# **Anex 2**

**Regional comparative approach**

This document moves forward to a comparative approach on regional legislation on the matter. Due to its importance to the subject, the approach will be divided in (1) comparative European law, and (2) comparative American law, as follows.

## **Comparative European law**

Prostitution has been a topic of discussion in various countries around the world. In each country, considering its sovereignty, laws have been chosen that may follow one of four positions studied by social theorists. The common points of these positions are, first, the illegality or legality of engaging in prostitution; second, the expression of the free or coerced will of those who practice it; and third, the role of authorities, individuals engaged in prostitution, and those who promote it.

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| **Model** | **Principal characteristics** | **States** |
| Criminalization | The state criminalizes prostitution by deeming it an offense and prohibiting both the exchange of sexual services for payment and establishments intended for the practice of prostitution. Consequently, individuals engaged in prostitution are treated as criminals, alongside procurers, although clients are not consistently sanctioned in this system[[1]](#footnote-1).This model fails to provide alternatives for individuals; instead, it seeks to eliminate their presence in society, particularly on the streets, considering it a detriment to public spaces. The prohibitionist stance is repressive and punitive, lacking room for a debate on the voluntariness of engaging in prostitution[[2]](#footnote-2). | Lituania[[3]](#footnote-3); Croatia[[4]](#footnote-4) |
| Nordic Model - Abolitionist | The proposition is for the decriminalization of prostitution, accompanied by a call to discourage and eradicate it. In defense of human dignity, the abolitionist norm does not penalize individuals engaged in prostitution, but it does penalize those profiting from sexual exploitation. Therefore, **prostitution is understood as a form of gender-based violence**, additionally considered a new form of slavery, domination, and violence causing severe physical, psychological, and social harm, with prostituted women being the victims. It asserts that women are objectified, with men exerting dominant control over them[[5]](#footnote-5).In this model, both clients and procurers face penalties. Individuals engaged in prostitution receive assistance from the state for their reintegration into society, as it believes that prostitution is rarely voluntary and that individuals are compelled to engage in it due to economic and social reasons or as victims of human trafficking for sexual exploitation. In this sense, radical abolitionism maintains that any form of consent is invalid, as prostituted women may express it due to their situation of poverty and vulnerability, making it impossible to understand as genuine voluntary engagement in sexual activity[[6]](#footnote-6). | Estonia[[7]](#footnote-7); Irlanda[[8]](#footnote-8); Islandia; Noruega[[9]](#footnote-9); Irlanda del Norte; Sweden[[10]](#footnote-10); France[[11]](#footnote-11) |
| Legalist | This model characterizes the practice of prostitution as just another job. Prostituted women have the same rights and obligations as in any other occupation, subject to taxes, health insurance, labor benefits, etc. However, it differentiates between forced and voluntary prostitution, with the latter being categorized as work[[12]](#footnote-12). | Austria[[13]](#footnote-13); Germany; The Netherlands |
| Regulated decriminalization | It is a model in which prostitution is considered a necessary evil that is regulated to prevent harmful effects, such as the spread of venereal diseases and inconveniences derived from the practice of prostitution in public spaces. The state chooses to regulate it in areas such as health, public order, coexistence, and good customs. In this sense, regulation consists of two tools: police measures to maintain public order and sanitary measures to control sexually transmitted diseases. Therefore, the regulatory model is characterized by the state's tolerance of prostitution and the establishment of rules governing its practice, delineating public and private spaces where it is allowed, its hours, and the characteristics of the places where it is practiced[[14]](#footnote-14).The regulatory model is not based on the individual freedom of women or the right to work **but on reasons of public health, public order**, protection of minors, combating crime and illegal immigration, among other issues. For this reason, projects with this stance are often unfavorable to women, discriminatory, and stigmatizing; furthermore, they do not effectively control sexual diseases or prevent possible exploitation[[15]](#footnote-15). | Letonia[[16]](#footnote-16) |

## **Comparative American law**

Legislation and general legal framework in Latin America and the Caribbean (hereinafter “LAC”) regarding prostitution is wide, but similar in nature. On a general basis, the conclusion can be reached that none of the countries of the region currently penalize prostitution as a crime or offense, and some other have made advancements towards its regularization through laws governing access to health, use of public space, among others.

A brief analysis of the current state of affairs in LAC’s legislation on prostitution will be presented below, with a special emphasis on the following countries: Chile, Colombia, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Paraguay, Peru and the Dominican Republic. The comparative approach will be presented in a parallel manner to establish possible differences in the way each of these countries treat the “voluntary” offering of sexual services.

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| **Country** | **Prostitution penalized as a crime?** | **Relevant provisions of national Criminal Codes that could potentially be related to prostitution** | **Relevant provisions of other nature related to prostitution** |
| Chile[[17]](#footnote-17)  | No | Prohibits the sexual exploitation of minors in article 367 and trafficking for exploitation purposes in article 367bis. Nonetheless, there are some provisions worded in an ambiguous manner that could potentially result in repression against sex workers. For instance, article 373 has a very vague wording, when it states that “Those who in any way offend modesty or good customs with acts of serious scandal or significance, not expressly included in other articles of this Code, will suffer the penalty of minor imprisonment in its minimum to medium degrees”, thereby leaving the definition of scandalous behavior to justice officials.  | Article 39 of the Health Code establishes “the manner and conditions in which... persons who engage in the sexual trade and those affected by venereal diseases that constitute a threat to public health.”The law attempts to make a clear differentiation of prostitution and trafficking with the purpose of sexual exploitation, defining the later as “Whoever through violence, intimidation, coercion, deception, abuse of power, taking advantage of a situation of vulnerability or dependency of the victim, or the granting or receipt of payments or other benefits to obtain the consent of a person who has authority over another captures, transfers, harbors or receives persons for who are subject to any form of sexual exploitation, including pornography, forced labor or services, servitude or slavery or practices analogous to this, or removal of organs”. |
| Colombia[[18]](#footnote-18) | No | While the voluntary offering of sexual services is not penalized as a crime, pimping or inducing prostitution (article 213), pimping with a minor (article 213A), constraining prostitution (article 214) and encouraging prostitution of minors (article 217) are punishable offenses under Colombian law. It is interesting that a whole chapter of the Colombian Criminal Code is devoted to punishing specific crimes committed in the context of an armed conflict. In such a context, actions such as forced prostitution in a protected person” (article 141), forced slavery (article 141A), human trafficking for sexual exploitation (article 141B) are also considered as crimes. Consequently, any form of induction or forcing into prostitution of people who are not able to decide for themselves is punishable, both in the context of peace and in its aggravated form in the context of armed conflict.  | Law 985 of 2005 establishes measures to protect victims of sexual exploitation and other types of exploitation of people for the benefit of third parties. The law defines trafficking as "whoever captures, transfers, harbors or receives a person, within the national territory or abroad, for the purposes of exploitation." Therefore, there is no confusion between trafficking and self-employed sex work.Additionally, article 43 of Law 1801 of 2016 establishes the conditions that establishments where sex work is carried out must meet, among which stands out “Treat people who practice prostitution with dignity, avoid their discrimination or rejection and the violation of their rights to free movement and development of personality", which favors the dignity of sexual work. Also, article 45 includes prohibited behaviors for people who request sexual services, with the express purpose of guaranteeing respect for “sex workers”. These provisions towards clients are rare in the legislation of the region and imply an explicit recognition of the dignity of prostitution as sex work and the people who perform it. |
| Costa Rica[[19]](#footnote-19) | No | The Criminal Code does include crimes such as pimping (article 169) and ruffianry (article 171), which are linked to sex work, to take illegitimate advantage of it.Article 172 regulates the crime of human trafficking: “Whoever promotes, facilitates or favors the entry or exit of the country, or the movement within the national territory, of people of any sex will be punished with a prison sentence of six to ten years.” to carry out one or more acts of prostitution or subject them to exploitation, sexual or labor servitude, slavery or practices similar to slavery, forced labor or services, servile marriage, begging, illicit removal of organs or irregular adoption. | N/A |
| Dominican Republic[[20]](#footnote-20) | No | Article 187 defines prostitution as “any sexual relationship carried out in exchange for financial remuneration (or promise of remuneration),” but only for the correct interpretation of the following articles, not to prohibit it. Article 186 regulates the prohibition of pimping and article 188 punishes it with up to 2 years in prison when certain conditions are met. Article 376 punishes association between individuals for human trafficking. | N/A |
| El Salvador[[21]](#footnote-21) | No | While sex work is not prohibited or punished as a crime, there are certain offenses that are prohibited. One of them is “determination of prostitution” in Article 170, which penalizes forcing other people to have sexual relations in exchange for money, taking advantage of it, as well as such as the “supply and demand of other people's prostitution” in Article 170-A.  | El Salvador has a framework law on citizen coexistence, based on which the different municipalities establish their respective Contravention Ordinances. Article 48 clearly establishes that “Offering services of a sexual nature in public places or requesting sexual services in a notorious manner or with scandal that disturbs public order…” constitutes a contravention “related to proper behavior in public places.” Article 11 enables the Municipal Contravention Delegate to impose sanctions in case of contravention. Therefore, this law allows punishment for offering sexual services on the street. El Salvador’s special law on human trafficking finds human sexual exploitation “when a person has the physical integrity of another person to carry out sexual exploitation activities in its different modalities; commercial sexual exploitation in the tourism sector…”. Therefore, voluntary sexual work between adults is excluded from the scope of this law. |
| Guatemala[[22]](#footnote-22)  | No | Until 2009, the Criminal Code included “the practice of prostitution” as punishable. With the elimination of this reference, all mention of sex work in the Code disappeared and the practice was, hence, decriminalized. “Promotion, facilitation or favoring of prostitution” is maintained in Article 191, as the exploitation of another person's prostitution, and “Promotion, facilitation or favoring of aggravated prostitution”, as an aggravated form of the previous crime. Also included are the exploitation of minors (Article 193) and “Remuneration for the promotion, facilitation or favoring of prostitution” (Article 193 bis). Trafficking in persons for sexual exploitation is prohibited by Article 202. The legislation clearly differentiates between trafficking in persons for sexual exploitation and prostitution and makes it clear that voluntary prostitution is not criminalized. | N/A |
| Honduras[[23]](#footnote-23) | No | Pimping is punishable by the Penal Code and is committed by anyone who “promotes, induces, facilitates, recruits or subjects other people to activities of commercial sexual exploitation”. Article 149-E penalizes the promotion of sexual tourism, when it establishes a penalty for “Whoever, in order to attract the influx of tourists, promotes or carries out advertising programs or campaigns of all kinds, using any means to project the country nationally and internationally, as an accessible tourist destination for the exercise of sexual activities with people of either sex.” Prostitution is not described as a crime in the Penal Code. | The special law against human trafficking clearly differentiates voluntary prostitution from human trafficking, defining it as “the recruitment, transportation, transfer, shelter or reception of people, using the threat or the use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability or the giving or receiving of payments or benefits to obtain the consent of a person having authority over another, for exploitation purposes. Such exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices analogous to slavery, servitude or the removal of organs.” |
| Nicaragua[[24]](#footnote-24) | No | Articles 178 and 179 penalize anyone who “induces, promotes, facilitates or favors the sexual exploitation, pornography and paid sexual act of a person of any sex, maintains them or recruits them for that purpose”, with aggravating factors in the case of minors, profit motive, deception, intimidation or violence or relationship of superiority. Article 180 penalizes “Whoever induces, promotes, facilitates or favors the sexual exploitation, pornography and paid sexual act of a person of any sex, maintains them in it or recruits them for that purpose.” Article 187 criminalizes acts such as forcing persons to consume alcohol daily in order to carry out prostitution, which is a very common practice. | Law 896 of 2015 against human trafficking sanctions forced acts of what it calls prostitution, as well as the fact that any person takes advantage of the prostitution of another. It clearly delimits what prostitution is from trafficking for prostitution. |
| Panama[[25]](#footnote-25) | No | Chapter IV of the Penal Code regulates the criminalization of human trafficking in a way that is very ambiguous, since it establishes that “Whoever promotes, directs, organizes, finances, advertises, invites or manages through any means of individual or mass communication or in any other way facilitates the entry or exit of the country or the movement within the national territory of a person of any sex, to carry out one or more acts of prostitution or subject them to exploitation, sexual or labor servitude, slavery or practices analogous to prostitution. slavery, forced labor or services, servile marriage, begging, illicit extraction of organs or irregular adoption, will be punished with imprisonment of fifteen to twenty years." This article does not require that the act of “prostitution” be forced to be considered human trafficking and could be interpreted as penalizing any invitation. | Decree 149 of May 20, 1949, by which provisions are developed to repress prostitution and measures are dictated on social hygiene and public morality, prohibits “absolutely the exercise of prostitution within the perimeter of cities and towns, and within other areas determined by the Technical Health Council.” Where it is not prohibited, prostitution is subject “to the inspection and regulation of the health authorities.” To carry out prostitution, a permit from the Ministry of Health is required, which requires proof of “good conduct and a good health history”, according to article 5. In addition, it prohibits women from carrying out prostitution in their homes (article 6). Article 7 provides for the possibility of detention of prostitues who are not under the supervision of the Ministry of Health.In some States in the country there are further limitations to the exercise of sexual services. Decree 42, of October 19, 1987, of the Mayor of the District of Colón and Decree 7, of September 17, 1987, of the Mayor of the District of Panama oblige all women who work in “cantinas, brothels, boarding houses, hotels and other similar entertainment centers” to take an HIV and syphilis test every 3 months. It will be the owner of the premises who will have to present said evidence to the local authorities. |
| Paraguay[[26]](#footnote-26) | No | Article 139 criminalizes some forms of pimping, when the person who is induced into “prostitution” is a minor or has some specific limitations. Article 140 punishes the exploitation of the earnings of another person's prostitution. | In the City of Asunción, Municipal Ordinance 573/2015 recognizes the existence of prostitues and regulates some of the conditions that must be guaranteed so that they can carry out their labour in a dignified manner, such as hygiene, health and safety conditions. The Ordinance restricts the areas of the city in which premises such as brothels or motels can be installed. The additional provisions establish that municipal officials, including the police, may only enter the premises to verify the working conditions, which are the sole responsibility of the owners. It is expressly established that they cannot question or threaten prostitues, but only the owners. Other municipalities also have regulations that regulate prostitution, but in a repressive manner. |
| Peru[[27]](#footnote-27) | No | Article 179 establishes that it will be a crime to “favor prostitution” of people of legal age, without obtaining profit in exchange. Article 180 criminalizes “thugism,” such as obtaining profit in exchange for another person's prostitution. Pimping is typified in article 181, defined as “He who compromises, seduces, or abducts a person to deliver him to another for the purpose of having carnal access.” | N/A |

The regional analysis of legal framework regulating prostitution leaves a clear and unequivocal conclusion: the voluntary practice of prostitution and offering of sexual services is not punishable as a crime. In most countries, there is specific framework applicable to human trafficking with sexual purposes or intentions, and any conduct aimed at getting any kind of revenue by obliging others to perform prostitution or taking advantage of their voluntary services is, indeed, punishable as a crime. Even though in most countries its exercise is not directly punishable by law, the activity of sex work is clandestine in most of the region. That is: although prostitution is not classified as a crime in the current regulatory bodies of any of the countries in the region, the overlap of national and local regulations, and the vagueness and ambiguity of some legal classifications, give rise to arbitrariness in the interpretation and application[[28]](#footnote-28).

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