



Submission from the Villanova Law Institute to Address Commercial Sexual Exploitation (CSE Institute) to the UN Women Consultation on Approaches to Sex Work, the Sex Trade and Prostitution.

As a preliminary matter, the CSE Institute has concern regarding the terms of the Consultation and encourages UN Women to avoid use of the term “sex work,” or any of its variations. At a minimum, such usage is inconsistent with international law. Indeed, as the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949 Convention), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol), considered together, recognize, prostitution, as actually practiced in the world, constitutes a harmful human rights violation that both results from and perpetuates discrimination against women. Moreover, the term “sex work” has the effect, if not the purpose, of framing commercial sexual exploitation as a legitimate employment choice, which is contrary to reality. In contrast, terms such as commercially sexually exploited persons, trafficking victims, and prostituted persons more appropriately reflect the realities of prostitution.

Answer to Question 1: Recognizing Prostitution as a Legitimate Form of Employment is Contrary to Agenda 2030’s Commitment to Universality, Human Rights, and Leaving Nobody Behind

UN Women can fulfill its commitment to the principles of universality, human rights, and leaving nobody behind by adopting an abolitionist approach to the commercial sex industry. Specifically, it should endorse laws and policies consistent with a “Nordic Model,” which decriminalizes selling/being sold for sex; holds traffickers, pimps, and buyers accountable; and provides real and acceptable alternatives for those harmed in the sex trade. Below, we illustrate how each of the 2030 Agenda principles is best-promoted by the abolitionist approach.

The abolitionist approach promotes the 2030 Agenda’s commitment to universality.

As the 2030 Agenda states, “[w]e envisage a world of *universal* respect for human rights and human dignity.”¹ Such a vision is inconsistent with a world in which some people—typically those with the fewest options, resources, and protections—are sold for sex. Even when someone “chooses” to enter prostitution, typically this “choice” results from a “situation in which the person involved has no real and acceptable alternative” and thus does not represent any

¹G.A. Res. 70/1, ¶ 8 (Sept. 25, 2015).

legitimate choice.² As such, adopting the abolitionist approach and rejecting legalization of prostitution is consistent with the fulfillment of the 2030 Agenda as it relates to universality.

The abolitionist approach promotes the 2030 Agenda's commitment to human rights.

From its inception, the UN has recognized the fundamental human right of dignity.³ Moreover, the UN has specifically recognized that prostitution is “incompatible with the dignity and worth of the human person.”⁴ *Quite simply, prostituted persons are human beings* who deserve the same human rights and protections as all other classes of exploited persons. Punishing them for being prostituted, or legitimating their abuse through legalization of the sex trade, fails to respect these basic human rights. Thus, adopting an abolitionist approach to prostitution is the most effective means to advance Agenda 2030's commitment to human rights.

The abolitionist approach promotes the 2030 Agenda's commitment to leaving nobody behind.

As long as prostitution exists, those with the fewest options will be left behind. We strongly encourage UN Women to recognize prostitution for what it truly is, an institution that exploits its victims—mostly women and girls—and fails to recognize their value as human beings. “[A] world in which women are not valued as human beings tends to be a world in which harms to prostituted people will be common; a world in which such harms are common tends to be one in which women are not valued as human beings.”⁵ This self-perpetuating cycle is inconsistent with Agenda 2030's commitment to leaving nobody behind.

Answer to Question 2: The UN's Sustainable Development Goals (SDG) of Achieving Gender Equality and Empowering all Women and Girls Can Be Achieved Only By Adopting an Abolitionist Policy Towards Prostitution

Simply put, gender equality and prostitution cannot co-exist; they are mutually exclusive. Thus, if the UN is committed to the goal of achieving gender equality and empowering all women and girls, the UN *must* adopt an abolitionist policy towards prostitution. Only an abolitionist policy can achieve the SDG's target of ending the trafficking of women; any policy that stops short of abolition is a policy of conscious avoidance of human trafficking. An abolitionist policy would

² *Interpretative Notes for the Official Records (Travaux Préparatoires) of the Negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, ¶ 63, UN Doc. A/55/383/Add.1 (Nov. 3, 2000).

³ U.N. Charter pmb. (“reaffirm[ing] 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”).

⁴ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others pmb., Dec. 2, 1949, 96 U.N.T.S. 271.

⁵ *Id.* at 1737.

go further than ending trafficking, however, and would significantly impact SDG targets of (1) reproductive rights, by removing a woman's body from the position of tradable commodity and returning it to her dominion; (2) women's ownership of land and assets, by transforming a woman's role in society from that of product to that of a full and equal member of the human community; (3) building peaceful and inclusive societies, again, by positioning women as humans and not as "items" to be used, which can easily be abused when their use becomes unsatisfactory to the purchaser; and (4) eliminating violence against women, by refusing to ignore the human rights violations endemic to prostitution.

That prostitution is a violation of basic human rights has long been recognized by the international community. As noted above, the 1949 Convention specifically recognized that prostitution is "*incompatible with the dignity and worth of the human person.*"⁶ Despite this long-acknowledged truth, "[i]n some domestic legal systems, men have been granted a *legal* right to engage in the use of prostituted persons."⁷ As noted in a 2006 Report of the Special Rapporteur ("2006 Report"), while the Palermo Protocol does not absolutely prohibit the granting of this legal right, "[i]t does, however, require States to act in good faith towards the abolition of all forms of child prostitution and all forms of adult prostitution in which people are recruited, transported, harboured, or received 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"⁸

As this report also noted, "[w]here the human rights of trafficking victims conflict with the legal rights granted to prostitute-users, the human rights of trafficking victims must prevail."⁹ Yet, governments that have chosen to legalize prostitution consistently fail to meet their "heavy responsibility" of "ensur[ing] that the conditions which actually pertain to the practice of prostitution within their borders are free from the illicit means" enumerated in the Protocol.¹⁰ Why? Because, as the UN has recognized since at least 1949, prostitution is "incompatible" with human dignity. Given the reality that, "prostitution as actually practised in the world usually *does* satisfy the elements of trafficking," the human rights of trafficking victims are bound to conflict with the legal rights granted to prostitute-users.

Context for understanding the fundamental incompatibility between prostitution and gender equality is provided by CEDAW, which explains that "consent" to prostitution typically reflects

⁶ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others pmbl., Dec. 2, 1949, 96 U.N.T.S. 271.

⁷ Sigma Huda (Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children), Comm'm on Human Rights, *Integration of the Human Rights of Women and a Gender Perspective*, U.N. Doc. E/CN.4/2006/62, at 15 (Feb. 20, 2006).

⁸ *Id.* at 8.

⁹ *Id.* at 15.

¹⁰ *Id.* at 9.

lack of options, rather than legitimate choice because, “in situations of poverty[,] women have the least access to food, health, education, training and opportunities for employment.”¹¹ It is this systemic gender inequality—not informed, free choice—that leads women to a life of prostitution, a life that maintains them perpetually in a state of societal inferiority linked to their gender. In short, prostitution is a harmful and oppressive human rights violation, exploitive of women, that both *results from* and *fosters* gender inequality. Thus, to achieve its goals of gender equality and the empowerment of girls and women, the UN must adopt an abolitionist policy towards prostitution.

Answer to Question 3: UN Women Can Best Protect Women in the Sex Trade From Harm, Violence, Stigma, and Discrimination By Adopting an Abolitionist Policy Towards Prostitution

The best way to protect women in the sex trade from harm, violence, stigma, and discrimination is by adopting the abolitionist policies that eliminate any legal sanction against those who sell/are sold for sex; that hold traffickers, pimps, and buyers accountable; and that provide robust social services to those seeking to exit the sex trade, thereby ensuring real and acceptable alternatives for those harmed in the sex trade.

Criminalizing women in the sex trade creates additional harm, violence, stigma, and discrimination—all of which are exacerbated by unequal and discriminatory law enforcement patterns. Police often target sellers, while buyers completely avoid arrest—their crimes justified by a “boys will be boys” attitude. As a consequence, women are frequently incarcerated for prostitution, while men are rarely incarcerated for buying sex. On the other hand, full legalization of the commercial sex industry will not eliminate the harm, violence, stigma, and discrimination experienced by women in the sex trade. Rather, legalization is likely to increase trafficking, thus resulting in further harms.¹² Ultimately, the harms of the sex trade cannot be marginally reduced by attempting to draw boundaries for permissible exploitation; it can only be, and must be, eradicated in order to achieve UN Women’s stated goals.

In conclusion, any policy short of abolition turns a blind eye to ongoing discrimination and human rights violations against women and fails to fulfill UN Women’s commitments under Agenda 2030 and the Sustainable Development Goals.

¹¹ Convention on the Elimination of All Forms of Discrimination Against Women art. 6, Dec. 18, 1979, 1249 U.N.T.S. pmb.

¹² Seo-Young Cho, Axel Dreher, & Eric Neumayer, *Does Legalised Prostitution Increase Human Trafficking?*, 41 WORLD DEVELOPMENT 67 (2013).