**Annex 1**

**International regulations on prostitution**

The present document aims to present the current state of the art on prostitution in international law. For such a purpose, the following outline will be developed:

# **Universal System of Human Rights**

This document presents a comprehensive analysis of the current state of prostitution within the Universal System of Human Rights. To achieve this, the document initially enumerates the key binding instruments that constitute part of the universal human rights system, whether directly addressing prostitution or making reference to it. Subsequently, the document highlights, in chronological order, the principal pronouncements from United Nations bodies regarding prostitution. Additionally, the document includes an executive summary for a succinct overview of the findings.

## **Binding instruments regarding prostitution in the Universal System of Human Rights**

The following section highlights the principal binding instruments within the universal human rights system that address prostitution. Additionally, an executive summary of these findings is provided, accompanied by a concise analysis of the evolution of these instruments.

## **Extracts**

## **1949 UN Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of others**

**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”.

**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 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”.

**Article 16:** “The Parties to the present Convention agree to take or to encourage, through their public and private educational, health, social, economic and other related services, 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.”

## **1979 Convention on the Elimination of All Forms of Discrimination Against Women**

**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”.

## **1993 Declaration on the Elimination of Violence against Women (While it is not a legally binding instrument, it is included in the list because it is a resolution adopted by the United Nations General Assembly)**

**Article 2:** “Violence against women shall be understood to encompass, but not be limited to, the following: (...) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and **forced prostitution**”.

## **2000 Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children**

**Article 3:** “(a) "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,

(b) **The consent of a victim of trafficking** in persons to the intended exploitation set forth in subparagraph (a) of this article **shall be irrelevant** where any of the means set forth in subparagraph (a) have been used”.

## **Executive Summary**

The 1949 UN Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others articulates a commitment to prevent prostitution, emphasizing the prosecution of those profiting from it. This early instrument does not explicitly distinguish between sexual exploitation and “voluntary” prostitution. The 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) marks a linguistic shift, differentiating between human trafficking and prostitution. However, it does not explicitly recognize “voluntary” prostitution as a distinct concept.

The 1993 Declaration on the Elimination of Violence against Women condemns forced prostitution as a form of violence against women, drawing a clear distinction between “voluntary” and forced prostitution. This marks a nuanced acknowledgment of varying forms of engagement in prostitution. The 2000 Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children defines trafficking and emphasizes the irrelevance of consent when certain coercive means are employed. This protocol reflects an evolving understanding, acknowledging the distinction between forced and voluntary prostitution.

## **United Nations Human Rights Bodies take on prostitution**

This section aims to highlight the principal statements from United Nations bodies regarding prostitution. It is important to note that there is no consensus on this matter, except for the acknowledgment that forced prostitution constitutes a form of violence against women.

## **Extracts**

## **UN Women:**

**2019**[[1]](#footnote-1)**: “**Thus, **UN Women does not take a position for or against the decriminalization/legalization of prostitution/sex work.** Member states have approached the legal framework relating to prostitution/sex work in different ways. We are aware that these different models are currently debated in many countries and in the global women's movement. UN Women believes that interventions **should be guided by gender equality and women’s empowerment objectives, that all women must be protected from all forms of violence, abuse and exploitation**, as well as discrimination and stigmatization, and have access to protection, healthcare and other services. UN Women will continue to work to support all women who are exploited, within the national framework of each country”.

## **The Working Group on discrimination against women and girls**

**2023[[2]](#footnote-2):** The Working Group on discrimination against women and girls (the Working Group) considers that it is high time for discrimination, marginalization and stigmatization of sex workers to be addressed by human rights bodies so that their human rights are protected. The Working Group considers that there is now sufficient evidence on the harms of any forms of criminalisation of sex work, including criminalisation of clients and ‘third parties’ related activities. **It notes the growing consensus by international human rights and other international bodies on full decriminalisation of adult voluntary sex work**, as well as the advocacy of sex workers rights movements for this approach. Whilst not finding it necessary to define sex work and noting the different experiences of diverse women and persons, it proposes full decriminalisation of adult voluntary sex work from a human rights perspective, as it holds the greatest promise to address systemic discrimination and violence and the impunity for the violations of sex workers’ rights. It also constitutes the approach best suited to enhancing their rights to health and other socio-economic rights, freedom from torture, inhuman or degrading treatment, right to private life, and freedom from discrimination. Further, a decriminalised framework is most conducive to the protection of their rights to participate in public and political life. Decriminalisation would not jeopardise the protective functions of the State in relation to combatting exploitation, as other criminal law provisions would be used in the case of violence, compulsion or exploitation, including anti-trafficking laws. However, antitrafficking measures should not be implemented in a way that infringes sex workers’ rights, as recognised by the Special Rapporteur on trafficking in persons and the Special Rapporteur on the right to health.

**2016. Report to the Human Rights Council[[3]](#footnote-3): “**76. The discriminatory use of criminal law, punitive sanctions and legal restrictions to regulate women’s control over their own bodies is a severe and unjustified form of State control. This can include punitive provisions in criminal, civil and administrative laws and regulations governing extramarital consensual sex, same-sex consensual adult relations, gender non-conforming expressions, provision of reproductive and sexual education and information, termination of pregnancy and **prostitution/sex work**. The enforcement of such provisions generates stigma and discrimination and violates women’s human rights. It infringes women’s dignity and bodily integrity by restricting their autonomy to make decisions about their own lives and health.

77. States also violate women’s right to health and safety where women are penalized for sexual or reproductive conduct that should not be criminally prohibited, such as adultery, prostitution or termination of pregnancy; States also violate the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment where they impose penalties such as stoning and lashing.

84. **Criminal laws and other punitive regulations have imposed custodial sentences on women involved in prostitution/sex work in a manner that has been shown to harm rather than protect them**. The Working Group considers that the **criminalization of women in prostitution/sex work places them in a situation of injustice, vulnerability and stigma and is contrary to international human rights law**. It notes that the Convention on the Elimination of All Forms of Discrimination against Women calls for prohibition of the exploitation of prostitution and not for punishment of the women in prostitution/sex work themselves; **the well-established position of the Committee on the Elimination of Discrimination against Women that women should not be criminalized for prostitution**; and the stipulation in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol) that efforts should be made to discourage the demand that fosters all forms of exploitation of women, including trafficking for sexual exploitation.

85. International organizations and human rights bodies have called on States to ensure, at a minimum, that women in prostitution/sex workers have the right to access sexual health services; are free from violence or discrimination, whether committed by State agents or private persons; and have access to equal protection of the law. In particular, States should also ensure that law enforcement officials serve a protective function, as opposed to engaging in or perpetuating violence against women in prostitution/sex workers. A number of States have introduced regulations that cover health and safety issues, including access to health services, medical insurance and social security benefits that have had a positive impact on women engaged in prostitution/sex work.”.

**2019. Report to the Human Rights Council on Women deprived of liberty[[4]](#footnote-4): “**34**.** Sexual and gender non-conforming women are disproportionately targeted for social control based on their perceived challenge to or “transgression of” established norms of gender roles and sexuality (A/HRC/23/50, para. 47). As a result, they face increased vulnerability to criminalization and deprivation of liberty. Even in cases where such women are not expressly criminalized based on their sexual orientation or gender identities, they may face a heightened risk of encountering the criminal justice system. For example, transgender women are arbitrarily profiled and targeted for prostitution/sex work.

36. Women in prostitution/sex work are likely to face deprivation of liberty because of laws and social attitudes that seek to control women’s morality and sexuality. **In States where prostitution/sex work is criminalized, women are disproportionately affected and targeted by law enforcement agents.** Even in countries where sex work itself is not a criminal offence, women who engage in it have high rates of interaction with the police and may be prosecuted and incarcerated for other offences, including loitering, vagrancy and public indecency, and for migration-related infractions. Short of incarceration, women in sex work/prostitution may, in some States, be confined to “re-education” institutions, designed to “cure” them of “deviant behaviour”.

61. Reduced job opportunities, coupled with a lack of social protection, may be a factor in women’s criminalization and eventual imprisonment. Several stakeholders pointed to the lack of decent work opportunities as one of the major reasons for women’s involvement in drug trafficking, certain forms of prostitution/sex work and other irregular businesses, resulting in them coming into conflict with the criminal justice system. Women who are incarcerated for their involvement in illicit economic ventures identify such activities as being the only opportunities available to them to provide for their families, given their financial constraints and family responsibilities. In several States, transgender women disproportionately engage in prostitution/sex work, owing to the limited opportunities available to them because of discrimination, and face criminalization or other types of restriction of liberty as a result of such activities.

Recommendations: (c) Ban laws and practices policing, targeting, punishing or confining women in relation to consensual sexual or reproductive behaviour or decisions, including sex work/prostitution, termination of pregnancy or expressions of sexualit”

**2020. Report to the Human Rights Council on Women's rights in the changing world of work[[5]](#footnote-5):** “43. International standards recognize sexual harassment as a form of discrimination against women and a violation of human rights. New challenges stemming from technological change and continued globalization make it more urgent than ever to ensure women’s safety at work. In this respect, the adoption in 2019 of the ILO Violence and Harassment Convention, 2019 (No. 190), marks a significant advancement towards creating a world of safe and decent work for all, with a particular focus on addressing women’s experiences of violence and harassment. Discrimination based on other factors, such as pregnancy, age, race, social origin, migration status, disability, maternity, family responsibilities, sexual orientation and gender identity, may also influence how, and in what ways, women are more vulnerable to violence and harassment. Furthermore, the criminalization of women in prostitution or sex work increases their vulnerability to violence and compounds their exclusion from essential services”.

**2023. Report to the Human Rights Council on Gendered inequalities of poverty: feminist and human rights-based approaches[[6]](#footnote-6): “**32. In many jurisdictions, criminal laws are disproportionately applied to women and girls because of their economic or social status, and due to the costs of accessing the formal justice system. Those particularly affected are women and girls living in poverty seeking reproductive health care and services, including abortion, Indigenous, migrant and ethnic minority women and girls, women and girls who are experiencing homelessness, women and girl street vendors, sex workers, those who use drugs or are associated with trade in drugs, women in the informal economy, informal and cross-border traders, women and girls environmental and human rights defenders, and members of LGBTIQ+ communities”.

**2023. Mandates of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Working Group on discrimination against women and girls regarding Sexual Offenses and Related Matters Amendment Bill, 2022[[7]](#footnote-7):** The mandate holders express concerns about the impact of criminalization and punitive legal frameworks on sex work. They argue that the use of criminal law as a tool of social and political control, particularly in relation to consensual sex work, is discriminatory and contributes to structural violence. The former Special Rapporteur on the right to health emphasizes that sex workers are denied basic rights, leading to poorer health outcomes, stigma, and violence due to criminalization.

The document underscores that criminalization perpetuates violence against sex workers, often inflicted by those in positions of authority. It also discusses how structural violence, normalized through laws and policies, creates unjust barriers across race, class, and gender lines. The Special Rapporteur on torture and other cruel, inhuman, or degrading treatment, along with the Special Rapporteur on violence against women and girls, emphasizes that criminalization increases the vulnerability of sex workers to violence, stigma, and discrimination.

Moreover, the Working Group on discrimination against women and girls argues that discriminatory criminal laws violate women's human rights, particularly their autonomy and dignity. It recommends that states ensure law enforcement officials protect sex workers instead of perpetuating violence. The Working Group concludes that violations of sex workers' rights have been committed with impunity, emphasizing gendered aspects of laws penalizing sex work.

Furthermore, the adverse effects of criminalization on sex workers' right to health, including reproductive health, are highlighted. The Special Rapporteur on the right to health points out that criminalization creates barriers to health services and legal remedies, resulting in poorer health outcomes and increased vulnerability to HIV. The Committee on Economic, Social and Cultural Rights calls for an immediate moratorium on arrests of sex workers until the legal status of sex work is determined.

## **Committee for the Elimination of All Forms of Discrimination Against Women (CEDAW)**

**2003. Background paper concerning article 6 of the Convention on the Elimination of All Forms of Discrimination against Women[[8]](#footnote-8): “**8. During the period under review, the Committee expressed appreciation for the adoption of legislative measures on prostitution, as for example when considering the combined second and third periodic report of Thailand7 (twentieth session). The Committee consistently gave importance to the need for States parties to take effective steps to review existing legislation on prostitution in conformity with the Convention, ensure its full implementation and compliance (Nepal, twenty-first session; Guyana, twenty-fifth session) and strengthen law enforcement (India, twenty-second session; Guinea, twenty-fifth session). Moreover, the Committee frequently recommended that States parties review their criminal code in order to punish persons who procured women for prostitution (Nepal, Georgia, twenty-first session; Guyana, twenty-fifth session).

9. The enactment of new legislation was recommended to States parties where the phenomenon of the exploitation of prostitutes had not been adequately addressed (Armenia, exceptional session).

12. The Committee noted positively the decriminalization of prostitution (Greece, twentieth session) and recommended it in the States parties where prostitution was reported to be an illegal activity, for example in China and Liechtenstein (twentieth session). In cases where prostitution was illegal, the Committee inquired what penalties were established, and to what extent prostitutes were criminalized in a similar manner as pimps and clients. In that regard, the Committee noted “that criminal penalties imposed only on prostitutes entrench[ed] sexual exploitation of women”13 (Lithuania, twenty-third session) and noted “with dissatisfaction that prostitutes ... [were] criminalized by law while their clients … [went] unpunished”14 (Zimbabwe, eighteenth session). In those cases, legislation was considered to be discriminatory.

13. When considering the combined initial and second periodic report of Suriname15 (twenty-seventh session), the Committee expressed concern “about the low penalty for those who exploit[ed] prostitutes and that those who exploit[ed] prostitutes … [were] not prosecuted”.16 Similar concerns were expressed with regard to Mexico (eighteenth session) and Uganda (exceptional session).

14. The Committee recommended the review or enforcement of laws relating to prostitution to ensure that prostitutes were not criminalized (Lithuania, twentieth session; Guinea, twenty-fifth session). It also consistently recommended prosecution of and strong penalties for those who exploited prostitutes (Mexico, eighteenth session; Georgia, Nepal, twenty-first session; Mongolia, Kazakhstan, twenty-fourth session; Iceland, Fiji, twenty-sixth session; and Switzerland, twenty-eight session).

18. In a large number of countries, such as Indonesia (eighteenth session), Kyrgyzstan, China (twentieth session), Georgia (twenty-first session), Belarus, Democratic Republic of the Congo (twenty-second session), Cameroon (twentythird session), Jamaica, Burundi (twenty-fourth session), Guinea (twenty-fifth session), Iceland (twenty-sixth session), Mexico (exceptional session) and Switzerland (twenty-eighth session), **the Committee identified a link between prostitution and the feminization of poverty.** The Committee also identified the links between prostitution and tourism (Jamaica, twenty-fourth session; and Barbados, exceptional session).

35. The Committee consistently addressed the issue of prostitution and trafficking in women and girls when considering the initial and periodic reports of the States parties. In general, the approach taken by the Committee focused on the need to adopt a comprehensive strategy against the exploitation of prostitution and trafficking which would include: adoption or review of legislation to de-criminalize prostitutes and impose severe sanctions to pimps, procurers and traffickers; implementation of measures aimed at improving the economic situation of women and girls so as to eliminate their vulnerability to prostitution and trafficking; provision of social support and health-care services to prostitutes; implementation of rehabilitation and reintegration measures for women and girls who had been victims of trafficking; and training of border police and law enforcement officials in order that they might recognize and provide support for victims of trafficking. In its approach, the Committee laid particular emphasis on the need to respect the human rights of prostitutes and victims of trafficking”.

**1992. General Recommendation no. 19:[[9]](#footnote-9)** “13. States parties are required by article 6 to take measures to suppress all forms of traffic in women and exploitation of the prostitution of women.

14. Poverty and unemployment increase opportunities for trafficking in women. In addition to established forms of trafficking there are new forms of sexual exploitation, such as sex tourism, the recruitment of domestic labour from developing countries to work in developed countries and organized marriages between women from developing countries and foreign nationals. These practices are incompatible with the equal enjoyment of rights by women and with respect for their rights and dignity. They put women at special risk of violence and abuse.

15. 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.

16. Wars, armed conflicts and the occupation of territories often lead to increased prostitution, trafficking in women and sexual assault of women, which require specific protective and punitive measures”.

**2017. General Recommendation No. 35[[10]](#footnote-10): “**12. In general recommendation No. 28 and general recommendation No. 33, the Committee confirmed that discrimination against women was inextricably linked to other factors that affected their lives. The Committee, in its jurisprudenc e, has highlighted the fact that such factors include women’s ethnicity/race, indigenous or minority status, colour, socioeconomic status and/or caste, language, religion or belief, political opinion, national origin, marital status, maternity, parental status, age, urban or rural location, health status, disability, property ownership, being lesbian, bisexual, transgender or intersex, illiteracy, seeking asylum, being a refugee, internally displaced or stateless, widowhood, migration status, heading households, living with HIV/AIDS, being deprived of liberty, and being in prostitution, as well as trafficking in women, situations of armed conflict, geographical remoteness and the stigmatization of women who fight for their rights, including human rights defenders. Accordingly, because women experience varying and intersecting forms of discrimination, which have an aggravating negative impact, the Committee acknowledges that gender-based violence may affect some women to different degrees, or in different ways, meaning that appropriate legal and policy responses are needed.

29. The Committee recommends that States parties implement the following legislative measures: (c) Repeal, including in customary, religious and indigenous laws, all legal provisions that are discriminatory against women and thereby enshrine, encourage, facilitate, justify or tolerate any form of gender-based violence. In particular, repeal the following: (i) Provisions that allow, tolerate or condone forms of gender-based violence against women, including child or forced marriage and other harmful practices, provisions allowing medical procedures to be performed on women with disabilities without their informed consent and provisions that criminalize abortion, being lesbian, bisexual or transgender, **women in prostitution** and adultery, or any other criminal provisions that affect women disproportionally, including those resulting in the discriminatory application of the death penalty to women.

**2013. Concluding Observations on the combined seventh and eighth periodic reports of Hungary adopted by the Committee at its fifty fourth session[[11]](#footnote-11): “**Trafficking and exploitation of prostitution 22. While noting the more comprehensive definition of trafficking in human beings in the Criminal Code and the adoption of a national mechanism for identification of victims, the Committee remains concerned about the insufficient number of shelters for women who are victims of trafficking and their limited access to justice and to adequate remedies, including compensation. The Committee observes with concern the information on stigmatization of the children victims of sexual exploitation. The Committee is also concerned about discrimination against women sex workers and the lack of State party’s action aimed at ensuring safe working conditions and exit programmes for those wishing to leave this activity”.

## **Special Rapporteur on the right to health**

**2010. Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grove. Human Rights Council[[12]](#footnote-12).** “36. Criminalization represents a barrier to accessing services, establishing therapeutic relationships and continuing treatment regimes, leading to poorer health outcomes for sex workers, as they may fear legal consequences or harassment and judgement. This is particularly concerning given that HIV has been noted to disproportionately affect sex workers in many regions.50

37. The use of punitive measures against sex workers, such as antisocial behaviour orders in the United Kingdom of Great Britain and Northern Ireland, has undermined effective health promotion activities. Raids, cautions and arrests generally result in a shift of the sex worker population, often towards unsafe areas, putting sex workers at higher risk.51 Criminalization has also been noted to diminish the “bargaining power” of sex workers in choosing clients and negotiating condom use.

38. In one study, about 45 per cent of a sample of sex workers operating in illegal circumstances were assessed with negative mental health scores, as compared to 12 per cent of the sample of “legal” sex workers. Although differences in physical health outcomes were not observed, significant patterns of disadvantage and vulnerability were noted amongst the former group.53 This not only highlights the impact of criminalization, both in terms of the impact of sex work and entry into sex work, but also draws attention to the importance of differentiating between the various types and settings of sex work in devising effective health interventions.

39. Stigmatization has been cited as the major factor preventing sex workers from accessing their rights. Laws criminalizing or onerously regulating sex work compound the stigmatization experienced by sex workers, adversely affecting health outcomes, often without justification on the grounds of public health. The Geschlechtskrankheitengesetz, a law in Germany designed to combat venereal disease, required prostitutes to undergo mandatory medical examinations.54 This law legally stigmatized sex workers as being almost solely responsible for the spread of venereal disease, despite the absence of epidemiological studies to support this. The law has since been amended to provide for voluntary, anonymous testing.

43. The criminalization of sex work infringes on the enjoyment of the right to health, by creating barriers to access by sex workers to health services and legal remedies. When sex workers are not recognized as engaging in legitimate work, they are not recognized by standard labour laws in many countries.61 Sex workers often cannot gain access to State benefits, and are not protected by occupational health and safety regulations that routinely protect employees in other industries.62 The criminalization of selling sex also renders any agreement concluded for sex work illegal or unenforceable by law on the grounds of being contrary to public policy, resulting in no legal recourse for sex workers.

44. Moreover, the criminalization of practices related to sex work can create barriers to the realization of safe working conditions. For instance, where laws exist prohibiting the running of a brothel, those who invariably subvert the law and run such a business can impose unsafe working conditions without difficulty, as sex workers themselves have no recourse to legal mechanisms through which they can demand safer working conditions.63 Where criminalization in any form exists, the protection offered by a brothel or a manager may become increasingly desirable or necessary, but this also comes at a price: fiscally, through the opportunities created for extortion, and in terms of health.

45. Sex workers should have the right to legal protection, with regard to various hazards such as violence, general occupational risks and labour exploitation.64 Judicial decisions have, in some instances, resulted in such protection being directly realized. For instance, a court in The Hague found in favour of a Czech immigrant who had been denied permission to reside in The Netherlands for the purposes of prostitution, concluding that prostitution is considered labour according to domestic law, and that the petitioner was therefore entitled to a permit.

46. The decriminalization or legalization of sex work with appropriate regulation forms a necessary part of a right-to-health approach to sex work, and can lead to improved health outcomes for sex workers. Any regulation of the sex sector should be implemented in accordance with a right-to-health framework, and should satisfy the requirement of safe working conditions as incorporated into the right to health. Decriminalization, along with the institution of appropriate occupational health and safety regulations, safeguards the rights of sex workers. Where sex work is legally recognized, the incidence of violence may also be reduced, through the enforcement of laws against abuse and exploitation

The Special Rapporteur calls upon States: (a) To take immediate steps to decriminalize consensual same-sex conduct and to repeal discriminatory laws relating to sexual orientation and gender identity, as well as to implement appropriate awareness-raising interventions on the rights of affected individuals; (b) To repeal all laws criminalizing sex work and practices around it, and to establish appropriate regulatory frameworks within which sex workers can enjoy the safe working conditions to which they are entitled. He recommends that States implement programmes and educational initiatives to allow sex workers access to appropriate, quality health services.”.

**2022. Violence and its impact on the right to health Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Tlaleng Mofokeng[[13]](#footnote-13).** “35. The abuse and violation experienced by sex workers in general includes a significant proportion of LGBTIQ+ people, who are further targeted and abused for their real or imputed sexual orientation, gender identity, gender expression and sex characteristics. Under such conditions, abuse of LGBTIQ+ sex workers would normally not be recorded as gender-based violence, leaving a gap in the understanding of the violence and who is affected.

70. Structural violence is a subtle and quite often invisible form of violence normalized through laws, policies and the institutionalization of certain practices that have their roots in legacies of colonialism, racism, apartheid and structural socioeconomic inequalities. It creates unjust barriers that are socially and systemically designed to marginalize individuals and populations across the race, class and gender divide, thereby limiting the realization of the right to health for many populations. Structural violence with deep roots in patriarchal, hegemonic, and colonial definitions of society and social order is deeply entwined with sexual and gender-based violence and the denial of survivors’ access to health care and medical services. It includes denial of abortion, preventable maternal morbidity, the criminalization of sex work, State-sanctioned sterilization and State-sanctioned intersex genital mutilation. Such instances of structural violence are seen across both the global North and global South.

71. Structural violence, when suffered at the hands of law enforcement or while in custody, creates similar barriers to the right to the highest attainable standard of health. Globally, police brutality and impunity contribute to non-reporting of sexual and gender based violence and the perpetuation of this kind of violence at the hands of officers and institutions of the law. Those issues arise particularly in contexts where abortion, same-sex relationships, transgender status or sex work are criminalized, 132 or where gender-based violence is condoned. Criminalization enables abuse and exploitation. Sex workers are exposed to conditions that include exposure to sexually transmitted infections but also to violence, extortion and intimidation by clients and police, nearly always without recourse. A South African study suggested that as many as 12 per cent of street-based sex workers in Cape Town had been raped by police officials”.

## **Special Rapporteur on violence against women and girls**

**2016. Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to South Africa[[14]](#footnote-14). “**35. Buying and selling sex are criminalized. There are no data available on the number of people being arrested and prosecuted under the relevant provisions of the SOA but the law was reported to be applied to women in prostitution only. The criminalisation of prostitution has driven women in prostitution underground, increased stigma and discrimination, created obstacles to access services and made them very vulnerable to violence, human rights violations and corruption. There has been evidence of police using the law against women in prostitution to commit abuses. As a result, women in prostitution, who often are ignorant of their rights, do not have access to justice. When they are arrested, they are often denied access to their medication (the HIV/AIDS prevalence is particularly high among prostitutes). There is also the stereotype by police that they cannot be raped. In terms of law reform process, the CGE has issued a position paper27 laying out the reasons and evidence behind its recommendation that women in prostitution should be decriminalized.

82. Based on the above findings, and in a spirit of cooperation and dialogue, with the Government, the SR offers the following recommendations: (d) review relevant legislation and regulations in force to decriminalize women in prostitution and take a comprehensive approach to addressing the question of prostitution, including exit programmes for women who wish to leave prostitution”.

**2011. Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Special Rapporteur on violence against women, its causes and consequences to Southafrica[[15]](#footnote-15):** “We wish to bring to your Excellency’s attention that, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, together with the Special Rapporteur on violence against women and girls stressed that the criminalization of sex work in the country increases the vulnerability of sex workers to violence, as it further enhances their social stigmatization and discrimination”.

## **Special Rapporteur on Trafficking in Persons**

**2021. Report on implementation of the non-punishment principle[[16]](#footnote-16).** “Detention, forced return, […] and the imposition of sanctions for immigration offences or engagement in sex work […] violate both the principle of non-punishment and the principle of non-discrimination.”

## Executive Summary

In 2019, UN Women maintained a neutral stance on the legalization of prostitution, emphasizing the need to protect women from violence, exploitation, and discrimination. The organization advocated for interventions guided by gender equality and empowerment within the unique national frameworks of member states.

By 2023, the Working Group on discrimination against women and girls maintained its perspective, urging the addressing of discrimination, marginalization, and stigmatization of sex workers through human rights frameworks. The Working Group recommended full decriminalization of adult voluntary sex work, citing evidence of harm from criminalization and emphasizing its potential to safeguard the rights, health, and socio-economic well-being of sex workers.

UN reports from 2016, 2019, and 2020 underscored the severe state control exerted through the discriminatory use of criminal laws and punitive measures, especially against women in sex work. These reports highlighted the violation of women's human rights and stressed the importance of ensuring access to health services, protection from violence and discrimination, and equal legal protection for sex workers. According to these reports, women engaged in sex work, including transgender women, faced disproportionate impacts from laws seeking to control morality and sexuality, leading to imprisonment or confinement in re-education institutions in states where sex work is criminalized. Lack of decent work opportunities was identified as a contributing factor, particularly for those in poverty.

Criminal laws were found to disproportionately affect marginalized women, including those in poverty, Indigenous, migrant, and ethnic minority women, sex workers, and members of the LGBTIQ+ communities. The enforcement of such laws exacerbated vulnerability to violence and harassment, perpetuating gender inequalities and poverty.

In 2023, the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, along with the Working Group on discrimination against women and girls, expressed concerns about the impact of criminalization on sex work. They argued that criminal law as a tool of social control is discriminatory, perpetuates structural violence, and violates sex workers' rights, emphasizing the need for protection, health services, and legal remedies.

Collectively, these reports stress the imperative to shift from punitive approaches to a human rights-based framework for sex work. The focus is on advocating for decriminalization to protect the autonomy, dignity, and rights of individuals involved in sex work, ensuring access to health services, preventing violence and discrimination, and dismantling unjust barriers perpetuated by criminalization.

# **Inter-American System of Human Rights**

The Inter-American System of Human Rights (hereinafter “IASHR”) unfortunately has not made significant contributions in the determination and regulation of sex work related issues regionally, nor has it deepened in States’ obligation with regards to it. Its input on the matter is very limited, with an opening to debates of the issues arising only opened fairly recent (in 2017) with the development of a public hearing before the Inter-American Commission of Human Rights (hereinafter “IACHR”).

On March 18, 2017, the IACHR held the first hearing in relation to the rights of sex workers in America[[17]](#footnote-17). The reason that motivated this hearing was the realization of a lack of legal security in which women sex workers find themselves in the region[[18]](#footnote-18). The applicants at the hearing spoke about the high rate of murders of female sex workers, the high rate of impunity that exists for these crimes, the barriers in access to justice, institutional violence by security forces, judicial officials and other state agents, among other serious problems. Likewise, they raised problems in the application of laws and regulations against human trafficking, indicating that operations often end up harming female sex workers[[19]](#footnote-19).

On a general basis, the applicants presented statistics on how the immense majority of women sex workers have been victims of violence during the exercise of their profession, and most of them have indicated that their attackers were police, armed forces, immigration agents and justice officials. That is, in most cases it was institutional violence[[20]](#footnote-20). Even more worryingly, in most cases, women sex workers who are victims of such attacks abstain from making formal complaints, among others, for fear of reprisals[[21]](#footnote-21). Another matter of concern that was presented during the hearing was related to the negative impact that anti-human trafficking laws have on sex workers[[22]](#footnote-22). The treatment that has been given to it in most countries “does not make a clear distinction between human trafficking and self-employment, and generates different forms of police, judicial and administrative intervention that result in the criminalization of sex work, reduce the possible areas of work for self-employed sex workers, and ends up seriously affecting the human rights of women who carry out this activity by their own decision”[[23]](#footnote-23).

Based on the above, the participants, among others, raised the request to the IACHR that progress be made in making a clearer differentiation between sex work and trafficking with sexual purposes, “both at the legislative level and in national public policies, generating efficient public policies to prevent, combat and punish discrimination and violence against sex workers, establish effective protection mechanisms against the actions of security forces and public institutions that develop discrimination and violence against sex workers, promote the development of regulations that regulate sex work, without criminalizing it, and guarantee optimal conditions for the development of women sex workers within the framework of respect for their human rights”[[24]](#footnote-24).

Based on the development of this hearing, the IACHR urged “the States of the region to design regulations and public policies that guarantee the human rights of sex workers, including measures to protect their life, integrity, honor and dignity, as well as to put an end to the stigmatization and discrimination of sex workers”[[25]](#footnote-25). Few updates and further developments have been implemented in the scope of the IACHR, apart from the Commission urging States to take specific measures to guarantee the respect for rights of women sex workers in the region, that could -and did- be particularly affected in the context of the COVID-19 pandemic[[26]](#footnote-26).

For its part, the Inter-American Court of Human Rights (hereinafter “IACtHR”) is yet to pronounce itself on the matter. So far, in only one opportunity has it referred to prostitution in the region, in the case of *Vicky Hernández and others v. Honduras*. Nonetheless, in the context of such a dispute, the Court limited its considerations to the fact that one of the victims in question was transgender, and referred to the discrimination she was subjected to based on stigma. The Court did not take advantage of the opportunity to go in depth in the analysis of prostitution related matters in general within the region, or the obligations American States are expected to comply with in such regard.

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