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

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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



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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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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 prostitution 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

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- (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.

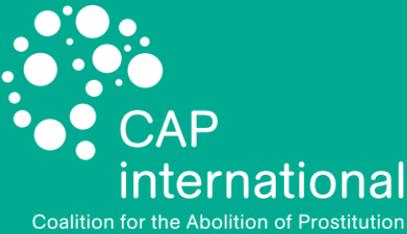
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Similarly, the term "sexual abuse" means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.

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;...



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