



“WHAT I’M DOING IS NOT A CRIME”

THE HUMAN COST OF CRIMINALIZING SEX WORK
IN THE CITY OF BUENOS AIRES, ARGENTINA
EXECUTIVE SUMMARY

AMNESTY
INTERNATIONAL



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Cover photo: A transgender woman descends from the third to the second floor as she leaves a hotel to work in the streets of City of Buenos Aires, Argentina. November 15, 2008.
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**AMNESTY
INTERNATIONAL**



EXECUTIVE SUMMARY

The sale or purchase of sex by adults is not formally criminalized in the Autonomous City of Buenos Aires (Buenos Aires), Argentina. However, in practice, these activities are criminalized on multiple levels through a range of laws that punish activities related to and communications around the sale and purchase of sex, as well as a Federal Anti-trafficking Law and related initiatives that fail to distinguish between consensual sex work and human trafficking into the sex sector.

An indoor sex worker named Soledad explained to Amnesty International that:

“Under our laws, even if our job is not forbidden... they forbid everything that surrounds us... they forbid [landlords] to lease to us, they forbid hotels to host us, they forbid the client from picking up a girl in the streets... They don’t tell us we can’t work, but if everything else is criminalized — [T]hat’s what we fight for. That’s [why we fight] to legalize [sex work].”

Amnesty International interview with Soledad, an indoor sex worker, 23 September 2014

The existence and enforcement of the criminal legal framework around sex work in Buenos Aires has led to human rights abuses and violations against sex workers by police, state officials and medical providers. For example, while enforcing the law, police and other state officials have conducted violent raids on apartments, profiled and arbitrarily detained sex workers in the streets and solicited bribes to avoid punishment. The current legal framework has also impeded sex workers’ ability to seek state protection from violence because of their involvement (or perceived involvement) in criminal activity.

Sex work is a stigmatized activity in Buenos Aires and the very existence of criminal laws around sex work reinforces and perpetuates stigma and discrimination against sex workers by enshrining in law condemnation of the sale and purchase of sex and related activities, and imposing state-endorsed punishment for these activities. In turn, state and non-state actors who engage in violence and discrimination against sex workers know that, because they are presumed to be criminals, sex workers are less likely to complain to the authorities. Stigma and discrimination also impede sex workers’ access to health services and to adequate housing.

This report is part of a series of publications by Amnesty International focusing on research into human rights abuses and violations against sex workers in Argentina, Hong Kong, Norway and Papua New Guinea.

This report focuses on criminal and other punitive laws that affect the human rights of sex workers in Buenos Aires.

Over the course of a year and a half, Amnesty International visited Buenos Aires twice (in September 2014 and December 2015) and interviewed 15 sex workers – 12 cisgender women and three transgender women. The 15 included street-based sex workers (nine), and indoor sex workers (six). All were over 18 and two had been victims of human trafficking. In addition, Amnesty International spoke to more than 30 key stakeholders and leaders from the main organizations working on issues related to commercial sex in Buenos Aires, anti-trafficking organizations, a transgender rights organization, and a specialized school for marginalized people (including transgender people), as well as representatives of the Federal Rescue Office (*Oficina de Rescate* – a government office assisting with the enforcement of Argentina’s Federal Anti-trafficking Law), prosecutors, federal and local judges, public defenders, a member of the City of Buenos Aires legislature, gender units within various government bodies working on issues related to sex work, doctors treating sex workers at a public hospital, and the Argentina Country Coordinator for the Joint United Nations Programme on HIV and AIDS (UNAIDS sub-regional office).

CRIMINAL JUSTICE ABUSES IN THE STREETS OF BUENOS AIRES

Amnesty International learned that over the years, street-based sex workers have experienced violence and abuse at the hands of police in Buenos Aires. A local judge and a public defender handling cases under the legislation that regulates street-based sex work in the city (Buenos Aires Code of Offences, Law 1472, Article 81), explained to Amnesty International that this law aims to prevent interference with public space (or “public nuisance”) by criminalizing the “ostentatious” offer of and demand for sex in unauthorized public places (mainly within 200m of schools, hospitals, residences and places of worship).

However, as a prosecutor and public defender explained to Amnesty International, there is no clear definition of what qualifies as an “ostentatious” offer of or demand for sex, which makes proving violations of the law very difficult. Amnesty International was informed that no Article 81 cases have gone to trial in recent years. When cases under this law have been prosecuted, according to the head of the Gender Office of the Public Defender’s Office, most were thrown out for lack of evidence demonstrating an “ostentatious” offer of or demand for sex.

Nevertheless, Article 81 and its enforcement affect the lives of street-based sex workers on a daily basis. Sex workers interviewed for this report explained that they are repeatedly stopped arbitrarily by police and asked to show identification. They can be subjected to fines and probation by prosecutors. While the “demand” for sex is criminalized under Article 81, it is sex workers, rather than clients, and primarily transgender sex workers, who are most often issued citations (“contraventions”) and given fines or probation.

Moreover, while it is unlawful for police and prosecutors to consider an individual’s appearance, dress or manners when enforcing Article 81, a local judge, public defender and sex workers interviewed by Amnesty International said that this type of profiling frequently occurs. Sex workers also reported that while enforcing Article 81 police can extort money from clients, and in some cases, from sex workers themselves, with impunity.

“[The police] now focus on extorting clients of transgender sex workers. They look for married clients in particular, because they can threaten to issue a citation that will be sent to their homes and [disclose] their conduct to the family. They take the clients to the ATM to get money.”

Laura, a street-based sex worker, 23 September 2014

Sex workers' statements were echoed by the various organizations and government officials working on the issue who spoke to Amnesty International.

Profiling sex workers based on their appearance and mannerisms, as opposed to evidence of their having committed a crime, violates the right to equal protection of the law (or to be treated equally under the law), as well as implicates the right to freedom of expression. Additionally, statements from sex workers and law enforcement officials provided to Amnesty International indicate that Article 81 is disproportionately enforced against transgender people in further violation of the right to equality and the principle of non-discrimination.

Article 81 fails to meet the principle of legality, which requires that the law defines crimes and punishments in a manner that is accessible to the population and that it clearly outlines what conduct is criminalized. The definition of an “ostentatious” offer of and demand for sex in unauthorized places as an offence is unclear and makes the provision vague, and the term has not been clarified by courts. This absence of legal clarity means that state officials lack sufficient guidance to enforce the law consistently and enables profiling and discriminatory application. Equally importantly, the vagueness of this provision impedes sex workers' ability to understand how to avoid violating the law.

HARASSMENT OF INDOOR SEX WORKERS – “CODE INSPECTIONS” AND ANTI-TRAFFICKING RAIDS

While autonomous sex work between consenting adults indoors is not formally criminalized, this type of sex work is criminalized in effect through the enforcement of Argentina's Federal Anti-trafficking Law. This Law, while serving the legitimate purpose of criminalizing human trafficking, is also applied to those selling sex “autonomously” (or without “third party” involvement) who are suspected of working with “third parties” (any person who facilitates the sale and purchase of sex, who is presumed to be exploiting sex workers). Every indoor sex worker interviewed for this report described being subjected to repeated raids by multiple agencies of law enforcement, which often involve violence, intimidation and theft of personal property. The sex workers reported being frequently arrested, often violently with fire arms, detained for up to 12 hours, and subjected to coercive questioning. Sex workers also reported that, at times, law enforcement officials take their personal property such as money and cell phones during these raids and fail to return them.

“The gendarmerie [federal military police] and the airport security knocked at the door and, as I was going to open it, they broke it down with a baton. They came in wearing helmets with lights and weapons. They made me lie facing down on the ground and they tied my hands while pointing their guns at me, and they did the same with everyone else. After that, they made all of us go and stay downstairs while they took everything they could from the apartment.”

Marti (not her real name), an indoor sex worker, 23 September 2014

According to an individual working in the Federal Prosecutor's Office, sex workers and sex worker rights organizations, the authorities generally consider people selling sex in such situations to be trafficking victims, irrespective of whether or not the individuals choose to sell sex. While Argentina's Federal Anti-trafficking Law refers to human trafficking and exploitation separately (referring to exploitation as an “aggravating factor”), no real distinction is made between the two in the under the law. As a result, different types of conduct are conflated and treated similarly, and consensual autonomous sex work indoors (which is not a

criminal offence) is criminalized in practice. According to the individual working in the Federal Prosecutor's Office, this occurs in part due to confusion around the law and in part for political reasons; the Anti-trafficking Law has a high profile and strong political support. Organizations providing support services to people who sell sex and to human trafficking victims take the view that commercial sex is not a legitimate form of work. They contend that it is impossible to exercise "free choice" to sell sex. For example, the Head of La Casa del Encuentro, an anti-trafficking non-governmental organization, claims that all types of "prostitution" are a form of slavery. These views are shared by some state officials.

Regardless of sex workers' claims that they consent to selling sex and that they are not human trafficking victims, an individual working in the Federal Prosecutor's Office made clear that victims' (or suspected victims') assessment of their situations cannot be considered under the law. As little attempt is made to differentiate between human trafficking and consensual sex work, sex workers' claims of consent are often dismissed, as confirmed by sex workers, the head of the Federal Rescue Office and the head of La Casa del Encuentro.

In addition to abuse and punishment under the Federal Anti-trafficking Law, the legal framework that applies in Buenos Aires, which largely criminalizes sex work as a whole, enables state and non-state actors to presume that sex workers are criminals. Therefore, regardless of whether sex workers are actually engaging in legally sanctioned activity, they often live under a spectre of criminality, and as such, are presumed to be undeserving of protection under the law. This reality fosters the use of other laws by state officials to harass sex workers and to demand bribes from sex workers or people protecting them.

For example, indoor sex workers reported being subjected to repeated "code inspections" by municipal officials and police, purportedly to ensure the safety of business establishments. Sex workers explained that they were not sure what law the state officials are enforcing when they enter their apartments; they are not given this information during the inspection. Amnesty International's enquiries failed to elicit the legal basis for the "code inspections". Ironically, these inspections regularly occur despite the fact that sex workers cannot register their services as a legal business subject to labour and employment regulations.

The lack of clarity around which law is being enforced in these circumstances breaches the principle of legality which requires that the law define crimes and punishments in a manner that is accessible to the population and that it clearly outlines what conduct is criminalized. This lack of clarity combined with the stigma against and presumptions of criminality imposed on sex workers also foster a climate in which state officials can demand bribes from sex workers without repercussions.

The criminalization in practice of indoor sex workers engaging in autonomous sex work in Buenos Aires violates sex workers' rights to privacy and personal autonomy. They are being harassed or punished for engaging in autonomous private sexual acts that are not formally criminalized in law. Additionally, raids and "code inspections" by state officials against sex workers are often conducted in a violent, intimidating and humiliating manner, with state officials giving little weight to sex workers' voices and experiences, violate their right to be free from cruel, inhuman or degrading treatment or punishment.

Moreover, when sex workers face extortion and violence at the hands of police and state officials, when they are forced to work in a precarious, clandestine manner due to stigma and a presumption of criminality that surrounds them, and when they cannot seek police protection from violence, their rights to security of the person and protection from torture and other ill-treatment are further violated. The right to just and favourable work conditions is also negatively impacted by the criminal legal framework in Buenos Aires because it punishes indoor sex workers for autonomously selling sex and fails to afford sex workers the opportunity to sell sexual services in a manner that does not fall foul of the law. Moreover, the criminalized nature of their work impedes sex workers' ability to protect themselves in the course of their work and to advocate for better work conditions.

A law penalizing the advertising of sexual services (Presidential Decree 936/2011 on the Comprehensive Protection of Women) has also had a punitive effect on sex workers. Passed without consultation with those involved in selling sex, this likely overbroad law has had the effect of forcing people to sell sex in the streets, in more precarious, less safe conditions, because they can no longer legally advertise to sell sex indoors in a safer environment. Legal restrictions around advertising, therefore, affect sex workers' right to security of the person.

Presidential Decree 936/2011 also affects sex workers' right to freedom of expression in a manner that is counter to international human rights law. While the Decree appears to have legitimate aims – to prevent human trafficking and discrimination against women – it is likely overly broad and may be unnecessary to achieve the stated purpose.

STIGMA AND DISCRIMINATION IN ACCESS TO HEALTHCARE AND HOUSING

The combination of the fact that sex work is criminalized in effect and that it is heavily stigmatized in society is a barrier to sex workers' access to health services without discrimination. Both health care providers and sex workers interviewed by Amnesty International said that stigma and discrimination are the primary barrier to healthcare faced by sex workers in Buenos Aires. Interviews with sex workers revealed experiences of torture and other ill-treatment when accessing health services.

“Whenever I was sick I went to the hospital but people always mistreated us. They told us to go to other hospital[s] because they couldn’t treat us there ... That’s why many [sex workers] don’t go to hospitals... We also used to medicate each other; recommending pills to take and stuff like that. We didn’t have any real access to health care services because whenever we went to hospitals we were laughed at or the last ones to be attended to by doctors.”

Virginia, a transgender woman and former sex worker, 26 January 2015

Two doctors interviewed by Amnesty International confirmed that they are aware of sex workers being abused in hospitals. For example, they recalled that a doctor at their hospital requested oral sex during an exam and another doctor refused to treat a patient who was a sex worker due to the perceived “HIV risk”. Both doctors and sex workers explained that, in general, sex workers will not complain about such mistreatment because they feel that they are not entitled to report violence or mistreatment and that little would be done.

Criminal prohibitions around sex work, as well as broader societal stigma, contribute to the discrimination sex workers face when seeking health care services. These barriers impact sex workers' rights to the highest attainable standard of health and to equality and non-discrimination.

Sex workers in Buenos Aires also face discrimination when attempting to obtain housing. Many cannot rent an apartment because they do not have legally documented income due to the informal, unrecognized and criminalized nature of their work. Additionally, some sex workers interviewed explained that they have been charged much higher prices than others by landlords or hotel owners because of the presumption of criminality surrounding them and their work. Discrimination against sex workers in Buenos Aires has implications for their right to adequate housing, a right that states are required to guarantee without discrimination of any kind.

Stigma against and presumptions of criminality imposed on sex workers in Buenos Aires also put them, and particularly transgender sex workers, at increased risk of harassment by landlords. Moreover, sex workers cannot seek state protection against discrimination and harassment by landlords when trying to access their right to adequate housing because of the criminalized nature of their work. Along these lines, the Buenos

Aires government is failing to meet its obligation to ensure sex workers' right to adequate housing without discrimination.

Despite the government's knowledge of transgender people's marginalized status and efforts to address this through the landmark Gender Identity Law adopted in 2012, discrimination against transgender people in Buenos Aires persists. Transgender people face particular discrimination and harassment when seeking housing. For example, the head of the Gender Office of the Buenos Aires Public Defender's Office told Amnesty International that transgender people face verbal abuse from landlords and other tenants. The Academic Director of Mocha Celis Bachillerato, a specialized school that serves transgender and other socially marginalized people, told Amnesty International that transgender people's access to housing is directly linked to their access to work, which is linked to their access to education, and discrimination in access to education and health services significantly impacts on their ability to secure jobs other than sex work.

SEX WORKERS' LACK OF ACCESS TO PROTECTION FROM VIOLENCE AND CRIME

The legal framework in Buenos Aires not only criminalizes sex work and related activities in effect, but it also leads some sex workers to work in more precarious conditions and effectively prevents them from seeking redress or protection from the authorities. As Laura, a sex worker, told Amnesty International, she did not report a robbery at knife point to police because: "They won't listen to me because I'm a street worker."

CONCLUSIONS AND RECOMMENDATIONS

Despite the different backgrounds and experiences of those who sell sex or who have sold sex in Buenos Aires interviewed for this report, all agreed on two things: the selling of sex should not be a criminal offence and the existing legal framework is being enforced in a manner that criminalizes those who sell sex, leading to a range of human rights abuses and violations.

The interviewees were very clear on the need to combat human trafficking into the sex sector, including the need for specific measures to prevent and punish all forms of sexual exploitation of children. Those who sell sex consensually and who do not define themselves as trafficking victims, as well as organizations working on sex worker rights, are calling for a clear distinction to be made between human trafficking and sex work. Many of these same individuals and organizations also call for the legal regularization of sex work to enable sex workers to register their services as a business, access social security benefits and pay taxes, and for the police to investigate their complaints properly and bring those responsible for abuses to justice.

Amnesty International calls on the authorities of Argentina and Buenos Aires to repeal or amend all laws used to criminalize or otherwise penalize adult consensual sex work, and to put an end to the discriminatory enforcement of laws that have a disproportionate impact on sex workers, in particular transgender sex workers.

Amnesty International further calls on the authorities of Argentina to amend the Federal Anti-trafficking Law so that it does not criminalize adult consensual sex work, but rather works to end sexual exploitation that occurs due to the threat or use of force or other forms of coercion, fraud, deception, abuse of power or of a position of vulnerability of a person. Further, the Argentine and Buenos Aires authorities should take proactive steps towards ending stigma against sex workers which reinforce and can contribute to violence and discrimination against sex workers.

Additional recommendations can be found in the full report.

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While consensual sex work between adults is not formally criminalized in the City of Buenos Aires, Argentina, in practice, sex workers are criminalized on multiple levels through laws that punish activities related to the promotion, sale and purchase of sex. This includes the Federal Anti-trafficking Law that fails to distinguish between consensual sex work and human trafficking into the sex sector.

The existence and enforcement of laws around sex work in the City of Buenos Aires facilitate police violence, abuse and extortion, and perpetuate stigma and discrimination against sex workers by state officials, health care providers and the wider community. Punitive sanctions around sex work also perpetuate negative stereotypes that impede sex workers’ access to health care services and adequate housing, and result in them working in precarious, clandestine conditions. Fear of law enforcement authorities also hampers sex workers’ ability to seek protection from violence and crime.

This report outlines the grave impact of criminalizing sex work in the City of Buenos Aires and provides recommendations to the Federal and local authorities to bring laws and practice into line with human rights law and to protect the human rights of all sex workers.

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