

Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024

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Comment on Criminal code (decriminalising sex work) and other legislation amendment bill 2024 – Queensland State

CAP International - 02/03/2024

CAP International – The Coalition for the Abolition of Prostitution is a coalition currently made of 35 frontline & survivors-led NGOs in 28 countries, united around a common objective : the abolition of the systems of prostitution and trafficking in human beings for the purpose of sexual exploitation. Last year, CAP member organisations collectively supported more than 18.000 prostituted persons in the world.

The Hon Yvette D'Ath, Attorney-General, Minister for Justice and Minister for the Prevention of Domestic and Family Violence introduced the Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024 into the Queensland Parliament.

Presented as a way to advance the rights of prostituted persons, this initiative appears to be based on a serious misunderstanding of the realities of prostitution, resulting from a lack of inclusion of sex trade survivors and frontline organisations in the construction of the bill.

A total acceptance of the merchandisation of the bodies the most vulnerable women and girls.

On the ground, when we listen to the testimonies of women and girls who are or who have been in prostitution, when we analyse the studies made by researchers and lawyers, when we take into consideration the experiences shared by social workers and psychologists from all over the world, we observe that prostitution is neither sex nor work, but constitutes in itself a form of violence against women : The repetition of sexual acts without physical desire, but instead experienced as the consequence of financial need, inequality or as an exploitation of vulnerability, constitutes sexual violence in and of itself.

The vast majority of prostituted persons have suffered from violence, often sexual, before entering prostitution. Most of them are also victims of many forms of violence while in prostitution (physical, verbal, sexual, psychological).

There is no "free " and "forced" prostitution : in reality the sexual act obtained by sex-buyers is always coerced. Coerced either by the physical coercion of traffickers and pimps, or by the socio-economic coercion that pushes the most vulnerable women and girls into prostitution.

There will be no equality between women and men as long as men think that they can buy access to women's bodies. Prostitution is a part of a continuing patriarchal tradition of making women's bodies available for men's benefit.

Prostitution is based on multiple forms of inequalities: men's domination over women, rich over poor, North over South, majority groups over minorities. Women from minorities, poor, migrant and marginalised groups form nearly the totality of the prostituted persons in prostitution all over the world.

These realities also apply to Queensland State. By reframing prostitution as a form of «work», by normalising the endless exploitation of women's bodies as an acceptable income alternative, the Attorney-General is sending an extremely sad message to its most vulnerable population, in particular women : if you are marginalised, we have nothing better to offer than being exploited in prostitution.

A disastrous impact observed in countries where the prostitution system has been fully decriminalised and legalised

In all countries that have fully decriminalised and legalised the prostitution system, the same consequences have emerged. In Germany for instance, a country which legalised prostitution in 2002, the results are unequivocal:

- The highest estimates put the number of persons in prostitution in the country at 400 000,¹ of which only 23 000 were registered for the official “sex worker” status in 2021.²
- 81% of registered women were foreigners in 2021³
- Pimps use the legislation as a façade to exploit the most vulnerable: since the war started in Ukraine, the number of Ukrainian women fleeing war registered in Berlin's red-light district has increased fivefold. ⁴
- The decriminalisation of the purchase of sexual acts has led to an explosion of the demand: in Germany, 26% of men declared that they have bought sex at least once in their lives, compared to 7% in Sweden. ⁵
- To meet this demand, brothels are selling women on an industrial scale in “mega-brothels” offering €70 packages including a woman, a beer and a sausage, or " all you can fuck " deals.

The disastrous results of the German approach are leading to a collective awakening and paradigm shift in the country: both the CDU/CSU parliamentary group and the Chancellor (SPD) have recently taken a stance to put an end to the “sex work” approach. ⁶

The explosion and normalisation of the purchase of sexual acts has an impact on all women and girls and increases the pressure on the most marginalised among them. In the Netherlands, a country that legalised prostitution in 2000, it is now legal for driving instructors to propose sexual acts to their students as a means of payment. This practice is commonly called “a ride for a ride”.⁷

In Belgium, in the Brussels' Aerschot street, known for its window prostitution, “each person in prostitution pays an average of €250 a day to brothel managers to rent a window. This rent is equivalent to €7,500/month

¹ *Germany Has Become the Cut-Rate Prostitution Capital of the World*, Time, 2013

<https://business.time.com/2013/06/18/germany-has-become-the-cut-rate-prostitution-capital-of-the-world/>

² https://www.destatis.de/EN/Press/2022/07/PE22_277_228.html

³ https://www.destatis.de/DE/Presse/Pressemitteilungen/2019/11/PD19_451_228.html.

⁴ https://www.theguardian.com/world/2023/mar/26/ukrainian-refugees-increasingly-targeted-for-sexual-exploitation-research-finds?utm_term=Autofeed&CMP=tw_t b-gdnnews&utm_medium=Social&utm_source=Twitter#Echobox=1679822347

⁵ <https://sverigeskvinnoorganisationer.se/wp-content/uploads/2023/12/Sex-prurchase-in-Sweden-Germany-Fact-sheet.pdf>

⁶ <https://www.xn--bndnis-nordischesmodell-cpc.de/>

⁷ *Dutch driving instructors can trade lessons for sex*, CNN, 2015 <https://edition.cnn.com/2015/12/21/europe/driving-lessons-sex-netherlands/index.html>

for a person paying these costs every day. This means that the person has to endure 150 “free” sexual acts before receiving a single euro for herself” according to the grassroots NGO isala.⁸

Under the guise of improving conditions for prostituted persons, the regulatory model of prostitution strengthens the stranglehold of pimps. They benefit from various legal statuses, such as “brothel owners” or “entrepreneurs” and perpetuate the sexual and economic exploitation of the most vulnerable with complete impunity.

Full-decriminalisation & legalisation have provided a legal facade used by international trafficking networks, as described among others by Manfred Paulus, a German police officer in charge of the fight against human trafficking for 30 years in Ulm, and now an EU expert:⁹

In Germany we now have up to 100% of women imported from abroad for prostitution. It should be clear that a Belarusian woman from the Chernobyl area or a Roma from the ghetto in Romania can never make her way alone to Germany to work in prostitution. (...) The women are trafficked into the country, and in this sector, highly criminal structures have developed. Organised crime controls the business. The demanded distinction [between prostitution and human trafficking] gives reason for fearing the worst. There are obviously people involved who are not at all or too little informed about the milieu, and who, consciously or not, give in to the myth of “free” Prostitution, whispered to them by lobbyists. (...) But “voluntary” is just a magic word. If prostitution takes place “voluntarily”, then the brothel operator, the bar owner and the john no longer have a problem. And then the police, judiciary and political systems are helpless. That is why many people really love this word. But the truth is quite different. Speaking of voluntariness is frankly, to my mind, quite cynical.

Today we have “noble” brothels, decorated in marble and stainless steel. This does not exclude pimps hiding behind this facade, and behind them some mysterious company...(but) if we look behind this letter-box company, then we discover (Eastern European) clans and mafia or (well-known gangs).

Far from improving the conditions of women and girls in prostitution, the decriminalisation of the purchase of sexual acts has on the contrary increased their exposure to violence. In Spain, Doctors of the World describes the situation as follows: *In the 30 years that we have been working with this group, we have assisted more than 100,000 people in prostitution and have found that this situation violates the human rights of the women involved and has a very negative impact on their physical, psychological and social health. They suffer social stigma and systematic violence, as we verified in our fieldwork: testimonies of sex-buyers who resort to emotional blackmail for the obtention of risky practices and physically and verbally assault them are alarmingly frequent. The mental health consequences of prostitution are similar to those suffered by people subjected to torture.*¹⁰

In New Zealand, Ally-Marie Diamond, survivor of the prostitution system, describes the situation as follows: *In fully decriminalised Aotearoa New Zealand, girls as young as 9 are being sold on the streets of Auckland, and 12-year olds are being bought in licensed massage parlours. Police are powerless to act, powerless to do raids, powerless to ask for ID, since these commercial sex establishments are legal businesses, and because women are independent contractors no paperwork on each woman or child is required. Sex tourism flourishes, as does sex trafficking to replenish the brothels and the market of flesh.*¹¹

⁸ <https://www.isalaasbl.be/prostitution-associations-feministes-expriment-leur-profonde-inquietude-quand-a-lapproche-de-la-belgique/>

⁹ <https://www.emma.de/artikel/prostitution-menschenhandel-sind-untrennbar-317541>

¹⁰ <https://www.medicosdelmundo.org/que-hacemos/espana/prostitucion-y-trata-de-seres-humanos-con-fines-de-explotacion-sexual>

¹¹ Survivor Explains: New Zealand’s Decriminalized Prostitution is Dangerous, Harmful, and Humiliating , PRE, 2019
<https://prostitutionresearch.com/survivor-explains-new-zealands-decriminalized-prostitution-is-dangerous-harmful-and-humiliating/>

Instead of fighting the patterns of sexist, racist, and socioeconomic oppression that drive the most marginalized individuals into prostitution, the policy proposed by the Attorney General actually helps normalizing and sanitizing of their exploitation.

The worsening of a situation of legal inconstancy towards international Human Rights standards

The government of Queensland seems unaware of international Human-Rights standards on prostitution and trafficking in persons.

The UN Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, which states in its preamble that prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person.

Article 1: The Parties to the present Convention agree to punish any person who, to gratify the passions of another:

(1) Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person; (2) Exploits the prostitution of another person, even with the consent of that person.

Article 2: The Parties to the present Convention further agree to punish any person who:

(1) Keeps or manages, or knowingly finances or takes part in the financing of a brothel;
(2) Knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others.

Article 6 : prohibits the implementation of a registration / regulation system on prostituted persons: Each Party to the present Convention agrees to take all the necessary measures to repeal or abolish any existing law, regulation or administrative provision by virtue of which persons who engage in or are suspected of engaging in prostitution are subject either to special registration or to the possession of a special document or to any exceptional requirements for supervision or notification.

The (Palermo) Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, in particular its Article 9(5), that includes to adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

The CEDAW Convention, Article 6: States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

Recently, the **UN Resolution 77/194** on Trafficking in women and girls adopted on 15 December 2022 in plenary session of the UN General Assembly by all Member States including Australia calls upon Governments to *intensify their efforts to prevent and address, with a view to eliminating, the demand that fosters the trafficking of women and girls for all forms of exploitation and in this regard to put in place or to enhance preventive measures, including legislative and punitive measures to deter exploiters of trafficked persons, as well as ensure their accountability.*

There is a Third Way between the criminalisation of prostituted persons and the legalisation of their exploitation

Between the prohibitionist model that unfairly criminalises prostituted persons, and the regulationist model that normalises their exploitation, there is third way: the Equality Model, which allows for the decriminalisation

and protection of prostituted persons, while repressing their exploiters. This model, adopted by countries such as France, Sweden, Norway, Ireland, Northern Ireland, Canada and Israel. The government of Spain also announced its desire to adopt such a model last week.¹²

In 2023, this approach was adopted by the European Parliament, which called all EU Member States to adopt all its pillars¹³. The approach was also praised by the UN Special Rapporteur on Violence Against Women in 2024.¹⁴

It is based on 5 pillars:

1. Full decriminalisation of all prostituted persons;
2. Access to an exit programme, including socio-economic, psychological and legal support;
3. Criminalisation of the demand for the purchase of sexual acts, which is the sole purpose of the sex trade,
4. Criminalisation of all forms of pimping;
5. Sensitisation on the realities of prostitution, in particular among the youth and the male population, and training frontline professionals.

The implementation of this model in the above-mentioned countries has had extremely positive effects compared to other models. It has reduced the demand for the purchase of sex acts, decreased the size of the sex trade, and enabled hundreds of prostituted persons to emancipate themselves from the prostitution system in a sustainable way.

In Sweden, which adopted an Abolitionist model in 1999:

- the demand has halved as a result of the criminalisation of the purchase of sexual acts. 13.6% of men in Sweden said they had bought a sex act once in their lives in 1996, compared to 7% in 2023.¹⁵
- The drop in demand has made Sweden an unattractive territory for trafficking networks, which have moved away from it.¹⁶
- The law has also had a normative effect: while ¾ of Swedish people were against penalising sex buyers in 1996, less than 10 years later, in 2008, this measure was widely supported by 70% of the population.¹⁷
- Since the adoption of the law, 0 prostituted person has been killed in Sweden, against at least 84 in Germany.¹⁸

In France, a country that adopted the Equality Model in 2016:

- 0 persons in prostitution have been penalised since the law was adopted.

¹² <https://twitter.com/IgualdadGob/status/1763238222975344919>

¹³ https://www.europarl.europa.eu/doceo/document/TA-9-2023-0328_EN.html

¹⁴ <https://www.ohchr.org/sites/default/files/documents/issues/women/sr/activities/2023-10-27-sr-vawg-commentary-france-law-prostitution.pdf>

¹⁵ <https://sverigeskvinnoorganisationer.se/wp-content/uploads/2023/12/Sex-pruchase-in-Sweden-Germany-Fact-sheet.pdf>

¹⁶ Sweden Ban on the purchase of a sexual act, an assessment" 2008.

¹⁷ Ibid

¹⁸ <https://prostitutionresearch.com/wp-content/uploads/2019/04/Murders-of-prostituted-women-in-Germany-since-legal-prostitution-in2002.pdf>

- 1 247 people have benefited from an exit programme in March 2023, providing psychosocial support, a residence permit for foreign victims, accommodation, monthly financial support, and vocational training with a 95% success rate.¹⁹
- More than 8,000 sex buyers have been fined or had to attend a mandatory awareness-raising course on the realities of prostitution.²⁰
- An increase of 54% in proceedings against pimps was observed between 2016 and 2019 as well as 7x more compensation for victims.²¹

We therefore call upon the Attorney General to adopt a Human-Rights and fact-based approach to prostitution rather than an ideological one. We call for the withdrawal of the bill and the launch of an initiative to adopt the Equality Model in Queensland State.

¹⁹ <https://www.causette.fr/societe/en-france/isabelle-lonvis-rome-je-souhaite-porter-une-nouvelle-strategie-nationale-de-lutte-contre-la-prostitution-a-la-rentree/>.

²⁰ IGAS, Evaluation of the law of April 13, 2016 aimed at strengthening the fight against the prostitutional system and supporting prostituted persons, V.Gervais et Dr. P.Loulergue (IGAS) – P.Willaert et A.Puccinelli (IGA) – P.Steinmetz et C.Gay (IGJ), 2020 <https://www.igas.gouv.fr/IMG/pdf/2019-032r-prostitution-d.pdf>

²¹ Ibid

**Prostitution under
International
Human Rights Law:**
An Analysis of
States' Obligations
and the Best Ways
to Implement Them

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Author: **Grégoire Théry**,
executive director of CAP international

Credits:

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**Prostitution under
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Foreword

Prostitution and its exploitation: a violation of human rights and a fundamental obstacle to gender equality.

At the end of the second world war, the United Nations States Parties adopted two key texts: the Charter of the United Nations, signed in San Francisco on 26 June 1945, and the *Universal Declaration of Human Rights* (UDHR), adopted by the United Nations General Assembly in 1948. These two founding texts of the international human rights corpus establish a fundamental principle: respect for and protection of the dignity and worth of the human person.

In 1949, the United Nations General Assembly paid consideration to a particularly blatant violation of human dignity: prostitution and its exploitation by third parties. In the preamble to the *United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, of 2 December 1949, the States Parties recalled that prostitution is “*incompatible with the dignity and worth of the human person*”. Consequently, the UN undertook to combat pimping in all its forms and to ensure assistance was provided to prostituted persons.

In 1979, article 6 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) reinforced this policy by explicitly requesting that States Parties “*suppress all forms of traffic in women and exploitation of prostitution of women*”.

In the early 2000s, the United Nations developed international policies and instruments to supplement those already in place. Within the context of the fight against human trafficking, the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (2000) includes “*the exploitation of the prostitution of others or other forms of sexual exploitation*” within its use of terms referencing human trafficking and exploitation.

Lastly, in 2003 Kofi Annan, the Secretary-General of the United Nations, adopted special measures to prevent exploitation and sexual abuse, pertaining to all peacekeeping missions operating under UN command and control and to all UN staff. This so-called 'zero tolerance' policy, applicable only within the UN framework, makes a significant breakthrough in expressly prohibiting UN stakeholders from any "exchange of money, employment, goods or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour".

It is these international instruments, and their legal implications, that the Coalition for the Abolition of Prostitution (CAP international) has chosen to present and elaborate upon in this report. CAP international will outline a rational way for States to meet their obligations to eliminate the exploitation of the prostitution of others whilst protecting the victims thereof.

Nicole Ameline



Nicole Ameline

*Member and former Chair of the Committee on the Elimination of Discrimination against Women (CEDAW)
Former French Minister for Gender Equality and Professional Equality
Member of the French National Assembly*

Introduction

The Coalition for the Abolition of Prostitution (CAP international) is an affiliation of fourteen frontline NGOs providing assistance to prostituted persons and victims of human trafficking in human beings for the purpose of prostitution. CAP international and its members stand in support of all women, men and children affected by prostitution and in opposition to the system that exploits their precariousness and vulnerabilities.

The purpose of this position paper is:

- to present the current human rights legislative framework and the obligations arising under international law with regards to prostitution and its exploitation
- to define the best ways for States to implement their obligations in respect of human rights.

This paper deliberately focuses on international legislation and constituent principles frameworks, and in doing so draws two main conclusions:

1. International human rights law recognises prostitution as a violation of human rights and prohibits its exploitation.
 2. The only way for States to respect their obligation to eliminate the exploitation of prostitution in respect of human rights is to implement abolitionist policies.
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MEMBERS OF CAP INTERNATIONAL:

- **Apne Aap**, India
 - **Breaking Free**, USA
 - **Embrace Dignity**, South Africa
 - **Fier / CKM**, Netherlands
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Section 1

An analysis of the human rights protected under international law: prostitution is a violation of human rights and States have a direct obligation to eliminate its exploitation, including pimping and procuring

Summary

International human rights law (hereafter HRL) recognises prostitution as a violation of human rights (I) and specifically prohibits exploitation of the prostitution of others, including pimping, procuring and the running of a brothel (II). States and United Nations (UN) agencies have a direct, binding obligation to oppose any trivialisation of prostitution and to work towards the elimination of its exploitation (III).

I- International human rights law qualifies prostitution as a violation of human rights

A- Respect for human dignity is a fundamental human right and a constituent principle of the United Nations System

The recognition of prostitution as a violation of human dignity is a key lever given that the protection of the dignity and worth of the human person is a cornerstone of the human rights system and law.

The very first sentence of the Universal Declaration of Human Rights (UDHR) states that *“recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”*.

>>>>>> *“We the Peoples of the United Nations determined to save succeeding generations from the scourge of war and to reaffirm faith in fundamental human rights, in the **dignity and worth of the human person, in the equal rights of men and women and of nations large and small**” (...)*
Charter of the United Nations (1945)

The protection of the dignity and worth of the human person is not only stated as a fundamental principle by the UDHR but is also cited as one of the *“ideals and common goals of all People whose Governments have gathered to create the United Nations”* in the Preamble of the Charter of the United Nations (1945). Signed in San Francisco on the 26th of June 1945, this Charter is the constituent treaty of the United Nations System.

B- Prostitution is recognised as a violation of human dignity under human rights law

One year after the adoption of the Universal Declaration of Human Rights (1948), the General Assembly of the United Nations adopted the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (hereafter UN 1949 Convention). This Convention is part of the UN universal human rights instruments and is a binding treaty. In fact, it is the only UN binding instrument focusing specifically on prostitution and its exploitation. In its preamble, the UN 1949 Convention states that prostitution and traffic in persons are “*incompatible with the dignity and worth of the human person*”.

>>>>>> *“Whereas prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community”.*

UN Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (1949)

II- International human rights law specifically prohibits the exploitation of the prostitution of others, including pimping, procuring and the running of a brothel

A- International human rights law prohibits all forms of exploitation of the prostitution of others

Two binding UN Conventions prohibit the exploitation of the prostitution of others: the UN Convention on the Elimination of All Forms of Discrimination against Women - CEDAW (1979) and the UN Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (1949). Both Conventions have been adopted by the

General Assembly of the United Nations and thus have universal scope. Furthermore, they are directly legally binding upon the States that have ratified, or acceded to, them.

>>>>>> **Article 6**

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

Convention on the Elimination of All Forms of Discrimination against Women - CEDAW

B- The “exploitation of the prostitution of others” includes pimping, procuring and the running of a brothel

The scope of States’ obligations to suppress all forms of exploitation of the prostitution of others is defined in the UN Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others. This Convention is the only UN treaty that focuses specifically on the exploitation of the prostitution of others and provides precisions to the general prohibition encompassed within provisions protecting human dignity. Article 1 prohibits the exploitation of prostitution in all its forms. States are obliged to punish any person who makes a profit from, or facilitates, the prostitution of another person, even with the consent of that person.

>>>>>> **Article 1**

The Parties to the present Convention agree to punish any person who, to gratify the passions of another:

(1) Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person;

(2) Exploits the prostitution of another person, even with the consent of that person.

Article 2

The Parties to the present Convention further agree to punish any person who:

(1) Keeps or manages, or knowingly finances or takes part in the financing of a brothel;

(2) Knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others.

UN Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (1949)

Articles 1 and 2 explicitly state that the elimination of the exploitation of the prostitution of others includes the prohibition of all forms of pimping, procuring and the running of a brothel.

It is essential to note that the exploitation of the prostitution of others is recognised as a “form of sexual exploitation” under international law by the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the United Nations Convention against Transnational Organized Crime (2000). In its definition of “*trafficking in persons*”, the Palermo Protocol makes reference to “*the exploitation of the prostitution of others or other forms of sexual exploitation*”. This reference explicitly encompasses the exploitation of the prostitution of others as one of several forms of sexual exploitation.

III- Binding obligations for States and UN bodies to contribute to the elimination of prostitution and its exploitation

The fact that international human rights law recognises prostitution as a violation of human dignity, and thus as a violation of human rights, has key consequences for States Parties and UN bodies and agencies alike.

A- States’ obligations under international human rights law with regards to prostitution and its exploitation

- States Parties are under a binding obligation to respect and to protect the dignity of the human person, which is a cornerstone of international human rights law (see title I- A and B). When defining and implementing policies with regards to prostitution and its exploitation, States must ensure that they work towards the elimination of prostitution and the protection of its victims. Furthermore, States are de facto prohibited from implementing policies that would encourage prostitution and thereby foster a violation of human dignity. All policies that justify, promote or trivialise

prostitution as “sex work” are incompatible with established and binding UN human rights legislation.

- The 189 States Parties to CEDAW are under a direct and binding obligation to suppress all forms of exploitation of the prostitution of others. As explained above (see title II- A and B), this includes pimping, procuring and the running of a brothel. As a consequence, States that have decriminalised or tolerate pimping, procuring and the running of brothels, violate both the spirit and the letter of international human rights law, and in particular their obligations under CEDAW to “*suppress all forms of traffic in women and exploitation of prostitution of women*”.

B- UN bodies', programmes' and agencies' obligations under international human rights law with regards to prostitution and its exploitation

The Charter of the United Nations gives all UN bodies and agencies the obligation to promote the respect of the “*dignity and worth of the human person*” and of the “*equal rights of men and women*”. Given that prostitution is recognised as a violation of the dignity and worth of the human person by international human rights law, all UN bodies and agencies are obliged to contribute to the elimination of prostitution and the protection of its victims. As a consequence, UN agencies and bodies are further obliged to oppose the use of the term “sex work”, which aims at normalising, and sometimes promoting, what is considered a human rights violation.

This specific obligation to contribute to the elimination of prostitution and to oppose any promotion or trivialisation of prostitution is further reinforced by the recognition by the United Nations of the purchase of sex acts as a “*sexual abuse*”. In his Special Bulletin on “*Special measures for protection from sexual exploitation and sexual abuse*”, the Secretary General of the United Nations (UNSG) defines as sexual abuse any “*actual or threatened physical intrusion of a sexual nature under **unequal** or coercive conditions*”. The UNSG Special Bulletin specifically targets and prohibits the purchase of sex acts in the context of UN operations (see below, section 2, title II).

>>>>>> “Exchange of money, employment, goods or services for sex is prohibited”.

UNSG Special Bulletin on “Special measures for protection from sexual exploitation and sexual abuse”

Section 2

The abolition of prostitution, through the protection of victims and the criminalisation of sex buyers, is the only effective way to eliminate prostitution and its exploitation in respect of fundamental rights

Summary

CAP international proposes a definition and three guiding principles for the implementation of an abolitionist policy (I), and advocates for the full decriminalisation of prostituted persons, and their right to exit prostitution (II). It also advocates for a universal prohibition on the purchase of sex acts (III).

I- Guiding principles and definition of an abolitionist policy

A- Guiding principles to eliminate exploitation within the human rights framework

The elimination of prostitution and its exploitation being an obligation under international human rights law, an essential element in meeting this obligation is to define how to enforce policies that promote a respect of human rights. In doing so, CAP international identifies three guiding principles:

- Implementing States' obligation to eliminate the exploitation of prostitution, including pimping, procuring and the running of a brothel (see above)
- Repealing all repressive measures against prostituted persons and offering them protection and exit options (see below)
- Prohibiting the purchase of sexual acts, which is the starting point of sexual exploitation and a form of sexual abuse in itself (see below).

B- Understanding the concept of the “abolition of prostitution”

'Abolition' is neither a synonym of 'prohibition', nor a synonym of 'direct eradication'. Prohibiting prostitution, and thus targeting indifferently prostituted persons, pimps, and buyers, does not improve the situation of victims of prostitutions and does not offer leverages for prevention, education and exit policies. It does not help to identify the authors of the violence of prostitution. Furthermore, 'abolishing prostitution' does not mean 'eradicating prostitution' immediately and entirely. Slavery was abolished 150 years ago but it still exists. The abolition of slavery did not lead to a direct



eradication, but was a process which allowed a new social consensus and the adoption of concrete measures to fight slavery and protect its victims. The abolition of prostitution is also a process, which aims to:

- Recognise the harm of prostitution, its inherent violence and the obstacle it constitutes to “the dignity and worth of the human person” and to “the equal rights of men and women”.
- Adopt concrete measures to combat the system of prostitution and protect its victims.

II- Towards the full decriminalisation of prostituted persons and the means to exercise a right to exit prostitution

A- Decriminalisation of prostituted persons

The decriminalisation of prostituted persons is not a direct, binding obligation under international law but it is wholly consistent with the purposes of human rights legislation. The United Nations Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others formally recognises the status of “victim of prostitution” (Art. 16). The status of victim is not compatible with the criminalisation of prostituted persons. Furthermore, the UN Convention condemns the exploitation of the prostitution of another person “*even with the consent of that person*” underlining that prostituted persons cannot be held accountable for their own exploitation. On the contrary, the Convention asks States to implement protection and assistance measures for prostituted persons, including migrants.



Article 16

*“The Parties to the present Convention agree to take or to encourage measures for the prevention of prostitution and for the rehabilitation and social adjustment of the **victims of prostitution** and of the offences referred to in the present Convention”.*

>>>>>> **Article 6**

"Each Party to the present Convention agrees to take all the necessary measures to repeal or abolish any existing law, regulation or administrative provision by virtue of which persons who engage in prostitution are subject either to special registration"(...)

UN Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (1949)

B- Right to protection, assistance and exit options

The United Nations Convention not only prohibits the exploitation of the prostitution of others, it also requires that States to protect and provide assistance to victims. In particular the Convention requires that States:

- implement prevention and rehabilitation policies (Art. 16)
- open access to justice and to financial compensation to victims from out the State (Art. 5)
- repeal all discriminatory laws and measures specifically targeting prostituted persons (Art. 6)
- make suitable provisions for the temporary care and maintenance of non-national victims of trafficking for the purpose of prostitution (Art. 19).

III- Towards the universal prohibition of the purchase of sex acts

A- Targeting demand for sex is one of the most effective ways for States to comply with their obligation to eliminate the exploitation of prostitution

The prohibition of the purchase of a sex acts is not yet a direct binding obligation under international law but is a logical consequence of the implementation of human rights frameworks; sex buyers play an obvious and direct role in what is recognised as a violation of the dignity and worth of the human person. Pimping, procuring and trafficking in hu-

man beings for sexual exploitation exist to meet the demand of sex buyers. Thus, prohibiting the purchase of sex acts is one of the most effective ways for States to implement their obligations to eliminate the exploitation of the prostitution of others. Further, States' obligations to address the root causes of trafficking for the exploitation of the prostitution of others are established in the Palermo Protocol. It asks States Parties to take *"legislative or other measures to discourage the demand that fosters all forms of exploitation of persons, especially women and children"*.

B- Paying for sex is defined as "sexual abuse" by the UN and should be universally prohibited

In 2003, the Secretary General of the United Nations, Kofi Annan, released guidelines aimed at ending sexual exploitation and sexual abuse within the context of UN operations.

The UNSG Special Bulletin includes *"Special measures for protection from sexual exploitation and sexual abuse"*. This strategic document highlights three key points:

- 1- The UNSG reaffirms that *"sexual exploitation and sexual abuse violate universally recognised international legal norms and standards"*
- 2- The UNSG gives a definition of *"sexual exploitation"* and *"sexual abuse"*
- 3- The UNSG directly targets as sexual abuse, and prohibits, the purchase of a sex acts.

Of course, although the regulatory scope of this prohibition is limited to operators of UN missions and their partners, the consequences of the bulletin are much broader. It would be very difficult to consider that what is defined as sexual abuse, and thus a *"violation of universally recognised international legal norms and standards"* by the UN for its own personnel, should not also be a violation of human rights when imposed by other actors.

The high degree of ethical obligation expected by the UN of its personnel is a direct and logical implementation of all human rights frameworks identified above. This bulletin opens up another avenue to the universal recognition of the purchase of sex acts as a violation of human rights.

>>>>>> *“The term ‘sexual exploitation’ means any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another.*

Similarly, the term ‘sexual abuse’ means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions”.

“Exchange of money, employment, goods or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour, is prohibited”.

UNSG Special Bulletin - “Special measures for protection from sexual exploitation and sexual abuse” (2003)

Annex

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)

Preamble

Whereas prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community.

Article 1

The Parties to the present Convention agree to punish any person who, to gratify the passions of another:

- (1) Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person;
- (2) Exploits the prostitution of another person, even with the consent of that person.

Article 2

The Parties to the present Convention further agree to punish any person who:

- (1) Keeps or manages, or knowingly finances or takes part in the financing of a brothel;
- (2) Knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others.

Convention on the Elimination of All Forms of Discrimination against Women (1979)

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

UN Secretary General's Bulletin (2003) - Special measures for protection from sexual exploitation and sexual abuse

Sexual exploitation and sexual abuse violate universally recognised international legal norms and standards.

The term "sexual exploitation" means any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another.

Similarly, the term "sexual abuse" means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.

Exchange of money, employment, goods or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour, is prohibited.

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000)

"Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;...



CAP international
14 rue Mondétour,
75001 Paris - FRANCE
contact@cap-international.org
www.cap-international.org