



Global Network of Sex Work Projects

Promoting Health and Human Rights

The Government of Spain and the Council of Ministers
Unidad de Comunicación con la Ciudadanía
Gabinete del Presidente del Gobierno
Edificio Semillas, Complejo de la Moncloa
Avda. Puerta de Hierro, s/n. 28071, Madrid.

cc: Leaders of all political parties in the Congress of Deputies

Subject: Proposals to amend the Penal Code (la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal) and introducing a 'Prostitution Prohibition Act'

Date: 1st September 2022

Introduction

NSWP is a global network of sex worker-led organisations, with 314 members in 101 countries, that exists to uphold the voice of sex workers globally and connect regional networks advocating for the rights of female, male, trans and gender diverse sex workers. It advocates for rights-based health and social services, freedom from abuse and discrimination, and self-determination for sex workers.

NSWP welcomes the opportunity to write to the Government of Spain and the leaders of all political parties in the Congress of Deputies regarding the legislative proposals to amend the Spanish Penal Code and introduce new provisions regarding sex work.

Our understanding is that the proposed reforms include amending Article 187.2 of the Penal Code "obtaining profit from the prostitution of others" and other amendments pertaining to third parties. They extend the punishment of third parties to include non-coercive relationships and decouple it from exploitation. A new Article 187 bis would criminalise "whoever, for profit and habitually, uses a property, premises or establishment, open or not to the public, or any other space, to promote, favour or facilitate the prostitution of another person, even with their consent", violating sex workers' right to housing and the security of sex workers, many of whom live and work in the same place. The proposals also "equate the prostituted person as the victim of a crime", overriding the consent of sex workers. Finally, they introduce fines and a criminal record for the purchasers of sex for agreeing to "perform acts of a sexual nature in exchange for money or other financial consideration".

Laws and policies which criminalise third parties fail to acknowledge that sex workers need protections to be put in place, in order to address cases of exploitative or harmful contractual or employment-based relationships with others. Criminalising these relationships necessitates that they be hidden from authorities and placed outside the bounds of regulation. The blanket criminalisation of third parties assumes that all third party relationships, regardless of context and circumstance, are exploitative and leaves sex workers without access to legal measures to challenge exploitation or abuse when it does happen. In contexts where third parties have been decriminalised (examples include New Zealand and New South Wales, Australia) there is evidence¹ to show that sex workers are empowered in their interactions with third parties and have access to legal rights and mechanisms to challenge bad practice.

¹ NSWP, 2017, "[Policy Brief: The Decriminalisation of Third Parties.](#)"

NSWP | Mitchell House, 5/5 Mitchell Street | Edinburgh EH6 7BD | Scotland UK

secretariat@nswp.org | +44 (0)131 553 2555 | www.nswp.org

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Laws criminalising brothel-keeping further exacerbate sex workers' vulnerability to violence and abuse by compelling them to work in isolation. As a whole, criminalisation and punitive policies have been found to reduce sex workers' access to justice, support networks, and rights-based health services, while increasing their risk of HIV infection, STIs, and physical and sexual violence.²

Laws criminalising the purchase of sexual services, also known as 'End Demand' legislation or the Nordic Model, are often framed as a strategy to promote gender equality and combat trafficking through the eradication of sex work. In reality, however, such legislation exacerbates, rather than ameliorates, sex workers' vulnerability to violence, discrimination, and exploitation.

The Enforcement of 'End Demand' Approaches

'End Demand' models are rooted in ideology which erroneously equates sex work with exploitation and human trafficking. As a result, countries that have adopted 'End Demand' legislation disproportionately enforce these laws in spaces occupied by sex workers, including homes, neighbourhoods, and work establishments. Sex workers - not clients or traffickers - incur the majority of profiling, surveillance, and policing.³ The over-policing of sex worker spaces leads to frequent police stops, identity checks, and questioning, as well as increased arrest, detention, and penalisation for sex work- and non-sex-work-related crimes.⁴ Sex workers in Canada, France, and Sweden have reported being threatened with criminal charges, detention, and physical violence, and have also been harassed to act as witnesses against their clients.⁵ 'End Demand' laws are also used to justify raids on sex workers' workplaces and homes, which can lead to forced evictions, loss of livelihood, and, in the case of migrant workers, deportation.

Impacts on Sex Workers

Safety and Wellbeing

The harmful effects of 'End Demand' legislation on sex workers' safety and wellbeing have been well documented since the first adoption of the sex-buyer law in Sweden in 1999.⁶ When the purchase of sexual services is criminalised, sex workers must shift their activities to more precarious, clandestine settings in order to avoid police detection. Fear of arrest discourages clients from visiting indoor establishments or meeting at hotels, which in turn leads sex workers to travel to clients' homes or other distant locations, exacerbating their vulnerability to both violence and exploitation.⁷

Sex workers have also reported that clients' fears of arrest have limited the possibilities to negotiate services and protect themselves. Outdoor sex workers have less time to negotiate their transactions and assess the risk of a client before getting in a car or moving to another location. In addition, fewer clients are willing to provide sex workers with personal identifying information that can act as an insurance and safety measure.⁸

In France, a Médecins du Monde study revealed that in the two years following the 2016 adoption of the 'Nordic Model,' 38% of sex workers found it increasingly difficult to negotiate condom usage. Sex workers reported that the criminalisation of clients simultaneously increased competition for clientele, driving down prices, while also increasing clients' sense of entitlement to demand services on their own terms due to the perception that they were the ones "taking the risk."⁹

In Ireland, UglyMugs.ie, an app through which sex workers confidentially report incidents of crime and abuse, noted a drastic increase in reported incidents following the adoption of the 'Nordic Model' in

² Lucy Platt et al., "[Associations between sex work laws and sex workers' health: A systematic review and meta-analysis of quantitative and qualitative studies](#)," *PLoS Medicine* 15(12) (2018).

³ NSWP, 2018, "[Policy Brief: The Impact of 'End Demand' Legislation on Women Sex Workers](#)."

⁴ Karim Yadgar, "[Ottawa Street-based Sex Workers and the Criminal Justice System: Interactions Under the New Legal Regime](#)," (University of Ottawa, 2016), 72.

⁵ NSWP, 2015, "[Advocacy Toolkit: The Real Impact of the Swedish Model on Sex Workers](#)."

⁶ J. Levy and P. Jakobsson, "[Sweden's abolitionist discourse and law: Effects on the dynamics of Swedish sex work and on the lives of Sweden's sex workers](#)," *Criminology and Criminal Justice*, 14(5) (2014), 593-607.

⁷ Médecins du Monde et al., 2019, "[Study on the Impact of the Law from 13 April 2016 Against the "Prostitution System" in France](#)."

⁸ NSWP, 2015, "[Advocacy Toolkit: The Real Impact of the Swedish Model on Sex Workers](#)."

⁹ Médecins du Monde et al., 2019, "[Study on the Impact of the Law from 13 April 2016 Against the 'Prostitution System' in France](#)."

2017. Between the years of 2017 and 2019, a 90% increase in crime and a 92% increase in violent crime were noted, in comparison to rates from 2015-2017. Meanwhile, the overall number of UglyMugs.ie users remained stable.¹⁰ In Northern Ireland, research shows that the risk of victimisation and fear of crime and abuse has contributed to higher levels of anxiety and unease amongst sex workers.¹¹

Stigma and Discrimination

It has been asserted that the 'End Demand' approach focuses only on increasing the stigma of individuals who purchase sex. However, as reported by sex workers, it is impossible to increase the stigma of those purchasing sex without also increasing the stigma of those selling sexual services. Public campaigns and policy debates, as well as social services and police trainings, infantilise, dehumanise and pathologise sex workers through quoting hateful language used by a small minority of clients, describing in graphic detail abuse against sex workers, as well as using unacceptable racialised and gendered language and images in public campaigns. These representations affect not only the clients of sex workers, but also shape public attitudes towards sex workers themselves.¹²

Following the adoption of the 'Nordic Model' in Norway, a study found that, contrary to lawmakers' intentions, while national attitudes towards the criminalisation of purchasing sex remained the same, Norwegians became more likely to support the criminalisation of selling sex.¹³ Simultaneously, sex workers reported increased harassment, violence, and discrimination from the public.¹⁴

Increased stigma and discrimination towards sex workers has also been documented in healthcare settings and social services,¹⁵ further impacting on sex workers' health and wellbeing. A study conducted by Rose Alliance and HIV-Sverige found that 25% of sex workers experienced problems in accessing HIV testing, including being interrogated on why they wanted an HIV test or having to insist on their right to receive a test. Only 6% of respondents had received HIV prevention services, and only 9% had received condoms from a government or health care organisation.¹⁶

Access to Justice

'End Demand' legislation reduces sex workers' access to justice by increasing punitive interactions between sex workers, law enforcement and judicial systems, including loss of child custody, eviction, property seizure, and deportation. In Norway, sex workers reported multiple instances of police failing to respond to reports of violence or threatening situations. Additionally, they expressed concern that the police would use these reports as a pretext to intimidate and harass sex workers.¹⁷ In Ireland, in spite of the drastic surge in crime documented by UglyMugs.ie, less than 1% of sex workers using the app said that they have or will report these crimes to the gardaí,¹⁸ indicating that the government's policies have neither protected sex workers, nor fostered their trust.

Impacts on the Demand for Sexual Services and Human Trafficking

'End Demand' legislation is often promoted as the only solution to human trafficking. However, the efficacy of broad efforts to reduce the demand for sexual services as a way of addressing trafficking have been criticised by a number of well-respected labour and anti-trafficking organisations, including

¹⁰ UglyMugs.ie, 2019, "[Crime has almost doubled in the two years since new law came in.](#)"

¹¹ Queens University Belfast, School of Law, 2019, "[A Review of the Criminalisation of Paying for Sexual Services in Northern Ireland.](#)"

¹² NSWP, 2018, "[Policy Brief: The Impact of 'End Demand' Legislation on Women Sex Workers.](#)"

¹³ A.A. Kotsadam and N. Jackobsson, "'Do laws affect attitudes? An Assessment of the Norwegian prostitution law using longitudinal data,'" *International Review of Law and Economics* 31 (2011): 103-115.

¹⁴ Amnesty International, 2016, "[Norway: The Human Cost of 'Crushing the Market': Criminalization of Sex Work in Norway.](#)"

¹⁵ NSWP, 2015, "[Advocacy Toolkit: The Real Impact of the Swedish Model on Sex Workers.](#)"

¹⁶ HIV-Sverige and Rose Alliance, 2014, "[En Annan Horisont.](#)"

¹⁷ PION Norway, 2017, "[A Shadow Report by PION.](#)"

¹⁸ UglyMugs.ie, 2019, "[Crime has almost doubled in the two years since new law came in.](#)"

the International Labour Organization (ILO),¹⁹ the Global Alliance Against Traffic in Women (GAATW),²⁰ and La Strada International.²¹

Critically, there is no substantive evidence to suggest that criminalising the purchase of sex has reduced the prevalence of sex work²² or human trafficking.²³ A 2019 study commissioned by the Department of Justice of Northern Ireland confirmed that the criminalisation of the purchase of sexual services neither impacted the supply of, and demand for, sexual services, nor the levels of trafficking for sexual exploitation.²⁴

'End Demand' legislation also hinders the identification of victims of trafficking, deterring both clients and sex workers, who are well-positioned to report exploitation and trafficking, from doing so. In South Africa, the Sex Workers Education and Advocacy Task Force recalled multiple cases in which clients were unable to report human rights violations due to fears of legal repercussions resulting from criminalisation.²⁵

Decriminalisation as Best Practice

International best practice guidelines, supported by a substantial body of evidence, promote the full decriminalisation of sex work as the best means to reduce violence, improve health outcomes, and uphold the human rights of sex workers.

Following the decriminalisation of sex work in New Zealand in 2003, sex workers reported improved working conditions, negotiation power, and increased confidence in asserting their legal and employment rights.²⁶ Sex workers in New Zealand have also reported improved relationships with law enforcement and an increased likelihood of reporting incidents of violence to the police.²⁷ When combined with increased opportunities for legal migration, decriminalisation has also been associated with reduced exploitation amongst migrant sex workers in Australia.²⁸

While decriminalisation alone cannot fully shield sex workers from violence and must be accompanied by rights-based programming and anti-discrimination measures, it is a critical step to ensuring that sex workers have equal access to fundamental human rights.

[The Joint United Nations Programme on HIV/AIDS \(UNAIDS\)](#), [UNFPA](#), [WHO](#), [UNDP](#), [the World Bank](#), [Amnesty International](#), [Médecins Du Monde](#), [Human Rights Watch](#), the [Global Commission on HIV and the Law](#), [Open Society Foundations](#), the [Global Network of People Living with HIV](#), the [Global Action for Gay Men's Health & Rights \(MPact\)](#), the International Women's Health Coalition, the [Association for Women's Rights in Development](#), the [American Jewish World Service](#), the [Global Alliance Against Traffic in Women \(GAATW\)](#), [The Lancet](#), The Global Fund for Women, the Elton John AIDS Foundation, [Frontline AIDS](#), the [International Community of Women Living with HIV](#), [Global Health Justice Partnership of the Yale Law School and Yale School of Public Health](#), [European AIDS Treatment Group](#), [ILGA-Europe](#), the [Platform for International Cooperation on Undocumented Migrants \(PIKUM\)](#), [Freedom Network USA](#), [STOPAIDS](#) and [ILGA World](#) all call for the full decriminalisation of sex work.

¹⁹ International Labour Organization, 2006, "[A Demand Side of Human Trafficking in Asia: Empirical Findings.](#)"

²⁰ Global Alliance Against Traffic in Women, 2011, "[Moving Beyond 'Supply and Demand' Catchphrases: Assessing the uses and limitations of demand-based approaches in anti-trafficking.](#)"

²¹ La Strada International, 2014, "[La Strada International NGO Platform Statement Ahead of the vote in the European Parliament on the Report of the Committee on Women's Rights and Gender Equality on sexual exploitation and prostitution and its impact on gender equality \(2013/2103\(INI\)\).](#)"

²² J. Levy and P. Jakobsson, "[Sweden's abolitionist discourse and law: Effects on the dynamics of Swedish sex work and on the lives of Sweden's sex workers.](#)" *Criminology and Criminal Justice*, 14(5) (2014), 593-607.

²³ S. Dodillet and P. Östergren, 2011, "[The Swedish Sex Purchase Act: Claimed success and documented effects.](#)"

²⁴ Northern Ireland Department of Justice & Queens University Belfast, 2019, "[A Review of the Criminalisation of Paying for Sexual Services in Northern Ireland.](#)"

²⁵ NSWSP, 2019, "[Policy Brief: The Impact of Anti-trafficking Legislation and Initiatives on Sex Workers.](#)"

²⁶ Gillian Abel, "[A decade of decriminalization: Sex work 'down under' but not underground.](#)" *Criminology and Criminal Justice* 15(5) (2014), 580-592.

²⁷ New Zealand Ministry of Justice and Victoria University of Wellington Crime and Justice Research Centre, 2007, "[Key Informant Interviews: Review of the Prostitution Reform Act 2003.](#)"

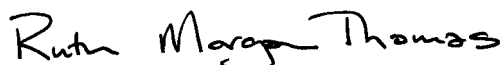
²⁸ P.G. Maciotti et al., "[Framing the Mother Tac: The Racialised, Sexualised and Gendered Politics of Modern Slavery in Australia.](#)" *Social Sciences* 9(11) (2020).

Recommendations

- Decriminalise all aspects of sex work. Whether some aspects or all aspects of sex work are criminalised, criminalisation creates structural barriers and promotes marginalisation that increases vulnerability to exploitative work conditions.
- Recognise the self-determination of sex workers, in all their diversity, and uphold them as rights bearers. Sex workers face intersecting forms of criminalisation, discrimination and marginalisation, which cannot be addressed in isolation.
- Consensual third party involvement in the sex industry should be regulated in line with existing labour laws and business regulations, with criminal law reserved only for instances of force, violence, and coercion.
- Remove laws that conflate trafficking, sex work and migration and promote the rights of migrant workers to safe, legal channels of migration and to 'decent work'. The focus of 'anti-trafficking' laws on eradicating sex work is detrimental to the identification of victims of human trafficking.
- Recognise sex work as work and ensure that sex workers are accorded labour rights in line with decent work as defined by ILO. Decent work, according to ILO, has four components: employment, social protection, workers' rights, and social dialogue. Sex workers' rights activists have been advocating for decent work for many years, and sex workers should be included in the decent work agenda, at national, regional and international levels.

The experiences of our global membership, combined with a substantial, growing body of evidence, indicate that the criminalisation of the purchase of sexual services negatively affects the health, safety, and wellbeing of sex workers. Efforts to repress or eradicate sex work not only fail to recognise sex workers as rights bearers, but also foster punitive enforcement practices, exacerbate vulnerability to violence and exploitation, and fuel stigma and discrimination. In order to support the human rights and self-determination of sex workers, the Government of Spain must take measures to fully decriminalise all aspects of sex work, including the purchase of sexual services.

Kindest regards



Ruth Morgan Thomas
Global Coordinator