

BELGIUM

AMNESTY INTERNATIONAL'S SUBMISSION TO THE GROUP OF EXPERTS ON ACTION AGAINST VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE (GREVIO) ON BELGIUM'S SEX WORKERS' RIGHTS LAWS

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INTRODUCTION

This submission, prepared on the occasion of the follow-up evaluation visit of the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), provides Amnesty International's legal analysis of Belgium's approach to sex work and sex workers' rights in light of the reforms undertaken in this area in the country since 2022.

In March 2022, as part of a broader reform of Belgium's Criminal Code and its provisions on sexual violence, sexual acts and consent, which Amnesty International has welcomed,¹ the country's Parliament passed the "Law amending the Penal Code with regard to sexual criminal law", which decriminalized sex work in the country, making it the first European country to do so.² Further, in May 2024, the country's Parliament passed a "Law laying down provisions on sex work under an employment contract", which entered into force on 1 December 2024.³

¹ Amnesty International, Annual Report 2022/23, Index: POL 10/5670/2023, p 92, www.amnesty.org/en/documents/pol10/5670/2023/en/.

² *Loi modifiant le Code pénal en ce qui concerne le droit pénal sexuel*, 21 March 2022, etaamb.openjustice.be/fr/loi-du-21-mars-2022_n2022031330.html#:~:text=Les%20actes%20C3%A0%20caract%C3%A8re%20sexuel,punie%20de%20la%20r%C3%A9clusion%20de.

³ *Loi portant des dispositions en matière du travail du sexe sous contrat de travail*, 3 May 2024, etaamb.openjustice.be/fr/loi-du-03-mai-2024_n2024202750.html.

1. DECRIMINALISATION OF SEX WORK

Amnesty International's research conducted over the years in several parts of the world demonstrates that criminalization and penalization of sex work have a foreseeably negative impact on a range of human rights. These include: the rights to life, liberty, autonomy and security of person; the right to equality and non-discrimination; the right to be free from torture or cruel, inhuman or degrading treatment or punishment; the right to privacy; the right to the highest attainable standard of health; the right to information and education; the right to freedom of opinion and expression; the right to adequate housing; the right to just and favourable conditions of work; the right to family life and to found a family; and the right to remedy for human rights abuses.⁴

Amnesty International has therefore called for decriminalization of all aspects of sex work for many years, urging States to repeal existing laws and/or refrain from introducing new laws that criminalize or penalize directly or in practice the consensual exchange of sexual services between adults for remuneration.

While the selling or purchase of sex were not criminal offences in Belgium, the 2022 "Law amending the Penal Code with regard to sexual criminal law" repealed provisions that criminalised third parties, which were in fact impacting on a range of sex workers' human rights.⁵ Renting a property to a sex worker, providing them with accountancy services or selling them an insurance policy are therefore no longer treated in Belgian law as profiteering from proceeds of sex work, which was a criminal offence, removing considerable obstacles to the realization of several of sex workers' human rights.

Several international human rights experts and institutions have called for decriminalization of all aspects of sex work as a human rights-based approach. For instance, in 2024, Council of Europe's then Commissioner for Human Rights called for "an approach to sex work that is firmly based on human rights and focuses on the effective protection of sex workers' rights, prioritising their safety, agency and bodily autonomy over stereotypes and misconceptions. Sex workers, like all individuals, are entitled to protection against discrimination based on their occupation. They should have equal access to basic human rights, services, and legal protections, regardless of their chosen

⁴ See, for instance, Amnesty International, *Sex Workers at Risk: A Research Summary on Human Rights Abuses Against Sex Workers* (Index: POL 40/4061/2016), 25 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), 25 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), 25 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), 25 May 2016, [amnesty.org/en/documents/asa34/4030/2016/en/](https://www.amnesty.org/en/documents/asa34/4030/2016/en/); Amnesty International, "We live within a violent system", *Structural violence against sex workers in Ireland* (Index EUR 29/5156/2022), 25 January 2022, www.amnesty.org/en/documents/eur29/5156/2022/en/.

⁵ *Loi modifiant le Code pénal en ce qui concerne le droit pénal sexuel*, 21 March 2022, Art 117 (14°).

profession.”⁶ She commended the 2022 decriminalisation of sex work in Belgium stating: “In a landmark change in legislation adopted in consultation with sex workers, Belgium became the first European country to decriminalise sex work in 2022. As a result, sex workers became able to legally work as self-employed workers and build up social rights.”⁷

⁶ Council of Europe Commissioner for Human Rights Comment, “Protecting the human rights of sex workers”, 15 February 2024, www.coe.int/en/web/commissioner/-/protecting-the-human-rights-of-sex-workers#:~:text=Council%20of%20Europe%20member%20states,in%20public%20and%20political%20life.

⁷ Council of Europe Commissioner for Human Rights Comment, “Protecting the human rights of sex workers”, 15 February 2024, www.coe.int/en/web/commissioner/-/protecting-the-human-rights-of-sex-workers#:~:text=Council%20of%20Europe%20member%20states,in%20public%20and%20political%20life.

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2. MEANINGFUL PARTICIPATION AND CONSULTATION OF SEX WORKERS

The rights of all sex workers to participate without discrimination in decisions affecting their lives must be respected.⁸ In establishing laws and policies relevant to sex work, whether they relate to entry, participation or exit, governments should ensure the meaningful participation and consultation of sex workers, including, in particular current sex workers. Participation must involve sex workers from marginalized groups and those facing discrimination on the basis of, for example, sexual orientation, gender identity, race, caste, ethnicity and Indigenous identity. To be effective, such consultation must allow participation of sex workers in a way that permits anonymous engagement and other measures required to protect them from criminalization, retaliation, or harm. The consultation process should also ensure effective access to information and resources to allow meaningful engagement.⁹

During the drafting of both the 2022 “Law amending the Penal Code with regard to sexual criminal law” and the 2024 “Law laying down provisions on sex work under an employment contract”, the Belgian authorities engaged with UTSOPI, the Belgian Trade Union of Sex Workers, as well as with civil society organisations, including those providing direct support to sex workers.¹⁰ UTSOPI called the law reforms “a major breakthrough” while recognising that legal reforms are only a first step to improving sex workers’ access to their human rights and outlining risks associated with certain aspects of the laws.¹¹

The 2024 “Law laying down provisions on sex work under an employment contract” contains specific provisions on engaging with sex workers’ trade unions and organizations as part of its implementation.¹² It provides for an evaluation of the implementation of the Law two years from its

⁸ For example, the United Nations Committee on Economic, Social and Cultural Rights has stated that the right of individuals and groups to participate in decision-making processes, which may affect their development, must be an integral component of any policy, programme or strategy developed to discharge governmental obligations under article 12”, General Comment No. 14: The right to the highest attainable standard of health, para 54.

⁹ 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, www.amnesty.org/en/documents/pol30/4062/2016/en/.

¹⁰ See, for instance: UTSOPI, Belgian labor law for sex workers: what and how?

www.utsopi.be/our-work/decriminalisation/cadre-du-travail; Espace P, Annual Report 2022, espacep.be/Rapport-Annuel.

¹¹ UTSOPI, Decriminalisation, www.utsopi.be/our-work/decriminalisation; www.utsopi.be/our-work/decriminalisation/cadre-du-travail.

¹² *Loi portant des dispositions en matière du travail du sexe sous contrat de travail*, Art 14 para 1(6).

entry into force.¹³ It is crucial that the Belgian authorities continue to meaningfully engage with sex workers' unions and organizations during this evaluation process, including current sex workers and those from marginalized groups and facing discrimination on the basis of, for example, sexual orientation, gender, gender identity, race, ethnicity, disability, homelessness, drug use and migrant status.

¹³ *Loi portant des dispositions en matière du travail du sexe sous contrat de travail*, Art 26.

3. PROTECTION FROM ABUSE AND EXPLOITATION OF SEX WORKERS

Amnesty International recommends that States implement their positive human rights obligations towards sex workers through a number of interventions, for instance, applying criminal laws to prevent forced labour, human trafficking, abuse and violence in the context of commercial sex and the involvement of children in commercial sex acts.¹⁴

The 2022 Law that decriminalized sex work in Belgium made it clear that provisions on human trafficking and sexual exploitation of minors continued to apply.¹⁵ The 2024 “Law laying down provisions on sex work under an employment contract” also contains specific provisions on protection of sex workers from abuse and exploitation, as well as on sex workers’ consent.

Article 7 § 1 of the Law provides, for example: “At no time can the sex worker be forced to perform any act of prostitution. In the context of the performance of the employment contract of a sex worker, the sex worker has the right, inter alia, at any time to refuse sexual intercourse with a client or the performance of certain sexual acts, to cease or interrupt the sexual activity or to impose their own conditions on the sexual activity or act. The exercise of this right cannot be considered as a breach of the employment contract on the part of the sex worker. No negative consequences can be attached to the exercise of this right for the sex worker” [Amnesty International’s translation].¹⁶ Article 8 states, for example, that “no one may be compelled to accept sex work” [Amnesty International’s translation].¹⁷

Under the Istanbul Convention, rape and all other non-consensual acts of sexual nature must be classified as criminal offences.¹⁸ Consent is a key component of Amnesty International’s definition

¹⁴ 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, www.amnesty.org/en/documents/pol30/4062/2016/en/, p 2.

¹⁵ *Loi modifiant le Code pénal en ce qui concerne le droit pénal sexuel*, 21 March 2022, etaamb.openjustice.be/fr/loi-du-21-mars-2022_n2022031330.html#:~:text=Les%20actes%20C3%A0%20caract%C3%A8re%20sexuel,punie%20de%20la%20r%C3%A9clusion%20de.

¹⁶ *Loi portant des dispositions en matière du travail du sexe sous contrat de travail*, 3 May 2024, etaamb.openjustice.be/fr/loi-du-03-mai-2024_n2024202750.html, Art 7 § 1.

¹⁷ *Loi portant des dispositions en matière du travail du sexe sous contrat de travail*, 3 May 2024, etaamb.openjustice.be/fr/loi-du-03-mai-2024_n2024202750.html, Art 8.

¹⁸ Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), 11 May 2011, Art 36(1).

of sex work, as a factor to distinguish sex work from human trafficking, sexual exploitation, sexual violence and gender-based violence.¹⁹ Further, the Istanbul Convention, as well as other international human rights law and standards also require that all systems set up to address gender-based violence to be designed in a way that takes into consideration the impact of multiple and intersecting forms of discrimination on women's specific experiences of violence and the different needs they may have, with particular attention to women subjected to multiple and intersecting forms of discrimination.²⁰

Amnesty International's research conducted in several countries over the years has shown that sex workers often experience intersecting forms of discrimination based on, for example, ethnicity, race, gender and gender identity, disability, socio-economic circumstances, migration status or drug use, combined with multiple layers of stigma associated with sex work.²¹

Consent analyses are necessarily fact- and context-specific and the views, perspectives and experiences of individuals selling sex should be prioritized in any consideration of issues related to their consent. Law enforcement bodies, other government bodies and clients often make assumptions, based on stereotypes, that sex workers always consent to sex (because they may engage in sex frequently for their work) or, conversely, that sex workers can never consent to sex (because "no one could rationally consent to selling sex"). These assumptions lead to violations of sex workers' human rights, particularly their safety, access to justice and equal protection under the law. Criminalization of sex work often reinforces these problematic assumptions.²² Specific provisions protecting sex workers' right to consent or refuse to consent to specific sexual acts, such as those contained in the "Law laying down provisions on sex work under an employment contract", are a positive step towards countering such stereotypes and improving sex workers' safety.

¹⁹ 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, www.amnesty.org/en/documents/pol30/4062/2016/en/.

²⁰ CEDAW Committee, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, UN. Doc. CEDAW/C/CG/35, 2017; Istanbul Convention, Article 3.

²¹ See, for instance, Amnesty International, Sex Workers at Risk: A Research Summary on Human Rights Abuses Against Sex Workers (Index: POL 40/4061/2016), 25 May 2016, 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), 25 May 2016, 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/; Amnesty International, The Human Cost of "Crushing" The Market: Criminalization of Sex Work in Norway (Index: EUR/36/4034/2016), 25 May 2016, 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), 25 May 2016, amnesty.org/en/documents/asa34/4030/2016/en/; Amnesty International, 'We live within a violent system', Structural violence against sex workers in Ireland (Index EUR 29/5156/2022), 25 January 2022, www.amnesty.org/en/documents/eur29/5156/2022/en/.

²² See, for instance, Amnesty International, Policy on state obligations to respect, protect and fulfil the human rights of sex workers (Index: POL 30/4062/2016), 25 May 2016, www.amnesty.org/en/documents/pol30/4062/2016/en/, p 15.

4. SPECIFIC PROVISIONS ON THE PROTECTION OF SEX WORKERS' SAFETY

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.²³ The 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.”²⁴ 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.”²⁵

In addition to specific provisions on consent, the “Law laying down provisions on sex work under an employment contract” places a duty on employers and those implementing the Law to establish practical measures for the protection of sex workers’ safety. For example, the Law provides for the establishment of the role of a “person of trust / reference person” by the sex worker’s employer, who is defined as “a person designated by the employer to be available to the sex worker and to ensure that the sex work is organized in a safe manner”²⁶. Further, the Law demands that employers “ensure that each room in the establishment where sex work is carried out is equipped with an emergency button, as well as that the sex worker has a mobile emergency button, which immediately connects him or her to the reference person, when the sex worker performs work outside the premises of the establishment” [Amnesty International’s translation]²⁷. Amnesty International believes that these provisions have the potential to enhance the protection of sex workers from gender-based violence and improve their safety.

²³ 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.

²⁴ Istanbul Convention, Art 5.2.

²⁵ CEDAW Committee, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, UN. Doc. CEDAW/C/GG/35, 2017, para. 24(b).

²⁶ *Loi portant des dispositions en matière du travail du sexe sous contrat de travail*, Art 2 (6)^o, Chapter 3.

²⁷ *Loi portant des dispositions en matière du travail du sexe sous contrat de travail*, Art 17 (5)^o.

5. PROTECTION OF SEX WORKERS' RIGHTS TO HEALTH AND EMPLOYMENT

Amnesty International recommends that States ensure that legal protections pertaining to health, employment and discrimination are accessible to sex workers and are effective in protecting them from abuse and exploitation.²⁸

The “Law laying down provisions on sex work under an employment contract” recognizes the right of employed sex workers to labour law protections in Belgium, as well as their access to social protection and social security. Under its provisions, sex workers can, for example, report concerns about their treatment by an employer, are entitled to protection of wages and parental leave.²⁹ Further, the Law also provides for the enactment of “additional conditions relating to safety, health, well-being and quality of work for sex workers ... These additional conditions must contain at least the following elements: - the minimum dimensions of the room and the specific hygiene conditions that must be complied with; - obligations to display information on emergency numbers, contact details of workers' representative organisations and support organisations and recommendations on safe sex; - the maximum number of sex workers based on the number of rooms; - the conditions for verifying the identity of sex workers present; - a reminder that the employer is always responsible for what happens within his establishment [Amnesty International's translation].”³⁰

²⁸ Amnesty International, Policy on state obligations to respect, protect and fulfil the human rights of sex workers (Index: POL 30/4062/2016), 25 May 2016, www.amnesty.org/en/documents/pol30/4062/2016/en/, p 2.

²⁹ *Loi portant des dispositions en matière du travail du sexe sous contrat de travail*, Art 3.

³⁰ *Loi portant des dispositions en matière du travail du sexe sous contrat de travail*, Art 17(6).

6. RISKS ASSOCIATED WITH LICENSING REQUIREMENTS AND REGULATION OF SEX WORK

Amnesty International is concerned that although the 2024 Law recognises sex workers' entitlement to labour rights and social protection, through introducing licensing requirements (Chapter 4) and restrictions on types of sex work considered to fall under the protection of the law, there is a risk that this legislation and its implementation may create a two-tiered system of "legal" and "illegal" sex work and exclude some sex workers. For instance, Art 5 of the Law provides that "sex work cannot be performed by a person with the main status of student. Sex work cannot be carried out under a flexi-job employment contract either, nor as a casual worker."³¹ The Law is also silent on the rights of sex workers working outdoors. The Law's regulatory requirements could mean that its protections do not apply to sex workers who operate outside of the legalized settings, such as students doing sex work on a part-time basis or those working in on-street settings, and that these sex workers thus remain at risk of being subject to policing and punishment and at risk of human rights violations.

³¹ *Loi portant des dispositions en matière du travail du sexe sous contrat de travail*, 3 May 2024, etaamb.openjustice.be/fr/loi-du-03-mai-2024_n2024202750.html, Art 5.

7. PROTECTION OF RIGHTS OF UNDOCUMENTED MIGRANT SEX WORKERS IN BELGIUM

The two Laws analysed in this submission do not reference access to rights and protections contained within them by sex workers who have an irregular migration status. It is likely that the Laws only apply to migrant sex workers with a regulated status in Belgium. UTSOPI, as well as the International Planned Parenthood Federation have raised concerns with regard to whether and how the new Laws will apply to undocumented migrant sex workers.³² There is abundant research demonstrating that undocumented migrant sex workers often experience a range of human rights violations.³³ A 2019 study by the Platform for International Cooperation on Undocumented Migrants (PICUM) noted the parallels between the criminalization of migration and of sex work. “In both cases,” it observed, “access to police protection and justice is severely limited as a result of these frameworks, creating an environment of impunity for violence.”³⁴ Amnesty International urges the Belgian authorities to extend the protections of the Laws analysed in this submission to undocumented migrant sex workers in Belgium and to engage with UTSOPI and sex workers’, as well as migrants’ rights organisations in Belgium in the monitoring of the implementation of the Laws and their application to undocumented sex workers in their evaluations.

³² UTSOPI, Decriminalisation, www.utsopi.be/our-work/decriminalisation; www.utsopi.be/our-work/decriminalisation/cadre-du-travail;

International Planned Parenthood Federation, Belgium: A Transformative Law for Sex Workers Rights, 20 December 2024,

www.ippf.org/featured-perspective/belgium-transformative-law-sex-workers-rights#:~:text=It%20recognizes%20consent%20and%20the,of%20professional%20and%20personal%20life.

³³ For instance, International Committee on the Rights of Sex Workers in Europe (ICRSE), Undeserving victims? A community report on migrant sex worker victims of crime in Europe, October 2020,

www.eswalliance.org/undeserving_victims_a_community_report_on_migrant_sex_worker_victims_of_crime_in_europe, Global Network of

Sex Work Projects, Briefing Paper, Migrant Sex Workers, 2017,

https://www.nswp.org/sites/default/files/briefing_paper_migrant_sex_workers_nswp_-_2017.pdf.

³⁴ Platform for International Cooperation on Undocumented Migrants (PICUM), Safeguarding the human rights and dignity of undocumented migrant sex workers, September 2019, picum.org/wp-content/uploads/2019/09/Safeguarding-the-human-rights-and-dignityof-undocumented-migrant-sex-workers.pdf, p 24.

8. RECOMMENDATIONS

To the Belgian authorities:

- continue to meaningfully engage with sex workers' unions and organizations during the evaluation process of the implementation of the 2024 Law, including current sex workers and those from marginalized groups and facing discrimination on the basis of, for example, sexual orientation, gender, gender identity, race, ethnicity, disability, homelessness, drug use and migrant status;
- extend the protections of the Laws analysed in this submission to sex workers engaging in sex work in informal and outdoor settings;
- extend the protections of the Laws analysed in this submission to undocumented migrant sex workers in Belgium and engage with UTSOPI and sex workers', as well as migrants' rights organisations in Belgium in the monitoring of the implementation of the Laws and their application to undocumented sex workers in their evaluations.

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