workers in the streets and solicited bribes to avoid punishment.³⁷ The legal framework in place also impeded sex workers' ability to seek state protection from violence because of their involvement (or perceived involvement) in criminal activity, for example under National Law 12.331 Articles 15 and 17, which criminalized "Setting up a house or establishment where there is prostitution or incitement

³¹ Graham Ellison, Caoimhe Ní Dhónaill and Erin Early, *A Review of the Criminalisation of Paying for Sexual Services in Northern Ireland*, Queen's University Belfast, School of Law, 2019, justice-ni.gov.uk/publications/assessment-impact-criminalisation-purchasing-sexual-services.

³² Ronald Weitzer, "The mythology of prostitution: Advocacy research and public policy", *Sexuality Research and Social Policy*, 2010, semanticscholar.org/paper/The-Mythology-of-Prostitution%3A-Advocacy-Research-Weitzer/ad41d8157c442c0d710986c6bcf0d3a490008b44, pp. 23-25; Durbar Mahila Samanwaya Committee, "Innovative approaches to combat trafficking of women in sex trade by Durbar Mahila Samanwaya Committee (Kolkata)", sexworkeurope.org/sites/default/files/resource-pdfs/dmsc_innovative_approaches_trafficking.pdf; Open Society Foundations, "10 reasons to decriminalize sex work: A reference brief", opensocietyfoundations.org/sites/default/files/decriminalize-sex-work-20120713.pdf, p. 6; UNAIDS, "Guidance note on HIV and sex work", 2012, unaids.org/en/resources/documents/2012/20120402_UNAIDS-guidance-note-HIV-sex-work.

³³ Ugly Mugs, "Crime has almost doubled in the two years since new law came in", 26 March 2019, uglymugs.ie/wp-content/uploads/um-statement-26-mar-2019.pdf.

³⁴ Rosie Campbell, Lucy Smith, Becky Leacy, Miriam Ryan and Billie Stoica, "Not collateral damage: Trends in violence and hate crimes experienced by sex workers in the Republic of Ireland", in *Irish Journal of Sociology*, 2020, journals.sagepub.com/doi/full/10.1177/0791603520939794, p. 15.

³⁵ "Not collateral damage: Trends in violence and hate crimes experienced by sex workers in the Republic of Ireland", (previously cited), p. 15.

³⁶ Kathryn McGarry and Paul Ryan, in conjunction with the Sex Workers' Alliance of Ireland (SWAI), commissioned by HIV Ireland, "Sex worker lives under the law: A community engaged study of access to health and justice in Ireland", 2020, hivireland.ie/policy-news-and-media/research/sex-worker-lives-under-the-law/.

³⁷ "What I'm Doing Is Not A Crime". *The Human Cost of Criminalizing Sex Work in the City of Buenos Aires, Argentina*, (previously cited), p. 27.

to prostitution, and maintaining, administering, managing or opening a “house of tolerance”.³⁸ The Intervener has found that sex work was a stigmatized activity in Buenos Aires and the very existence of criminal laws around it reinforced and perpetuated stigma and discrimination against sex workers. State and non-state actors who engaged in violence and discrimination against sex workers knew that, because they were presumed to be criminals, sex workers were less likely to complain to the authorities. Stigma and discrimination also impeded sex workers’ access to health services and to adequate housing.³⁹

4. Hong Kong

24. In Hong Kong, the Intervener interviewed over 40 key stakeholders, including sex workers, advocates, anti-trafficking and other non-governmental organizations, senior police officials and other government officers, between 2014 and 2016.⁴⁰ The sale of sex at the time of the research was not illegal in Hong Kong – unlike in mainland China, where all aspects of sex work, including the solicitation, sale and purchase of sex, are illegal under various laws.⁴¹ The research revealed, however, that sex work in Hong Kong was *de facto* criminalized by the wide range of limitations on its operational aspects.⁴²

5. Papua New Guinea

25. Papua New Guinean laws prohibited various acts related to the sale of sex at the time of the research. This included living on the earnings of “prostitution”, living with or associating with a “prostitute”, assisting a person to commit “prostitution” and “keeping or owning a brothel”.⁴³ In Papua New Guinea, the Intervener interviewed 29 sex workers, as well as other key stakeholders in 2015. The research found evidence of serious violence against sex workers perpetrated by clients but also by police officers. For example, one sex worker interviewed recounted how police officers tried to force her and a client to have sex while the officers watched.⁴⁴ When she refused, she was kicked hard in the back, leaving her needing medical care. Another reported how six policemen raped a sex worker who had been taken to a police station with her.⁴⁵ In March 2012, following a visit to Papua New Guinea, the then UN Special Rapporteur on Violence against Women Rashida Manjoo said: “Reports of police brutality and misconduct were widely reported in all parts of the country. Complaints indicated that violence and sexual abuse of women, including sex workers, while in police detention was a systemic issue.”⁴⁶ Sex workers also reported to the Intervener that possession of condoms was used by police as a justification to harass and arbitrarily detain them, with police officers confirming that condoms would be used as evidence in sex work related offences. In some cases, sex workers were forced to chew or swallow condoms as a means of degrading punishment meted out by police officers. In some cases, they were subjected to extortion for money or sex from police officers.⁴⁷

6. Dominican Republic

26. The sale and purchase of sex between adults or “prostitution” was not a criminal offence in the Dominican Republic at the time of the research. However, “procuring/pimping” was criminalized under section 334 of the Dominican Penal Code and penalized the organization of sex work. It included, among other things, “facilitating prostitution”, “benefiting off the

³⁸ National Law No. 12.331 Articles 15 and 17, available at: infoleg.mecon.gov.ar/infolegInternet/anexos/190000-194999/194957/norma.htm.

³⁹ “What I’m Doing Is Not A Crime”. *The Human Cost of Criminalizing Sex Work in the City of Buenos Aires, Argentina*, (previously cited).

⁴⁰ *China: Harmfully Isolated: Criminalizing Sex Work in Hong Kong*, (previously cited).

⁴¹ Human Rights Watch, *Swept Away: Abuses against Sex Workers in China*, 2014, hrw.org/news/2013/05/14/china-end-violence-against-sex-workers#:~:text=%22Swept%20Away%22&text=In%20December%202012%20a%20coalition,physical%20assaults%2C%20a%20even%20murder, pp. 14-20.

⁴² *China: Harmfully Isolated: Criminalizing Sex Work in Hong Kong*, (previously cited).

⁴³ Papua New Guinea, Criminal Code Act 1974, S.231, paclii.org/pg/legis/consol_act/cca1974115/; Summary Offences Act 1977, S. 55 and 56, paclii.org/pg/legis/consol_act/soa1977189/.

⁴⁴ *Outlawed and Abused: Criminalizing Sex Work in Papua New Guinea*, (previously cited), p. 32.

⁴⁵ *Outlawed and Abused: Criminalizing Sex Work in Papua New Guinea*, (previously cited), p. 31.

⁴⁶ Report of UN Special Rapporteur on violence against women its causes and consequences, Rashida Manjoo: Mission to Papua New Guinea, UN Doc. A/HRC/23/49/Add.2 (2013), para. 46.

⁴⁷ *Outlawed and Abused: Criminalizing Sex Work in Papua New Guinea*, (previously cited), p.30.

earnings of prostitution” and “contracting or maintaining a person for prostitution”, and was punishable by imprisonment.⁴⁸ The Intervener interviewed 46 women sex workers in 2018 in the country, conducted focus groups, which included an additional 18 sex workers, and interviewed government representatives, including the police, prosecutors, women’s organizations, NGOs, academics, and lawyers. The Intervener gathered strong evidence of women sex workers in the Dominican Republic being frequent targets for torture and other ill-treatment by police, as punishment for transgressing socially constructed views about femininity, acceptable sexuality, and gender identity and expression, in violation of both Dominican constitutional and criminal law, and international human rights law, including their right to life and freedom from torture and other cruel, inhuman or degrading treatment or punishment. The testimonies showed how law enforcement officials in the country routinely raped, beat, and humiliated women engaged in sex work. At least 10 out of the 24 cisgender women interviewed for this research described having been raped by police officials, often at gunpoint. Most of the transgender women had been subjected to discriminatory and violent actions by the police that could amount to torture or other ill-treatment, typically focused on their gender-identity or expression. The Dominican authorities routinely failed to properly investigate and provide remedies for these potential cases of torture or other ill-treatment as required by international law.⁴⁹

27. The Intervener’s research in the above-mentioned countries has found that sex workers experienced violent attacks, discrimination and injustice at the hands of police, clients, exploitative third parties involved in sex work, landlords, family, community and others. Much of this violence and abuse went unreported, under-investigated and unpunished, with states failing to uphold their obligations towards sex workers. The respectfully Intervener submits that the research above should be taken into careful consideration when assessing the human rights impacts resulting from the criminalization of the purchase of sexual services and of other aspects of sex work.

III. Sex workers’ human rights law in international law and standards, global and regional jurisprudence.

28. In line with the human rights principle of “due diligence”, states must adopt the legislative, administrative, social, economic and other measures necessary to prevent, investigate, prosecute and punish acts of violence, whether perpetrated by the state or by private individuals.⁵⁰ The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) sets out that parties “shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-State actors.”⁵¹ Similarly, the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW Committee) General Recommendation 35 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.”⁵²

29. States have an obligation to protect everyone within their jurisdiction, including sex workers, from violence, harassment and other abuse by adopting and enforcing laws that prohibit such violence and abuse.⁵³ Notably, the CEDAW Committee, in its General Comment 19 (violence against women), specifically recognizes the vulnerability of sex workers to human rights violations and violence, resulting from their marginalization and unlawful legal

⁴⁸ Dominican Penal Code, para. 334, 1-7.

⁴⁹ *“If They Can Have Her, Why Can’t We?”: Gender-Based Torture and Other Ill-Treatment of Women Engaged in Sex Work in the Dominican Republic*, (previously cited).

⁵⁰ Committee against Torture, General Comment 2 (Implementation of article 2 by States Parties), (UN Doc. CAT/C/GC/2), 2008; and UN General Assembly, Declaration on the Elimination of Violence against Women, (UN Doc. A/RES/48/104), 1993.

⁵¹ Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), 11 May 2011, Article 5.2.

⁵² CEDAW Committee, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, UN. Doc. CEDAW/C/CG/35, 2017, para. 24(b).

⁵³ Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover (UN Doc. A/HRC/14/20), 2010; CESCR, General Comment 22 (right to sexual and reproductive health (Article 12)), (UN Doc. E/C.12/GC/22), 2016, para. 32.

status.⁵⁴ The CEDAW Committee notes that: "Poverty and unemployment force many women, including young girls, into prostitution. Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. They need the equal protection of laws against rape and other forms of violence."⁵⁵ Along those lines, the Committee has called on states to take measures to ensure "the rights of all sex workers, whether men, women or transgender people, to access sexual health services; that they are free from violence or discrimination, whether by state agents or private persons; and that they have access to equal protection of the law."⁵⁶

30. The UN Committee on Economic, Social and Cultural Rights (CESCR), in its General Comment 22 on the right to sexual and reproductive health (Article 12), also explicitly calls on states parties to "take measures to fully protect persons working in the sex industry against all forms of violence, coercion and discrimination."⁵⁷ States also have an obligation to tackle gender stereotypes that essentially justify violence against certain groups of people, such as transgender people.⁵⁸ Violence should never be considered an inherent aspect of sex work, and states have an obligation to protect sex workers from violence. In 2013, as outlined at Paragraph 13, the Canadian Supreme Court struck down criminal laws which restricted the ways in which sex workers could work on the basis that they violated the right to security of the person in the Canadian Constitution.⁵⁹
31. This Court's jurisprudence on State Parties' positive obligations under Articles 2 and 3 of the Convention to prevent violence against women and gender-based violence, without discrimination, is long-established. It requires that the Convention's provisions with regard to Article 2 "must be interpreted and applied so as to make its safeguards practical and effective".⁶⁰ In cases such as *R.R. and Others v. Hungary*⁶¹ and *Makuchyan and Minasyan v. Azerbaijan and Hungary*,⁶² the Court examined allegations of violations of Article 2 rights by persons claiming that their life was at risk although no such risk had yet materialized and states' positive obligations under Article 2 (*R.R. and Others v. Hungary* concerned the Applicants' exclusion from a witness protection programme; *Makuchyan and Minasyan v. Azerbaijan and Hungary* concerned a presidential pardon of a person convicted of murder and his release upon transfer from Hungary to Azerbaijan).
32. This Court has also frequently opined on states' positive obligations under Articles 2 and 3 of the Convention to protect those within their jurisdiction from violence against women and domestic violence and adequately investigate such crimes. For example, in *Talpis v. Italy*, the Court found a violation of Article 2 due to the authorities' failure to protect the Applicant and her son from murder and attempted murder, respectively, by the husband/father. By failing to act promptly following a complaint against the man brought to them by the Applicant, the Italian authorities "deprived the complaint of any effectiveness, creating a situation of impunity conducive to the recurrence of A.T.'s acts of violence against his wife and family."⁶³ In its judgment, the Court reiterated that "the obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment,

⁵⁴ For a more in-depth discussion of the CEDAW Committee's analysis around the human rights of sex work or "women in prostitution", including the impact of criminalization of aspects of commercial sex, see Amnesty International's *Explanatory Note*, (previously cited).

⁵⁵ CEDAW, General Recommendation 19 (Violence against women), (UN Doc. A/47/38), 1992, para. 15.

⁵⁶ CEDAW, General Recommendation 24 (Article 12: Women and health), (UN Doc. A/54/38/Rev.1), Chapter I, 1999. See also Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover (UN Doc. A/HRC/14/20), 2010; and CEDAW, General Recommendation 19 (Violence against women), (UN Doc. A/47/38), 1992.

⁵⁷ CESCR, General Comment 22 on the right to sexual and reproductive health (article 12 of the ICESCR), (UN Doc. E/C.12/GC/22), 2016, para. 32.

⁵⁸ See CEDAW, Article 5; CEDAW, General Recommendation 28 (core obligations of States Parties under Article 2 of CEDAW), (UN Doc. CEDAW/C/2010/47/GC.2), 2010, paras 18, 26; and the Convention of Belém do Pará, Articles 6, 8. See also Office of the High Commission for Human Rights, Gender stereotyping as a human rights violation, 2013, pp. 23-24.

⁵⁹ *Canada (Attorney General) v. Bedford* [2013] 3 SCR 1101, 2013 SCC 72

⁶⁰ European Court of Human Rights, *McCann and Others v. France*, Application 18984/91, Grand Chamber judgment, 27 September 1995, para. 146.

⁶¹ European Court of Human Rights, *R.R. and Others v. Hungary*, Application 19400/11, 29 April 2013, paras 26-32.

⁶² European Court of Human Rights, *Makuchyan and Minasyan v. Azerbaijan and Hungary*, Application 17247/13, 12 October 2020, paras 93-94.

⁶³ European Court of Human Rights, *Talpis v. Italy*, Application 41237/14, 18 September 2017, para. 117.

even administered by private individuals".⁶⁴ The Court established that the Applicant and her children "had been living in a climate of violence", which amounted to ill-treatment, and found a violation of Article 3 as well, on account of the Italian authorities' failure to provide the Applicant with protection.⁶⁵ Further, in cases such as, for example *Opuz v. Turkey* and *Durmaz v. Turkey*, the Court observed that "domestic violence affected mainly women and that *the general and discriminatory judicial passivity in Turkey* created a climate that was conducive to domestic violence [Emphasis added]," finding violations of the country's positive obligations under Articles 2 in both cases, as well as Articles 3 and 14 (read in conjunction with 2 and 3) in *Opuz*.⁶⁶

IV. Conclusions.

33. The Intervener's research in countries across the globe has found that even when the selling of sex is not explicitly criminalized, laws criminalizing operational activities related to sex work are frequently enforced against sex workers and can contribute to increasing their risks of experiencing violence, including torture and other ill-treatment, and other human rights violations and abuses. Sex work remains highly stigmatized under the "Nordic Model", contributing to discrimination and marginalization of sex workers.
34. The Intervener respectfully submits to this Court that the Canadian Supreme Court's judgment referred to at Paragraph 13 and the research findings outlined in this submission show that even in countries where the sale of sex is not criminalized, criminalizing other aspects of sex work can violate sex workers' rights, including the right to life and freedom from torture and other cruel inhuman or degrading treatment. Consequently, the Intervener submits that sex workers are often victims of human rights violations and abuses caused by criminalization of sex work or particular aspects of sex work. The Intervener respectfully submits that the research and relevant human rights standards outlined in the present submission should be taken into careful consideration when assessing the human rights impacts of criminalization of sex work in the context of the general stigma and discriminatory attitudes towards and the treatment of sex workers, by state authorities, such as police, and by third parties, as well as sex workers' experiences with the criminal justice system.
35. The Intervener respectfully submits to this Court that the use of criminal law to prohibit 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 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 justice and stigmatizing and punishing them for their decisions.
36. The Intervener submits that in all circumstances, States must ensure their laws and policies respect individuals' agency and do not violate sex workers' human rights. Taking a human rights-based approach to decriminalization of sex work requires acknowledging and addressing the very real impacts that punitive regulation has on the human rights of sex workers. Guaranteeing human rights without discrimination is the most effective way to ensure the empowerment of people involved in sex work and the protection of individuals from discrimination, violence and coercion.

⁶⁴ European Court of Human Rights, *Talpis v. Italy*, para. 102.

⁶⁵ European Court of Human Rights, *Talpis v. Italy*, paras 126-131.

⁶⁶ European Court of Human Rights, *Opuz v. Turkey*, Application 33401/02, 9 September 2009, para. 198; European Court of Human Rights, *Durmaz v. Turkey*, Application 3621/07, 13 February 2015.