

Safeguarding Dignity: Insights on Prostitution and Violence Against Women

This submission, delivered by the Legal Clinic of Human Rights at Universidad de La Sabana¹, serves as a response to the call for input from the United Nations Special Rapporteur on Violence against Women and Girls. Its aim is to provide insights and contribute to the "report of the Special Rapporteur on violence against women and girls to the Human Rights Council on prostitution and violence against women and girls," as delineated in the thematic report issued by the Special Rapporteur.

This document will concentrate on three key issues: (i) delineating the profiles of women and girls engaged in prostitution, (ii) examining international standards on this matter, and (iii) presenting key conclusions. Complementing this report are three annexes designed to provide a more in-depth exploration of the conclusions outlined herein.

1. The Impact of Prostitution on Women and Girls, with Emphasis on the Most Vulnerable

Navigating the complexities of gathering data on prostitution proves to be a formidable challenge with limited prospects of success, primarily attributable to the insufficient disclosure by various States. Nevertheless, based on conservative estimates, it is suggested that the global prevalence of individuals involved in prostitution exceeds 52 million². Within this demographic, approximately 41.6 million are women, constituting a staggering 80%³. This, this pervasive phenomenon predominantly impacts women. Within this substantial cohort engaged in such activities, there is a concerning prevalence of severe vulnerabilities, manifesting in serious and often extreme forms.

- A) Women engaged in prostitution often find themselves in impoverished circumstances, as numerous studies worldwide have indicated⁴. The CEDAW Committee has further emphasized that in the majority of States, a clear connection exists between prostitution and the feminization of poverty⁵. A striking illustration of this phenomenon is evident in a study conducted in Nigeria, revealing that poverty is the driving force behind women entering into prostitution in 99.2% of cases⁶.
- B) Women engaged in prostitution often face circumstances that can impact their ability to provide informed consent. Various studies have highlighted the prevalent adverse effects on

¹ This document does not represent the opinion of the university or the Human Rights Legal Clinic. It is written in a personal capacity.

² International Union of Sex Workers. Sex Worker Statistics by Country, Gender (2023). Retrieved from: <https://www.iusw.org/sex-worker-statistics/#:~:text=3%2C000%2C000%2B-,Female%20Sex%20Worker%20Statistics,female%20sex%20workers%20being%2014.>

³ International Union of Sex Workers. Sex Worker Statistics by Country, Gender (2023). Retrieved from: <https://www.iusw.org/sex-worker-statistics/#:~:text=3%2C000%2C000%2B-,Female%20Sex%20Worker%20Statistics,female%20sex%20workers%20being%2014.>

⁴ Stoner MCD, Haley DF, Golin CE, Adimora AA, Pettifor A. The Relationship Between Economic Deprivation, Housing Instability and Transactional Sex Among Women in North Carolina (HPTN 064). *AIDS Behav.* 2019 Nov;23(11):2946-2955. doi: 10.1007/s10461-019-02611-8. PMID: 31332597; PMCID: PMC7374930; Jacquelyn Monroe PhD (2005) Women in Street Prostitution: The Result of Poverty and the Brunt of Inequity, *Journal of Poverty*, 9:3, 69-88, DOI: [10.1300/J134v09n03_04](https://doi.org/10.1300/J134v09n03_04)

⁵ CEDAW. Background paper concerning article 6 of the Convention on the Elimination of All Forms of Discrimination against Women. https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CEDAW%2F2003%2FII%2FWP.2&Lang=en.

⁶ ATOBAUKA, Ishaya, et al. Poverty and Women Prostitution in Nigeria: A Study of Wukari Local Government Area, Taraba State. *International Journal on Integrated Education*, 2021, vol. 4, no 9, p. 42-54.

the mental health of women involved in prostitution⁷, their lower levels of education⁸, and their dependence on psychoactive substances⁹.

- C) There is a close relationship between the violence experienced by women and their subsequent engagement in prostitution. A clear correlation has been established between incidents of sexual violence, domestic violence, exploitative environments, and the subsequent inclination to enter into prostitution¹⁰.

In this context, prostitution is not merely a phenomenon that impacts women but specifically targets the most vulnerable among them. Addressing these manifold vulnerabilities demands an intersectional approach that comprehensively attends to the diverse needs of this population. It is crucial to acknowledge that, given their circumstances, these women are potential victims of exploitation. Even when they provide consent for prostitution, it can be significantly influenced by various factors of vulnerability.

2. Prostitution, Labor, and Slavery: a Perspective from International Human Rights Law

Prostitution has sparked intense legal, philosophical, and ethical debates since ancient times. Currently, there is a heated discussion between those who argue that prostitution should be recognized as a form of labor (and regulated accordingly)¹¹ and those who believe it is a practice that should be prevented, as it is inherently contrary to human dignity, particularly for women¹². This section is grounded in three fundamental premises derived from international human rights law, thereby influencing the mandate of the Rapporteur and imposing obligations on States:

- A) There is no international prohibition of prostitution in international law; however, several prohibitions are in place regarding practices associated with prostitution. Notably prohibited are: (i) forced prostitution¹³, (ii) trafficking in persons¹⁴, (iii) child prostitution¹⁵, and (iv) the exploitation of prostitution by third parties¹⁶.

⁷ Jung YE, Song JM, Chong J, Seo HJ, Chae JH. Symptoms of posttraumatic stress disorder and mental health in women who escaped prostitution and helping activists in shelters. *Yonsei Med J.* 2008 Jun 30;49(3):372-82. doi: 10.3349/ymj.2008.49.3.372. PMID: 18581585; PMCID: PMC2615337.

⁸ University of Victoria, 2001. A study of 201 active and prior sex workers to differentiate between common myths and the realities of prostitution: https://dspace.library.uvic.ca/bitstream/handle/1828/7473/Benoit_Cecilia_DispeilingMyths_2001.pdf?sequence=1%26isAllowed=y.

⁹ British Medical Journal, 2001. A survey of 240 female prostitutes in the U.K. to determine violence from clients in different work settings: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC26557/>

¹⁰ Wilson HW, Widom CS. The Role of Youth Problem Behaviors in the Path From Child Abuse and Neglect to Prostitution: A Prospective Examination. *J Res Adolesc.* 2010;20(1):210-236. doi: 10.1111/j.1532-7795.2009.00624.x. PMID: 20186260; PMCID: PMC2825751; Stoltz JA, Shannon K, Kerr T, Zhang R, Montaner JS, Wood E. Associations between childhood maltreatment and sex work in a cohort of drug-using youth. *Soc Sci Med.* 2007 Sep;65(6):1214-21. doi: 10.1016/j.socscimed.2007.05.005. Epub 2007 Jun 18. PMID: 17576029; PMCID: PMC2254224.

¹¹ Salgado Santoyo, s. 2015. Modelos de Regulación de la Prostitución en la Unión Europea. Trabajo de grado. Universidad de les Illes Balears. Pág. 12: https://dspace.uib.es/xmlui/bitstream/handle/11201/3861/Santoyo_Salgado_Sofia.pdf?sequence=1

¹² Rubio, Ana . 2008. La teoría abolicionista de la prostitución desde una perspectiva feminista. En I. Holgado (Ed.), *Prostituciones: diálogos sobre sexo de pago* (pp. 73-94). Barcelona: Icaria

¹³ 1993 Declaration on the Elimination of Violence against Women. Article 2.

¹⁴ 2000 Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. Article 3.

¹⁵ The Convention on the Rights of the Child, adopted in 1989, and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, adopted in 2000.

¹⁶ 1979 Convention on the Elimination of All Forms of Discrimination Against Women. Article 6.

- B) International law does not recognize prostitution as a form of labor. While there are calls from international bodies, such as the Working Group on discrimination against women and girls, to consider prostitution as sex work¹⁷, this stance does not reflect international consensus and lacks a foundation in binding international legal norms¹⁸.
- C) Since the UN Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, it has been established that prostitution is “incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community”¹⁹.
- D) Several international bodies have issued a call for the importance of decriminalizing prostitution (among consenting adults) due to the negative effects that criminalization can have on women's rights, such as barriers to accessing health services and an increased occurrence of certain forms of violence²⁰.

Therefore, in international law, the question of considering prostitution as a form of labor lacks a foundation. Conversely, there appears to be a trend promoting the prevention of prostitution as injurious to human dignity, given its commodification of the body, particularly that of women. This conclusion is further supported by the following arguments:

Firstly, if the International Human Rights Law (IHRL) were to recognize prostitution as a globally protected form of labor, there would be no justification for prohibiting the spaces where it is practiced (brothels)²¹, nor for penalizing individuals who profit from the prostitution of others²². Conversely, these activities would be considered economic endeavors protected by the freedom of association, the right to development, and, more broadly, the freedom to conduct business. Additionally, there

¹⁷ UN. Working Group on discrimination against women and girls. 2023. Retrieved from: <https://www.ohchr.org/sites/default/files/documents/issues/women/wg/sex-work-pp-fin-proofread-24-sept.pdf>.

¹⁸ Annex 1.

¹⁹ 1949 UN Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of others. Preamble.

²⁰ UN Human Rights Council. Report of the Working Group on the issue of discrimination against women in law and in practice . <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/072/19/PDF/G1607219.pdf?OpenElement>; UN. Working Group on discrimination against women and girls. 2023. Retrieved from: <https://www.ohchr.org/sites/default/files/documents/issues/women/wg/sex-work-pp-fin-proofread-24-sept.pdf>; UN Human Rights Council. Women deprived of liberty. Report of the Working Group on the issue of discrimination against women in law and in practice. A/HRC/41/33. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/139/27/PDF/G1913927.pdf?OpenElement>; UN Human Rights Council. Women’s human rights in the changing world of work. Report of the Working Group on discrimination against women and girls. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/094/80/PDF/G2009480.pdf?OpenElement>; 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 (hereinafter 2022 Amendment Bill),¹ introduced at the National Assembly (proposed section 75), which intends to repeal the Sexual Offenses Act, 1957 (Act No. 23 of 1957) and the Criminal Law (Sexual Offenses and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007). Retrieved: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27841>; CEDAW Committee, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19 (2017), CEDAW/C/GC/35; 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. A/HRC/14/20. <https://www.refworld.org/docid/4c076fb72.html>; Human Rights Council. 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. A/HRC/50/28. <https://digitallibrary.un.org/record/3973085?ln=es>

²¹ 1949 UN Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of others. Article 2.

²² Ibid. Article 1.

would be no need for explicit prohibitions on forced prostitution²³, as the international prohibition of forced labor²⁴ would suffice.

Secondly, while prostitution itself is not prohibited, forced prostitution is, making the issue of consent a central element in the discussion. As seen in the previous section, a significant majority of women engaged in prostitution face serious vulnerabilities, often having been subjected to exploitation since childhood. The IHRL has consistently emphasized that vulnerability factors must be considered in case analyses and that they can impact individuals' freedom to consent under certain circumstances²⁵. In fact, the Palermo Protocol specifies that the victim's consent is irrelevant when it involves "abuse of power or of a position of vulnerability"²⁶. Therefore, not only in cases involving deception or violence in prostitution scenarios but also in situations where the victim's vulnerability is exploited, human trafficking can be established, which is usually the case.

Thirdly, slavery has been defined as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised"²⁷. This implies that the attributes of use, enjoyment, and disposal can be exerted over the individual. This is crucial because in prostitution, the enjoyment and disposal of the body, especially that of women, are the very objects of transactions. As some authors have pointed out²⁸, while all forms of work involve the provision of services with the body, in no other activity is the body itself the object of the provision. Thus, beyond the deplorable working conditions, the intrinsic connection of prostitution with vulnerability and the feminization of poverty, the very object of prostitution involves the disposal of the human body in exchange for remuneration. This can lead to the configuration of elements of slavery. It is worth noting that: (i) the prohibition of slavery is a norm of jus cogens²⁹, and (ii) the victim's consent does not absolve responsibility for slavery³⁰.

3. Conclusions

States have opted for various models to regulate the phenomenon of prostitution. These models include: (i) criminalization of prostitution, (ii) abolition of prostitution (recognizing it as contrary to human dignity and seeking prevention without criminalization), (iii) legalization of prostitution as a

²³ 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.

²⁴ ILO. C-029. Forced Labour Convention, 1930; Abolition of Forced Labour Convention 1957

²⁵ 2000 Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. Article 3; UNHR. The importance of implementing the non-punishment provision: the obligation to protect victims Maria Grazia Giammarinaro. Special Rapporteur on trafficking in persons, especially women and children.

²⁶ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Article 3.

²⁷ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. 1956.

²⁸ Rubio, Ana . 2008. La teoría abolicionista de la prostitución desde una perspectiva feminista. En I. Holgado (Ed.), Prostituciones: diálogos sobre sexo de pago (pp. 73-94). Barcelona: Icaria

²⁹ International Law Commission. A/74/10. Chapter V. Peremptory Norms of General International Law.

³⁰ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. 1956.

form of labor, and (iv) regulation of the consequences of prostitution³¹. In turn, international law does not prescribe a singular model but affords a broad margin of regulation to states³².

However, this broad margin has begun to evolve in a concerning manner. As some authors point out, the 1949 model was abolitionist, acknowledging the violation of human dignity inherent in prostitution and, therefore, promoting a preventive approach by restricting activities involving the exploitation of others' prostitution. In contrast, more recently, international bodies have incorporated the language of "sex workers," recognizing prostitution as a form of labor that should be simply regulated rather than prevented³³.

This evolution in international law appears to stem from a false dilemma surrounding the issue of prostitution. Many international bodies, recognizing the risks associated with a prohibitionist stance, have inclined towards a regulatory view of prostitution as a form of labor. In this context, the most recent international legal instruments seem to operate on the assumption that there are only two possible approaches to the phenomenon of prostitution: either to prohibit it or to recognize it as a form of work. The prohibitionist approach draws attention to the lack of access to health services and the heightened violence exacerbated by the clandestine nature of activities, along with the absence of legal recourse for individuals in prostitution facing disputes with clients or pimps. Consequently, international bodies have leaned towards considering prostitution as a form of labor.

However, this is a false dilemma. This is because it is not necessary to deny the violation of human dignity inherent in prostitution to provide comprehensive support to individuals, especially women, engaged in prostitution. Countries such as Iceland, Estonia, or Ireland have opted for abolitionist models, understanding the undesirability of prostitution for the respect of women's dignity. They recognize that prostitution itself is a form of gender-based violence. Therefore, their regulation of the phenomenon focuses on preventing prostitution while still addressing the rights of women engaged in prostitution³⁴.

Prostitution is a multimillion-dollar business³⁵ that profits from the buying and selling of women's bodies, particularly those who are most vulnerable. This industry capitalizes on the feminization of poverty, the lack of job opportunities for women, and the extreme conditions faced by women in contexts of violence³⁶. Therefore, a genuine approach from international human rights law, in our view, necessitates the following urgent actions:

- A) A call for the prevention of prostitution. This entails the need to critically reconsider the perspective that portrays prostitution as mere work, as this is undeniably a reductionist view. Such a perspective fails to acknowledge the objectification of women's bodies and the potential consequences that endorsing this stance could have for international human rights law.
- B) The promotion of reliable data collection by States, aiming to understand not only the consequences of prostitution but also its underlying causes. At the core of prostitution lies

³¹ Annex 2

³² UN Women. Executive director Statement. 2019. Retrieved from: [:https://www.passblue.com/wp-content/uploads/2019/11/Global-Letter-from-UN-Women-Executive-Director-re-Beijing25-and-Generation-Equality-Forum.pdf](https://www.passblue.com/wp-content/uploads/2019/11/Global-Letter-from-UN-Women-Executive-Director-re-Beijing25-and-Generation-Equality-Forum.pdf).

³³ Annex 1.

³⁴ Annex 2.

³⁵ Annex 3.

³⁶ Rubio, Ana . 2008. La teoría abolicionista de la prostitución desde una perspectiva feminista. En I. Holgado (Ed.), Prostituciones: diálogos sobre sexo de pago (pp. 73-94). Barcelona: Icaria

poverty and vulnerability. A genuine human rights-based approach involves recognizing that this poverty and vulnerability can significantly impact the consent given by women for their bodies to become objects of contractual agreements.

- C) The attention to the rights of women regardless of their circumstances. The premise that addressing the rights to health and integrity of women engaged in prostitution is only possible if this activity is recognized as a work implies that States should only provide access to these rights for women in the labor force. This perspective contradicts the international legal framework, which mandates that, progressively, the highest degree of access to the right to health must be granted to all women, irrespective of whether they are part of the labor market or not.
- D) Efforts must continue to address the prevention of institutional violence faced by women engaged in prostitution³⁷. Regardless of the national legal approach, women involved in prostitution encounter serious risks, often manifested by the institutional framework itself. In this regard, these forms of violence must be prevented, investigated, prosecuted, and sanctioned.

This comprehensive view of prostitution, one that avoids reducing the phenomenon to a mere crime or employment contract but rather acknowledges its complexity, should be spearheaded by international human rights protection bodies. It is unacceptable for the United Nations to endorse models that perpetuate violence against women, commodify their bodies, and allow the multibillion-dollar exploitation of millions of vulnerable women worldwide.

³⁷ Inter-American Commission of Human Rights, CIDH celebra primera audiencia sobre los derechos de las trabajadoras sexuales en América, Press Release March 23, 2017, available at: <https://www.oas.org/es/cidh/prensa/comunicados/2017/036.asp> (unofficial translation)