



**“WHAT I’M DOING IS  
NOT A CRIME”**

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

**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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# GLOSSARY

## ENGLISH

**AUTONOMOUS SEX WORK** In the context of Argentina, references to “autonomous sex work” generally refer to the exchange of sexual services<sup>1</sup> between consenting adults for some form of remuneration, with the terms agreed between the seller and the buyer, and consensual sale and purchase of sex occurs without the involvement of others or “third parties”. (See definitions of “sex work” and “third parties” below.)

**CISGENDER PERSON** Cisgender people are individuals whose gender expression and/or gender identity accords with conventional expectations based on the physical sex they were assigned at birth. In broad terms, “cisgender” is the opposite of “transgender”.

**CRIMINALIZATION OF SEX WORK** The process of prohibiting sex work and attaching punishments or penalties through criminal laws. This includes laws that punish the selling or buying of sex and the organization of sex work (for example laws against keeping a brothel; promotion of “prostitution”; renting premises for the purposes of “prostitution”; living off the proceeds of sex work; and facilitating sex work through the provision of information or assistance).

It also refers to other laws not specific to sex work which are either applied in a discriminatory way against people involved in sex work, and/or have a disproportionate impact on sex workers which can in practice work as a *de facto* prohibition. Such laws could include those on vagrancy, loitering. Similarly immigration laws can be applied in a discriminatory way against sex workers as a *de facto* prohibition on sex work by migrants and the criminalization of irregular (sometimes called “illegal”) entry or residence may give rise to – or exacerbate – the penalization of sex work by migrants, as engaging in this type of work may make them more visible and liable to being targeted by state authorities.

**DECRIMINALIZATION OF SEX WORK** The removal of the above-mentioned criminalization measures. It does not refer to the decriminalization of human trafficking, forced labour or any other exploitative practices; violence against sex workers; rape and sexual abuse; or the sexual exploitation and abuse of children.

**GENDER IDENTITY** Refers to a person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely

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<sup>1</sup> This report does not cover issues such as adult dancing or the production of sexually explicit material, including pornography.

chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerism. (See definition of “transgender” below.)

**GENDER EXPRESSION**

Refers to the means by which individuals express their gender identity. This may or may not include dress, make-up, speech, mannerisms and surgical or hormonal treatment.

**PENALIZATION**

Use of other laws, policies and administrative regulations that have the same intent or effect as criminal laws in punishing, controlling and undermining the autonomy of people who sell sex, because of their involvement in sex work. These measures include, but are not limited to the imposition of fines, detention for the purposes of “rehabilitation”, deportation, loss of child custody, disentanglement from social benefits, and infringement on rights to privacy and autonomy.

**REGULARIZATION OF SEX WORK**

Regularization of sex work involves including the sale of sexual services within a category of legal work to which existing labour rights, obligations and social entitlements apply (such as payment of taxes, social security and retirement pension). Regularization of sex work is somewhat distinct from legalization of sex work, which generally involves the passage of legislation that specifically regulates the sale of sexual services as a distinct category of work. The definition of this term is specific to the Argentine context.

**SEX WORK**

The exchange of sexual services between consenting adults for some form of remuneration, with the terms agreed between the seller and the buyer. Sex work takes different forms, and varies between and within countries and communities.<sup>2</sup>

**SEX WORKERS**

Adults (persons who are 18 years of age and older) of all genders who receive money or goods in exchange for the consensual provision of sexual services, either regularly or occasionally.<sup>3</sup> For purposes of this report, it includes those who sell sex but may not necessarily identify as “sex workers”.

**THIRD PARTIES**

Individuals who assist with facilitating the sale and purchase of sex. Distinctions are often made between exploitative third parties and those who provide support services to sex workers (for example, security guards, secretaries, advertisers) at their request.

**TRANSGENDER OR TRANS PEOPLE**

Individuals whose gender expression and/or gender identity differs from conventional expectations based on the physical sex they were assigned at birth. A transgender woman is a woman who was assigned the male sex at birth but has a female gender identity; a transgender man is a man who was assigned the female sex at birth but has a male gender identity. Not all transgender individuals identify as male or female; transgender is a

<sup>2</sup> The term “sex work” is used to describe situations where adults who are engaging in commercial sex have consented to do so. Where consent is absent for reasons including threat or use of force, deception, fraud or abuse of power or the involvement of a child, such activity does not fall within the definition of sex work used in this report. Rather, it constitutes rape, a human rights abuse which should be treated as a criminal offence.

<sup>3</sup> Amnesty International recognizes that the terms used to refer to sex work and sex workers vary across contexts and according to individual preference and that not all people who sell sex identify as “sex workers”. Where possible, Amnesty International has employed the terminology used by rights holders themselves. While some people who sell sex in Buenos Aires refer to themselves as “sex workers”, others prefer the phrase “people in a situation of prostitution” or do not claim any title related to or affiliated with the sale of sex. To that end, the term “sex worker” is solely used as a descriptive device and is not intended to impose an identity on any individual whose experiences inform this report. There are a few references throughout this report to “people who sell sex” or “people involved in commercial sex” to reflect that these individuals may not identify as sex workers.

term that includes members of third genders, as well as individuals who identify as more than one gender or no gender at all. Transgender individuals may or may not choose to undergo gender reassignment treatment.

# 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 14,722, 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 de 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 appear at the end of this report.**

# METHODOLOGY

This report is one of a series of Amnesty International reports documenting human rights violations experienced in four countries by people who sell sex. The reports explore the role which criminal laws on sex work and police enforcement of those laws play in relation to these violations. The other reports in the series are: The human cost of 'crushing' the market: Criminalization of sex work in Norway, (Index: EUR/36/4034/2016); Harmfully isolated: Criminalizing sex work in Hong Kong (Index: ASA 17/4032/2016); and Outlawed and abused: Criminalizing sex work in Papua New Guinea (Index: ASA 34/4030/2016). The reports are based on research which revealed serious human rights abuses and are being published at the request of advocates working in this area.

Research in the Autonomous City of Buenos Aires,<sup>4</sup> Argentina, primarily focused on the human rights impact of criminalizing sex work – both street-based and indoor sex work – and related activities in the city. It also focused on the impact on sex workers of the enforcement of laws criminalizing exploitation and human trafficking, as well as advertising for commercial sex.

The research on which this report is based was carried out over an 18-month period during which Amnesty International researchers visited the country twice (in September 2014 and December 2015). During those missions, Amnesty International interviewed 15 sex workers – 12 cisgender women, three transgender women. The 15 included street-based sex workers (nine), and indoor sex workers (six). All were over 18 and two were victims of human trafficking. All the interviews took place in the offices of non-governmental organizations (NGOs). This relatively small number of interviewees reflects the difficulty of finding people willing to share their experiences, given the criminalized nature of their work, prevailing stigma against sex workers in society at large and widespread discrimination against transgender people.

Amnesty International also interviewed key stakeholders and leaders from the main organizations working on issues related to commercial sex in Buenos Aires including: the National Association of Women Prostitutes of Argentina (Asociación de Mujeres Meretrices de la Argentina, AMMAR Nacional); the Capital Association of Women Prostitutes of Argentina (AMMAR Capital); the Association of Argentine Women for Human Rights (Asociación de Mujeres Argentinas por los Derechos Humanos, AMADH); and transgender rights organizations including the Association for Transvestites, Transsexuals and Transgender People in Argentina (Asociación de Travestis, Transexuales y Transgéneros de Argentina, ATTTA).

Interviews were also conducted with the head of the anti-trafficking NGO the Meeting House (La Casa del Encuentro); the head of the Federal Rescue Office (Oficina de Rescate); the academic director of Mocha Celis Bachillerato, a specialized school for marginalized individuals, with a focus on transgender people; as well as individuals working within different criminal jurisdictions, including a prosecutor, a public defender, a federal judge and a local judge; a member of the City of Buenos Aires legislature; gender units within various government bodies working on this issue; two 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).

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<sup>4</sup> In 1994, Constitutional amendments granted the city of Buenos Aires special status as an autonomous city (Ciudad Autónoma). This gave the city's population the right to elect a Chief of Government (mayor), among other things. Before that, the mayor was appointed by the President of Argentina.

Amnesty International wrote to the Chiefs of the Federal and Metropolitan Police to share the research findings and to provide an opportunity to respond. The Chief of the Metropolitan Police replied on 16 May, 2016, denying the abuses described in the report and explaining that the police perform their actions in accordance with the law, without discrimination on the basis of sex, gender, religion, politics, age, culture or ideology, etc., and confirming that, according to the Directorate of Professional Performance, no complaints have been filed against personnel of the Metropolitan Police. On 24 May, 2016, the General Commissioner and Superintendent of Planning and Development replied that federal officials have carried out law enforcement activities in accordance with Federal law and policies at issue in Amnesty International's research and that no complaints or administrative proceedings have been filed against the police in that regard.

To supplement the testimony gathered for the report, additional desk-based research and a literature review were conducted around the evolution of the legal framework related to sex work in Buenos Aires, and the economic and political context in Argentina. The research carried out by Amnesty International is qualitative; this document does not present its findings in quantitative terms.

Each of the interviews was conducted with the assistance of translators, where necessary, and testimony gathered was then transcribed and translated into English. Measures were taken to ensure the accuracy of the testimony gathered by enabling the interviewees to review their testimony in writing and to provide consent for its use in this report. All those interviewed were informed of the purpose of the interview, its voluntary nature and the ways in which the information would be used. All interviewees provided verbal consent to be interviewed. All were told that they could decline to answer questions and could end the interview at any time.

The names and identifying details of particular sex workers, stakeholders and government officials who asked not to be identified, have been withheld to protect their privacy and safety. Where pseudonyms or anonymized references are used, these are indicated by an asterisk (\*).

Amnesty International is grateful to all of the individuals who agreed to be interviewed or who provided information for this report. The organization particularly appreciates the time that sex workers and human trafficking victims took to share their personal stories. While these experiences have not been detailed in their entirety, all of the testimonies shared, without exception, helped inform the report. We are also grateful to the AMMAR Nacional, AMMAR Capital and AMADH for their efforts in identifying people who would be willing to speak to Amnesty International about their personal experiences.

# 1. BACKGROUND

## A SNAP-SHOT OF PEOPLE WHO SELL SEX IN BUENOS AIRES

The sale of sex in Buenos Aires encompasses individuals selling sex in the streets, in commercial establishments and in other private spaces such as apartments. Some people sell sex periodically to supplement their income, while others sell sex because it is the best paid work they can secure. Some sell sex while they wait for their legal residence card, which will enable them to get legal work, or until they can find another job.

**“Some workers married their clients and are now housewives or have a business. They’ve finished with sex work... Some work for four years and are able to finish a degree or to build their houses and they’re done with this work. There’s a young woman who’s staying here [at a hotel] with her baby, she doesn’t want to be a sex worker but she has to raise a certain amount of money to be able to rent an apartment and for that [reason] she has to do this work. She’s planning on finding another job once she rents an apartment.”**

Amnesty International interview with Carmen, a street-based sex worker, 30 September 2014

**“I started working on the streets with my friend. It wasn’t easy at first, but as I continued working I got used to it and I had money to pay for a nanny who took care of my kids. I always worked two or three hours a day, no more than that.”**

Amnesty International interview with Norma, street-based sex worker, 23 September 2014

Some work by themselves in the streets or in apartments, or in cooperatives with other sex workers to share expenses and for protection and camaraderie. Others work with another person who finds them clients, helps facilitate the transactions, and/or protects them from violence and police extortion, indefinitely or until they can find their own clients and means to better protect themselves.<sup>5</sup>

Many sex workers interviewed by Amnesty International explained that they started selling sex in the streets because they had no other livelihood options that paid enough to support their children and cover the rent,<sup>6</sup> while others use sex work to supplement their incomes while doing other work and/or attending school,<sup>7</sup> attracted by the flexible hours and the amount they can earn.<sup>8</sup>

One transgender former street-based sex worker told Amnesty International: “I would have like[d] to do other things but sex work helped me survive and live properly.”<sup>9</sup> By contrast, another cisgender street-based sex worker told Amnesty International: “[I like sex work] because it gives me the opportunity to be free. I don’t have

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<sup>5</sup> There are also some people who sell sex in Buenos Aires who are victims of human trafficking. These individuals are not considered “sex workers” as the term is generally used throughout the report, but rather victims of violence and crime.

<sup>6</sup> Interviews with Cecilia,\* a former street-based sex worker and trafficking victim, 25 September 2014; Norma, street-based sex worker, 23 September 2014; and Virginia, a transgender person and former sex worker, 26 January 2015.

<sup>7</sup> Interview with Carmen, a street-based sex worker for 38 years, 30 September 2014.

<sup>8</sup> Interviews with Laura, a street-based sex worker, 23 September 2014; Noemi, an indoor sex worker, 23 September 2014; and Soledad, an indoor sex worker, 23 September 2014.

<sup>9</sup> Interview with the head of ATTTA and a former sex worker, 26 September 2014.

a boss, I don't have to give anything to anyone. If I don't want to go to work I don't... I'm not a victim. I'm free to do whatever I want."<sup>10</sup>

A prosecutor, a public defender and the head of the Gender Observatory of the Buenos Aires Judiciary told Amnesty International that many transgender people have engaged in street-based sex work because of discrimination, barriers to education and the lack of other available employment options.<sup>11</sup>

Some people have decided to sell sex indoors in a wide range of settings. For example, some sell sex in apartments without "third parties", either alone or in cooperatives with other sex workers. Others sell sex in apartments with "third parties" in varying capacities. Interviews with indoor sex workers confirmed that some choose to work with "third parties" for protection as they feel vulnerable working alone in an apartment. They explained that collaborating with "third parties" can be safer and easier in terms of booking clients and dealing with the police.<sup>12</sup> (See **The law and practice governing "third parties"** below.)

Some sex workers both sell sex and act in roles where they could be viewed as "third parties" under the law (for example, answering phones, taking bookings or managing the apartment used for sexual services), making their conduct potentially criminal, depending on how officials interpret the law.

## LEGAL FRAMEWORK AROUND SEX WORK IN BUENOS AIRES

The legal framework around sex work in Buenos Aires is composed of civil, criminal and municipal laws from two jurisdictions (national or federal and local). In general, crimes are defined and set out under the National Criminal Code whereas Codes of Offences regulate minor criminal offences at the local level.

The consensual sale and purchase of sex is not formally criminalized in Buenos Aires. However, in practice, a range of laws and the way they are enforced criminalize sex workers in almost all circumstances and have a negative impact on their human rights. Some of these laws relate to communications around and advertising for sex work, and others to regulations governing business premises. Some laws have a negative impact on sex workers because they are overly broad or vague and are thus open to misuse by officials, which given the stigma and discrimination that sex workers face in society in general, puts them at risk of a range of human rights abuses. In addition, legislation on human trafficking is often applied in situations where sex workers affirm they have consented to sex work and, in turn, infringes on their human rights and freedoms.

The legal framework surrounding sex work in Buenos Aires includes the criminalization of the following activities related to sex work and human trafficking:

- **"Ostentatious" offer of and demand for sex in unauthorized public places, mainly in areas within 200m of schools, hospitals, residences and churches/temples** (Autonomous City of Buenos Aires Code of Offences, Law 1472, Article 81).<sup>13</sup>
- **Promoting or facilitating the prostitution of another and economically exploiting the prostitution of a person, even with the consent of the victim** (Argentine Criminal Code, Title III, Crimes against Sexual Integrity, Articles 125 bis, 126 and 127).<sup>14</sup>

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<sup>10</sup> Interview with Laura, a street-based sex worker, 23 September 2014.

<sup>11</sup> Interviews with Diana Maffia, Director of the Gender Observatory of the Buenos Aires Judiciary, 9 October 2014; Prosecutor Claudia Barcia, 15 October 2014; and Public Defender Emilio Cappuccio, 1 October 2014. See also Fundación Huésped, ATTTA, UNAIDS, *Gender identity law and access to health care for transgender people in Argentina (executive report)*, 2014, p. 30. Qualitative and quantitative research was carried out in 2013 to explore the impact of the enactment of Argentina's Gender Identity Law. The research documented notable improvements in terms of access to health care and education and a reduction in discrimination within health care and educational settings. Nevertheless, the transgender population in Argentina remains vulnerable due to stigma and discrimination. Notably, six out of 10 transgender people interviewed reported doing sex work in 2013 and that sex work was the most common job opportunity for transgender women. Moreover, one transgender person in three lives in poverty.

<sup>12</sup> Interviews with Eliana,\* an indoor sex worker, 24 September 2014, and Soledad, an indoor sex worker, 23 September 2014.

<sup>13</sup> The "Palermo woods" is a "zona rosa" (pink zone) in Buenos Aires where sex work in public is technically not criminalized. Otherwise, selling sex in public spaces that are within 200m of a school, church, place of worship or home is criminalized. Buenos Aires Code of Offences, Law 1.472, Article 81, available at: [www.cedom.gov.ar/leyes.aspx](http://www.cedom.gov.ar/leyes.aspx).

<sup>14</sup> Argentina Criminal Code, Article 125 bis, 126 and 127, available at: [www.infoleg.gov.ar/infolegInternet/anexos/15000-19999/16546/texact.htm#17](http://www.infoleg.gov.ar/infolegInternet/anexos/15000-19999/16546/texact.htm#17).



- **Setting up a house or establishment where there is prostitution or incitement to prostitution, and maintaining, administering, managing or opening a “house of tolerance”<sup>15</sup>** (National Law 12.331 on Organizing Prophylaxis of Venereal Disease, Articles 15 and 17).<sup>16</sup>
- **Spreading messages and images that encourage or promote sexual exploitation (including advertisements for sexual services in the print media/newspapers)** (Presidential Decree 936/2011 on the Comprehensive Protection of Women).<sup>17</sup>
- **Advertising sexual services through flyers in public spaces** (Local Law of the Autonomous City of Buenos Aires, Act 4.486).<sup>18</sup>

A Federal Anti-trafficking Law adopted in 2008 added Article 145 bis to the National Criminal Code. This criminalizes human trafficking for purposes of exploitation (including the promotion, facilitation or commercialization of “prostitution” of another person or any form of solicitation of sexual services or “sexual exploitation”).<sup>19</sup>

Article 145 bis was subsequently amended and expanded in 2012 by National Law 26.842, following a public outcry over the high-profile kidnapping (allegedly by human traffickers) of Marita Verón.<sup>20</sup> The Director of the Gender Observatory of the Buenos Aires Judiciary and two anthropologists working on human trafficking issues told Amnesty International that following the trial for this crime, which rendered a “not guilty” verdict, there were many calls for concrete action from the government.<sup>21</sup> Public outrage, combined with anti-trafficking activists’ critique of the 2008 Anti-trafficking Law,<sup>22</sup> paved the way for the Argentine legislature to promptly amend the law.

The 2008 Law was modelled on the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (UN Trafficking Protocol).<sup>23</sup> However, following the 2012 amendment, the current federal law departs from international standards by, in part, changing and expanding the legal definition of human trafficking.<sup>24</sup>

The UN Trafficking Protocol, which was adopted in 2000, provides a legal definition of trafficking that contains three elements:

1. **Action:** the recruitment, transportation, transfer, harbouring or receipt of persons;
2. **Means:** how that action is achieved (threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability, and the giving or receiving of payments or benefits to achieve consent of a person having control over another person); and
3. **Purpose** (of the action/means): specifically, exploitation.<sup>25</sup>

15 A “house of tolerance” (*casa de tolerancia*) is an Argentine expression denoting places where sex work occurs or “brothels”.

16 National Law No. 12.331 Articles 15 and 17, available at: [infoleg.mecon.gov.ar/infolegInternet/anexos/190000-194999/194957/norma.htm](http://infoleg.mecon.gov.ar/infolegInternet/anexos/190000-194999/194957/norma.htm).

17 Presidential Decree 936/2011 on the Comprehensive Protection of Women, available at:

[www.infoleg.gob.ar/infolegInternet/verNorma.do?id=184133](http://www.infoleg.gob.ar/infolegInternet/verNorma.do?id=184133).

18 Local Law of the Autonomous City of Buenos Aires, Act 4.486, available at: [www.cedom.gov.ar/lleyes.aspx](http://www.cedom.gov.ar/lleyes.aspx).

19 Article 145 bis punishes the offer, capture, movement or reception of people for exploitation, either within the country or to or from other countries, regardless of the consent of the victim. Article 2 of the Act defines the offence, including the promotion, facilitation or commercialization of “prostitution” of another or any form of solicitation of sexual services. See National Criminal Code, Article 145a, National Law 26.842, available at: [biblioteca.afip.gob.ar/dcp/LEY\\_C\\_026842\\_2012\\_12\\_19](http://biblioteca.afip.gob.ar/dcp/LEY_C_026842_2012_12_19).

20 Interview with Cecilia Varela and another anthropologist working on sex work and human trafficking issues, 24 September 2014. During the 2001 economic crisis in Argentina there appears to have been an increase in kidnappings (Interview with an individual working in the Federal Prosecutor’s Office, 25 September 2014).

21 Interviews with Diana Maffia, Director of the Gender Observatory of the Buenos Aires Judiciary, 10 October 2014, and Cecilia Varela and another anthropologist working on sex work and human trafficking issues, 24 September 2014. See also BBC World News Latin American and Caribbean, *Argentina sentences 10 in Marita Verón sex trafficking case*, 2014, available at: [www.bbc.com/news/world-latin-america-26948962](http://www.bbc.com/news/world-latin-america-26948962). Ten defendants were ultimately held responsible for the abduction of Marita Verón in a second trial.

22 According to an individual working in the Federal Prosecutor’s Office, the 2008 Anti-trafficking Law created much confusion because it overlapped with many existing crimes, including the “promotion of prostitution” and “exploiting the exercise of prostitution of a person” (National Criminal Code, Articles 125 bis and 127). Interview with an individual working in the Federal Prosecutor’s Office, 25 September 2014.

23 Interview with Zaida Gatti, Director of the Federal Rescue Office, 1 October 2014.

24 Interview with an individual working in the Federal Prosecutor’s Office, 25 September 2014.

25 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (Trafficking Protocol), 2000, Article 3(a).

All three elements must be present to constitute “trafficking in persons” under the UN Trafficking Protocol.<sup>26</sup> The only exception is that when the victim is a child, the “means” element is no longer required: action and purpose are sufficient to establish the crime of “trafficking in persons”.

Argentina’s 2012 Anti-trafficking Law now departs from the UN Trafficking Protocol because it no longer contains a “means” element in the definition of the crime of trafficking.<sup>27</sup> This is despite concrete explanations by the United Nations Office on Drugs and Crime (UNODC) that the “means” requirement is specifically used to distinguish between human trafficking and generally exploitative conditions.<sup>28</sup> The federal law also broadened the “acts” element to include “offering a person for the purpose of exploitation” and “exploitation” generally, although it does not clearly define what constitutes exploitation. The resulting definition of human trafficking in Argentina is simply “offering, acquiring, transferring or receiving people for purposes of exploitation”.<sup>29</sup>

Amnesty International’s research has found that while Argentina’s Federal Anti-trafficking Law is primarily directed at combatting human trafficking, its broad language has resulted in sex workers who are not trafficking victims being caught up in its enforcement. In the context of commercial sex, those who promote, facilitate or commercialize the “prostitution or any other form of offering sexual services of others” can be liable for human trafficking.

Amnesty International’s research findings also show that in the enforcement of such a broad legal framework, little effort is made in Buenos Aires to distinguish between human trafficking into the sex sector, sexual exploitation generally, and organizational aspects of commercial sex, where no exploitation, coercion, deception or fraud is present.<sup>30</sup> In turn, all organized sex work, including cooperatives organized between sex workers, risks being viewed as human trafficking by law enforcement. Moreover, an individual working in the Federal Prosecutor’s Office told Amnesty International that following the adoption of the current Federal Anti-trafficking Law, sex workers’ voices are given less weight in trafficking investigations and proceedings, if they are considered at all.<sup>31</sup>

In practical terms, the expansion of the Federal Anti-trafficking Law and the lack of a clear legal definition of what constitutes “exploitation” have led to the effective criminalization of sex workers involved in autonomous sex work or sex work collectives that are not exploitative.<sup>32</sup> Government officials explained that this has occurred, in part, because some people involved in the enforcement of the law consider sex work, in and of itself, exploitative.<sup>33</sup> For example, Zaida Gatti, the Director of the Federal Rescue Office, representatives of which accompany the police during anti-trafficking raids and provide services and support to trafficking victims, told Amnesty International that:

**“Regardless of whether those [who are] prostituted interviewed by the Rescue Office during raids introduce themselves as ‘autonomous sex workers’, [what] emerges [is] a situation of vulnerability, a lack of choice and always the presence of a third party that profits from the practice of prostitution by these women. This means there is utilization and abuse of that situation, and so therefore [it is] not freely chosen work, but the only opportunity that they have.”**

Amnesty International interview with Zaida Gatti, Director of the Federal Rescue Office, 1 October 2014

Amnesty International was told that any involvement in the organization of sex work is considered exploitation for purposes of the crime of human trafficking. An individual working in the Federal Prosecutor’s Office

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26 See UNODC, *Issue paper: The concept of ‘exploitation’ in the Trafficking in Persons Protocol*, 2015, p. 5.

27 The definition of human trafficking under the 2008 Federal Anti-trafficking Law included the “means” element as set out in the UN Trafficking Protocol; that is, the requirement that the act is conducted by threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability, and the giving or receiving of payments or benefits to achieve consent of a person having control over another person. See UNODC, *Issue paper: The role of ‘consent’ in the Trafficking in Persons Protocol* (Argentina case study), 2014, p. 37, available at: [www.unodc.org/documents/human-trafficking/2014/UNODC\\_2014\\_Issue\\_Paper\\_Consent.pdf](http://www.unodc.org/documents/human-trafficking/2014/UNODC_2014_Issue_Paper_Consent.pdf).

28 See UNODC, *Issue paper: The role of ‘consent’ in the Trafficking in Persons Protocol* (Argentina case study), 2014, pp. 7-8. The “means” element was retained in the amended law solely as an aggravating factor, not as an element of the crime of human trafficking.

29 See National Law 26.842.

30 Interview with an individual working in the Federal Prosecutor’s Office, 25 September 2014.

31 Interview with an individual working in the Federal Prosecutor’s Office, 25 September 2014.

32 A federal judge who handles trafficking cases told Amnesty International that the 2012 law was basically passed to make it easier to prosecute trafficking. The judge stated that in the past it was risky to investigate trafficking cases as law enforcement had to wait for harm to occur. (Interview, 25 September 2014).

33 Interviews with Zaida Gatti, Director of the Federal Rescue Office, 1 October 2014, and Diana Maffia, Director of the Gender Observatory of the Buenos Aires Judiciary, 9 October 2014. While Diana Maffia stated that she believes all forms of commercial sex are exploitative, she thinks there needs to be a distinction between “prostitution” and human trafficking, and that women should be able to self-identify as sex workers.

explained that the expansion of the Federal Anti-trafficking Law, was also due, in part, to a loosening of the interpretation of criminal law, which no longer includes a transit process as an element of human trafficking. This change, to some extent, facilitates treating human trafficking and exploitation as one and the same. The individual working in the Federal Prosecutor's Office clarified, however, that the law still technically distinguishes between human trafficking and sexual exploitation, explaining that "[t]hese are two different crimes, and exploitation can become an aggravating factor". This individual further explained that "the criminal law considers two situations: trafficking for the purpose of sexual exploitation and exploitation by itself, and the only way to differentiate both criminal offences is to recognize the distinction that trafficking includes a migratory process, either internal or international."<sup>34</sup>

In practice, however, such distinctions are not made when the law is enforced and the Federal Anti-trafficking Law is frequently interpreted in an inconsistent manner,<sup>35</sup> often to the detriment of sex workers. Different government institutions have issued guidelines to prosecutors that overall refer to sex work and human trafficking as the same thing.<sup>36</sup> As a result, sex workers can be categorized as trafficking victims, even if they claim otherwise, whether they are working autonomously or with others (or "third parties").

There is no clear definition of a "third party" in the context of sex work under federal or local law. Rather, Amnesty International has found that the phrase is subject to a range of interpretations by sex workers, those who enforce the law and other institutions that engage in sex work debates. For example, sex workers interviewed referred to those who support their work, and/or enhance their safety (such as secretaries, security staff and those who hand out flyers) as "third parties",<sup>37</sup> while others who enforce the law use the term to describe those who exploit sex workers.<sup>38</sup>

## THE LAW AND PRACTICE GOVERNING "THIRD PARTIES"

Articles 125 bis and 127 of the National Criminal Code criminalize those who "promote or facilitate prostitution" and who "economically exploit the exercise of prostitution of a person". However, interviews with sex workers, a prosecutor and public defenders indicate that this law is not being used, in contrast to the ongoing enforcement of the Federal Anti-trafficking Law. A public defender who has been handling such cases for many years, Emilio Cappuccio, told Amnesty International that Article 125, in particular, was not enforced even before the 2012 Anti-trafficking Law came into effect, suggesting that this was generally not seen as a priority by law enforcement agencies.<sup>39</sup>

National Criminal Code Articles 125 bis and 127, as amended in 2012, criminalize the "promotion or facilitation of prostitution" and "economically exploiting the exercise of prostitution of a person." Those who engage in this penalized conduct are often referred to as "pimps", "dueños" or "managers". However, there is no clear definition of what qualifies as "exploitation", which leaves interpretation open to the discretion of individual officials and to abuse. Some claim that all people who enable sex work (including sex workers working collectively) are exploitative and akin to "pimps"; others claim that sex work is like other businesses which involve or require multiple people to establish safe working conditions. These individuals often refer to people that support sex workers (such as security guards, secretaries or advertisers) as "third parties".

An individual working in the Federal Prosecutor's Office explained that "pimps" are generally viewed as exploiting sex workers in very precarious and informal conditions. While noting that situations of exploitation exist, this individual explained that there is also a broader "organization of a market, with current market rules, with women who organize themselves to work and people who collaborate with them to provide support, resources, and often also security".<sup>40</sup>

The lack of a clear definition of "exploitation" under the law is problematic because presumptions of exploitation can lead to sex workers (even those who sell sex consensually and are clear that they are not being

34 Interview with an individual working in the Federal Prosecutor's Office, 18 December 2015.

35 Interview with an individual working in the Federal Prosecutor's Office, 18 December 2015.

36 Interview with an individual working in the Federal Prosecutor's Office, 25 September 2014.

37 Interviews with Noemi, an indoor sex worker, 23 September 2014; Laura, a street-based sex worker, 23 September 2014; Georgina Orellano, head of AMMAR Nacional, 26 September 2014; Argentina Ascona, head of AMADH, 25 September 2014; Eliana,\* an indoor sex worker, 24 September 2014; and Cecilia,\* a former street-based sex worker and trafficking victim, 25 September 2014.

38 Interviews with Fabiana Tuñez, Director of La Casa del Encuentro, 10 October 2014; an individual working in the Federal Prosecutor's Office, 25 September 2014; and Cecilia Varela and another anthropologist working on sex work and human trafficking issues, 24 September 2014.

39 Interview with Public Defender Emilio Cappuccio, 15 October 2014.

40 Interview with an individual working in the Federal Prosecutor's Office, 25 September 2014.

exploited) being punished and abused.

For example, sex workers collaborating with each other, including just one other sex worker, can trigger the application of the Federal Anti-trafficking Law, which can lead to raids, violence and abuses against sex workers. Moreover, in some circumstances, a sex worker who both sells sex and serves in a role that facilitates sex work (for example, by renting the apartment used for sex work by others or answering the phone and taking appointments) can be categorized as a trafficker under the Anti-trafficking Law or as someone who otherwise exploits or “facilitates the prostitution” of others. Carmen, a sex worker, told Amnesty International that she has been accused of being a “pimp” because she charges sex workers a fee for hotel rooms used for sex work and sometimes babysits their children.<sup>41</sup>

## ONGOING DEBATES ABOUT SEX WORK AND THE LAW

Legal and policy approaches to sex work in Buenos Aires continue to be actively debated in civil society, the media and the legislature. Various bills are currently pending in the national and several provincial congresses on a range of issues related to sex work, including a proposal to recognize autonomous indoor sex work (without “third party” involvement) as legal work – enabling sex workers to register their services as a business, pay taxes and access social security benefits – and to decriminalize the offer of and demand for sex in public. By contrast, there are also proposals to criminalize those who buy sex and advertising for sexual services over the Internet.

Behind these ongoing law reform efforts are vibrant debates among civil society actors regarding whether commercial sex is exclusively a matter of gender-based violence and sexual exploitation, whether it should be seen as a matter of bodily autonomy and individual decision-making, and/or whether sex work should be classified as a form of work that is legally regulated.

There are widely diverging views on sex work, both within state institutions and in civil society organizations in Argentina. Some organizations call for decriminalization and/or regularization of sex work. Others, on the contrary, oppose all forms of commercial sex.

For example, AMMAR Nacional, an organization that has promoted sex workers’ rights in Argentina since 1994, calls for the decriminalization of sex work (including the seller, buyer and “third parties”) and for sex work to be regularized to enable sex workers to work independently and to have a voice in matters that affect their lives.

**“[A]utonomous sex work is not recognized and we, as sex workers, find ourselves with no protection due to the lack of a regulatory legal framework... The police [should be] given less power to sanction and... regulation [around sex work should be] concentrated at the Labour Ministry in consultation with sex workers' organizations... This is the only way to distinguish sex work from human trafficking, the only way to improve the general labour conditions and quality of life for sex workers, [and ensuring] access to all the rights that protect workers.”**

Georgina Orellano, head of AMMAR Nacional, Response to Amnesty International’s Internal Consultation Questionnaire for Sex Workers, June 2014

AMMAR Nacional emphasizes the importance of making a distinction between sex work and human trafficking into the sex sector.<sup>42</sup> It argues that the measures being taken by governments ostensibly to combat trafficking have been ineffective in addressing these abuses. Instead, they have served to blur the distinction between sex work and human trafficking. The result has been to push sex work underground and “mafias can prevail”.<sup>43</sup> Georgina Orellano, head of AMMAR Nacional and herself an indoor sex worker, told Amnesty International that AMMAR has consistently denounced those who exploit sex workers including traffickers, clients and third parties and highlighted “corruption and collusion between judges, police and politicians”.<sup>44</sup> AMMAR Nacional considers the Argentine government’s recent crackdown on private apartments used for sex work and pending

41 Interview with Carmen, a street-based sex worker, 30 September 2014.

42 Estudio social en trabajadoras sexuales: Saberes y estrategias de las mujeres trabajadoras sexuales ante el VIH/SIDA y otras ITS, informe anual equipo multidisciplinario de investigaciones de género y trabajo, Ciudad Autónoma de Buenos Aires, Argentina, 2007; see also Elena Reynaga, 10 años de acción: La experiencia de la Red de Trabajadoras Sexuales de Latinoamérica y el Caribe, RedTraSex, 2007.

43 F. Yofre, “¿La prostitución es un trabajo?”, *Miradas al Sur*, Año 5, Edición número 23, 2012.

44 F. Yofre, “¿La prostitución es un trabajo?”, *Miradas al Sur*, Año 5, Edición número 23, 2012.

legislative bills to criminalize clients to be a form of violence towards sex workers because it denies them their right to self-determination.<sup>45</sup> The organization calls for:

**“Sexual commerce... [to be] decriminalized and ... [for the government to] respect the decision of co-workers who want to work autonomously, who want to work for someone else [someone who manages the business], and who want to advertise”.**

Amnesty International interview with Georgina Orellano, head of AMMAR Nacional, 26 September 2014

A range of people and institutions in Argentina also take the view that sex workers’ decisions regarding how they use their bodies should be respected. These groups include AMMAR Capital, RedTraSex, the Network for the Recognition of Sex Work (la Red por el Reconocimiento del Trabajo Sexual, RRTS), ATTTA and the UNAIDS sub-regional office.<sup>46</sup>

**“If a woman tells you that she wants to sell sex, what can you say? ... You can just try [to ensure] that this woman has the possibility to exercise what she chooses freely in good conditions, with respect for human rights, with social protection, and without possibilities of actions from the police... that are often violent, against human rights, and which make women more vulnerable”.**

Amnesty International interview with Alberto Stella, Argentina Country Coordinator for UNAIDS, 15 October 2014

**“My choice to work like this has always been my choice. There are women who can’t choose...All I want is for sex workers to be free and to be able to choose what to do. I want them to be able to rent an apartment by themselves or along with other co-workers and work independently”.**

Amnesty International interview with Noemi, a sex worker and AMMAR Nacional member, 23 September 2014

However, other organizations, such as AMADH and La Casa del Encuentro, oppose all forms of commercial sex.<sup>47</sup> The head of AMADH, Argentina Ascona, a former trafficking victim, believes all “women in prostitution to be in situations of sexual exploitation” and defines them as “victims”.<sup>48</sup> Both organizations are of the view that commercial sex is not a legitimate form of work because they contend that it is impossible to exercise free choice to sell sex.<sup>49</sup>

AMADH and La Casa del Encuentro take the view that any form of commercial sex is an inherent form of gender-based violence. These organizations assert that commercial sex is akin to violence because most women in prostitution “are poor... and have had no access to education; to a life with basic human rights.”<sup>50</sup> For example, the head of La Casa del Encuentro, Fabiana Tuñez, told Amnesty International that in her view all types of “prostitution” are a form of slavery, that “pimping has to be severely punished” and that more work needs to be done to assist women in “building a life project that is free from violence”.<sup>51</sup>

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45 F. Yofre, “¿La prostitución es un trabajo?”, *Miradas al Sur*, Año 5, Edición número 23, 2012.

46 Interviews with Alberto Stella, Argentina Country Coordinator for UNAIDS (sub-regional office), 15 October 2014; Georgina Orellano, head of AMMAR Nacional, 26 September 2014; and the head of ATTTA, 26 September 2014.

47 Interviews with Argentina Ascona, head of AMADH, 25 September 2014, and Fabiana Tuñez, Director of La Casa del Encuentro, 10 October 2014.

48 Interview with Argentina Ascona, head of AMADH, 25 September 2014.

49 Interviews with Argentina Ascona, head of AMADH, 25 September 2014; and Fabiana Tuñez, Director of La Casa del Encuentro, 10 October 2014.

50 Interview with Fabiana Tuñez, Director of La Casa del Encuentro, 10 October 2014.

51 Interview with Fabiana Tuñez, Director of La Casa del Encuentro, 10 October 2014.

# 2. SEX WORK AND HUMAN RIGHTS VIOLATIONS: THE IMPACT OF CRIMINALIZATION

The criminal legal framework in Buenos Aires facilitates police violence, abuse and extortion, and perpetuates stigma and discrimination against sex workers by state officials, health care providers and the wider community. Punitive sanctions around sex work contribute to presumptions of criminality around those suspected of engaging in sex work by state and non-state actors, helping perpetuate negative stereotypes that impede sex workers' access to health care services and adequate housing, and resulting in them working in more precarious conditions. Fear of law enforcement authorities also hampers sex workers' ability to seek protection from violence and crime.

## CRIMINAL JUSTICE ABUSES IN THE STREETS OF BUENOS AIRES

Article 81 of the Buenos Aires Code of Offences (Law 1.472) prohibits the "ostentatious" offer of and demand for sex in unauthorized public places (mainly within 200m of homes, schools and places of worship). An exchange of money is not required to break this law, but rather simply "ostentatious" communication.<sup>52</sup> A local judge and a public defender explained to Amnesty International that violation of Article 81 is a misdemeanour, punishable by a fine (200-400 pesos or US\$22-44) or 1-5 days' deprivation of liberty (which can include house arrest). It is primarily intended to prevent interference with public space (or "public nuisance").<sup>53</sup>

While it is unlawful for police and prosecutors to consider individuals' appearance, dress or manners when enforcing Article 81, a number of people interviewed by Amnesty International said that this frequently occurs.<sup>54</sup> In fact, a local judge who handles Article 81 cases, Gabriela López Iñiguez, confirmed that police

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<sup>52</sup> There is no clear definition of what qualifies as an "ostentatious" offer of or demand for sex. The term is generally defined as a vulgar or flamboyant display, and/or attempting to impress or attract attention.

<sup>53</sup> Interviews with Emilio Cappuccio, a Public Defender who handles Article 81 cases, 1 October 2014; Judge Gabriela López Iñiguez, 9 October 2014; and Laura, a street-based sex worker, 23 September 2014.

<sup>54</sup> Interview with Prosecutor Claudia Barcia, 15 October 2014.

officers commonly profile individuals for sex work in public.<sup>55</sup> Laura, a street-based sex worker who has worked for 17 years, told Amnesty International:

**“Three weeks ago I was in the car with my brother, who was taking me home, and we were passing by a ‘working area’. The police stopped us and tried to take money from my brother because they thought that he was my client [and they knew that I was a sex worker]. I told them that he was my brother”.**

Amnesty International interview with Laura, a street-based sex worker, 23 September 2014

A prosecutor handling Article 81 cases, Claudia Barcia, told Amnesty International that the lack of a clear definition of “ostentatious” makes proving violations of the law very difficult.<sup>56</sup> Emilio Cappuccio, a public defender who handles Article 81 cases, told Amnesty International that the law is too vague and has been the subject of legal debate since it was passed in 2004.<sup>57</sup>

In terms of enforcement, Claudia Barcia and Gabriela López Iñíguez told Amnesty International that there are no cases against street-based sex workers that have gone to trial in recent years.<sup>58</sup> Government statistics document the low rates of Article 81 prosecutions. While these statistics are disaggregated based on gender, we were told by Prosecutor Claudia Barcia that transgender women were likely to be categorized as men.<sup>59</sup>

**“At this time, the cases reaching trial are practically non-existent. According to information provided by the Judicial Council of the City of Buenos Aires, 2,261 cases were initiated in 2012, and 1,880 cases were initiated in 2013, but none of these cases reached judgments. In 2014, 1,111 cases were initiated and only one culminated in a hearing and public trial. The cases tend to only continue through the judicial process when someone presses the district prosecutor by his [or her] complaints about such behaviour in the street.”**

Amnesty International interview with Emilio Cappuccio, a public defender, 1 October 2014

While law enforcement officials will respond to complaints from neighbours, check sex workers’ identification and issue fines and probation, few cases are ever actually prosecuted.<sup>60</sup> A local judge suggested that there had been a noticeable expansion in criminal law in recent years. As a result, prosecutors have had to become increasingly selective in terms of what laws to enforce through the courts.<sup>61</sup> Prosecutor Claudia Barcia and Judge Gabriela López Iñíguez confirmed that most cases are “resolved” by issuing sex workers probation orders and thus are settled outside of court.<sup>62</sup>

According to the head of the Gender Office of the Public Defender’s Office, Josefina Fernández, when cases under Article 81 actually do get prosecuted, most are thrown out for lack of evidence of an “ostentatious” offer of or demand for sex.<sup>63</sup> Public Defender, Emilio Cappuccio, explained that mere communication about sexual services or the act of agreeing to buy or sell sex without it being heard by people in public, do not generally qualify as “ostentatious” communication punishable under the law.<sup>64</sup>

Josefina Fernández and Claudia Barcia said that it is sex workers, primarily transgender sex workers, rather than clients who are most often issued citations (“contraventions”) and given fines or probation under Article 81.<sup>65</sup> In fact, clients of sex workers are rarely issued Article 81 citations, despite the fact that the law also criminalizes the “ostentatious” demand for sex in unauthorized public spaces. Emilio Cappuccio told Amnesty International that, in his personal opinion, this could be due to the fact that police tend to issue citations before actually witnessing a “transaction” (offer of or demand for sex). Instead, he explained that they may focus on a person’s clothing, mannerisms, or “provocative” gestures (even though profiling in this way is prohibited by law), or a complaint by a neighbour.<sup>66</sup> However, a prosecutor and two cisgender sex workers explained that this is also

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55 Interview with Judge Gabriela López Iñíguez, 9 October 2014.

56 Interview with Prosecutor Claudia Barcia, 15 October 2014.

57 Interview with Public Defender Emilio Cappuccio, 1 October 2014.

58 Interview with Prosecutor Claudia Barcia, 15 October 2014, and Judge Gabriela López Iñíguez, 9 October 2014.

59 Interview with Prosecutor Claudia Barcia, 14 December 2016.

60 Interview with Prosecutor Claudia Barcia, 15 October 2014.

61 Interview with Judge Gabriela López Iñíguez, 9 October 2014.

62 Interviews with Prosecutor Claudia Barcia, 15 October 2014, and Judge Gabriela López Iñíguez, 9 October 2014.

63 Interview with Josefina Fernández, head of the Gender Office of the Public Defender’s Office in the City of Buenos Aires, 14 October 2014.

64 Interviews with Public Defender Emilio Cappuccio, 1 October 2014, and Judge Gabriela López Iñíguez, 9 October 2014.

65 Interviews with Prosecutor Claudia Barcia, 15 October 2014, and Josefina Fernández, head of the Gender Office of the Public Defender’s Office in the City of Buenos Aires, 14 October 2014.

66 Interview with Public Defender Emilio Cappuccio, 1 October 2014.

because clients have money on hand and can pay off the police to avoid citations.<sup>67</sup> Clients may have an interest in not having their association with a sex worker exposed to their families, which can facilitate extortion by police officers.<sup>68</sup> Prosecutor Claudia Barcia explained that in terms of punishment under Article 81, prosecutors generally propose something that the complainant wants and that seems reasonable.<sup>69</sup>

While Article 81 attempts to prevent interference with public space (or “public nuisance”) by limiting and controlling where street-based sex work occurs, both Prosecutor Claudia Barcia and Public Defender Emilio Cappuccio claimed that the law is ineffective.<sup>70</sup> Claudia Barcia told Amnesty International that “it is a bad article and it is hard to implement.”<sup>71</sup>

**“In my opinion, Article 81 should be gone. It is, in my opinion, just an instrument of the police now. A criminal response will not give a real solution to things on the street – these people have been mistreated and discriminated against, they cannot find work in the formal labour market.”**

Amnesty International interview with Public Defender Emilio Cappuccio, 1 October 2014

A local judge handling Article 81 matters specifically noted that cases which involve a “public nuisance” can be addressed by other laws and that Article 81 charges are often simply premised on one’s “clothing and manner”.<sup>72</sup> In short, it appears that Article 81 leads to unlawful profiling and is being enforced in a discriminatory manner that has a disproportionate impact based on gender presentation, among other things.

Article 81 fails to meet the principle of legality. This requires that crimes and punishments be defined by law in a manner that is accessible to the population and that clearly outlines what conduct is criminalized.<sup>73</sup> Vague and/or overly broad laws that aim to prevent intangible social harms, that can be used to punish a wide range of behaviours or that are enforced in an abusive manner, fail to satisfy the principle of legality.<sup>74</sup>

The definition of an “ostentatious” offer of and demand for sex in unauthorized places is unclear and makes the provision vague. This lack of legal clarity fails to provide state officials with sufficient guidance to enforce the law consistently and encourages profiling and discriminatory application. Equally importantly, the vagueness of this provision impedes sex workers’ ability to understand how to avoid violating the law.

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

## **POLICE EXTORTION AND ABUSE AGAINST STREET-BASED SEX WORKERS, PARTICULARLY TRANSGENDER SEX WORKERS**

The legal framework coupled with stigma against sex workers means that many police officers in Buenos Aires who engage in unlawful profiling and demand bribes from sex workers or clients can do so with impunity. The

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67 Interviews with Prosecutor Claudia Barcia, 15 October 2014; Laura, a street-based sex worker, 23 September 2014; and Carmen, a street-based sex worker 30 September 2014.

68 Interviews with Public Defender Emilio Cappuccio, 1 October 2014, and Laura, a street-based sex worker, 23 September 2014.

69 Interview with Prosecutor Claudia Barcia, 15 October 2014.

70 Interviews with Public Defender Emilio Cappuccio, 1 October 2014, and Prosecutor Claudia Barcia, 15 October 2014.

71 Interview with Prosecutor Claudia Barcia, 15 October 2014.

72 Interview with Judge Gabriela López Iñiguez, 9 October 2014.

73 The principle of legality is a general principle of law which is crucial to the protection of human rights and is therefore found, in various forms, in almost every general international human rights instrument, including Article 15 of the International Covenant on Civil and Political Rights (ICCPR) and Article 9 of the Inter-American Convention on Human Rights. See *Castillo Petruzzi v Peru*, Inter-American Court of Human Rights, 1999, para. 121; *Lori Berenson v Peru*, Inter-American Court of Human Rights, 2004, para. 125; *Cantoral Benavides v Peru*, Inter-American Court of Human Rights, 2000, para. 157; *Ricardo Canese v Paraguay*, Inter-American Court of Human Rights, 2004, para. 174; *Del Rio Prada v Spain*, European Court of Human Rights, Grand Chamber Judgment, 2013, paras. 77-93.

74 The Inter-American Court of Human Rights has repeatedly established that, in accordance with the principle of legality, “crimes must be classified and described in precise and unambiguous language that narrowly defines the punishable offense... This means a clear definition of the criminalized conduct, establishing its elements and the factors that distinguish it from behaviors that are either not punishable offences or are punishable but not with imprisonment.” See *Castillo Petruzzi v Peru*, Inter-American Court of Human Rights, 1999, para. 121; see also UN Commission on Human Rights, Siracusa principles on the limitation and derogation provisions in the International Covenant on Civil and Political Rights, UN Doc. E/CN.4/1985/4, 1984, annex; *Naz Foundation (India) Trust v Government of Delhi and Others*, Writ Petition (Civil) No. 7455/2001, Delhi High Court, 2009.



current situation also prevents sex workers from seeking police protection from violence and crime. In effect, sex workers are denied their rights to freedom from arbitrary arrest and to liberty and security of the person.<sup>75</sup>

Prior to 2003, street-based sex work was criminalized in Buenos Aires under the Contraventional Code (Código Contravencional),<sup>76</sup> which made the offer of and demand for sex in public a misdemeanour, punishable with 24 hours' imprisonment. Prior to that (before Buenos Aires became an autonomous local government in 1994), street-based sex workers could be jailed for 21 days.<sup>77</sup> People interviewed by Amnesty International recalled that they were extremely vulnerable to police abuse and extortion at that time.<sup>78</sup>

**"The police [were] the ones who exploited us the most, more than any pimp. They used our bodies, our money and our time. They hit us, made fun of us; they used their cattle prods against us. If one of us was eating at a restaurant, or walking the dog, they would take her to jail, no matter where you were or what you were doing... They would take you to jail just for being a sex worker."**

Amnesty International interview with Carmen, street-based sex worker, 30 September 2014<sup>79</sup>

Since the adoption of Article 81 in 2003, police abuse and extortion appears to manifest in different ways, including through harassment on the streets and bribery to avoid fines and probation. Transgender street-based sex workers are at particular risk of extortion and harassment by police.

Josefina Fernández, the head of the Gender Office of the Public Defender's Office in the City of Buenos Aires, who runs a "Gender, Diversity and Rights" Working Group (bringing together a range of people in marginalized situations, including sex workers, to address common social and legal issues), confirmed that the vast majority of people detained under Article 81 are transgender people.<sup>80</sup> While Prosecutor Claudia Barcia also confirmed that transgender people receive the majority of Article 81 citations, she claimed that this was probably due to prejudice and general discrimination against them and neighbours' biased attitudes.<sup>81</sup>

All sex workers (cisgender and transgender) are frequently stopped by police under Article 81 and compelled to show their identification. Their clients can also be targeted for extortion.<sup>82</sup> For example, one street-based sex worker told Amnesty International that:

**"It's calmer [now]. Although when they see a sex worker they ask her to show her ID, but nothing else, they do it to look at her. Before, the police cars always had two policemen inside, one of them with machine guns. Now there's only one... I'm not aware of [police asking sex workers for money now]. They do ask for money from the clients but generally not from the workers."**

Amnesty International interview with Carmen, a street-based sex worker, 30 September 2014

**"Now the [police] mess up with our work by threatening our clients. If a client has to pay a bribe he won't come to our area again, that's for sure. And in the meantime, while the police are taking money from the client, you can't work because nobody will stop the car if there's a police car next to you... [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**

75 ICCPR, Article 9; American Convention on Human Rights, Article 7.

76 This code was formerly referred to as the "Código de Convivencia Urbana" or the "Code of Urban Co-existence".

77 Police Edict criminalizing "prostitution", among other conduct. See Clarin Digital – "Argentina News, 'Edictos Policiales'", 1996, available at: [edant.clarin.com/diario/96/10/27/E-05202d.htm](http://edant.clarin.com/diario/96/10/27/E-05202d.htm). Prior to 1996, police edicts were in force throughout the city which enabled police to judge and sentence individuals largely without judicial oversight. These edicts were used by police to discriminate against marginalized individuals such as gay men, trans people and sex workers. While the Buenos Aires Constitution overturned the police edicts, replacing them with a Municipal Code, such edicts continue to be in force in many provinces throughout Argentina. See K. Loehr, *Transvestites in Buenos Aires: Prostitution, poverty and policy*, 2007, pp. 13-14 and 33-36, available at:

[repository.library.georgetown.edu/bitstream/handle/10822/551629/etd\\_kel25.pdf?sequence=1](http://repository.library.georgetown.edu/bitstream/handle/10822/551629/etd_kel25.pdf?sequence=1).

78 Interviews with Carmen, a street-based sex worker, 30 September 2014, and Laura, a street-based sex worker, 23 September 2014.

79 Carmen further explained that police abuse not only took place in the streets, but also in detention settings. "We used to be jailed for 21 days at a time. There was no possibility to negotiate out of the 21 days... The only negotiation possible was in order to have our belongings with us, to have a cigarette, to be able to use the phone or to see our children. There were about 10 to 15 policemen in each 12-hour-guard and 40 or 50 women locked in the cell so we took turns to do them sexual favours in order to get what we needed. I have always had to negotiate with the police. [While you could say no but after 20 days of being imprisoned we had needs and the only way of getting them was to offer a part of our bodies because that was the only thing we had."

80 Interview with Josefina Fernández, head of the Gender Office of the Public Defender's Office in the City of Buenos Aires, 14 October 2014.

She explained that this was likely due to the fact that transgender sex workers do not generally work with "third parties" who appear to provide some degree of protection from police abuse, presumably through payment of bribes.

81 Interview with Prosecutor Claudia Barcia, 15 October 2014.

82 Interviews with Laura, a street-based sex worker, 23 September 2014, and Carmen, a street-based sex worker, 30 September 2014.

**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.”**

Amnesty International interview with Laura, a street-based sex worker, 23 September 2014

Local Judge Gabriela López Iñiguez similarly told Amnesty International that she has informally heard that, on occasion, the police approach transgender sex workers for bribes to avoid citations under Article 81.<sup>83</sup>

## **LACK OF POLICE PROTECTION FOR STREET-BASED SEX WORKERS**

Although the law surrounding street-based sex work was reformed in 2003 and the focus of police enforcement around this type of sex work has shifted to preventing interference with public space (under Article 81), street-based sex workers have said that they still feel unable to report violence or seek protection from police. Most sex workers interviewed by Amnesty International did not say that they experienced violence from clients, but those who did experience problems generally said that they were unable to seek police protection.<sup>84</sup>

**“One can go to the police but there’s no guarantee that they will act properly. When a client is violent and the worker calls the police, they take the client out of the hotel room and ask for a bribe. That’s all they do.”**

Amnesty International interview with Carmen, a street-based sex worker, 30 September 2014

A street-based sex worker named Laura also told Amnesty International that she had recently been robbed by a client: “He paid me and I was about to get out of the car when he grabbed me by the neck and cut me with a knife. I gave him all the money I had and my cell phone, and he let me go.” She said she didn’t go to the police because: “They won’t listen to me because I’m a street worker. Times have changed but we’re still discriminated against and we don’t have our rights assured.”<sup>85</sup>

Amnesty International was unable to locate disaggregated police data that tracked incidents of violence against sex workers. Rather, incidents that are reported are likely to be grouped with all other forms of violence. Sex workers’ inability to seek protection from violence and crime has implications for their rights to liberty and security of the person.<sup>86</sup>

## **“CODE INSPECTIONS” AND ANTI-TRAFFICKING RAIDS**

Sex workers working indoors in apartments face a range of abuses, harassment and punitive state action, ostensibly for not complying with local laws regulating work places, despite the fact that under the current legal framework sex work is not recognized as legal work and sex workers cannot register their services as a business. They are also being swept up in the government’s anti-trafficking efforts, even when they assert that they are not trafficking victims.

### **“CODE INSPECTIONS”**

Indoor sex workers in Buenos Aires are being harassed by police or municipal officials through “code inspections”. These are purportedly conducted to ensure that the apartments where sex work is suspected of occurring comply with local labour regulations, or to monitor suspected locations where “prostitution” or “sexual exploitation” is taking place. For example, an indoor sex worker who says she has been subjected to around 20 “code inspections” since 2011, told Amnesty International that the authorities frequently inspect her apartment like a “commercial place, when it is not, it is a residence”.<sup>87</sup> She explained:

**“They say we need to have permits, [under] a commercial category that is not what we do, like ‘massage,’ or ‘personal direct services’. They say we have to hang signs of such and such, and that we are violating a lot of rules... as if it was a business, which it is not, and they close us down. When they do this, some stick a notice on the door, but generally, since it is a residence, they stick it to a wall so you can get in, but you cannot work in there. We tell them that we are not masseus[es] so why should we get a licence... and obviously, every time we fight**

<sup>83</sup> Interview with Judge Gabriela López Iñiguez, 9 October 2014.

<sup>84</sup> Interviews with Norma, a street-based sex worker; and Laura, a street-based sex worker, 23 September, 2014; and Carmen, a street-based sex worker, 30 September 2014.

<sup>85</sup> Interview with Laura, a street-based sex worker, 23 September 2014.

<sup>86</sup> See Committee against Torture, General Comment 2 (Implementation of article 2 by states parties), UN Doc. CAT/C/GC/2, 2008; UN General Assembly, Declaration on the Elimination of Violence against Women, UN Doc. A/RES/48/104, 1993.

<sup>87</sup> Interview with Soledad, an indoor sex worker, 23 September 2014.

**back, we always win, because the judges end up saying that there's no law, or that since sex work is not recognized as such, then there can be no licence."**

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

Indoor sex workers reported that it is not always clear what law the authorities are enforcing when conducting "code inspections". Sometimes law enforcement refer to National Law No. 12.331 (criminalizing the establishment of houses or locations where "prostitution" or "sexual exploitation" is taking place) and sometimes to Buenos Aires Local Law 265 (Powers of the Administrative Authority of Work).

One indoor sex worker told Amnesty International that police or municipal officials enter apartments claiming to conduct "official inspections" of businesses and issue citations for violations of the law, give fines and often take people's personal property such as cell phones.<sup>88</sup> Sometimes, the authorities post signs on the doors of private apartments stating that the "business" has been closed. One indoor sex worker who has been fined three times (600 Pesos or approximately US\$42 each time)<sup>89</sup> following these types of inspections, told Amnesty International that on one occasion local inspectors put a sign on her apartment building indicating that her apartment was closed down:

**"There was [barricade] tape on the building door, I lived on the second floor. Apparently, the police went there and no one opened the door because there was no one home so they left the closure tape there. It was all very confusing because I had three neighbours [in] that building and the closure tape didn't say which of the apartments was closed down, so it could have been any of them. I found out later, during [a] raid, that it was my apartment."**

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

In some circumstances, inspectors take advantage of the fact that sex workers are either presumed to be engaging in criminal activity and/or criminalized in effect under the law in order to extract bribes for not issuing citations during "code inspections".

It is clear that some state officials are using "code inspections" to harass sex workers by penalizing them for not conforming to laws governing commercial premises which do not apply to them as they cannot register as a commercial enterprise. This therefore breaches the principle of legality which requires that crimes and punishments be defined by law in a manner that is accessible to the population and that clearly outlines what conduct is criminalized. This, combined with the stigma and presumption of criminality faced by sex workers, also creates an environment conducive to corruption in the form of state officials demanding bribes from sex workers to avoid punishment, secure in the knowledge that they will not be held to account.

## **ANTI-TRAFFICKING RAIDS**

Government efforts to combat human trafficking through enforcement of the 2012 Federal Anti-trafficking Law have in some cases resulted in sex workers who are clear that they are not trafficking victims being punished and abused. Individuals who sell sex autonomously or in cooperatives are often deemed to be exploited – the primary element to establish human trafficking under federal law – and categorized as trafficking victims, despite their claims to the contrary.

As stated earlier (see **Legal framework around sex work in Buenos Aires**), the 2012 amendment of the Federal Anti-trafficking Law criminalized a broader range of conduct and the law now simply requires proof of "exploitation", for which there is no clear definition in law. In the context of commercial sex, the authorities are interpreting this to simply require some form of involvement in the organization of sex work.<sup>90</sup> As many government officials deem sex work exploitative, current legislation allows human trafficking and sex work to be treated in practice as one and the same and there is little or no incentive to distinguish between the two.

Enforcement of Argentina's Anti-trafficking Law is carried out by a range of federal offices, including a special federal prosecutor and judges, as well as a unit within the Ministry of Justice and Human Rights which helps identify trafficking victims.<sup>91</sup> Raids are generally conducted by anti-trafficking police units or other local and

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88 Interview with Noemi, an indoor sex worker, 23 September 2014.

89 US dollar equivalents for currency in this report are those that applied on 31 April 2016.

90 See National Law 26.842.

91 See generally [www.jus.gov.ar](http://www.jus.gov.ar) highlighting the federal government's anti-trafficking work.

federal law enforcement officials at apartments where exploitation is suspected. The head of the Federal Rescue Office, Zaida Gatti, explained to Amnesty International that the raid teams are accompanied by representatives from her Office, who approach the “individuals in situations of prostitution” to gather testimony and provide support for potential victims of trafficking.<sup>92</sup>

Representatives from the Federal Rescue Office include psychologists who identify appropriate care for alleged victims and whose reports, while not part of the formal investigative procedure, are often used to support criminal prosecutions.<sup>93</sup> This means that information regarding sex workers’ experiences have been used in prosecutions without their consent.<sup>94</sup> One sex worker told Amnesty International that: “Therapists claim that the information we tell them is confidential, but sometimes they share it with the police.”<sup>95</sup>

According to sex workers interviewed by Amnesty International, the psychologists accompanying officers on raids can be forceful in their questioning and often tell sex workers that they are victims of sexual exploitation, even when sex workers are adamant that is not the case.<sup>96</sup>

**“The psychologists tell you to say you’re a victim of sexual exploitation. Workers are frightened by the whole situation so of course they say they’re victims. They also tell you to say that and that if you do, they won’t call your family. They take pictures of you.”**

Amnesty International interview with Claudia Brizuela, a street-based sex worker and head of AMMAR Capital, 24 September 2014

In the view of AMMAR Nacional, measures taken by the government, including raiding apartments, have not stopped human trafficking but rather, in effect, they have made sex work go “further underground and more hidden.”<sup>97</sup> They see such raids as a form of violence against sex workers because it denies their right to self-determination.<sup>98</sup>

**“When I say, for example, that I have a son... I’m working because, honestly, I make good money... I can take my son wherever I want to, the father never gives me money... [the psychologists] say I am vulnerable, in a vulnerable situation, and that’s why I work [like] this. So you can’t say anything.”**

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

Following her visit to Argentina in 2011, the UN Special Rapporteur on trafficking in persons expressed concern that despite the government’s claim that there was an internal protocol to ensure correct identification of trafficking victims she was never provided with a copy, and that there was a lack of reliable data on how victims are identified and assisted by the government.<sup>99</sup>

An individual working in the Federal Prosecutor’s Office explained to Amnesty International that while there are clear parameters to distinguish between trafficking for labour exploitation and violations of labour rights (to determine if what happened is a violation of criminal law or of the labour code), there are no similar parameters to distinguish between exploitation and precarious conditions of employment in the context of sex work (consensual selling of sex) and human trafficking.<sup>100</sup>

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 enforcement.<sup>101</sup> As a result, consensual autonomous sex work indoors (which is not formally criminalized) can be criminalized because it is treated in the same way as sexual exploitation as a result of trafficking. According to an individual

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92 Interview with Zaida Gatti, Director of the Federal Rescue Office, 1 October 2014.

93 Interview with Zaida Gatti, Director of the Federal Rescue Office, 1 October 2014.

94 Interview with Zaida Gatti, Director of the Federal Rescue Office, 1 October 2014.

95 Interview with Soledad, an indoor sex worker, 23 September 2014.

96 Interviews with Claudia Brizuela, head of AMMAR Capital and a street-based sex worker, and Soledad, Eliana\* and Noemi, all indoor sex workers, September 2014.

97 F. Yofre, “¿La prostitución es un trabajo?”, *Miradas al Sur*, Año 5, Edición número 23, 2012.

98 F. Yofre, “¿La prostitución es un trabajo?”, *Miradas al Sur*, Año 5, Edición número 23, 2012.

99 See Human Rights Council, Report of the special rapporteur on trafficking in persons: Mission to Argentina, UN Doc. A/HRC/17/35/Add.4, 2011, paras 49 and 52. Along those lines, the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families called on the Argentine government in 2011, to “adopt checklists and protocols and train border security, labour inspectors and migration and other law enforcement officials to ensure the prompt identification of victims of trafficking and the referral of those with protection needs to the asylum procedure.” UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, Concluding Observations: Argentina, UN Doc. CMW/C/ARG/CO/1, 2011, para. 32(f).

100 Interview with an individual working in the Federal Prosecutor’s Office, 25 September 2014.

101 Interview with an individual working in the Federal Prosecutor’s Office, 18 December 2015.

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.<sup>102</sup>

Sex workers' statements that they consent to selling sex and that they are not human trafficking victims are disregarded because under the 2012 Federal Anti-trafficking Law "consent" of an alleged victim cannot be asserted as a defence in human trafficking cases. Regardless of whether a trafficking case goes to trial, disregard for sex workers' perspectives as enshrined in the law applies throughout the preliminary investigation process. This essentially eliminates sex workers' agency and decision-making capacity with regard to their bodies, lives and means of earning a livelihood.

In addition, current enforcement measures under the Federal Anti-trafficking Law have led to violations of the rights to liberty, security of the person, and equality and non-discrimination of those who choose to sell sex indoors. The broad scope of the law serves as the basis for apartment raids where commercial sex or exploitation of sex workers is suspected, in effect criminalizing and/or otherwise punishing autonomous sex workers.

An individual working in the Federal Prosecutor's Office stated that efforts to enforce the Federal Anti-Trafficking Law are failing to target people at the top of criminal networks and are instead more often used to punish sex workers working collectively.<sup>103</sup> For example, in situations where a group of sex workers work together, the one with the most responsibility or who manages the apartment is usually identified by the police and in judicial proceedings as the "victimizer". The individual working in the Federal Prosecutor's Office added that it appears that "the system always reaches the organized women... so, what always happens is that there are many more women [involved in sex work] accused of this crime, but not traffickers."<sup>104</sup>

**"As officials interpret the law, and as long as the law is based on the notion that it is impossible to autonomously decide to sell sex, there will be no way for sex work to be organized and understood outside the criminal definition of exploitation or human trafficking. In other words, if it is considered that a woman cannot consent to sex work, any person that acts in any way that facilitates sex work will be regarded as a criminal. And this is what is happening.**

**But what is most concerning is that a large number of people who collaborate in or make commercial sex possible are women and these women end up being criminalized. We are talking about women that have been sex workers and that, either because they have a wide network and knowledge of the market have achieved some kind of 'social mobility' or 'promotion' in that market, or because they have reached an age that undermines their ability to work, or both, they get involved in other activities, like customer reception, organizational, advertising or management tasks. Thus, the current paradigm, both in law and practice, determines that such activities are seen as forms of 'pimping' or sexual exploitation, and therefore, these women are treated by the authorities as criminals."**

Amnesty International interview with an individual working in the Federal Prosecutor's Office, 18 December 2015

Several sex workers told Amnesty International that following anti-trafficking raids, law enforcement officials occupy sex workers' apartments for long periods (at times, up to 12 hours) and take their personal property (money and cell phones).<sup>105</sup> There are also reports that corruption occurs in these situations when law enforcement officials ask for money in exchange for giving advance warning of raids or concluding that "no human trafficking" was taking place in the apartment.<sup>106</sup> Some sex workers interviewed by Amnesty International said that police notify "managers" or sex workers when raids will occur in exchange for money.<sup>107</sup>

The head of AMMAR Capital, Claudia Brizuela, told Amnesty International that "money is paid to avoid raids," and that the authorities often only conduct raids when they "have to fill statistics forms."<sup>108</sup>

Law enforcement officials conduct anti-trafficking raids on apartments even when sex is being sold without "third party" involvement. Noemi, an indoor sex worker who works with a few friends in the same apartment,

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102 Interview with an individual working in the Federal Prosecutor's Office, 18 December 2015.

103 Interview with an individual working in the Federal Prosecutor's Office, 25 September 2014.

104 Interview with an individual working in the Federal Prosecutor's Office, 25 September 2014.

105 Interviews with Soledad, indoor sex worker, and Noemi, indoor sex worker, 23 September 2014.

106 Interviews Claudia Brizuela, head of AMMAR Capital and a street-based sex worker, and Eliana,\* an indoor sex worker, 24 September 2014.

107 Interviews with Claudia Brizuela, head of AMMAR Capital and a street-based sex worker, and Eliana,\* an indoor sex worker, 24 September 2014, and Soledad, indoor sex worker, 23 September 2014.

108 Interview with Claudia Brizuela, head of AMMAR Capital and a street-based sex worker, 24 September 2014.

told Amnesty International that local police entered her apartment without a warrant to do a “visual inspection”.<sup>109</sup> The police pretended to be clients and then pushed their way in when she started to open the door. A therapist from the Federal Rescue Office also entered her apartment and asked her lots of questions. When asked if she wanted to leave, Noemi told the therapist: “This is my life, this is my job, why would I want to leave?”<sup>110</sup> She told the police, “I have no criminal record. What I’m doing is not a crime. If it was, I would not do it.”<sup>111</sup>

Soledad, another sex worker, described a very similar experience: “The most invasive raids take place when the police [working with the Federal Rescue Office] enter the apartment to ‘enforce’ the Anti-trafficking Law. They come with a rescue team. They enter the apartment, assume the person who opened the door is running the business (and so don’t interview her)”.<sup>112</sup> Soledad told Amnesty International that during one lengthy raid both the federal police and the Federal Rescue Office stayed in her apartment for around 12 hours.<sup>113</sup>

Another indoor sex worker named Marti told Amnesty International about a particularly violent raid:

**“They came in wearing helmets with lights and arms. They made me lie facing down on the ground and they tied my hands while pointing at me with their guns, 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.**

**I thought ‘Oh my God, where am I? What happened?’, because I never thought it was going to be that violent. When they handcuffed me I thought of my daughters. ‘What if I’m being imprisoned? What if my daughters find out about it?’ We didn’t know what was going to happen, it was the first time I experienced something like that. The truth is that it was a tough situation because I realized what the reality is like, that I’m being persecuted. That’s when it hit me that we are no longer working in peace because they can come in at any minute and do what they did.”**

Amnesty International interview with Marti\*, an indoor sex worker, 23 September 2014

This raid by federal military police and airport security took place in January 2014. Around 15 sex workers were removed from various apartments in a building and detained on another floor of the building for almost 11 hours.<sup>114</sup>

Another long-term sex worker and the head of AMMAR Capital, Claudia Brizuela, told Amnesty International:

**“The police enter with machine guns, they hit you and throw you to the ground and after that they start to question you”.**

Amnesty International interview with Claudia Brizuela, a street-based sex worker and head of AMMAR Capital, 24 September 2014

Another indoor sex worker recounted: “When the gendarmerie came I was talking with the guy who delivers our flyers... Suddenly they knocked down the door and when I attempted to stand up they put a gun to my head and told me to stay still”.<sup>115</sup>

Amnesty International received consistent reports of raids being carried out by police using excessive or unnecessary force, including with fire arms. This level of force continued, at times, even when it became clear that the women in the apartment posed no threat to either the officers or to others.

## **PROHIBITIONS ON ADVERTISING SEXUAL SERVICES**

Sex workers in Buenos Aires are also targeted by the application of other civil laws and directives that criminalize activities related to sex work. For example, in 2011, Presidential Decree 936/2011 on the Comprehensive Protection of Women was adopted to prohibit advertising that promotes the offer of sexual services or makes explicit or implicit requests for a person in the sex trade (with a specific emphasis on

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109 Interview with Noemi, an indoor sex worker, 23 September 2014.

110 Interview with Noemi, an indoor sex worker, 23 September 2014.

111 Interview with Noemi, an indoor sex worker, 23 September 2014.

112 Interview with Soledad, an indoor sex worker, 23 September 2014.

113 Interview with Soledad, an indoor sex worker, 23 September 2014.

114 Interview with Marti\*, an indoor sex worker, 23 September 2014.

115 Interview with Eliana,\* an indoor sex worker, 24 September 2014.

print/newspaper ads).<sup>116</sup> The Director of the Federal Rescue Office explained to Amnesty International that this Decree was adopted with the stated aim of combatting human trafficking and to eliminate discrimination against women in Argentina.<sup>117</sup> The Federal Rescue Office is specifically empowered to enforce this regulation.<sup>118</sup>

This Decree has primarily affected indoor sex workers. The Executive Secretary of RedTraSex, a regional sex worker rights organization, and founder of AMMAR Nacional, Elena Reynaga, is highly critical of the Decree on the grounds that it strips sex workers of their ability to advertise and work independently while doing nothing to limit advertising by those who exploit sex workers or facilitate trafficking.<sup>119</sup>

The Director of the Gender Observatory of the Buenos Aires Judiciary, Diana Maffia, told Amnesty International that the Decree was passed without consulting “people in prostitution” regarding its potential impact.<sup>120</sup> She said that sex workers told her that it is safer to advertise than to stand on the street and wait for a client so that the effect of the prohibition on advertising was to force sex workers to work in more dangerous conditions. This view was shared by a transgender sex worker interviewed by Amnesty International who explained that the Decree has had an extremely negative impact on transgender sex workers as it has compelled them to sell sex in the streets whereas before they could advertise their services and work indoors.<sup>121</sup>

Posting flyers for sex work in some places in the city is also criminalized under a local Buenos Aires law (Act 4.486). However, flyers advertising sexual services continue to be posted around the city and at least two sex workers interviewed by Amnesty International stated that they believe these flyers are used by the authorities to locate sex workers and conduct raids.<sup>122</sup>

An initiative called “Red Tuesday” was created after the adoption of Presidential Decree 936/2011 where people walk through the streets of Buenos Aires each week removing flyers advertising sexual services. People who participate in this initiative discuss sex work and human trafficking interchangeably and see their work as contributing to national anti-trafficking efforts, in honour of Marita Verón. However, according to at least two sex workers, these individuals ignore the effect this has on autonomous sex workers who are then unable to earn money to support themselves and their children.<sup>123</sup>

Overbroad punitive legal restrictions on advertising for sex work appear to be compelling some sex workers to sell sex in more precarious, less safe conditions, which can lead to violations of the right to security of the person.

## **STIGMA AND DISCRIMINATION IN ACCESS TO ESSENTIAL SERVICES**

The criminalization of sex work has contributed to and perpetuated negative attitudes towards sex workers. The stigma and discrimination faced by sex workers can have a detrimental effect on their lives, in particular by serving as a barrier to accessing health services and to protection from violence and discrimination. Bias and prejudice on the part of health care providers has led some sex workers in Buenos Aires to avoid public health care services and even private health care services, thus impacting their rights to health and equality and non-discrimination. Combined with presumptions of criminality enabled by the criminal law around sex work, stigma and discrimination also inhibit sex workers’ ability to make complaints or pursue accountability for mistreatment or violence.<sup>124</sup>

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116 Presidential Decree 936/2011 on the Comprehensive Protection of Women, Article 1.

117 Interview with Zaida Gatti, Director of the Federal Rescue Office, 1 October 2014.

118 Presidential Decree 936/2011 on the Comprehensive Protection of Women, Article 3.

119 See *La otra carta de la prohibición*, *La Agencia de Noticias de la CTA*, 2011, available at: [www.agenciacta.org/spip.php?article1500](http://www.agenciacta.org/spip.php?article1500).

120 Interview with Diana Maffia, Director of the Gender Observatory of the Buenos Aires Judiciary, 9 October 2014.

121 Interview with Melissa, a transgender sex worker and teacher, 23 September 2014.

122 Interviews with Eliana\* and Claudia Brizuela, head of AMMAR Capital, both street-based sex workers, 24 September 2014.

123 Interview with Norma, a street-based sex worker, 23 September 2014. See also H. Firpo, “Hoy: Martes rojo”, *Clarín*, 2013, available at: [www.clarin.com/ciudades/titulo\\_0\\_889711112.html](http://www.clarin.com/ciudades/titulo_0_889711112.html).

124 The UN Committee on Economic, Social and Cultural Rights (CESCR) has confirmed that the right to health includes the “right to control one’s health and body, sexual and reproductive freedom, and to be free from interference,” as well as “equality of opportunity for people to enjoy the highest attainable level of health.” See CESCR, General Comment 14 (The right to the highest attainable standard of health (Article 12)), UN Doc. E/C.12/2000/4, para. 8, 2000. The UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) has recommended in its General Recommendation 24, that special attention should be given to the health rights of women belonging to vulnerable groups, which include “women in prostitution.” See CEDAW Committee, General Recommendation 24 (Article 12 (Women and Health)), UN Doc. A/54/38/Rev.1, Chap. I, 1999, para. 6.

## DISCRIMINATION AND VIOLENCE AGAINST TRANSGENDER SEX WORKERS

A high proportion of transgender people in Buenos Aires go into sex work,<sup>125</sup> particularly street-based sex work, because of discrimination, barriers to education and a lack of other available employment options. The head of ATTTA told Amnesty International: "Sex work for trans people is socially imposed because we are excluded from society so that's our only working option. We can't access... working benefits like any other worker."<sup>126</sup>

Individuals who participated in the Office of the Public Defender's "Gender, Diversity and Rights" Working Group<sup>127</sup> report that transgender people suffer discrimination when seeking jobs because of a lack of acceptance of their identities and because training provided by the state tends to be stereotyped (for example, training in hairdressing, manicures and other aesthetic-related services) and job opportunities never actually materialize.<sup>128</sup> Melissa, a transgender sex worker, agreed that transgender people have fewer work opportunities and said that what was needed were public policies to ensure alternative employment for transgender people, rather than condemnations of sex work.<sup>129</sup>

Research conducted by Fundación Huésped, ATTTA and UNAIDS in 2013, confirmed a high rate of institutional violence against transgender sex workers in Argentina.<sup>130</sup> However, it appears that transgender sex workers rarely, if ever, report police violence, abuse or extortion.<sup>131</sup> In a regional report on violence against lesbian, gay, bisexual, transgender and intersex (LGBTI) people in the Americas, the Inter-American Commission on Human Rights affirmed that "violence against trans people, particularly trans women, is the result of the combination of several factors: exclusion, discrimination and violence within the family, education and society in general; lack of recognition of their gender identity; involvement in occupations that put them at higher risk of violence; and high criminalization."<sup>132</sup> The Commission further noted that there is a strong link between poverty, exclusion and violence and that "LGBT people living in poverty are more vulnerable to profiling and police harassment, and consequently higher rates of criminalization and imprisonment."<sup>133</sup>

## STIGMA AND DISCRIMINATION IN HEALTH CARE

Both health care providers and sex workers interviewed by Amnesty International said that stigma and discrimination are the primary health issues faced by sex workers in Buenos Aires. Interviews with sex workers revealed various experiences of torture and other ill-treatment when accessing health services. Most of the sex workers Amnesty International spoke to reported primarily seeking private health services that were known to be "friendly" to sex workers and/or services from a specialized programme for sex workers informally set up at a local public hospital. While sex workers explained that they access health services regularly, some confirmed that they seek services outside of their communities and/or at private health clinics to avoid revealing their work and because of stigma or discrimination.<sup>134</sup>

Sex workers and people otherwise involved in commercial sex reported being judged by health care providers and/or being treated in an unprofessional manner that, at times, was not medically indicated. For example, one woman who identifies as a trafficking victim, recalled a traumatizing experience when she went to a hospital after a condom broke during sex with a client. Rather than being provided with standard sexual and

125 See Fundación Huésped, ATTTA, UNAIDS, *Gender identity law and access to health care for transgender people in Argentina (executive report)*, 2014, p. 30.

126 Interview with the head of ATTTA and former sex worker, 26 September 2014.

127 The Working Group was created by the Office of the Public Defender to address some of the primary social and political issues faced by marginalized people in Buenos Aires. It brings together sex workers (nationals and migrants), people who consider themselves "in prostitution" and others experiencing marginalization. Much of the information referenced in this section comes from minutes of meetings organized by the Gender Office of the Buenos Aires Public Defender's Office. The minutes provide an overview of some of the issues these individuals face.

127 Meeting Minutes, 16 October 2014, "Gender, Diversity and Rights" Working Group Meeting.

128 Meeting Minutes, 16 October 2014, "Gender, Diversity and Rights" Working Group Meeting.

129 Interview with Melissa, a transgender sex worker and teacher, 23 September 2014.

130 See Fundación Huésped, ATTTA, UNAIDS, *Gender identity law and access to health care for transgender people in Argentina (executive report)*, 2014, p. 42.

131 Interview with the head of ATTTA and former sex worker, 26 September 2014.

132 Inter-American Commission on Human Rights, Report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas, 12 November 2015, OAS/Ser.L/V/II. Doc 36/15 Rev 1, Chapter 5, 2015, para. 16.

133 Inter-American Commission on Human Rights, Report on Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas, 12 November 2015, OAS/Ser.L/V/II. Doc 36/15 Rev 1, Chapter 5, 2015, para. 17.

134 Interview with Georgina Orellano, head of AMMAR Nacional and an indoor sex worker, 26 September 2014.



reproductive health services, such as assistance with removing the condom and provision of emergency contraception, like any other patient in those circumstances, she was instead sent directly to the Infectious Diseases Unit.<sup>135</sup> She said: "I ran out of there crying".<sup>136</sup>

Another sex worker told Amnesty International that when sex workers seek health services for general health issues, such as back pain or headaches, they are often automatically referred to a gynaecologist if they reveal the nature of their work.<sup>137</sup> As a result, she explained, "many decide not to go [to the doctor] and they self-medicate".<sup>138</sup>

## SPECIALIZED HEALTH SERVICES FOR SEX WORKERS

Two doctors interviewed by Amnesty International who work at a local public hospital explained that they provide specialized sexual and reproductive health services to sex workers at a set date and time each week. This started in 2000, when the founder of AMADH approached a senior doctor about providing targeted services to people who sell sex.<sup>139</sup> These services are part of a discrete initiative that is supported by the Director of the hospital, but not necessarily by the hospital staff as a whole, which the two doctors consider may be due to stigma against sex workers. The doctors, who identify as "human rights defenders/women's rights defenders", explained that they prefer to keep quiet about their work. When discussing the specialized services, they said: "While others talk, we work."

Some sex workers are brought to the special clinic at the public hospital by representatives from sex worker organizations. The doctors confirmed that the sex workers they see are generally in good health, except that sometimes they request treatments and do things to their bodies that are not medically necessary and, in some cases, may be harmful (for example, prolonged use of anti-infection medicine to "prevent" disease and infection).<sup>140</sup>

Soledad, an indoor sex worker, recalled visiting a public health facility with some co-workers who were feeling ill. When they told the doctor what they did for a living, the doctor was very rude and dismissive.<sup>141</sup> Georgina Orellano, the head of AMMAR Nacional, told Amnesty International about her personal experience of seeking health services as a sex worker: "I went to the gynaecologist because I had intense vaginal pain. The first thing he asked me was how many men... that is, if I had a partner or was promiscuous... so I told him I was not promiscuous but a sex worker... Apart from recommending vaginal suppositories, he told me to try and find another job." She explained that as a result of his judgmental and offensive comments she did not go back to the doctor but self-medicated, buying the same suppositories every time the pain returned.<sup>142</sup>

The two doctors interviewed by Amnesty International confirmed that they were aware of sex workers suffering ill-treatment in hospitals. For example, they recalled that one doctor at their hospital requested oral sex during an examination and another doctor refused to treat a patient who was a sex worker because of a perceived "HIV risk". The doctors went on to explain that sex workers will generally not complain about such mistreatment.

**"They don't want to write a complaint because they feel like victims, or exposed... because to some extent, they also think that what they do is not right and so they also have an attitude of 'no, how would I report them?'"**

Amnesty International interview with doctors at a local public hospital, 24 September 2014

Stigma and discrimination against sex workers by health care providers not only affects access to services for sex workers and human trafficking victims, but also leads some to take certain self-protective measures such as avoiding disclosure of their work and seeking services outside of their communities. For example, one indoor sex worker, Marti, explained that while she regularly attended a private health clinic where she feels

135 Interview with Argentina Ascona, head of AMADH and trafficking victim, 25 September 2014.

136 Interview with Argentina Ascona, head of AMADH and trafficking victim, 25 September 2014.

137 Interview with Georgina Orellano, head of AMMAR Nacional and indoor sex worker, 26 September 2014.

138 Interview with Georgina Orellano, head of AMMAR Nacional and indoor sex worker, 26 September 2014.

139 Interview with doctors at a local public hospital, 24 September 2014.

140 Interview with doctors at a local public hospital, 24 September 2014.

141 Interview with Soledad, an indoor sex worker, 23 September 2014.

142 Interview with Georgina Orellano, head of AMMAR Nacional and indoor sex worker, 26 September 2014.

comfortable being open about her work, she would be ashamed to tell the truth about her work to a public service doctor: "I would be afraid of him changing his mind about me because of that."<sup>143</sup>

The head of AMMAR Nacional explained that stigma leads sex workers to go to "hospitals or health care centres far from where they live, so... people in their neighbourhoods won't find out. Or far from where they work so, clearly, [health care providers] don't realize they are sex workers".<sup>144</sup> She went on to explain that even though sex workers often carefully select their health care providers, they may be nervous about disclosing their work to their doctors "because when we say we are sex workers, very often we see that the [health care provider] starts feeling uneasy and the treatment changes. It goes from friendly to cold and they usually suggest we find a new job."<sup>145</sup>

National research conducted by AMMAR Nacional and RedTraSex focusing on sex workers' access to health care services in Argentina similarly confirms that around 55% of sex workers accessed services far from their homes to avoid revealing their work to their family or neighbours, and around 48% of sex workers would not go to a hospital or clinic in order to avoid having to explain the nature of their work.<sup>146</sup>

A study conducted by Argentina's National Scientific and Technical Research Council also found that 72.3% of sex workers did not tell their doctors about their work and the main reason for this was fear of discrimination. Of those who did disclose their work, 8.9% felt they were treated worse than before.<sup>147</sup>

However, in settings where health care providers have been sensitized to the needs of sex workers, care improves. The stigma and discrimination sex workers face when seeking health care services, in part due to criminal prohibitions around sex work, as well as broader social stigma and self-stigma, directly impact sex workers' access to health care services and thus violate their rights to the highest attainable standard of health and to equality and non-discrimination.<sup>148</sup>

## DISCRIMINATION IN ACCESS TO HOUSING

Despite the fact that Article 31 of the City of Buenos Aires Constitution requires the local government to provide suitable housing for the city's inhabitants,<sup>149</sup> sex workers who participate in the "Gender, Diversity and Rights" Working Group of the Office of the Public Defender report significant problems related to accessing adequate housing. It can be extremely difficult for sex workers to rent apartments for personal or work purposes due to lack of formal (documented) and consistent income.<sup>150</sup> One transgender sex worker told Amnesty International:

**"You need to show where your money comes from in order to rent an apartment. If you're a sex worker you can't show it because your work is not legal. You have to negotiate with the owners and pay more than the apartment costs if you want to rent it. What usually happens is that a client offers to rent out his place to you and you have to pay him a commission."**

Amnesty International interview with Melissa, a transgender sex worker and teacher, 23 September 2014

As a result, it was reported that some sex workers resort to living in guesthouses or hotels, in poor conditions, where they are often charged substantially more rent than others because of the presumed criminality attached to sex workers, as well as stigma and discrimination against them.<sup>151</sup> For example, sex workers participating in

143 Interview with Marti,\* an indoor sex worker, 23 September 2014.

144 Interview with Georgina Orellano, head of AMMAR Nacional and indoor sex worker, 26 September 2014.

145 Interview with Georgina Orellano, head of AMMAR Nacional and indoor sex worker, 26 September 2014.

146 See AMMAR Nacional, RedTraSex, *Estudio sobre estigma y discriminación en los servicios de salud a las mujeres trabajadoras sexuales en América Latina y el Caribe: Informe de país - sub-región Cono Sur (Argentina)*, 2012, p. 9. This report concluded that, in general, a high percentage of sex workers in Argentina do not receive health care. Only 57.7% receive assistance from a health facility or doctor, which is much lower than the regional average (74.9%). Additionally, sex workers in Argentina have the lowest HIV testing rates in the region (89.4%), p. 11.

147 See Ciudad Autónoma de Buenos Aires: UBATEC SA, A. Comas, M. Fabro, and T. Seiffer, *Sabres y estrategias de las mujeres trabajadoras sexuales ante el VIH/SIDA y otras ITS*, 2008, p. 34, available at: [www.msal.gov.ar/imagenes/stories/bes/graficos/0000000148cnt-2313-06\\_estrategias-trabajadoras-sexuales-vih-sida-its.pdf](http://www.msal.gov.ar/imagenes/stories/bes/graficos/0000000148cnt-2313-06_estrategias-trabajadoras-sexuales-vih-sida-its.pdf).

148 CDESCR, Article 12; Protocol of San Salvador, Article 10.

149 See Buenos Aires Constitution, Article 31 (explicitly recognizing the right to decent housing and requiring the local government to address the housing deficit). See also Buenos Aires Constitution, Articles 20, 30 and 40 (recognizing a right to housing). Argentine citizens' right to decent housing is further recognized under Article 14 bis of the National Constitution and international human rights law. In addition, Article 75 (22) of the Constitution of Argentina incorporates international human rights law into national law, thereby incorporating the right to adequate housing contained in the International Covenant on Economic, Social and Cultural Rights.

150 Interviews with Josefina Fernández, head of the Gender Office of the Public Defender's Office in the City of Buenos Aires, 14 October 2014, and Melissa, a transgender sex worker and teacher, 23 September 2014.

151 Interview with Josefina Fernández, head of the Gender Office of the Public Defender's Office in the City of Buenos Aires, 14 October 2014.

the “Gender, Diversity and Rights” Working Group claimed that some pay up to four times the regular rental fee.<sup>152</sup>

One woman formerly involved in street-based “prostitution” who identifies as a trafficking victim told Amnesty International: “Even people from hotels abuse you, they increase prices all the time... [Hotels] charge even more if you have little children”.<sup>153</sup>

Transgender people face particular discrimination and harassment in seeking and retaining housing. The head of the Gender Office of the Buenos Aires Public Defender's Office, Josefina Fernández, told Amnesty International that transgender people are often viewed as a nuisance and face verbal abuse by landlords and other tenants.<sup>154</sup> Vida Morant, the Academic Director of Mocha Celis Bachillerato, a specialized school that serves transgender and other socially marginalized people, told Amnesty International that, in addition to a lack of legal documented income, transgender people's strained family relations impede them from finding a guarantor for housing.<sup>155</sup> Moreover, transgender people's access to housing is directly linked to their access to work, which is linked to their access to education and that these issues cannot be viewed in isolation.<sup>156</sup>

In an effort to tackle the housing issues that sex workers face, the Public Defender's Office helps people to petition the government for housing subsidies.<sup>157</sup> While some subsidies have been granted, they are quite modest and are only provided for a few months.<sup>158</sup>

## THE MOCHA CELIS BACHILLERATO SCHOOL

In 2011, a group of committed advocates sought to address the grave educational gaps faced by people with trans identities in Argentina by opening the Mocha Celis Bachillerato school in Chacarita, Buenos Aires.<sup>159</sup> Most transgender people have little or no access to even primary education due to stigma, violence and discrimination, and the lack of an inclusive educational policy in the country.<sup>160</sup> This directly impacts their ability to secure legal employment and/or access to health services and housing. With few livelihood options, many transgender people turn to selling sex.

The Academic Director of Mocha Celis Bachillerato school, Vida Morant, describes the school as an “occupational educational project” that not only provides a curriculum that enables students to complete their primary and secondary education, but also provides social services to assist students in securing housing, health care, protection from violence and skills to obtain jobs in the legal market. The school is intentionally inclusive and not limited to transgender people, but rather open to people from all identity constructions, diverse sexual orientations and a range of ethnic and cultural backgrounds. Starting with a class of 25 students coming from a range of marginalized backgrounds, enrolment at the school has risen to 150 in just four years. In addition, 70% of the first graduating class has secured legal employment and those who formerly sold sex have moved on to earning money through other means. This has all been achieved with only partial financial support from the government, which pays for teachers' salaries. All other costs are met using funds raised by the school from other sources.

Vida Morant explained that transgender people face tremendous stigma because “we are always linked to crime, prostitution, marginality”. From her perspective, “education is the pillar to secure access to other rights... without an educational project that provides the tools, there is no access to an occupational project for skilled jobs... no chance of having access to a decent house.”

The Mocha Celis Bachillerato is named after a transvestite from Tucumán province who was murdered by the police in the 1990s. Mocha Celis was illiterate and every time she was arrested and put in jail “she would ask

152 Meeting Minutes, May 16, 2014, “Gender, Diversity and Rights” Working Group Meeting.

153 Interview with Cecilia,\* a former street-based sex worker and trafficking victim, 25 September 2014.

154 Interview with Josefina Fernández, head of the Gender Office of the Public Defender's Office in the City of Buenos Aires, 14 October 2014.

155 Interview with Vida Morant, Academic Director of Mocha Celis Bachillerato and transgender person, 23 December 2014.

156 Interview with Vida Morant, Academic Director of Mocha Celis Bachillerato and transgender person, 23 December 2014.

157 Interview with Josefina Fernández, head of the Gender Office of the Public Defender's Office in the City of Buenos Aires, 14 October 2014.

The Working Group conducted a survey to document the housing issues faced by sex workers and other marginalized people in Buenos Aires, with the intention of filing a collective action lawsuit to compel the government to comply with its obligation to provide housing to people living in Buenos Aires. Concerned about the lengthy nature of collective action lawsuits and the urgency of the issue, the Working Group has instead focused its energies on referring individuals to public defenders to assist with petitioning the government for housing subsidies.

158 Interview with Josefina Fernández, head of the Gender Office of the Public Defender's Office in the City of Buenos Aires, 14 October 2014.

159 See [www.facebook.com/mochacelis](http://www.facebook.com/mochacelis).

160 Interview with Vida Morant, Academic Director of Mocha Celis Bachillerato and transgender person, 15 December 2014.

her jail mates to teach her to read and write and do simple math calculations – she showed a willingness to learn.” As noted by Vida Morant, “there are many Mocha Celis.”

Amnesty International interview with Vida Morant, Academic Director of Mocha Celis Bachillerato and a transgender person, 15 December 2015.

# 3. INTERNATIONAL HUMAN RIGHTS AFFECTED BY CRIMINALIZATION OF SEX WORK IN BUENOS AIRES

Argentina is party to all major international and regional human rights instruments which set out the obligation to respect, protect and fulfil human rights and elaborate on the substance of this obligation regarding specific rights. The instruments that cover the issues raised in this report include:

- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (ICAT)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- Convention on the Rights of the Child (CRC)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers' Convention)
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949 Trafficking Convention)
- Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (UN Trafficking Protocol)
- American Convention on Human Rights (American Convention)
- Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)
- Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)

Argentina is also a member of the International Labour Organisation (ILO), the specialized UN agency that sets standards for basic labour rights and other labour conditions across the full spectrum of work-related issues.<sup>161</sup> The Argentine authorities have the obligation to adapt the country's own domestic legal system – its laws and the implementation and enforcement of those laws – so as to respect, protect and fulfil the rights established in the above-referenced treaties without discrimination.<sup>162</sup>

The findings of this report reveal multiple violations of the key human rights of sex workers in Buenos Aires. These rights include the right to security of the person, to liberty, to freedom from torture and other cruel, inhuman and degrading treatment or punishment, to the highest attainable standard of health, to adequate housing, to just and favourable conditions of work, to privacy, to freedom of expression and to equality and non-discrimination.

This chapter analyses the extent to which each of these rights is affected by the criminal law and other related punitive laws as they are applied to sex workers in Buenos Aires. While this report does not address all human rights affected by the legal framework around sex work and its enforcement in Buenos Aires, for example the rights to education or freedom of association, it is important to note that there are other human rights concerns related to the impact of legal and policy approaches to sex work in the city that deserve further inquiry.<sup>163</sup>

This chapter draws on recommendations by international human rights bodies and experts. These bodies and experts are increasingly focusing on human rights abuses and violations faced by sex workers and recommending that states work towards decriminalization of sex work and refrain from punitive application of non-criminal laws and regulations against people engaged in sex work.<sup>164</sup>

Significantly, in addressing the reality that “[m]isuse of criminal law often negatively impacts health and violates human rights”,<sup>165</sup> the UN Secretary-General recently emphasized that “decriminalization of sex work can reduce violence, harassment and HIV risk.”<sup>166</sup> He further affirmed that “[s]ex workers should enjoy human rights protections guaranteed to all individuals, including the rights to non-discrimination, health, security and safety.”<sup>167</sup>

## RIGHT TO SECURITY OF THE PERSON AND FREEDOM FROM VIOLENCE

When sex workers face extortion and violence at the hands of police and other government officials, when they are forced to work in a precarious, clandestine manner because of stigma and presumptions of criminality, and when they cannot seek police protection from violence, their right to security of the person is at stake. Under

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161 See ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, 1998 (Annex revised in 2010), available at: [www.ilo.org/declaration/textdeclaration/lang-en/index.htm](http://www.ilo.org/declaration/textdeclaration/lang-en/index.htm). This establishes a set of minimum standards of rights that should apply to all workers.

162 Notably, decisions at all levels of government, including at the national, regional and local levels, must ensure the protection of human rights for all people, including sex workers.

163 See Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, UN Doc. A/HRC/14/20, 2010; Human Rights Watch, “*Treat us like human beings: Discrimination against Sex Workers, Sexual and Gender Minorities and People Who Use Drugs in Tanzania*”, 2013, available at: [www.hrw.org/sites/default/files/reports/tanzania0613webwcover\\_o\\_o.pdf](http://www.hrw.org/sites/default/files/reports/tanzania0613webwcover_o_o.pdf); Human Rights Watch, *In Harm's Way: State Response to Sex Workers, Drug Users, and HIV in New Orleans*, 2013, available at: [www.hrw.org/sites/default/files/reports/usnola1213\\_ForUpload\\_3.pdf](http://www.hrw.org/sites/default/files/reports/usnola1213_ForUpload_3.pdf); UNDP, Global Commission, *HIV and the Law: Risks, Rights & Health*, 2012, available at: [www.hivlawcommission.org/index.php/report](http://www.hivlawcommission.org/index.php/report); UNAIDS, UNFPA, UNDP, *Sex work and the law in the Asia Pacific*, 2012, available at: [www.undp.org/content/dam/undp/library/hivaids/English/HIV-2012-SexWorkAndLaw.pdf](http://www.undp.org/content/dam/undp/library/hivaids/English/HIV-2012-SexWorkAndLaw.pdf).

164 UNFPA, APNSW, UNDP, *Policy brief: Sex work, violence and HIV in Asia – From evidence to safety*, 2015, p. 7. The World Health Organization calls on all countries to “work toward decriminalization of sex work and elimination of the unjust application of non-criminal laws and regulations against sex workers.” WHO, UNFPA, UNAIDS, and 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](http://apps.who.int/iris/bitstream/10665/77745/1/9789241504744_eng.pdf). The UN Special Rapporteur on the right to health has also highlighted the impact of criminalizing sex work on health and human rights and explicitly called for decriminalization of sex work. See Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, UN Doc. A/HRC/14/20, 2010, para. 76(b).

165 See UN General Assembly, 70<sup>th</sup> Session, Report of the Secretary-General, *On the Fast-Track to end the AIDS epidemic* (advance unedited edition), 2016, para. 53.

166 See UN General Assembly, 70<sup>th</sup> Session, Report of the Secretary-General, *On the Fast-Track to end the AIDS epidemic* (advance unedited edition), 2016, para. 53.

167 See UN General Assembly, 70<sup>th</sup> Session, Report of the Secretary-General, *On the Fast-Track to end the AIDS epidemic* (advance unedited edition), 2016, para. 53.

the ICCPR, this right entails a requirement that the state protect individuals from intentional physical or mental injury.<sup>168</sup> To respect and protect this right, state parties must respond appropriately to patterns of violence against categories of victims, including sex workers.

States have an obligation to protect sex workers from violence, harassment and other abuse by adopting and enforcing laws that prohibit such violence and abuse.<sup>169</sup> Notably, the CEDAW Committee, in its General Recommendation 19 (violence against women), specifically recognizes the vulnerability of sex workers to human rights violations and violence, resulting from their marginalization and unlawful legal status.<sup>170</sup> The CEDAW Committee notes that:

**“Poverty and unemployment force many women, including young girls, into prostitution. Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. They need the equal protection of laws against rape and other forms of violence.”<sup>171</sup>**

Along those lines, the Committee has called on states to take measures to ensure “the rights of all sex workers, whether men, women or transgender people, to access sexual health services; that they are free from violence or discrimination, whether by state agents or private persons; and that they have access to equal protection of the law.”<sup>172</sup> The CEDAW Committee has further noted in its General Recommendation 33 (women’s access to justice) that where sex workers face the threat of criminalization, penalization or loss of livelihood when or if they report crimes against themselves to police, their access to justice and equal protection under the law is significantly compromised.<sup>173</sup> This, in turn, offers impunity to perpetrators of violence and abuse against sex workers.

Notably, the Committee on Economic, Social and Cultural Rights (CESCR), in its General Comment 22 on the Right to sexual and reproductive health (Article 12), explicitly calls on states parties to “take measures to fully protect persons working in the sex industry against all forms of violence, coercion and discrimination.”<sup>174</sup> At present, the enforcement of laws in Buenos Aires that criminalize activities related to sex work is leading to violence against sex workers. Additionally, the criminal legal framework and presumptions of criminality imposed on sex workers dissuade them from seeking state protection from violence and crime, impacting their access to justice.

Under international and regional human rights law, Argentina has an obligation to protect all individuals from all forms of violence. This obligation is closely related to and overlaps the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment (see **Right to be Free from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** below). In line with the human rights principle of “due diligence”, it 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.<sup>175</sup> Argentina must also provide mechanisms for redress and ensure reparations to victims and survivors.<sup>176</sup>

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168 Human Rights Committee, General comment 35 (Article 9 (liberty and security of person)), UN Doc. CCPR/C/GC/35, 2014, para. 9.

169 See Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, UN Doc. A/HRC/14/20, 2010; CESCR, General Comment 22 (right to sexual and reproductive health (Article 12)), UN Doc. E/C.12/GC/22, 2016, para. 32. Along similar lines, the CEDAW Committee has recently expressed concern to one state party about “widespread violence and discrimination against women in prostitution, in particular by the police.” CEDAW, Concluding observations: Kyrgyzstan, UN Doc. CEDAW/C/KGZ/CO/4, 2015, para. 21(c).

170 For a more in-depth discussion of the CEDAW Committee’s analysis around the human rights of sex work or “women in prostitution”, including the impact of criminalization of aspects of commercial sex, see Amnesty International’s ‘Explanatory Note’ (which both contextualizes and provides an overview of Amnesty International’s research base for its policy on states’ obligations to respect, protect and fulfill sex workers’ human rights).

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

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

173 See CEDAW, General Recommendation 33 (women’s access to justice), UN Doc. CEDAW/C/GC/33, 2015, paras. 9, 51(l).

174 See CESCR, General Comment 22 (The right to sexual and reproductive health (Article 12)), UN Doc. E/C.12/GC/22, 2016, para. 32.

175 See 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.

176 See Human Rights Committee, General Comment 31 (The Nature of the General Legal Obligation Imposed on States Parties to the Covenant), UN Doc. CCPR/C/21/Rev.1/Add.13, 2004; and Inter-American Court of Human Rights, *Ana, Beatriz and Celia González v Mexico*, 2001; and *Velasquez-Rodriguez v Honduras*, 1988.

States also have an obligation to not create or perpetuate gender stereotypes that essentially justify violence against certain groups of people, such as transgender people.<sup>177</sup> The failure to hold those accountable for attacking, extorting or harassing sex workers and for enforcing the law in a violent and discriminatory manner, making it impossible for sex workers to complain about violence, is an example of how the Argentine authorities continue to reinforce sex and gender stereotypes and fail to comply with their obligation to respect, protect and fulfil sex workers' right to security of the person. (See **Argentina's obligation to combat sex and gender stereotypes** below.)

UN bodies and experts are increasingly turning their attention to the impact of criminalizing sex work on a range of human rights. In part, this is because punitive approaches tend to put sex workers at heightened risk of violence, often with little legal recourse. For example, various UN bodies have recognized that "[C]riminalization legitimizes violence and discrimination against sex workers (particularly from law enforcement officers and healthcare providers) and makes authorities reluctant to offer protection or support to sex workers."<sup>178</sup> Following a country visit to India, the UN Special Rapporteur on violence against women emphasized the need to address violence faced by sex workers from state and non-state actors and the lack of legal redress. She also spoke of the impact of conflating sex work and human trafficking.<sup>179</sup>

The CEDAW Committee has expressed concern about the criminalization of sex work and its negative impact on the human rights, health and security of sex workers.<sup>180</sup> The Committee has consistently made clear that under the Convention criminal sanctions should be reserved for those who profit from the "exploitation of prostitution."<sup>181</sup> It has noted that imposing criminal penalties on sex workers only "entrenches sexual exploitation of women."<sup>182</sup> Along those lines, the Committee has specifically condemned policies that seem to exacerbate the situation of sex workers instead of improving it. For example, in its concluding observations to China, Hong Kong and Macau, the Committee expressed concern that "the continued criminalization of prostitution disproportionately impacts on prostitutes rather than on the prosecution and punishment of pimps and traffickers."<sup>183</sup>

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177 See CEDAW, Article 5; CEDAW, General Recommendation 28 (core obligations of States Parties under Article 2 of CEDAW), UN Doc. CEDAW/C/2010/47/GC.2, 2010, paras 18, 26; and the Convention of Belém do Pará, Articles 6, 8. See also Office of the High Commission for Human Rights, Gender stereotyping as a human rights violation, 2013, pp. 23-24; HRC, Report of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/HRC/31/57, 2016, para. 10.

178 UNFPA, APNSW, UNDP, *Policy brief: Sex work, violence and HIV in Asia – From evidence to safety*, 2015, p. 7. The World Health Organization calls on all countries to "work toward decriminalization of sex work and elimination of the unjust application of non-criminal laws and regulations against sex workers. 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](https://apps.who.int/iris/bitstream/10665/77745/1/9789241504744_eng.pdf). The UN Special Rapporteur on the right to health has also highlighted the impact of criminalizing sex work on health and human rights and explicitly called for decriminalization of sex work. See Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, UN Doc. A/HRC/14/20, 2010, para. 76(b).

179 See Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo (Mission to India), UN Doc. A/HRC/26/38/Add.1, 2014, para. 78(e).

180 See CEDAW, General Recommendation 33 (women's access to justice), UN Doc. CEDAW/C/GC/33, 2015, paras. 9, 51(l); CEDAW, Concluding observations: Fiji, UN Doc. A/57/38, 2002, paras 64-65; Hungary, UN Doc. A/57/38, 2002, paras 323-324; Kenya, UN Doc. CEDAW/C/KEN/CO/6, 2007, paras. 29-30; Republic of Korea, UN Doc. CEDAW/C/KOR/CO/6, 2007, paras. 19-20; France, UN Doc. CEDAW/FRA/CO/6, 2008, paras. 30-31; Germany, UN Doc. CEDAW/C/DEU/CO/6, 2009, paras. 49-50; Japan, UN Doc. CEDAW/C/JPN/CO/6, 2009, para. 39; and China, UN Doc. CEDAW/C/CHN/CO/6, 2006, para. 4. Article 6 of CEDAW requires states to protect women and girls against "exploitation of prostitution".

181 See CEDAW, Concluding observations: Fiji, UN Doc. A/57/38, 2002, paras. 64-65; Hungary, UN Doc. A/57/38, 2002, paras. 323-324; Kenya, UN Doc. CEDAW/C/KEN/CO/6, 2007, paras. 29-30; Republic of Korea, UN Doc. CEDAW/C/KOR/CO/6, 2007, paras. 19-20; France, UN Doc. CEDAW/FRA/CO/6, 2007, paras. 30-31; Germany, UN Doc. CEDAW/C/DEU/CO/6, 2009, paras. 49-50; Japan, UN Doc. CEDAW/C/JPN/CO/6, 2009, para. 39; and Albania, UN Doc. CEDAW/C/ALB/CO/3, 2010, para. 29. While Article 6 of CEDAW requires that states take "all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women", the CEDAW Committee does not define the terms "exploitation" or "prostitution." The inclusion of the term "exploitation" suggests that not all forms of commercial sex are exploitative and that states are not obligated to suppress "prostitution", but rather only that which involves exploitation. Indeed, when the text of CEDAW was being drafted, a proposal to amend Article 6 to call for the abolition of prostitution in all its forms was rejected. Furthermore, the delineation between "traffic in women" and "exploitation of prostitution" recognizes the two issues as distinct, but in some cases related, phenomena. See C. Mgbako and L.A. Smith, "Sex work and human rights in Africa", *Fordham International Law Journal*, 2011, p. 1200-01; General Recommendation 19 (violence against women), UN Doc. A/47/38, 1992, para. 16; CEDAW, Concluding observations: Indonesia, UN Doc. CEDAW/C/IDN/CO/5, 2007, paras. 28-29.

182 CEDAW, Concluding observations: Lithuania, UN Doc. A/55/38, 2000, para. 152. See also CEDAW Concluding observations: Armenia, UN Doc. CEDAW/C/ARM/CO/4/Rev.1, 2009, para. 27 (addressing administrative penalties imposed on sex workers); and Egypt, UN Doc. CEDAW/C/EGY/CO/7, 2010, para. 25 (expressing concern that women in prostitution are punished, as opposed to clients).

183 See CEDAW, Concluding observations: China (including mainland China, Hong Kong and Macau), UN Doc. CEDAW/C/CHN/CO/6, 2006, para. 19.



## RIGHT TO LIBERTY

Criminalizing the buying or selling of adult consensual sex, or elements of these transactions, also threatens the right to liberty where sex workers are arbitrarily detained, in the international legal sense of the term,<sup>184</sup> and/or in a manner not in accordance with domestic law. The Human Rights Committee has determined that legally authorized detention must be reasonable, necessary and proportionate taking into account the specific circumstances of a case.<sup>185</sup> Detention can amount to arbitrary detention, even if it is authorized by law, if it includes “elements of inappropriateness, injustice, lack of predictability and due process of law”.<sup>186</sup> Related to this, the UNAIDS Advisory Group on HIV and Sex Work has recommended that:

**“States should move away from criminalizing sex work or activities associated with it. Decriminalization of sex work should include removing criminal penalties for purchase and sale of sex, management of sex workers and brothels, and other activities related to sex work. To the degree that states retain non-criminal administrative law or regulations concerning sex work, these should be applied in ways that do not violate sex workers’ rights or dignity and that ensure their enjoyment of due process of law.”<sup>187</sup>**

A key issue raised by police detention of street-based sex workers in Buenos Aires is that sex workers are being profiled based on their dress, mannerisms and appearance, contrary to Article 81 of the Buenos Aires Code of Misdemeanours. Additionally, detaining sex workers for purportedly engaging in an “ostentatious” offer of sex in unauthorized places (under Article 81) when there is no clear definition in law of what constitutes “ostentatious” communication is arbitrary. Without such clarity, sex workers do not have sufficient information and understanding about how to avoid violating the law. This lack of legal clarity also enables Article 81 to be enforced in an inconsistent and arbitrary manner by police, prosecutors and judges.

## THE RIGHT TO BE FREE FROM TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Criminalizing sex work can also lead to violations of the right to be free from torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment). The prohibitions against torture and other ill-treatment are absolute and cannot be derogated from at any time.<sup>188</sup>

States are obliged as a matter of international law to take measures to prevent torture and other ill-treatment, to investigate and prosecute perpetrators,<sup>189</sup> and to provide adequate reparations for victims.<sup>190</sup> States have an enhanced obligation to diligently prevent acts of torture and other ill-treatment, including during law enforcement operations.<sup>191</sup> The Inter-American Court of Human Rights has determined that shortcomings in

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184 See ICCPR, Art. 9(1); Human Rights Committee, General comment 35 (Article 9: Liberty and security of person), UN Doc. CCPR/C/GC/R.35/Rev.3, 2014, paras. 10-23; Methods of work of the Working Group on Arbitrary Detention, UN Doc. A/HRC/30/69, 2015, para. 8.

185 See Human Rights Committee, *Van Alphen v The Netherlands*, UN Doc. CCPR/C/39/D/305/1988, 1990, para. 5.8; Human Rights Committee, Comm. No. 560/1993, *A v Australia*, UN Doc. CCPR/C/59/D/560/1993, 1997, para. 9.2.

186 Human Rights Committee, *A. W. Mukong v Cameroon*, UN Doc. GAOR, A/49/40 (vol. II), 1991, para. 9.8.

187 UNAIDS, UNAIDS guidance note on HIV and sex work, Annex I, 2011, p. 6. The report makes clear that its recommendation relates to buying as well as selling sex.

188 See ICCPR, Article 4.2; American Convention on Human Rights, Article 27. The UN Committee Against Torture has said that the obligations contained in Articles 2 and 15 of the Convention against Torture may not be derogated from under any circumstances. See also Human Rights Committee, General Comment 29 (States of Emergency (article 4)), UN Doc. CCPR/C/21/Rev.1/Add.11, 2001.

189 See Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Doc. A/RES/57/199, 2002, Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 4; Human Rights Committee, General Comment 20 (replaces General Comment 7 concerning prohibition of torture and cruel treatment or punishment (article 7)), UN Doc. HRI/GEN/1/Rev.1, 1992, paras 8 and 11. See also Human Rights Committee, *Rodriguez v Uruguay*, UN Doc CCPR/C/51/D/322/1988, 1994; Human Rights Committee, *Blanco v Nicaragua*, UN Doc CCPR/C/51/328/1988, 1994; and Human Rights Committee, *Kurbanov v Tajikistan*, Comm. No. 1096/2002 UN Doc CCPR/C/79/D/1096/2002, 2003.

190 See Human Rights Committee, General Comment 20, UN Doc. HRI/GEN/1/Rev.1, 1992, paras. 14 and 15; UN General Assembly, Interim report of the Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/55/290, 2000, para. 28.

191 See Inter-American Court of Human Rights, *Cabrera Garcia and Montiel Flores v Mexico*, 2010, para. 135.

the investigation and prevention of acts of torture or other ill-treatment can constitute a violation of the right to personal integrity enshrined in Article 5 of the American Convention.<sup>192</sup>

States' duty to prevent torture and other ill-treatment is further implicated by laws and policies that perpetuate harmful gender stereotypes. The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has confirmed that:

**“States fail in their duty to prevent torture and ill-treatment whenever their laws, policies or practices perpetuate harmful gender stereotypes in a manner that enables or authorizes, explicitly or implicitly, prohibited acts to be performed with impunity.”<sup>193</sup>**

Sex workers in Buenos Aires are frequently subjected to ill-treatment by law enforcement officials during “code inspections” and anti-trafficking raids on apartments where commercial sex is suspected. Frequently, sex workers are detained (often violently with weapons) for long periods of time and subjected to coercive and intimidating questioning where the authorities attempt to persuade them that they are victims of violence and human trafficking. Sex workers also face deeply degrading treatment when accessing health services, including when they are subjected to demands for sexual services in the course of treatment, are stigmatized for their work, or receive non-medically indicated treatment that solely focuses on perceptions of risk around sex work, as opposed to their broader health, or turned away from treatment entirely.

## RIGHT TO THE HIGHEST ATTAINABLE STANDARD OF HEALTH

Criminalization of sex work also impacts on the right to the highest attainable standard of health on various grounds.<sup>194</sup> The right to health contains both freedoms and entitlements, including the “right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from interference,” as well as “equality of opportunity for people to enjoy the highest attainable level of health.”<sup>195</sup>

Like other rights, the right to health is subject to non-discrimination guarantees, including the right to non-discrimination on the basis of sex, property or other status. The CEDAW Committee has recommended that special attention be given to the health rights of women belonging to at-risk groups, including “women in prostitution”.<sup>196</sup>

Health services should be made available, accessible and acceptable to people engaged in sex work based on the principles of equality and non-discrimination and the right to the highest attainable standard of health.<sup>197</sup> Human rights bodies have called on states to ensure timely and affordable access to good quality health services that ensures informed consent, respects dignity, guarantees confidentiality and is sensitive to people’s particular needs and perspectives.<sup>198</sup>

Laws which preclude individuals’ access to needed health services, including those for all dimensions of sexual health, violate human rights and are commonly associated with preventable ill health.<sup>199</sup> The CESCR has confirmed that criminalizing consensual adult sexual activities violates states’ obligation to respect the right to sexual and reproductive health as it amounts to a legal barrier that impedes access to sexual and reproductive health services.<sup>200</sup> Therefore, states have an immediate obligation to “repeal or eliminate laws, policies and practices that criminalize, obstruct or undermine access by individuals or a particular group to sexual and

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192 See Inter-American Court of Human Rights, *Baldeón García v Perú*, 2006, para. 157; Inter-American Court of Human Rights, *Cabrera-García and Montiel-Flores v Mexico*, 2010, para. 131, 215; Inter-American Court of Human Rights, *J v Peru*, 2013, para. 341.

193 HRC, Report of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/HRC/31/57, 2016, para.10.

194 CESCR, Article 12; Protocol of San Salvador, Article 10.

195 CESCR, General Comment 14 (The right to the highest attainable standard of health (Article 12 of the Covenant)), UN Doc. E/C.12/2000/4, 2000, para. 8.

196 CEDAW, General Recommendation 24 (Article 12: Women and health), UN Doc. A/54/38/Rev.1, 1999, para. 6.

197 CESCR, Article 12.

198 CEDAW, General Recommendation 24 UN Doc. A/54/38/Rev.1, 1999; CRC, General Comment 4 (Adolescent health and development in the context of the Convention on the Rights of the Child), UN Doc. CRC/GC/2003/4, 2003.

199 See General Recommendation 24, UN Doc. A/54/38/Rev.1, 1999; CESCR, General Comment 14, UN Doc. E/C.12/2000/4, 2000; CRC, General Comment 15 (The rights of the child to the highest attainable standard of health), UN Doc. CRC/GC/15, 2013.

200 See CESCR, General Comment 22 (right to sexual and reproductive health (Article 12)), UN Doc. E/C.12/GC/22, 2016, para. 57.

reproductive health facilities, services, goods and information".<sup>201</sup> The CESCR has further called on state parties to ensure that people in the sex industry have access to the full range of sexual and reproductive health care services.<sup>202</sup>

The public health impact of criminalizing sex work is well documented. Public health research has found, for example, that criminal laws undermine sex workers' ability to collaborate to identify potentially violent clients and their capacity to demand condom use with clients as a means to prevent unintended pregnancy, HIV and sexually transmitted infections.<sup>203</sup> The need for furtive, rushed transactions is repeatedly identified in the public health literature as a principal factor in sex workers' reduced ability to negotiate safer sex.<sup>204</sup> Criminalization also diminishes sex workers' ability to access health services.<sup>205</sup>

## IMPACT OF CRIMINALIZATION OF SEX WORK ON HIV PREVENTION

Criminalization of sex work has particularly dire consequences for HIV prevention because it prevents sex workers – and sometimes their clients – from taking the necessary precautions to lower the risk of transmission. For example, sex workers that fear detection by the police may be compelled to engage in rushed transactions with clients, to the detriment of their health and safety.<sup>206</sup> Similarly, law enforcement practices that include confiscating condoms or using condoms as evidence of sex work reduce condom use among sex workers and their clients.<sup>207</sup> Criminalization of sex work also deters sex workers from testing or seeking treatment for fear of arrest.<sup>208</sup> An examination of HIV among female sex workers published in July 2014 in *the Lancet* concluded that of all potential interventions identified, "[d]ecriminalisation of sex work would have the greatest effect on the course of HIV epidemics across all settings, averting 33–46% of HIV infections in the next decade."<sup>209</sup>

The importance of recognizing and promoting sex workers' human rights is a basic building block of sound HIV prevention, reflected in the policy positions of the Global Fund to Fight AIDS, Tuberculosis and Malaria and the Joint United Nations Programme on HIV/AIDS (UNAIDS). The UNAIDS strategy for 2011-2015, "Getting to Zero", commits UNAIDS and its co-sponsors to empowering sex workers, pushing for the repeal of punitive laws, policies, practices and countering stigma and discrimination that block effective HIV responses.<sup>210</sup>

The Independent Commission on AIDS in Asia has also called for the removal of legislative, policing and other barriers that prevent sex workers from organizing collectives and asked donors to remove conditionalities that prevent partners from working with sex worker organizations.<sup>211</sup> Similarly, the Independent Commission on AIDS in the Pacific has called on countries to "undertake progressive legislative reform to repeal legislation that criminalizes high-risk behaviour [identified in the report to include sex work]."<sup>212</sup> The Commission noted

201 CESCR, General Comment 22, UN Doc. E/C.12/GC/22, 2016, para. 49(a).

202 See CESCR, General Comment 22, UN Doc. E/C.12/GC/22, 2016, para. 32.

203 See UNAIDS, *UNAIDS guidance note on HIV and sex work*, Annex 2, 2011, p. 8; see also D. Kulick, "Sex in the new Europe: The criminalization of clients and Swedish fear of penetration", *Anthropological Theory*, 2003, pp. 199-218; NSWP, *Research for sex work*, No. 12, 2010; K. Blankenship and S. Koester, "Criminal law, policing policy, and HIV risk in female street sex workers and injection drug users", *Journal of Law, Medicine and Ethics*, 2002, p. 550 (finding that raids, cautions, arrests, and the use of anti-social behaviour orders (ASBOs) against sex workers in the United Kingdom shift sex workers toward unsafe areas and diminish sex workers' ability to choose clients and negotiate condom use).

204 See K. Shannon, et al, "Global epidemiology of HIV among female sex workers: Influence of structural determinants", *The Lancet*, 2010, p. 10, available at: [dx.doi.org/10.1016/S0140-6736\(14\)60931-4](https://doi.org/10.1016/S0140-6736(14)60931-4). "Kenyan sex workers describe similar experiences to Vancouver—of how criminalisation compromises HIV prevention by rushed transactions due to fear of arrest, bribes, extortion, sexual coercion, and the forgoing of condoms, and the deterrence of sex workers from reporting violence to authorities."

205 See C.M. Lowndes, et al, "Injection drug use, commercial sex work, and the HIV/STI epidemic in the Russian Federation", *Sexually Transmitted Diseases*, 2003, p. 47. See also UNDP, Global Commission, *HIV and the Law: Risks, Rights & Health*, 2012, available at: [www.hivlawcommission.org/index.php/report](http://www.hivlawcommission.org/index.php/report).

206 See K. Blankenship and S. Koester, "Criminal law, policing policy, and HIV risk in female street sex workers and injection drug users", *Journal of Law, Medicine and Ethics*, 2002, p. 550; K. Shannon, et al, "Global epidemiology of HIV among female sex workers: Influence of structural determinants", *The Lancet*, 2010, p. 10, available at: [dx.doi.org/10.1016/S0140-6736\(14\)60931-4](https://doi.org/10.1016/S0140-6736(14)60931-4).

207 See OSF, *Criminalizing condoms: How policing practices put sex workers and HIV services at risk in Kenya, Namibia, Russia, South Africa, the United States, and Zimbabwe*, 2012.

208 See UNDP, Global Commission, *HIV and the Law: Risks, Rights & Health*, 2012, p. 38.

209 K. Shannon, et al, "Global epidemiology of HIV among female sex workers: influence of structural determinants", *The Lancet*, 2010, p. 1.

210 See UNAIDS Strategy 2011-2015, *Getting to Zero*, 2010, p. 7. UNAIDS issued an updated Guidance Note on HIV and Sex Work in 2009 and some additional Annexes to the Guidance Note in 2012.

211 See the Commission on AIDS in Asia, *Redefining AIDS in Asia: Crafting an effective response*, 2008, para. 5.3.

212 See the Commission on AIDS in the Pacific, *Turning the tide: An open strategy for a response to AIDS in the Pacific*, 2008, p. 6.

that “[c]hanging the laws need not imply approval of the behaviour but would signal a greater concern for people.”<sup>213</sup> In 2012, the Global Commission on HIV and the Law<sup>214</sup> recommended the decriminalization of sex work and called for laws and policies to ensure safe working conditions for sex workers.<sup>215</sup>

International human rights standards make it clear that the grounds set out on which discrimination is prohibited are non-exhaustive and that equal treatment is essential for specific population groups (regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, place of residence, economic and social situation) as part of their right to access sexual and reproductive health services without discrimination.<sup>216</sup>

International human rights bodies and experts such as the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health have called on states to ensure (at a minimum) the rights of all sex workers to access sexual health services; that they are free from violence or discrimination, whether by state agents or private persons; and that they enjoy equal protection of the law.<sup>217</sup>

Human rights standards also call for quality health care information to be available, accessible and acceptable, including for transgender and gender non-conforming people. They also require that all those seeking services should be treated with respect and dignity and without discrimination.<sup>218</sup> Some regional standards specifically call for the consideration of the specific needs of transgender people in the development of national health plans, including suicide prevention measures, health surveys, medical curriculums, training courses and materials, and when monitoring and evaluating the quality of health services.<sup>219</sup>

At present, stigma and discrimination in Buenos Aires, as well as the overarching criminalization of sex work, impede sex workers’ access to health services, in violation of their right to health.<sup>220</sup> This access is impeded by stigma and bias expressed by health care providers in the course of providing services and by stigma within society, which compels sex workers to travel outside of their neighbourhoods to locate non-biased services and with the hope that they can obtain services without disclosing their work to their families and communities.

## RIGHT TO ADEQUATE HOUSING

The right to adequate housing regardless of one’s status is enshrined in the ICESCR.<sup>221</sup> Article 11(1) of the ICESCR requires that state parties guarantee the right to adequate housing without discrimination of any kind.<sup>222</sup> This right is central to the enjoyment of a range of other economic, social and cultural rights.<sup>223</sup>

213 See the Commission on AIDS in the Pacific, *Turning the tide: An open strategy for a response to AIDS in the Pacific*, 2008, p. 6.

214 The Global Commission on HIV and the Law was an independent expert body created under UN auspices to develop actionable, evidence-informed and human rights-based recommendations for effective HIV responses that promote and protect the human rights of people living with and most vulnerable to HIV.

215 See UNDP, Global Commission, *HIV and the Law: Risks, Rights & Health*, 2012, p. 99.

216 See CRC, General Comment 15 (the rights of the child to the highest attainable standard of health), UN Doc. CRC/C/GC/15, 2013; CESCR, General Comment 20 (Non-discrimination in economic, social and cultural rights (Article 2, para. 2)), UN Doc. E/C.12/GC/20, 2009, para. 108; Human Rights Committee, *Toonen v Australia*, UN Doc. CCPR/C/50/D/1488/1992, 1994.

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

218 See CESCR, General Comment 14 (the right to the highest attainable standard of health (Article 12 of the Covenant)), UN Doc. E/C.12/2000/4, 2000; CRC, General Comment 15 (the rights of the child to the highest attainable standard of health), UN Doc. CRC/C/GC/15, 2013; CESCR, General Comment 20 (Non-discrimination in economic, social and cultural rights (Article 2, para. 2, of the ICESCR)), UN Doc. E/C.12/GC/20, 2009; CEDAW, General Recommendation 28 (Core obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women), UN Doc. CEDAW/C/20107477GC.2, 2010.

219 See Council of Europe, *Discrimination on grounds of sexual orientation and gender identity in Europe* (2nd edition), 2011.

220 See S.E. Day and H. Ward, “British policy makes sex workers vulnerable”, *British Medical Journal*, 2007; and Prostitutes Empowerment, Education and Resource Society, C. Benoit and A. Millar, *Dispelling Myths and Understanding Realities: Working Conditions, Health Status, and Exiting Experiences of Sex Workers*, 2001, available at:

[www.understandingsexwork.com/sites/default/files/uploads/Dispelling%20Myths%20and%20Understanding%20Realities%20Working%20Conditions%20Health%20Status%20and%20Exiting%20Experiences%20of%20Sex%20Workers.pdf](http://www.understandingsexwork.com/sites/default/files/uploads/Dispelling%20Myths%20and%20Understanding%20Realities%20Working%20Conditions%20Health%20Status%20and%20Exiting%20Experiences%20of%20Sex%20Workers.pdf).

221 CESCR, Article 11(1).

222 CESCR, Article 11(1).

223 CESCR, General Comment 4 (The right to adequate housing), UN Doc. E/1992/23, annex III at 114, 1991, para. 1.

A core component of the right to adequate housing is legal security of tenure or the principle that all people should be guaranteed “legal protection against forced eviction, harassment and other threats.”<sup>224</sup> Furthermore, governments should “take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups.”<sup>225</sup>

Another core component of the right to adequate housing is the principle of accessibility whereby “tenants should be protected by appropriate means against unreasonable rent levels or rent increases.”<sup>226</sup> To fulfil its international obligations related to the right to adequate housing the government must adopt all appropriate legislative, administrative, budgetary, judicial, promotional and other measures required to realize the right to adequate housing for all; prioritizing the most disadvantaged groups when allocating resources.<sup>227</sup>

Stigma against and presumptions of criminality imposed on sex workers in Buenos Aires not only renders them vulnerable to extremely high and inflated rent, but also to harassment by landlords (particularly transgender sex workers). Moreover, sex workers cannot seek state protection against discrimination and harassment by landlords when trying to access their right to adequate housing. As such, sex workers are vulnerable to violations of their right to adequate housing (including homelessness).

## RIGHT TO JUST AND FAVOURABLE CONDITIONS OF WORK

States have an obligation to ensure that everyone is able to access just and favourable conditions of work and is protected against exploitation, including people who are self-employed or who make their living in informal settings.<sup>228</sup> There have been some moves at all levels – international<sup>229</sup>, regional<sup>230</sup> and national<sup>231</sup> – to recognize that sex workers must be protected with relevant labour and employment guarantees even in the absence of explicit recognition by the state in which they are undertaking work (even in some cases where sex work remains criminalized). Notably, the ILO decided in 2010, that its recommendation on HIV and the World of Work (Recommendation 200) should apply to all workers, both formal and informal and that this should include sex workers.<sup>232</sup>

As many sex workers in Buenos Aires are migrants (both documented and undocumented), their rights are affected by the criminal legal framework and the government’s failure to ensure safer working conditions. Notably, some migrants in Buenos Aires sell sex while they are waiting for their residency permits, which they have to obtain before they can apply for legal employment. This often entails lengthy administrative processes and delays. During this time, their rights and lives are in a particularly precarious position because of their migrant status and their involvement in sex work (criminalized work).

More broadly, the right to just and favourable conditions of work is also negatively impacted by the criminal legal framework in Buenos Aires as it punishes sex workers for engaging in work that is in practice criminalized in all circumstances. Working at the margins or outside the law reduces sex workers’ ability to protect themselves in the course of their work and to advocate for better work conditions. The current criminal legal framework actually leads some to sell sex in more precarious, less safe conditions and subjects them to violence, to the detriment of their lives and health.

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224 CESCR, General Comment 4 (The right to adequate housing), UN Doc. E/1992/23, annex III at 114, 1991, para. 8(a).

225 CESCR, General Comment 4 (The right to adequate housing), UN Doc. E/1992/23, annex III at 114, 1991, para. 8(a).

226 CESCR, General Comment 4 (The right to adequate housing), UN Doc. E/1992/23, annex III at 114, 1991, para. 8(c).

227 CESCR, Article 2(1); CESCR, General Comment 4 (The right to adequate housing), UN Doc. E/1992/23, annex III at 114, 1991, paras. 12, 14 and 15.

228 ICESCR, Article 7; see also Protocol of San Salvador, Articles 6 and 7 (Article 7, in particular, highlights the need for fair, equitable and satisfactory conditions in one’s exercise of work); Inter-American Charter of Social Guarantees, IX International Conference of American, 1948 (sets forth the minimum rights workers must enjoy in the American states, including fair working conditions, without prejudice to the fact that the laws of each state may extend such rights or recognize others that are more favourable).

229 See ILO, *Report of the Committee on HIV/AIDS, HIV and AIDS and the world of work (Provisional Record 13 (Rev.))*, 2010, paras. 192-210.

230 In 2001, the European Court of Justice ruled that a group of Polish and Czech women had the right to engage in sex work in the Netherlands under treaties between the European Union and its applicant countries. The judges said that “prostitutes” could work in any European Union country where selling sex was tolerated as long as they were genuinely self-employed, had the means to set up their business and had a reasonable chance of success. See *Jany and others v Staatssecretaris van Justitie*, Case C-268/99, European Court of Justice, 2001.

231 See *Kylie v Commission for Conciliation, Mediation and Arbitration & Ors*, C52/07, C52/07, ZALC 86, 2008 (in which the South African Labour Appeals Court ruled that a sex worker was entitled to protection against unfair dismissal even though sex work remained criminalized). See also the minority judgment of Sachs and O’Regan *JJ in S v Jordan and others*, 2002 (6) SA 642 (CC), para 74.

232 See ILO, *Report of the Committee on HIV/AIDS, HIV/AIDS and the world of work (Provisional Record 13 (Rev.))*, 2010, paras. 192-210.

## RIGHT TO PRIVACY

Laws that criminalize consensual adult sex in private violate the right to privacy.<sup>233</sup> Everyone is entitled to respect for their privacy and to enjoy this right without fear and discrimination. The right to privacy means that individuals may not be subject to arbitrary or unlawful interference with their privacy and should enjoy protection of the law in this respect.

The rights to privacy and bodily integrity have been applied to sexuality and individuals' autonomous decisions with regard to their bodies.<sup>234</sup> For example, in *Toonen v Australia*, the Human Rights Committee confirmed that laws that interfered with adult consensual sex in private breached the ICCPR, in particular Article 17 (right to privacy). While the Committee considered a criminal "sodomy" law in this communication, it did not limit its reasoning to this specific type of criminal provision. The Committee's analysis and reasoning is applicable to all laws prohibiting consensual adult sex in private, likely including private consensual sex work. To justify such laws which infringe on individuals' human rights, governments must demonstrate that the law has a legitimate purpose, is appropriate to meet that purpose, provided by law, necessary for and proportionate to the legitimate aim sought, and not discriminatory.<sup>235</sup>

Concepts of autonomy and liberty are also closely connected with privacy rights. The Inter-American Court of Human Rights has confirmed that the right to personal autonomy is protected under the right to privacy enshrined in Article 11 of the American Convention. The right to personal autonomy guarantees individuals' freedom to run their own lives and the means to do so.<sup>236</sup>

The Inter-American Court of Human Rights has also noted that the concept of liberty protected by the American Convention is linked to the right of every human being to self-determination and to freely choose the options and circumstances that give meaning to their existence, according to their own choices and convictions.<sup>237</sup> The effective exercise of the right to privacy is essential for the exercise of personal autonomy around the future course of relevant events for a person's quality of life.<sup>238</sup> Penalizing sex workers in Buenos Aires for engaging in private consensual sex directly violates the rights to privacy and to personal autonomy. While the laws being enforced against sex workers working in apartments in part have a legitimate purpose, in particular to prevent human trafficking, they are overbroad and have a discriminatory impact on sex workers, in violation of their human rights.

## RIGHT TO FREEDOM OF EXPRESSION

The legal prohibition of advertising for sex work under Presidential Decree 936/2011 on the Comprehensive Protection of Women<sup>239</sup> affects the rights to freedom of expression and to security of person. Above all, there is clear evidence to suggest that this likely overbroad provision that penalizes certain advertising around sex work, impacts negatively on sex workers' ability to sell sex indoors in a safer manner and to protect themselves from harm.

Sex workers have the same right to freedom of expression as others. This includes the right to communicate, dress or otherwise present one's self in a particular way without repercussions, such as being targeted by the authorities in crackdowns on street-based sex work and for apartment raids. The right to freedom of expression further includes the "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print".<sup>240</sup> This may also include commercial advertising.<sup>241</sup> The Human

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233 See UDHR, Article 12, ICCPR, Article 17; Human Rights Committee, *Toonen v Australia*, UN Doc. CCPR/C/50/D/488/1992, 1994; American Convention, Article 11; American Declaration of Human Rights, Article V.

234 ICCPR, Article 17(1)(2); CRC, Article 16(1)(2); Convention on the Rights of Persons with Disabilities, Article 22(1); Human Rights Committee, *K.L. v Peru*, UN Doc. CCPR/C/85/D/1153/2003, 2005, paras. 6.4 and 6.5; CEDAW, General Recommendation 24 (Article 12: Women and health), UN Doc. A/54/38/Rev.1, 1999.

235 See ICCPR, Articles 18, 19, 21 and 22; ICESCR, Article 4; Protocol of San Salvador, Article 5. The content of these requirements has been developed extensively by independent experts. See, for example, the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, UN Doc. E/CN.4/1985/4, annex, 1985; Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, UN Doc. E/CN.4/1987/17, annex, 1987. See also UN Human Rights Council, Report of the Special Rapporteur on extreme poverty and human rights, UN Doc. A/66/265, 2011, para. 11.

236 See Inter-American Court of Human Rights, *Atala Riffo and girls v Chile*, 2012, para. 135.

237 See Inter-American Court of Human Rights, *Atala Riffo and girls v Chile*, 2012, para. 135.

238 See Inter-American Court of Human Rights, *Artavia Murillo and others ("In Vitro Fertilization") v Costa Rica*, 2012, para. 143.

239 Presidential Decree 936/2011 on the Comprehensive Protection of Women, Article 1.

240 ICCPR, Article 19; American Convention, Article 13.

Rights Committee has stated that: “the commercial element in an expression taking the form of outdoor advertising cannot have the effect of removing this expression from the scope of protected freedoms.”<sup>242</sup>

Laws against communication around or advertising for sex work such as Presidential Decree 936/2011, that have an impact on the safety and other rights of sex workers, may violate their right to freedom of expression, as well as their right to security of person. International human rights law allows only for limited restrictions on the right to freedom of expression. These restrictions must be set out in law, may only be imposed for one of the purposes permitted under international law,<sup>243</sup> and must conform to strict tests of necessity and proportionality with regard to the intended purpose.<sup>244</sup> To that end, any legitimate aim of such laws must be weighed against the impact on the most marginalized sex workers (especially street-based sex workers) and the risks they face, and not require them to work in ways which compromise their safety.

In addressing permissible restrictions on the right to freedom of expression, the Human Rights Committee has confirmed that such restrictions cannot be overbroad. Specifically, “they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; [and] they must be proportionate to the interest to be protected”.<sup>245</sup> Along those lines, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has affirmed that any limitation must not be more restrictive than required to achieve their purpose, must be periodically reviewed for its continued relevance and “must be consistent with other rights recognized in the [ICCPR] and in other international human rights instruments, as well as with the fundamental principles of universality, interdependence, equality and non-discrimination as to race, colour, sex, language, religion, political or other belief, national or social origin, property, birth or any other status.”<sup>246</sup>

While the stated aims of Presidential Decree 936/2011 – to prevent human trafficking and discrimination against women – are legitimate, it is unclear why such a total prohibition on advertising as set out in the regulation is necessary for that purpose. As such, it may be an overbroad restriction on the right to freedom of expression. There is also a lack of evidence of the effectiveness of this restriction in achieving its stated aims; and indeed it seems more likely that its broader purpose is to restrict the market for sex work generally. Even if the Decree was shown to reduce human trafficking and prevent discrimination against women, this would need to be weighed against the impact of the provision on increasing risk of violence against sex workers by compelling them to sell sex in more precarious, less safe conditions.

## RIGHT TO EQUALITY AND THE PRINCIPLE OF NON-DISCRIMINATION

While criminalizing sex work violates a range of human rights, as set out in this chapter, it can also create a permissive environment for discrimination, harassment and intimidation of sex workers, in violation of the right to equality and the principle of non-discrimination,<sup>247</sup> a fundamental principle of international human rights law.<sup>248</sup> Additionally, a range of general laws can be applied in a way that discriminates against sex workers, including for example, immigration laws and policies, family laws, and administrative laws and regulations, among others.

The principle of non-discrimination is fundamental to the realization of all human rights. All of the core international human rights treaties reiterate this general principle, including the Universal Declaration of

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<sup>241</sup> Human Rights Committee, General Comment 34 (Article 19: Freedoms of opinion and expression), UN Doc. CCPR/C/GC/34, 2011, para. 11

<sup>242</sup> Human Rights Committee, *Ballantyne, Davidson and McIntyre v Canada*, UN Docs. CCPR/C/47/D/359/1989 and 385/1989/Rev.1, 1990, para. 11.3.

<sup>243</sup> The right to freedom of expression can only be restricted if this is demonstrably necessary and proportionate for any of the following reasons: to protect the rights or reputations of others, national security or public order, or public health or morals.

<sup>244</sup> See Human Rights Committee, General Comment 34 (Article 19: freedoms of opinion and expression), UN Doc. CCPR/C/GC/34, 2011, paras. 21-36.

<sup>245</sup> See Human Rights Committee, General Comment 34 (Article 19: freedoms of opinion and expression), UN Doc. CCPR/C/GC/34, 2011, para. 34 (citing Human Rights Committee, General Comment 27 (freedom of movement (Article 12)), UN Doc. CCPR/C/21/Rev.1/Add.9, 1999, para. 14).

<sup>246</sup> Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue (UN Doc. A/HRC/14/23), 2010, para. 79.

<sup>247</sup> ICCPR, Articles 2 and 26; and American Convention, Articles 1 and 24.

<sup>248</sup> See Charter of the United Nations, Articles 1(3) and 55; Universal Declaration of Human Rights, Article 2.

Human Rights.<sup>249</sup> In short, every person is entitled to the full range of human rights without distinction of any kind, such as on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>250</sup>

Under international law, states have an obligation to refrain from having laws that are discriminatory and whose impact could be discriminatory with regard to certain groups or categories of individuals, even when it is not possible to prove a discriminatory intention. States must also prohibit policies and practices that are deliberately discriminatory.

The Inter-American Court of Human Rights has considered that a violation of the right to equality and non-discrimination also occurs in cases of indirect discrimination reflected in the disproportionate impact of norms, actions, policies or other measures that, even when their formulation is or appears to be neutral, or their scope is general and undifferentiated, have negative effects on certain vulnerable groups.<sup>251</sup>

The impact of laws criminalizing sex work in Buenos Aires violates sex workers' right to equality and the principle of non-discrimination. These criminal laws tend to be disproportionately enforced against women, transgender people and migrants on the basis of their sex, gender, gender identity and expression and/or migrant status—people who are often already facing multiple levels of discrimination.

## EQUAL PROTECTION UNDER THE LAW

States have an obligation to ensure that people are treated equally under the law. Article 26 of the ICCPR, for example, states: "All persons are equal before the law and are entitled without discrimination to the equal protection of the law."<sup>252</sup> By becoming party to international and regional human rights treaties, Argentina has undertaken to ensure the equal rights of all people within its jurisdiction.

At present, the criminal legal framework around sex work in Buenos Aires has a disproportionate impact on those who engage in consensual but non-normative, stigmatized sex. Transgender sex workers, in particular, are disproportionately affected by the enforcement of Article 81 (prohibiting the "ostentatious" offer of and demand for sex in unauthorized places). Human rights experts and bodies are increasingly acknowledging that gender stereotypes underlie discrimination, harassment and violence against transgender people.<sup>253</sup> The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has stated that:

**"States fail in their duty to prevent torture and ill-treatment whenever their laws, policies or practices perpetuate harmful gender stereotypes in a manner that enables or authorizes, explicitly or implicitly, prohibited acts to be performed with impunity. States are complicit in violence against women and lesbian, gay, bisexual and transgender persons whenever they create and implement discriminatory laws that trap them in abusive circumstances."**<sup>254</sup>

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249 See Universal Declaration of Human Rights, Article 2; ICCPR, Article 26; ICESCR, Article 2; CERD, Article 5; CEDAW, Article 2; CRC, Article 2; CRPD, Article 4; Migrant's Rights Convention, Article 7, between them comprehensively prohibit discrimination on all grounds, including age, race, caste, ethnicity, disability, sexual orientation, gender identity, marital status, and migrant status. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) requires governments to address specifically discrimination against women and guarantee substantive gender equality in all areas.

250 Universal Declaration of Human Rights, Article 2.

251 See Inter-American Court of Human Rights, *Nadege Dorzema and others v Dominican Republic*, 2012, para. 235.

252 ICCPR, Article 26.

253 UN Commission on Human Rights, Oral Statement by Radhika Coomaraswamy, UN Special Rapporteur on violence against women, its causes and consequences, 2002. ("Gender-based violence is also related to the social construct of what it means to be either male or female. When a person deviates from what is considered 'normal' behaviour they are targeted for violence. This is particularly acute when combined with discrimination on the basis of sexual orientation or change of gender identity. Violence against sexual minorities is on the increase and it is important that we take up the challenge of what may be called the last frontier of human rights.") See also UN Commission on Human Rights, Report of the Special Rapporteur on violence against women, its causes and consequences, Radhika Coomaraswamy, (Integration of the human rights of women and the gender perspective – violence against women), UN Doc. E/CN.4/2002/83, 2002, paras 27-28; Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, addendum – Mission to Turkey, UN Doc. A/HRC/4/34/Add.2, 2007, para. 19; Inter-American Commission of Human Rights and Organization of American States, *Violencia contra personas lesbianas, gays, bisexuales, trans e intersex en América*, OAS/Ser.L/V/II.rev.1, 2015, available at: [www.oas.org/es/cidh/informes/pdfs/ViolenciaPersonasLGBTI.pdf](http://www.oas.org/es/cidh/informes/pdfs/ViolenciaPersonasLGBTI.pdf) (for an overview of the report in English, see: [www.oas.org/en/iachr/media\\_center/PReleases/2015/143.asp](http://www.oas.org/en/iachr/media_center/PReleases/2015/143.asp)). The UN Special Rapporteur on torture has noted that "sexual minorities are disproportionately subjected to torture and other forms of ill-treatment, because they fail to conform to socially constructed gender expectations. Indeed, discrimination on grounds of sexual orientation or gender identity may often contribute to the process of the dehumanization of the victim, which is often a necessary condition for torture and ill-treatment to take place." Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (Question of torture and other cruel, inhuman or degrading treatment or punishment), UN Doc. A/56/156, 2001, para. 19.

254 HRC, Report of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/HRC/31/57, 2016, para. 10.



The right of migrants in Buenos Aires to equal protection under the law is also violated. The Migrant Workers' Convention sets out a wide range of human rights to which all migrant workers, regardless of their immigration status, are entitled.<sup>255</sup> The Convention calls upon state parties to protect the fundamental rights of all migrant workers and to ensure that they and their families are accorded the same treatment as nationals in relation to their conditions of employment.<sup>256</sup> Similarly, ILO Convention No. 97 (migration and employment convention, revised) requires states to put migrants who are lawfully residing within their territory on the same footing as their own nationals in applying labour-related laws and regulations, without discrimination on the grounds of nationality, race, religion or sex.<sup>257</sup> As highlighted earlier in this report, many sex workers in Buenos Aires are selling sex as a means to earn money while undertaking an often lengthy administrative process to obtain a residency card, which is required to apply for legal work. With few other options to support themselves, migrants are placed in precarious positions where they may face violence and abuse, but cannot seek police protection, due to the criminalization of their work.

## ARGENTINA'S OBLIGATION TO COMBAT STEREOTYPES BASED ON SEX AND GENDER

Selling sex is a highly stigmatized activity in many countries in the world. The act of selling sex has historically been attributed shame in Western culture in particular<sup>258</sup> and associated with personal degradation, sexual deviancy, the spread of sexually transmitted infections and moral and social decay. This deep-rooted stigma intersects with and compounds harmful stereotypes against women and marginalized groups involved in sex work on the basis of their perceived failure to conform to social and gender-based norms of sexual behavior.

Women who sell sex are frequently subjected to harmful gender stereotypes on account of being perceived to transgress traditional notions of what is acceptable sexual behavior for women.<sup>259</sup> These tropes range from that of the "fallen women/whore" who in failing to control her own sexuality has spoiled her identity<sup>260</sup> and poses a risk to "decent" society, to the characterization of the "prostitute" as a damaged woman who cannot be in control of her own mind in selling sex and is lacking any agency or rational consciousness.<sup>261</sup> Stigmatization of sex work is also frequently informed by and enmeshed with racist and colonialist notions of the racialized, sexualized "Other" and/or heteronormative prejudices, which characterize Indigenous communities, migrants, ethnic or racial minorities and LGBTI people as overtly sexualized and requiring containment, rescue or rehabilitation by the colonial power<sup>262</sup> white and/or hetero-patriarchal majority.<sup>263</sup>

Criminal laws which prohibit sex work serve as both an expression of this stigma, as they are the manifestation of society's disapproval of certain conduct, and as a driver of ongoing stigmatization and stereotyping as they confirm and compound the perception of people who undertake, or are suspected of doing, sex work as criminal and unwanted.<sup>264</sup>

International human rights law requires states to combat stereotypes and stereotyping, including gender stereotypes and stereotyping.<sup>265</sup> For example, Article 5 of CEDAW explicitly calls upon states to confront stereotyping by requiring state parties to take "all appropriate measures" to "modify the social and cultural patterns of conduct of men and women" in an effort to eliminate practices that "are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women."<sup>266</sup> Article 5 covers both gender stereotypes that are based on a view of women as being inferior to men and sex-role stereotypes.<sup>267</sup> Additionally, Article 2(f) reinforces Article 5 by requiring state parties to take "all appropriate

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255 See Migrant Workers' Convention, Articles 8-24.

256 See Migrant Workers' Convention, Articles 25, 26, 27, 28, 30.

257 See ILO Convention 97 (Migration for Employment Convention (Revised)), 1949, Article 6.

258 See C.A. Mgbako, *To live freely in this world: Sex worker activism in Africa*, 2016, p. 50.

259 See R. Fassinger and J. Arseneau, "Diverse women's sexualities", in F. Denmark, P. Florence, and A. Paludi, (eds.) *Psychology of Women: A Handbook of Issues and Theories*, 2008.

260 See E. Goffman, *Stigma: Notes on the management of spoiled identity*, 1963.

261 See R. Weitzer, "The mythology of prostitution: Advocacy research and public policy", *Sexuality Research and Social Policy*, 2010.

262 See C.A. Mgbako, *To live freely in this world: Sex worker activism in Africa*, 2016, p. 50.

263 See R. Kapur, "'Faith' and the 'good' liberal: The construction female sexual subjectivity in anti- trafficking legal discourse", *Sexuality and the Law, Feminist Engagements*, 2007, pp. 223-258; L.M. Augstin, *Sex at the margins: Migration, labour markets and the rescue industry*, 2007.

264 See R. Fassinger and J. Arseneau, "Diverse women's sexualities", in F. Denmark, P. Florence, and A. Paludi, (eds.) *Psychology of Women: A Handbook of Issues and Theories*, 2008.

265 See CEDAW, Article 5; the Convention of Belém do Pará, Articles 6 and 8.

266 CEDAW, Article 5.

267 CEDAW, Article 5; see also OHCHR, Gender stereotyping as a human rights violation, 2013, p. 23.

measures” to “modify or abolish ... laws, regulations, customs and practices which constitute discriminat[ion] against women.”<sup>268</sup>

The CEDAW Committee has further affirmed the importance of state parties’ obligations around stereotyping in its General Recommendation 25 (temporary special measures) by identifying the requirement to “address prevailing gender relations and the persistence of gender-based stereotypes” as one of three categories of obligations central to the achievement of substantive equality.<sup>269</sup>

The CEDAW Committee has also confirmed that the CEDAW’s protections, and states’ related obligations, apply not only to cisgender women, but also to transgender women, particularly given the specific forms of gendered discrimination they face.<sup>270</sup> While transgender people are not explicitly referenced in CEDAW, the CEDAW Committee has affirmed through its analysis of intersectional discrimination in General Recommendation 28 that gender identity works with sex to create a prohibited form of gendered discrimination. As such, CEDAW prohibits the full range of gender-based discrimination.<sup>271</sup> Along these lines, states’ overarching obligations to combat gender stereotypes specifically extend to transgender and other gender non-conforming people and to confirm that culture and tradition cannot be used to violate or limit human rights.<sup>272</sup>

The Human Rights Committee has also reaffirmed the notion that: “Inequality in the enjoyment of rights by women throughout the world is deeply embedded in tradition, history and culture, including religious attitudes.”<sup>273</sup> To that end, this Committee has called on state parties to “ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women’s ... equal enjoyment of all Covenant rights.”<sup>274</sup>

The Convention of Belém do Pará also requires state parties in the Americas to implement programmes to modify the social and cultural patterns of conduct of men and women and to counteract the stereotyped roles of men and women.<sup>275</sup> Similarly, the Inter-American Court of Human Rights has determined that the persistent socially dominated stereotypes that subordinate women, either implicitly or explicitly – a situation that is exacerbated when the stereotypes are reflected in laws, policies and practices – are contrary to the American Convention.<sup>276</sup>

In the end, the ongoing existence and enforcement of laws in Buenos Aires that punish non-normative sex between consenting adults indicate the Buenos Aires and Argentine authorities are not fully complying with their obligations to combat sex and gender stereotyping.

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268 OHCHR, Gender stereotyping as a human rights violation, 2014, p. 24.

269 CEDAW, General Recommendation 25 (Article 4, paragraph 1, temporary special measures), UN Doc. A/59/38, 2004, para. 7; see also CEDAW, *R.K.B. v Turkey*, UN Doc. CEDAW/C/51/D/28/2010, 2012, para. 8.8.

270 See CEDAW, General Recommendation 28 (core obligations of States Parties under Article 2 of CEDAW), UN Doc. CEDAW/C/2010/47/GC.2, 2010, paras 18 and 26; CEDAW, General Recommendation 26 (women migrant workers), UN Doc. CEDAW/C/2009/WP.1/R, 2008, para. 14.

271 See CEDAW, General Recommendation 28, UN Doc. CEDAW/C/2010/47/GC.2, 2010, paras 18 and 26; CEDAW, General Recommendation 26 (women migrant workers), UN Doc. CEDAW/C/2009/WP.1/R, 2008, para. 14.

272 See Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights (discrimination and violence against individuals based on their sexual orientation and gender identity), UN Doc. A/HRC/19/41, 2013, available at:

[www.ohchr.org/Documents/Issues/Discrimination/A.HRC.19.41\\_English.pdf](http://www.ohchr.org/Documents/Issues/Discrimination/A.HRC.19.41_English.pdf); Human Rights Council, Summary of information from States Members of the United Nations and other relevant stakeholders on best practices in the application of traditional values while promoting and protecting human rights and upholding human dignity, UN Doc. A/HRC/24/22, 2013, available at:

[www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-22\\_en.pdf](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-22_en.pdf); HRC, Report of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/HRC/31/57, 2016, paras. 10, 68, 72(g).

273 See Human Rights Committee, General Comment 28 (Equality of rights between men and women (Article 3)), UN Doc. CCPR/C/21/Rev.1/Add.10, 2000, para. 5.

274 See Human Rights Committee, General Comment 28 (equality of rights between men and women (Article 3)), UN Doc. CCPR/C/21/Rev.1/Add.10, 2000, para. 5.

275 Convention of Belém do Pará, Article 8.

276 Inter-American Court of Human Rights, *Gonzalez et al. ("Cotton Field") v Mexico*, 2009, para. 401.

# 4. CONCLUSIONS AND RECOMMENDATIONS

The experiences and situations of those who sell sex in Argentina vary greatly. However, all face significant societal stigma and discrimination, in part due to the fact that in effect they are largely criminalized and/or presumed to be engaging in criminal activity.<sup>277</sup> Sex workers are among the most marginalized and discriminated people in Buenos Aires.<sup>278</sup>

The human rights abuses and violations inflicted on sex workers in Buenos Aires are rooted in the existence and enforcement of a range of federal and local laws that criminalize and otherwise penalize activities related to sex work, in effect punishing most people in sex work. In addition, the Federal 2012 Anti-trafficking Law, which is notably vague and overly broad, has resulted in the conflation of human trafficking into the sex sector and consensual sex work. This in turn has led to violent and coercive raids by law enforcement officials on sex workers' homes and places of work. Under the current legal framework, both indoor and street-based sex workers face violence, abuses and extortion by police, state officials and members of the public. Stigma and discrimination also act as obstacles to sex workers' access to their rights to health and adequate housing.

Article 81 lies at the centre of the criminalization that street-based sex workers face. Sex workers are often profiled by police under this provision; clients are rarely, if ever, charged under the law. As noted by state officials and cisgender and transgender sex workers, transgender people have been disproportionately targeted under Article 81. Despite reforms over the years to the law on street-based sex work, people working on the streets still feel unable to report violence and seek protection from police, mainly due to the existence of vague and overbroad legislation that continues to be used to punish and abuse them.

Those selling sex indoors are primarily impacted by "code inspections" of their apartments, laws criminalizing advertising for sex work and the Federal Anti-trafficking Law. The recent expansion of the Federal Anti-trafficking Law in 2012, in particular, has led to an increase in the number of raids on apartments where commercial sex (or human trafficking) is suspected. These raids are often protracted, traumatizing and violent.

The enforcement of the different provisions around sex work and the institutionalization of a prohibitionist perspective in many government bodies have resulted in a general conflation of human trafficking with consensual sex work. Sex workers' claims of consent are not taken into account because the law largely prohibits this and because of the absence of clear parameters for police and prosecutors on how to distinguish between trafficking victims and those who choose to sell sex.

In the end, criminalization of a range of activities related to sex work has created a legal and social environment that in effect criminalizes all sex work in Buenos Aires. This situation has also enabled human rights abuses against sex workers by police, state officials, medical providers and members of the public to flourish.

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277 Interviews with Melissa, a transgender sex worker and teacher; Laura, a street-based sex worker; Georgina Orellano, head of AMMAR Nacional and an indoor sex worker; and Cecilia,\* a former street-based sex worker and trafficking victim, September 2014.

278 See UN Office of the High Commissioner for Human Rights, Programa de las Naciones Unidas para el Desarrollo, Proyecto ARG/02/024, 'Hacia un plan nacional contra la discriminación, la discriminación en Argentina: Diagnóstico y propuestas', 2005, p. 156.

In order to bring both laws and practice into line with human rights law and standards and to protect the human rights of sex workers in Buenos Aires, Amnesty International calls on the authorities to implement the following recommendations.

## RECOMMENDATIONS

### AMNESTY INTERNATIONAL CALLS ON THE ARGENTINE AND BUENOS AIRES AUTHORITIES TO:

- Repeal or amend all laws that are used to criminalize or otherwise penalize, either directly or indirectly, adult consensual sex work.
- Refocus laws away from catch-all offences that criminalize most or all aspects of sex work and towards laws and policies that provide protection for sex workers' health and safety and against acts of exploitation, which prevent trafficking and prevent the exploitation of children in commercial sex.
- Ensure that all allegations and reports of human rights abuses against sex workers are promptly, impartially and efficiently investigated by competent authorities and where sufficient admissible evidence is obtained, suspected perpetrators are prosecuted in proceedings that meet international standards of fairness.
- Release, immediately and unconditionally, all those who have been detained or convicted solely for actual or alleged consensual sex work, as opposed to those convicted of offences involving exploitation or abuse, and clear their criminal record of any such charges.
- Introduce ongoing training for all levels of police, prosecutors, judges and court officials on human rights laws and standards related to sex work, sexual orientation and gender identity, and on effective, impartial investigation and prosecution, without discrimination, of violent attacks.
- Adopt and implement – in consultation with sex workers, human trafficking victims and others currently or previously involved in commercial sex – effective programmes, laws and policies, in line with obligations under international human rights law, to ensure no one is coerced into selling sex and anyone can stop selling sex if they choose.
- Develop and implement support programmes, in consultation with sex workers, including through social welfare, education and training and/or alternative employment, to ensure that sex workers can leave the sex industry if and when they choose, while guaranteeing that sex workers are not compelled to participate in such programmes through the use of stigmatization or threat of sanctions.
- Ensure equal access to health services, adequate housing, education, social security, child or spousal maintenance or any government programmes, including for sex workers, irrespective of whether they have engaged in sex work (past or present) and/or because of their sexual orientation or gender identity.
- Implement training and guidelines for public and private health care providers and administrators highlighting their obligation to treat all patients, including sex workers, with respect and without discrimination based on sex, sexual orientation, gender identity or HIV status, and to protect the right to privacy.
- Improve sex workers' access to sexual and reproductive health, HIV and information and services and develop and implement programmes to enable sex workers to exercise their sexual and reproductive rights.
- Ensure that sex workers enjoy equal protection under the law and are not excluded from the application of labour, health and safety or other laws or discriminated against in such application.
- Develop specialized social service programmes to ensure transgender people have access to primary and secondary education, adequate housing and protection from violence, and create and implement an accountability mechanism that enables transgender people a means to seek protection from and redress for institutional, family and community violence.

- Develop specialized social service programmes to ensure cisgender women have access to primary and secondary education, a range of means to earn a living and protection from violence, and create and implement an accountability mechanism that enables cisgender women to seek protection from and redress for institutional, family and community violence.
- Ensure implementation of the Gender Identity Law which requires access to comprehensive health care for transgender people, and adopt and enforce existing laws and policies that protect transgender people from discrimination in access to education and adequate housing.
- Enable migrants to engage in legal work upon arrival in Argentina, without delay, while they are undertaking the administrative process to establish legal residence.

#### **AMNESTY INTERNATIONAL CALLS ON THE ARGENTINE AUTHORITIES TO:**

- Amend the Federal Anti-trafficking Law to clearly define “exploitation” as distinct from simply the acts of selling and purchasing sex and related non-violent, non-coercive activities, in part, through reincorporating a “means” element (the requirement that the act is conducted with force, fraud or coercion) into the law to distinguish between human trafficking and generally exploitative conditions, in line with the UN Trafficking Protocol.
- Halt the enforcement of laws and policies used to punish mere engagement between sex workers and “third parties”, while ensuring protection for sex workers who are abused and exploited in the context of sex work.
- Refrain from conducting violent raids of apartments where the sale of sex is suspected of taking place, unless there is evidence to confirm reasonable suspicion of human trafficking. Ensure that all apartment searches are conducted in accordance with the law particularly that a judicial warrant is obtained beforehand.
- Ensure the voices of sex workers are taken into account in determining whether they are victims of human trafficking for purposes of sexual exploitation.
- Ensure laws, policies and practices refrain from conflating adult consensual sex work with human trafficking into the sex sector.
- Develop parameters, drawing upon those used in the labour trafficking context, to distinguish between exploitation generally and human trafficking into the sex sector.
- Effectively investigate and punish human trafficking and provide adequate treatment and reparations to victims.
- Amend overbroad restrictions on advertising around sex work to permit sex workers to advertise to sell sex in a safer manner, which may be subject to legitimate, necessary and proportionate restrictions.

#### **AMNESTY INTERNATIONAL CALLS ON THE BUENOS AIRES AUTHORITIES TO:**

- Halt law enforcement practices that rely on profiling individuals on the street for sex work based on their dress and appearance and/or past engagement in sex work.
- Halt the practice of “code inspections” conducted by state officials on premises where sex work is suspected of taking place until such time as sex workers are permitted to register their businesses, and refrain from discriminatory application of such inspections against sex workers.
- Ensure that unnecessary use of force, extortion and harassment by police and other law enforcement officials, including as part of “code inspections” and apartment raids, are expressly prohibited and independently investigated by the authorities. Where appropriate, officers should face criminal charges in addition to disciplinary action.
- Develop and implement a public campaign to confront and reduce stigma and discrimination against transgender people, with the aim of improving transgender individuals’ inclusion in society and access to education, health services and the formal labour market.

### **AMNESTY INTERNATIONAL CALLS ON UN AGENCIES AND RELEVANT DONOR COUNTRIES TO:**

- Ensure that technical and financial assistance to the law and justice sector, including the police, includes human rights training on the appropriate use of force, arbitrary arrest and detention, torture and other ill treatment (including the physical and sexual abuse of persons during investigations and in custody) and how to handle complaints of gender-based violence on the basis of sexual orientation, gender and gender identity appropriately and without discrimination, in line with international standards.
- Request that the Buenos Aires and Argentine governments investigate all allegations of human rights violations against sex workers by police and military officers through an independent and impartial tribunal.
- Ensure that funding is targeted at addressing gender inequality and discrimination, aiming towards increasing cisgender women and transgender individuals' access to education and providing vocational and other training to ensure meaningful and viable employment of cisgender women and transgender people across all professions.
- Ensure that law and justice sector training distinguishes between sexual violence, exploitation, human trafficking and consensual adult sex work, recognizes that sex workers are particularly vulnerable to human rights abuses and ensures that sex workers are not punished under national laws, policies and practices.
- Ensure that funding and support for anti-trafficking work does not call for overbroad measures that can lead to human rights abuses against sex workers.
- Support local human rights organizations and sex workers' organizations that are assisting sex workers on a voluntary, participatory basis.

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# “WHAT I’M DOING IS NOT A CRIME”

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

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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