



DON'T OUTLAW SEX WORKERS' CONSENT!



**POLICY BRIEF IN RESPONSE
TO LAW PROPOSAL TO
CRIMINALISE SEX WORK &
CALLS FOR 'ABOLITION OF
PROSTITUTION' IN SPAIN**

**EUROPEAN SEX WORKERS
RIGHTS ALLIANCE (ESWA)**

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Briefing paper drafted by ESWA



**european
sex workers
rights
alliance**

**Endorsed by 11 international
human rights organisations**



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ABOUT THE CONTRIBUTORS

This Policy Brief was drafted by the European Sex Workers' Rights Alliance and endorsed by 11 international and European human rights organisations in the context of the [draft organic law on integral guarantee of sexual freedom](#), the call for abolition of prostitution by Spanish prime minister Pedro Sanchez and upcoming law on trafficking in human beings.

ABOUT ESWA:

The European Sex Workers' Rights Alliance (ESWA) – previously the International Committee on the Rights of Sex Workers in Europe (ICRSE), is a sex worker-led network representing more than 100 organisations in 35 countries across Europe and Central Asia. Our aim is to ensure that all sex worker voices are heard and that their human, health and labour rights are recognised and protected. With our actions and approach inspired by our membership community, we work to build a strong, vibrant and sustainable network that mobilises national, regional and international advocacy activity that moves us towards long-term, systemic change.

ENDORSERS:

1. Platform for the International Cooperation on Undocumented Migrants (PICUM)
2. European Network Against Racism (ENAR)
3. Equinox – Racial Justice Initiative
4. International Planned Parenthood Federation European Network (IPPF EN)
5. Aids Action Europe
6. European AIDS Treatment Group (EATG)
7. The European region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe)
8. International Lesbian, Gay, Bisexual, Transgender, Queer & Intersex Youth and Student Organisation (IGLYO)
9. Transgender Europe (TGEU)
10. Trans United Europe (TUE)
11. Correlation – European Harm Reduction Network

For more information, consult our website: www.eswalliance.org

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SEX WORK & ITS DECRIMINALISATION

Sex work is a form of livelihood and economic activity. Sex workers consensually exchange their own sexual labour or sexual performance for compensation. Workers in the sex industry constitute a heterogeneous group of individuals of all genders who decide to engage in sex work for many different reasons. Some might decide to work in the sex industry because it allows for more flexible working hours and gives them greater control over their working conditions than other jobs. Others choose sex work because they find it financially rewarding. For other sex workers again, it may be the most acceptable of very few options available to them which enables them to provide a living for themselves and their families.

Sex work is an informal economy job and does not benefit from legal protection through the state. It mainly employs women, often (undocumented) migrants; entry requirements are low in terms of capital and professional qualifications; and skills needed for the job are often acquired outside of formal education. Many sex workers enter the sex industry as they are excluded from the formal economy or state benefits to achieve a decent standard of living. Similarly to other sectors of the informal economy, most sex work is precarious employment, characterised by insecurity and exploitative conditions, and can include illegalised, seasonal and temporary employment as well as home work, temp-work, sub-contracting and self-employment.

In recent years, numerous organisations working in the fields of human rights, health, LGBTQ rights, women's rights or migrants' rights, as well as trade unionists and representatives of the workers' movement have expressed their support for sex work decriminalisation and spoken out against the adverse effects of the criminalisation of sex workers, their clients and third parties. These include several UN agencies such as the World Health Organisation, UNAIDS and UNDP, Médecins du Monde (Doctors of the World), Amnesty International, Human Rights Watch, Transgender Europe (TGEU), the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe and ILGA-World), the Platform for International Cooperation on Undocumented Migrants (PICUM) and the European AIDS Treatment Group.

Decriminalisation, the removal of all laws that criminalise any aspect of sex work, is recognised as the best legal framework to advance sex workers' rights by the global sex worker movement. Decriminalisation does not mean the removal of laws that target human trafficking, coercion and violence against sex workers. When sex work is governed through the same laws as other professions, workers are able to work as independent contractors or

as employees, negotiate employment contracts, organise collectively and challenge exploitative labour practices. Furthermore, in the decriminalisation framework third parties must obey occupational health and safety regulations. Decriminalisation also contributes to enabling sex workers' rights to health, housing and justice, access to which is hampered through criminalisation.

While human trafficking is a gross violation of human rights that is present in all sectors, including sex work, anti-trafficking laws and policies should not adversely affect human rights and dignity of persons. The conflation of sex work with human trafficking obscures the complex realities of sex workers' lives and working arrangements, and consequently fails to address the diversity of exploitative working practices that occur in the sex industry. Evidence shows that police raids and rescue operations often result in migrant sex workers having to work clandestinely, rendering them particularly vulnerable to exploitation and abuse. Instead, the most effective way to address exploitation in the sex industry is to improve the labour and social protections available to the workers involved and their ability to organise.¹

A GROWING CONSENSUS FOR DECRIMINALISATION

Our organisations, experts in the fields of human rights, anti-trafficking, migrants' rights, anti-racism, sexual health and reproductive rights, HIV and LGBTI rights are united in the knowledge, based on evidence and research, that criminalisation of sex work does not protect sex workers and victims of trafficking. An overtly broad use of criminal law, criminal law enforcement and policing on marginalised communities such as sex workers is counter-effective and reinforces their marginalisation and exclusion.

We invite the Spanish government and members of parliament to review our positions papers and policy on this issue:

Amnesty International Policy's 'recommends the decriminalization of consensual sex work, including those laws that prohibit associated activities – such as bans on buying, solicitation and **general organization of sex work**. This is based on evidence that these laws often make sex workers less safe and provide impunity for abusers with sex workers often too scared of being penalized to report crime to the police. **Laws on sex work should focus on protecting people from exploitation and abuse, rather than trying to ban all sex work and penalize sex workers.**'

PICUM: 'In our paper, we outline the harmful impact of the criminalisation of sex work and conclude that legal frameworks criminalising the purchase and facilitation of sex work impact negatively on undocumented sex workers. **Criminalisation places power in the hands of exploitative managers, dangerous clients, and abusive police officers. These harms are exacerbated if a sex worker has an irregular immigration status.** Migrants and people of colour – cis and transgender migrant women of colour in particular – are disproportionately subject to police harassment and targeted for immigration enforcement, including as a result of anti-trafficking initiatives.'

ILGA Europe: 'Decriminalisation of sex work removes significant barriers to the effective enjoyment of human rights for LGBTI people who engage in sex work. It contributes to reducing police violence and abuse and to facilitating access to police protection and justice. Indeed, where criminal prosecution of sex work is removed, it becomes easier for sex workers to report crimes to the police and seek redress, without the fear of facing potential prosecution themselves.'

La Strada International: 'We do recognise that the sex industry is one of the economic sectors in which human trafficking occurs, as it does in other sectors, in particular those where workers are invisible, unprotected, excluded and disempowered. Therefore, we believe that **sex workers rights organisations, just as trade unions, are important allies in the efforts to protect workers from exploitation, violence and abuse and to prevent trafficking in human beings.**'

EATG: 'As one of the leading European organisations advocating for the rights of people living with or at risk of contracting HIV, the European AIDS Treatment Group expresses profound concern that **the current criminalisation and legal oppression of sex work undermines, rather than supports, the reach and impact of health programmes for sex workers.** Therefore, EATG supports the demand from sex workers' rights organisations and networks to end the criminalisation and legal oppression of sex work, including sex workers, their clients and third-parties (those managing, facilitating or helping sex workers including friends, partners and family members).'

Equinox — Racial Justice Initiative: 'The criminalisation and legal oppression of sex work in many European states has exacerbated and enabled violence against sex workers by creating a number of barriers to the reporting of, and seeking support and redress for, violence against sex workers. Migrant and racialised sex workers are estimated to comprise the majority of the sex worker population in Western Europe and a significant proportion of the community in Central and Eastern Europe.'

CRIMINALISATION OF THIRD PARTIES AND NEGATION OF CONSENT

Article 187 bis of the draft organic law on integral guarantee of sexual freedom

'Anyone who, for profit and on a regular basis, uses a property, premises or establishment, open or not to the public, to encourage the exploitation of the prostitution of another person, even with his/her consent, will be punished with imprisonment. one to three years, and a fine of six to eighteen months without prejudice to the closure provided for in article 194 of this Code.

The penalty shall be imposed in the upper half when prostitution is committed as a result of an act of violence, intimidation, deception or abuse as described in Article 187 (1).'

The organisations signatory of this policy brief wish to express their **strong concern regarding Article 187bis of the draft organic law on integral guarantee of sexual freedom** which aims to penalise 'anyone who, for profit and on a regular basis, uses a property, premises or establishment, open or not to the public, to encourage the exploitation of the prostitution of another person, **even with his/her consent.**'

This article, if implemented, will not protect sex workers from violence, coercion and exploitation. **Laws that criminalise sex work - including clients and third parties - have been evidenced to increase the vulnerability of sex workers to violence, exploitation and HIV.**

Research led by the London School of Hygiene & Tropical Medicine (LSHTM) finds that sex workers who had been exposed to repressive policing (such as recent arrest, prison, displacement from a workplace, extortion or violence by officers) had a three times higher chance of experiencing sexual or physical violence by anyone, for example, a client, a partner, or someone posing as a client. They were also twice as likely to have HIV and/or other sexually transmitted infections (STIs), compared with sex workers who had avoided repressive policing practices.²

The term 'exploitation of prostitution' has no international legal definition and the criminalisation of 'exploitation of prostitution' creates an environment where sex workers are forced to work in **more isolated areas and unsafe conditions**.

In the Spanish context, the criminalisation of third-parties who rent venues and accommodations to sex workers would also push sex workers into the streets and **increase their risks of homelessness**.

Furthermore, the Article 187bis goes against the principles of the draft organic law on integral guarantee of sexual freedom by recognising that sex workers can consent, but that their consent should be ignored (**'even with his/her consent.'**)

This denial of sex workers' consent is also prevalent in approaches that aim to criminalise clients of sex workers and conflate prostitution and violence against women. This model, known as the Swedish Model, has also been evidenced to increase the vulnerabilities of sex workers.

COERCION, CONSENT AND AUTONOMY

Excerpt from '**Explanatory note on Amnesty International's policy on state obligations to respect, protect and fulfil the human rights of sex workers.**'

'It is important to avoid approaches to the issue of consent and sex work that eliminate any possibility of consent and thereby actively disempower sex workers, denying them individual agency and bodily autonomy.³ Sex work implies consent of sex workers and their capacity to exercise that consent voluntarily. The exercise of agency – that is, people determining for themselves what they want to do and when – is central to the definition of sex work.⁴ Along these lines, human rights bodies, experts and instruments increasingly recognize that individuals have the capacity to consent to sell sex,⁵ and critique criminalization of sex work as a matter of human rights.⁶

For the purposes of Amnesty International's policy on sex workers' rights, the term "consent" refers to the voluntary and ongoing agreement to engage in a particular sexual activity. Consenting to sex or to sell sex does not mean consenting to violence. Sex workers, like other people, can change or rescind their consent to have or sell sex at any point and this must be respected by all parties involved (e.g. clients, potential clients, third parties, law enforcement officials, judges and other officials). Where consent is absent for reasons including threat or use of force, deception, fraud, and abuse of power or involvement of a child, such activity would constitute a human rights abuse which must be treated as a criminal offence.

Consent analysis is necessarily a fact- and context-specific analysis. When conducting this type of analysis, the views, perspectives and experiences of individuals selling sex is fundamental in any considerations of issues related to consent. Moreover, it is vital that law- and policy-makers and service providers engage directly with the individuals who engage in sex work to develop laws, policies and practices that protect human rights of sex workers.

Sex work laws that fail to recognize that sex workers have agency and bodily autonomy and that they can and do make conscious decisions about their lives and how they use their bodies, raise a range of

human rights concerns. Despite approaching the issue with different motivations, criminal laws that either designate all sex work and sex workers as “immoral/criminal”, or laws that conceive all sex workers as “victims” of gender-based violence against women or as people who lack full understanding of the harm they face, can deny sex workers the ability to make decisions about their lives and bodies and enjoy their human rights. Such approaches are problematic from a human rights perspective, as they deny agency and decision-making to an entire group of people (most of whom are women) and place the power to make decisions about their lives in the hands of the state. Framing the entirety of the sex industry as abusive obscures the harm and the rights abuses that sex workers may face, paralleling “some popular beliefs [that] dictate that women who sell sex cannot be raped, because they have already agreed to have sex, albeit for money”.⁷ The Special Rapporteur on violence against women has also raised concern that sex workers are positioned as being “outside the boundaries of what could constitute rape”, reinforcing sex workers’ marginal status.⁸

IMPACT OF THE SWEDISH MODEL

Since its introduction, the Swedish model has been considered in legislative debates across Europe and internationally, and promoted by a diverse group of stakeholders, such as politicians, abolitionist feminists and religious groups as best practice to support gender equality and fight trafficking. However, no systemic evaluation by the Swedish government has ever been carried out of the law and its impact. This lack of evidence did not prevent other governments from importing the model, despite differences in income disparities, gender equality, levels of police corruption and transparency, social benefits amongst other factors between Sweden and the countries in question.

The Swedish model was introduced in **Norway** in 2009. In contrast with Sweden, there is significant evidence available from Norway on the detrimental effects of the law. According to the government commissioned evaluation⁹ from 2014, sex workers are in a weaker bargaining position, face more safety concerns and rely more on aggressive and abusive clients and third parties than before the law was introduced. These findings echo the results of an Oslo survey from 2012¹⁰ that show that sex workers faced increased violence after the law was introduced, especially street-based and Nigerian sex workers.

In 2016, Amnesty International published its research on sex work in Norway,¹¹ which provides a detailed account of the human rights abuses under the Swedish model. According to the Amnesty International research, based on 54 interviews with sex workers, representatives of state agencies and NGOs, sex workers in the country face high levels of policing leading to eviction, loss of livelihood and/or deportation, worsening attitudes towards sex workers by the public and increasing exposure to exploitation.

In **France**, sex workers report similar tendencies after the Swedish law was introduced in 2016. The results of a large-scale research led by *Medicins du Monde*¹² with the participation of 583 sex workers show that 63 percent of sex workers have experienced deterioration of their living conditions, more isolation and greater stress, 42 percent of sex workers are more exposed to violence and the majority of the community (78 percent) have experienced a loss of income due to decrease in number of clients and fall of rates. Even though the overruling of previous criminalisation of sex workers is claimed to be a success of the legislative change, the research states municipal by-laws restricting sex work at the local level and regular identity checks aimed at those selling sex result in sex workers still being more often criminalised than

their clients. Sex workers often report intimidation by the police, including being pressured to report clients. If they're undocumented they are frequently threatened with deportation if they do not comply. A key element on the law was its 'social component': funding and services for those wishing to exit prostitution. In 3 years since the implementation of the law, however, only 86 people received support to exit sex work.¹³

Increasing vulnerability to violence has also been reported in **Ireland**, where the Swedish model was introduced in 2017. UglyMugs, an app allowing for the safe reporting of violent incidents, the number of reports of abuse and crime has greatly increased. Comparing the two years before and the two years after the new law came in, crime has increased by 90 % and violent crime specifically has increased by 92 %, based on the statistics of the app.¹⁴

Furthermore, the conceptual framing of 'prostitution as violence against women' is inherently problematic as:

- it denies the agency of all people selling sexual services;
- it renders invisible actual acts of violence and exploitation occurring in the sex industry;
- it uses criminal laws to address a social issue, therefore diverting police resources that should be used towards addressing actual crimes (including violence, exploitation and trafficking in the sex industry.)

RECOMMENDATIONS

TO SPANISH MEMBERS OF PARLIAMENT:

- Vote against amendment Article 187 bis of the draft organic law on integral guarantee of sexual freedom;
- Eliminate all articles related to prostitution which distorts the purpose and spirit of the norm by negating the consent of sex workers;
- Refrain from introducing new laws that criminalize or penalize directly or in practice the consensual exchange of sexual services between adults for remuneration;

TO THE SPANISH STATE:

- Address underlying harmful gender and other stereotypes, discrimination and structural inequalities that drive marginalization and exclusion and lead to individuals from marginalized groups selling sex in disproportionate numbers, and to discrimination against sex workers;
- Comply with your obligations with respect to all people's economic, social and cultural rights, in particular guaranteeing access for all to education and employment options and social security to prevent any person from having to rely on selling sex as a means of survival due to poverty or discrimination;
- Combat gender and other forms of direct and indirect discrimination and ensure that the human rights of all individuals, including women and girls, and those at risk of discrimination and abuse because of their sexual orientation or gender identity and expression, race, caste, ethnicity, Indigenous identity, migrant status or other characteristics of their identity, are equally respected, protected and fulfilled;
- Refrain from the discriminatory enforcement against sex workers of other laws, such as those on vagrancy, loitering, and immigration requirements;
- Ensure the meaningful participation of sex workers in the development of law and policies that directly affect their lives and safety;

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- Refocus laws away from catch-all offences that criminalize most or all aspects of sex work and towards laws and policies that protect sex workers' health and safety and that oppose all acts of exploitation and trafficking in commercial sex (including of children);
 - Ensure that there are effective frameworks and services that allow people to leave sex work if and when they choose; and
 - Ensure that sex workers, regardless of their migration status, have equal access to justice, health care and other public services, and to equal protection under the law.

ENDNOTES

1. For more information see: [Briefing: Tackling Trafficking under Decriminalization model, From vulnerability to resilience: sex workers organising to end exploitation.](#)
2. See more on the research results [here](#).
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4. UNAIDS, Guidance note on HIV and sex work, 2012, p. 16.
5. UN Commission on Human Rights, Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, on trafficking in women, women's migration and violence against women, submitted in accordance with Commission on Human Rights resolution 1997/44, UN Doc. E/CN.4/2000/68, 2000, para. 36 (recognizing that some individuals do consent to selling sex and thus should not be classified as trafficking victims); OHCHR, Recommended principles and guidelines on human rights and human trafficking: Report of the United Nations High Commissioner for Human Rights (Addendum), UN Doc. E/2002/68/Add.1, 2002, Guideline 8.1 (Similar to the Trafficking Protocol, these Guidelines recognize consent as a defence for trafficking of adults.); UNAIDS, Guidance note on HIV and sex work, 2012, p. 16; UNDP, Global Commission on HIV and the Law, Risks, rights & health, 2012, p. 39; UN Fourth World Conference on Women International, Beijing Platform for Action, 1995, para. 96; ILO, L.L. Lim, 'The economic and social bases of prostitution in Southeast Asia', in *The Sex Sector: The Economic and Social Bases of Prostitution in Southeast Asia*, 1998, pp. 1, 213. After conducting research on the sex sector in Southeast Asia conducted in 1998, the ILO concluded that while coercion often accompanied sex work, it could be freely chosen.
6. WHO, UNFPA, UNAIDS, NSWP, Prevention and Treatment of HIV and other sexually transmitted infections for sex workers in low- and middle-income countries: Recommendations for a public health approach, 2012, p.8, available at: apps.who.int/iris/bitstream/10665/77745/1/9789241504744_eng.pdf (Calling for all countries to "work toward decriminalization of sex work and elimination of the unjust application of non-criminal laws and regulations against sex workers."); UNDP, Global Commission on HIV and the Law, Risks, rights & health, 2012, pp. 36-43 (Global research documenting that criminalising the sale of sex can negatively impact sex workers' human rights in several ways, including by directly violating their rights to life, health, physical and mental integrity, equality and non-discrimination and autonomy,

by rendering sex workers and those who work with them more vulnerable to violence, abuse and extortion by police, clients and third parties, infringing upon their privacy.

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8. Commission on Human Rights, Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, UN Doc. E/CN.4/1997/47, 12 February 1997, para. 40; Anti-Slavery International, J. Bindman and J. Doezema, Redefining prostitution as sex work on the international agenda, 1997.

9. Rasmussen I. et. al. (2014). Evaluering av forbudet mot kjøp av seksuelle tjenester, English Summary document. Available: https://www.regjeringen.no/contentassets/0823f01fb3d646328f20465a2afa9477/evalueringssekskjopsloven_2014.pdf

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14. <https://uglymugs.ie/wp-content/uploads/um-statement-26-mar-2019.pdf>