



OHCHR Working Group promotes the decriminalisation of pimping and of the demand that fosters trafficking, in complete denial of international Human Rights law and realities on the ground.

CAP International – The Coalition for the Abolition of Prostitution is a coalition made of 35 frontline & survivors-led NGOs in 28 countries. Last year, CAP member organisations supported more than 18.000 prostituted persons in the world, overwhelmingly women and girls from the most marginalised groups.

Our coalition is appalled by the recent position paper published by the Working Group on discrimination against women and girls of the OHCHR, the content of which raises serious questions in terms of objectivity, rigor and credibility.

A one-sided, misleading paper based on a non-inclusive consultation

Before analysing the content of the report itself, it seems necessary to address the methodological approach taken by the Working Group. While we could have expected that such a paper would be based on transparent and inclusive consultations, we observe that not a single member of our coalition – and globally, from any frontline and survivors-led organisations working to provide support and alternatives to prostituted persons – has been consulted. The only civil society organisations mentioned as references are pressure groups advocating for the full decriminalisation and/or legalisation of the sex-trade, with a particular mention to the NSWP, quoted 11 times in a 12 pages document.

At this point, it seems impossible not to address *the elephant in the room*: 100% of the civil society organisations referred to¹, as well as four over five of the members of the Working Group² (including the main author of this Paper Ivana Radačić) are either supported or active members of structures supported by the Open Society Foundation (OSF), which is one of the most aggressive promoter and funder of the full decriminalisation of the sex-trade.³ It must also be noted that the terminology used, including the definition of prostitution reframed as “sex work” is directly provided by the OSF⁴, in total denial of the agreed language of the international Human Rights law.

This situation raises serious concerns about the objectivity and ethics in the work carried out by the Working Group on the issue of prostitution and should raise attention among UN Agencies and Member States.

The misleading content of the report only reflects this biased, partial approach, and seems to be more the result of a work carried out in a closed circle, disconnected from the realities, than of a collective, objective and inclusive process.

A misleading description of the legal environment on prostitution

The position paper’s reference to certain constitutional challenges to laws targeting the demand is both incomplete and misleading. The Working Group refers to challenge to the French Abolitionist law at the European Court of Human Rights as a form of jurisprudence validating the arguments of the pro “sex work”

¹ References to civil society organisations in the position paper: Open Society Foundations: 1, 3, 10, 20; Global Network of Sex Work Projects - NSWP: 9, 10, 13,14,17,22, 24, 25, 27, 28, 31; European Sex Workers Rights’ Alliance - ESWRA: 10, 22; Sex Workers’ Rights Advocacy Network - SWAN: 16, 19; Sex Workers Inclusive Feminist Alliance - SWIFA: 20, 21, 59, 64 ; International Commission of Jurists - ICJ: 63, Amnesty International: 23.

² Ivana Radačić is a member of the Ivo Pilar Institute of Social Sciences https://www.pilar.hr/biografije/user-bio/?my_user_id=97, Melissa Upreti and Eskerem Geset Techane are members of the Women’s Human Rights Institute <https://learnwhr.org/about/faculty/>, Elizabeth Broderick is a Board Member of the International Service for Human Rights <https://unwomen.org.au/speaker/elizabeth-broderick-ao/>, all supported by the Open Society Foundations.

³ <https://www.opensocietyfoundations.org/publications/ten-reasons-decriminalize-sex-work>

⁴ Footnote 3 of the Working Group’s position paper explaining their definition of “sex work”:
“see <https://www.opensocietyfoundations.org/explainers/understanding-sex-work-open-society>”

groups. However, the most elementary notions of law allow to understand that the lodging of a complaint does not equal a justice decision.

On the contrary, if we refer to judgements recently given, we can observe that the procedures targeting Abolitionist laws are more likely to result in the unequivocal confirmation of their constitutionality than in their repeal. It has been the case in Canada, through a decision recently given by the Court of Ontario⁵, and by the State Court⁶ and Constitutional Court⁷ in France.

Regarding France, it is precisely because the complainants have seen their arguments being strongly rejected by the highest French Courts – and have therefore exhausted their means at the national level - that they have turned to the ECHR, according to the principle of subsidiarity. Unfortunately, no mention of this (real) jurisprudence can be found in the references of the Working Group.

A fair and objective analysis of the legal environment surrounding laws on prostitution could also have included the recent developments in South Africa, where a bill aiming at fully decriminalise the sex-trade (following the recommendations of several references mentioned in the working group's report, including Dr. Tlaleng Mofokeng) had to be withdrawn by the Deputy-Minister of Justice, after realizing that such a bill "might not pass the constitutional muster".⁸ This important element is also omitted in the report.

A terminology reflecting an ideological and disconnected vision of the realities of the prostitution system, in complete denial of the international Human Rights' law agreed language on prostitution.

The term "sex work", which use is being institutionalised in the position paper, is an ideological term which one and only purpose is to promote the full decriminalisation and/or legalisation of the sex trade. It has never been recognised by any UN Convention and does not reflect the realities of the prostitution system.

This term is used in the position paper in a way that creates a confusion between prostituted persons (referred to as "sex workers") and the entire prostitution system (referred to as "sex work"), which includes pimps, sex-buyers and prostituted persons. For instance: *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*. By doing so, the Working Group mixes prostituted persons with their exploiters, thus blanketing their exploitation. It justifies the decriminalisation of pimps and sex buyers on the pretext of protecting prostituted persons.

As much as the terminology present in the position paper, the one that is missing also reflects its ideological and disconnected dimension: pimps are reframed as « third parties », « sex-buyers » are reframed as « clients »... The terms "pimp", "trauma", "PTSD", "rape", "male violence" are not even mentioned once in the Paper. The sexist, racist, class-based patterns of oppression that shape the prostitution system are only mentioned to explain that they exist in prostitution as in everywhere else.⁹ Violence is mentioned but never connected to pimps and sex-buyers, only to "State agents and private actors".¹⁰

This narrative could not be more disconnected from the concrete realities observed every day among the prostituted persons supported by frontline and survivors-led organisations.

⁵ *Federal prostitution law is constitutional, rules Ontario court*, Radio Canada, 18 September 2023: <https://ici.radio-canada.ca/nouvelle/2011136/prostitution-decriminalisation-legalisation-canada-modele-scandinave>

⁶ Decision of Conseil d'Etat, 10ème - 9ème chambres réunies, 07/06/2019, 423892: <https://www.legifrance.gouv.fr/ceta/id/CETATEXT000038566449>

⁷ Decision of Constitutional Court n° 2018-761 QPC, 1 February 2019: <https://www.conseil-constitutionnel.fr/decision/2019/2018761QPC.htm>

⁸ Deputy Minister John Jeffery: Justice and Constitutional Development Dept Budget Vote 2023/24: <https://www.gov.za/speeches/deputy-minister-john-jeffery-justice-and-constitutional-development-dept-budget-vote-202324>

⁹ OHCHR Working Group on Discrimination against women and girls, position paper: *Eliminating discrimination against sex workers and securing their human rights: "Sex work is a gendered phenomenon and arrangements within sex work sectors tend to follow existing patriarchal, racial, class and nationalistic hierarchies."* <https://www.ohchr.org/sites/default/files/documents/issues/women/wg/sex-work-pp-fin-proofread-24-sept.pdf>

¹⁰ Ibid

Human Rights and international Human Rights law are not abstract concepts.

The Working Group claims to be “examining sex work (sic) from a Human Rights perspective”, but only makes vague references to certain rights, without any argumentation. However, **Human Rights, and International Human Rights law are not abstract concepts, they pertain to international conventions and treaties that have a Universal value which UN bodies cannot freely emancipate from. The position expressed by the Working Group is totally incompatible with several UN Conventions.**

While the OHCHR Working Group calls for the “decriminalisation of sex work”, the **UN Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others**, states in its preamble that *prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person.*

While the OHCHR Working Group calls for the decriminalisation of what they call “third parties”, **Article 1 and 2 of the same Convention states** : *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. (...) 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.*

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

While the OHCHR Working Group calls for the decriminalisation of the demand (referred to as simple “clients”, the **(Palermo) Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, in particular its Article 9(5)**, calls upon States to *adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.*

On the demand, the Working Group applies the same selective approach to the work of the **CEDAW Committee** that it has applied to jurisprudence: it omits to refer to the **General Recommendation 38 on trafficking in women and girls in the context of global migration** that calls upon States to *Discourage the demand that fosters exploitation of prostitution and leads to trafficking in persons.*¹¹

The position of the OHCHR Working Group also goes against the **Resolution 77/194 on Trafficking in women and girls** adopted on the 15th of December 2022 in plenary session of the UN General Assembly by all Member States, which *Calls upon Governments to intensify their efforts to prevent and address, with a view to eliminating, the demand that fosters the trafficking of women and girls for all forms of exploitation and in this regard to put in place or to enhance preventive measures, including legislative and punitive measures to deter exploiters of trafficked persons, as well as ensure their accountability.*¹²

Finally, in terms of international standards, the Working Group fails to mention the **European Parliament resolution of 14 September 2023**,¹³ which recognises prostitution as a form of violence and calls on Member States to adopt all the pillars of the abolitionist model: the decriminalisation of prostituted persons, their access to exit routes, the criminalisation of the purchase of sexual acts and all forms of pimping, and the implementation of awareness-raising programmes aimed at men and young people in particular.

The position the Working Group clearly contradicts international Human Rights law and standards.

¹¹ CEDAW General recommendation No.38 (2020) on trafficking in women and girls in the context of global migration <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no38-2020-trafficking-women#:~:text=Summary,align%20with%20mixed%20migration%20flows>.

¹² UN Resolution 77/194 on Trafficking in women and girls: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/759/64/PDF/N2275964.pdf?OpenElement>

¹³ European Parliament resolution of 14 September 2023 on the regulation of prostitution in the EU: its cross-border implications and impact on gender equality and women's rights (2022/2139(INI)) https://www.europarl.europa.eu/doceo/document/TA-9-2023-0328_EN.html

The decriminalisation of the prostitution system has disastrous consequences for women and girls

A disastrous impact has been observed in countries that have decriminalised and/or legalised the sex trade:

- **Male demand for buying sexual acts has exploded**, normalising the objectification of women's bodies. By giving a transactional value to sex, a form of "uberisation" of sexual acts has been observed, particularly among the youth. In the Netherlands for instance, it is now legal for a driving instructor to propose a sexual act to his students as a means of payment: the practice is called "a ride for a ride".¹⁴ In Spain, it has become normal for young people to go to a brothel to celebrate a birthday or a success.¹⁵

Germany has become known as "The Brothel of Europe"¹⁶ as it is estimated that 1 million men buy a sexual act every day.¹⁷ In Spain, 32%¹⁸ to 39%¹⁹ of men have already paid for a sexual act. This figure comparatively is 7,4% in Sweden²⁰ and 6% in Ireland²¹, both countries with Abolitionist legislations.

- **To satisfy the exploding demand, pimps and traffickers have developed their activities to increase the "supply"**: it is estimated that there would be up to 400,000 prostituted persons in the country,²² and 350,000 in Spain.²³ Comparatively, they are between 30.000 and 44.000 in France, nearly 10 times less.²⁴

- **It has provided a legal facade used by international trafficking networks**, as described by Manfred Paulus, a German police officer in charge of the fight against trafficking for 30 years: *In Germany we now have up to 100% of women imported from abroad for prostitution. (...) Women are trafficked into the country, and in this sector, highly criminal structures have developed. Organised crime controls the business. There are obviously people involved who are not at all or too little informed about the milieu, and who, consciously or not, give in to the myth of "free" Prostitution, whispered to them by lobbyists. (...) But "voluntary" is just a magic word. If prostitution takes place "voluntarily", then the brothel operator, the bar owner and the john no longer have a problem. And then the police, judiciary and political systems are helpless.*²⁵

- **It has not improved the conditions of prostituted themselves.** On the contrary, an explosion of violence has been observed in Germany since the regulatory law was passed in 2002, with 84 identified murders of prostituted persons.²⁶ Comparatively, 0 prostituted person has been murdered in Sweden since the country adopted an Abolitionist law in 1999.²⁷

- **Finally, it has not allowed to answer the needs expressed by prostituted persons:** when genuinely asked about their needs, the primary answer is **to exit prostitution**.²⁸

While the Working Group stated its intention to ensure that "no one is left behind", the position it has just adopted concretely endorses the exploitation of the most discriminated vulnerable women and girls by a sexist, racist, and class-based system.

We call the OHCHR to ensure that its Working Group acts in line with international Human Rights law and UN Conventions, and adopts an inclusive, transparent and fair approach in its work on prostitution.

¹⁴ <https://edition.cnn.com/2015/12/21/europe/driving-lessons-sex-netherlands/index.html>

¹⁵ <https://eldiariosolidario.com/prostitucion-jovenes-espana>

¹⁶ <https://www.bbc.com/news/world-europe-26261221>

¹⁷ <https://business.time.com/2013/06/18/germany-has-become-the-cut-rate-prostitution-capital-of-the-world/>

¹⁸ https://www.cis.es/cis/export/sites/default/-Archivos/Marginales/2780_2799/2780/Cru278000EDAD_H.html

¹⁹ La trata con fines de explotación sexual, 2017. <https://apramp.org/download/la-trata-con-fines-de-explotacion-sexual/>

²⁰ <https://link.springer.com/article/10.1007/s10508-020-01843-3>

²¹ <https://www.newstalk.com/news/just-one-15-men-say-purchase-sex-ireland-977486>

²² <https://www.bbc.com/news/world-europe-26261221>

²³ La prostitución como forma de violencia de género > La percepción de las mujeres en situación de prostitución. Médicos del Mundo, 2020

https://www.medicosdelmundo.org/sites/default/files/la_prostitucion_como_forma_de_violencia_de_genero.pdf

²⁴ Ministère de l'Égalité, France, 2021. <https://www.egalite-femmes-hommes.gouv.fr/sites/efh/files/migration/2021/12/Chiffres-cles-Egalite-femmes-hommes-02-12-2021.pdf>

²⁵ <https://resourcesprostitution.wordpress.com/2014/09/03/prostitution-and-human-trafficking-cannot-be-separatedinterview-with-manfred-paulus/>

²⁶ <http://prostitutionresearch.com/wp-content/uploads/2019/04/Murders-of-prostituted-women-in-Germany-since-legal-prostitution-in2002.pdf>

²⁷ Swedish Ambassador-at-large for Combating Trafficking in Persons, 2023

²⁸ <https://www.irishexaminer.com/news/arid-30978567.html>