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(c) 1997

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# Redefining Prostitution as Sex Work on the International Agenda

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## 1. Abstract

The report disputes the identification of prostitution as a human rights violation akin to slavery which informs the 1949 Convention on the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. The research reveals that rather than facing conditions of slavery, most men and women working as prostitutes are subjected to abuses which are similar in nature to those experienced by others working in low status jobs in the informal sector.

This finding is supported by an investigation of the applicability of existing human rights and labour standards to issues of concern to men and women in the sex industry. The investigation concludes that most of these issues are subject to existing standards, developed to curtail abuses in other industries. However, the marginal position of sex workers in society excludes them from the international, national and customary protection afforded to others as citizens, workers or women. Their vulnerability to human and labour rights violations is greater than that of others because of the stigma and criminal charges widely attached to sex work. These allow police and others to harass sex workers without ever intervening to uphold their most elementary rights.

The report finds that the dismissal of the entire sex industry as abusive obscures the particular violations of international norms which are of concern to sex workers. This approach also fails accurately to reflect the limited nature of the relationship negotiated between sex worker and client in the commercial transaction. This is not an employment relationship as the client does not have enduring power over the worker. Sex work can take place in the context of exploitative employment relationships, even slavery, where someone with enduring power over the worker constrains her power to negotiate with the client. This case does not support an assertion that all sex work is akin to slavery. Moreover, by distinguishing sex work from other

forms of labour, such an approach reinforces the marginal, and therefore vulnerable, status of the sex worker.

The report recommends that all national legislation which, in intent or in practice, results in the placing of sex workers outside the scope of the rule of law, should be repealed. The redefinition of prostitution as sex work is proposed as a preliminary condition for the enjoyment by sex workers of their full human and labour rights. Investigation is recommended into the mechanisms which exclude sex workers from the protection of existing human rights and non-industry specific labour standards. It is recognised that existing labour standards may not be adequate to protect the right to security of person in the context of sex work. It is suggested that of the intergovernmental organisations, the International Labour Organization is in principle best suited to the task of regulating working conditions to accommodate the special features of the sex industry.

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## **2. Introduction**

### **2a. Redefining Prostitution as Sex Work**

Sex workers, usually referred to as prostitutes, have occupied an anomalous position in societies throughout history. Prostitutes are generally regarded as a social category, as women who do not adhere to sexual and other behavioural norms; pitied or despised, they are excluded from mainstream society, their lowly and marginal position analogous to that of a low caste or minority ethnic group. Outcast status denies them whatever international, national or customary protection from abuse is available to others as citizens, women or workers.<sup>[1]</sup> This social exclusion renders the prostitute vulnerable to exploitation.

The designation of prostitution as a special human rights issue, a violation in itself, emphasises the distinction between prostitution and other forms of female or low-status labour, such as cleaning or food-serving, however exploitative they are. It thus reinforces the marginal, and therefore vulnerable, position of the women and men involved in prostitution. By dismissing the entire sex industry as abusive, it also obscures the particular problems and violations of international norms within the industry which are of concern to sex workers.

The terms 'sex work' and 'sex worker' have been coined by sex workers themselves to redefine commercial sex, not as the social or psychological

characteristic of a class of women, but as an income-generating activity or form of employment for women and men. As such it can be considered along with other forms of economic activity. An employment or labour perspective is a necessary, if not sufficient, condition for making sex work a part of the mainstream debate on human, women's, and workers' rights at local, national and international level.

The lack of international and local protection renders sex workers vulnerable to exploitation in the workplace, and to harassment or violence at the hands of employers, law enforcement officials, clients and the public. The need for worker protection, including occupational health and safety provisions, is of particular relevance in the current context of HIV/AIDS. Sex workers without rights in their place of work are uniquely vulnerable to infection with HIV and other sexually transmitted disease, as they routinely lack the information, materials or authority to protect themselves and their clients.

This report is intended as a preliminary step in the process of ending the exclusion of sex workers. By looking at commercial sex as work, and at the conditions under which that work is performed, sex workers can be included and protected under the existing instruments which aim to protect all workers in a general way, all persons from violence, children from sexual exploitation, and women from discrimination. The focus of the report is on how much sex workers have in common with other people and workers, not on how they differ. This report demonstrates that the social discrimination faced by sex workers and the problems they face in their working lives are not, in general, unique. Rather, their experience resembles the experience of other persons and workers. An examination of international human rights and labour standards reveals that most issues of concern to sex workers could be subject to the international instruments already developed to protect the rights of others. This approach contrasts with the historic treatment of prostitution at international level.

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## **2b. Prostitution on the International Agenda: the 'Trafficking' framework**

The earliest definitions of 'trafficking' were used to distinguish the 'innocent' woman, who found herself in the sex industry as a result of abduction or deceit, from the ordinary prostitute. This was to allow the participation in the treaties about 'trafficking' of the many national governments which permitted highly regulated forms of prostitution. These were not willing to sign a document which required the elimination of prostitution. For this reason, until 1949 prostitution was not named as a separate phenomenon but addressed in international agreements through the concept of 'white slavery' and, after 1921, through 'trafficking.' The international process began with a conference in 1895 in Paris, followed by others in London and Budapest in 1899, and the first international instrument in 1904. These were prompted by alarm at reports of European women being tricked, with offers of other employment or marriage, into brothels far from home. Women from western Europe were going to other parts of Europe, British women to the United States, and eastern European women to Latin America. One writer has linked growing concern with 'trafficking' and prostitution in the European public arena to social dislocation in the wake of industrialisation. Prostitution was a target for fears associated with urbanisation and mass male migration in search of work [2]

Between 1895 and 1949 there were seven successive international agreements on the issue, each with its own different definition. [3] The definitions were all variations on the themes of: prostitution, recruitment into prostitution, the issue of coercion and the validity of consent, and movement across frontiers. All agreements shared the basic themes of trying to protect women and children from engagement in prostitution, and from prosecution if already in prostitution, and the criminalisation of 'third parties,' anyone recruiting for or profiting from prostitution. These themes derive from the 'Abolitionist' approach to prostitution, which gained ground throughout the first half of the twentieth century.

The Abolitionist approach declares that the institution of prostitution itself constitutes a violation of human rights, akin to the institution of slavery (in fact the term 'Abolitionist' was originally used to describe campaigners against the transatlantic slave trade). As such, no person, even an adult, is believed to be able to give genuine consent to engaging in prostitution. Prostitution only persists through the efforts of procurers or pimps, the 'third parties,' who induce a woman into prostitution, openly or by means of deceit and coercion, to extort her earnings from her. The Abolitionist approach requires governments to abolish prostitution through the penalisation of this 'third party', which profits from the transaction between prostitute and client. The prostitute cannot be punished, as she is the victim of a process she does not control. Without the 'third party', it is believed that the institution of prostitution will wither away.

The United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949) reflects the Abolitionist position to the point that its preamble states that "...prostitution (is) incompatible with the dignity and worth of the human person...", and it specifically targets the 'third party.' Abolitionists nevertheless continue to call for the amendment of the Convention, to define all prostitution as a violation of human rights and call for its complete abolition.

The 1949 Convention has been widely criticised from other quarters and in 1996 had been ratified by only 70 countries. [4] There is no evidence that the Convention or other international and local sanctions have been effective either in eliminating the flow of women and men into the sex industry, or in curtailing abuses within it. Meanwhile, in the years since 1949, prostitutes themselves and others have been redefining the problem, asserting that the abuses are neither inherent nor unique to prostitution, but the outcome of the stigmatisation of the prostitute.

The 1949 Convention has yet to be revised or replaced, but the discussion of 'trafficking' has arisen in other fora. In the 1990s, the UN Commission on Human Rights Special Rapporteur on Violence against Women has been looking at "Trafficking in Women" in the context of her wider investigations into abuses directed at women for her report to the Commission in April 1997.

An international NGO, the Global Alliance Against Trafficking in Women (GAATW) prepared a report for the Special Rapporteur, [5] in which their definitions put the emphasis on the coercion to which women are subjected. For the first time on the international agenda, they explicitly distinguish 'trafficking' from prostitution, which is not named at all in the definition. 'Trafficking in Women' becomes:

*All acts involved in the recruitment and/or transportation of a woman within and across national borders for work or services by means of violence or threat of violence, abuse of authority or dominant position, debt bondage, deception or other forms of coercion.*

They recognise that women may be particularly at risk of abuse both in transit and in situ because they are hidden in unregulated sectors: the private home, as domestic workers or wives, and the sex industry. They also distinguish between 'trafficking' and abusive practices which occur when a woman is already in situ or has reached her destination. The latter are covered under a separate definition of Forced Labour and Slavery-like Practices.

Meanwhile, a European Union (EU) discussion has focused on migration and

prostitution under the title "Trafficking in Women for the Purpose of Sexual Exploitation." The Netherlands government took advantage of its position as President of the European Union in the first half of 1997 to follow up the activities of 1996. In June 1996 the European Commission hosted a conference on the issue jointly with the International Organisation for Migration on "Trafficking in Women", in Vienna. A European Commission Communication, on "Trafficking in Women for the Purpose of Sexual Exploitation", in November 1996 reported that in September 1996 the work of Europol's Drug Unit was extended to include "trafficking in human beings." A ministerial conference in the Hague in April 1997 agreed Union-wide procedures for addressing the issue.

There is still no authoritative definition of the term 'trafficking' and so some commentators prefer to avoid the term completely, but debates on the sex industry and on female migration in various fora continue to be placed under the heading 'Trafficking' or 'Trafficking in Women.' Some activists distrust all definitions of 'trafficking' as the term continues to be associated with the image of 'white slavery,' with transnational migration or deception with respect to prostitution. This constitutes an anomaly in a world where most sex workers work in their country of origin and are not brought into the industry by deception. The focus on extreme abuses, they argue, demands justice for the deceived and enslaved prostitute, but neglects the ordinarily exploited person who is typical of the majority of sex workers, and indeed, workers in general. It runs the danger of reiterating the distinction between the 'innocent victim' who deserves pity and the punishment of those who have criminally abused her, and the willing 'whore' who has sacrificed her right to social protection through her degraded behaviour.

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## **The International Agenda today: prostitution and slavery**

UN standards which refer to prostitution reflect the confusion still surrounding the issue. The 1949 Convention is placed alongside the Slavery Conventions for the consideration of the Working Group on Contemporary Forms of Slavery at the UN Sub-Commission on the Prevention of Discrimination and the Protection of Minorities. The very fact that a separate convention exists linking 'trafficking' and prostitution indicates a confusion. Other processes considered under both the UN and International Labour Organization's Conventions against slavery and forced labour are classified only according to means of control, for example debt bondage, rather than to activities performed. The 1949 Convention appears, moreover, to be fundamentally flawed. The world-wide investigation of "Trafficking in Women" by GAATW in 1996 examined the recruitment of female migrants and the conditions they experience in the sex industry and in the home. The

problems they identified, such as limited opportunities for legal migration and lack of recourse to the authorities, are in no way addressed by the Convention, with its focus on repressing the 'third party'. In considering the institution of prostitution itself as the abuse, the opportunity to prevent human and labour rights violations has been missed. It is hoped that this report will be a step in an ongoing process to resolve this confusion.

At the 16th Session of the Working Group on Contemporary Forms of Slavery in 1991, the Coalition Against Trafficking in Women, an Abolitionist group, declared that "to be a prostitute was to be unconditionally sexually available to any male who bought the right to use a woman's body in whatever manner he chose". [6] The words "unconditionally" and "in whatever manner he chose" imply the rights of ownership which have been a part of the international definition of slavery since the League of Nations Slavery Convention of 1926. This represents a fundamental misconception about what constitutes slavery and what prostitution.

Slavery is a distortion of the employer-employee relationship and is predicated upon an enduring relationship characterised by the employer's abuse of superior power in relation to the employee. Without this enduring power to prevent the employee's resistance or escape, slavery and slavery-like practices are not possible. Some sex work is conducted in the structure of employment. Employment relations in the sex industry, and the working conditions associated with them, as in every other industry, can be more or less exploitative. The most exploitative relations in any industry are categorised as slavery and slavery-like practices. The 1926 Slavery Convention defines slavery as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised." The 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery defines the practices applicable to the sex industry, debt bondage and child servitude. Debt bondage occurs where a debt is to be paid off with services but "the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined" (Article 1(a)). Child servitude is "Any institution or practice whereby a ...person under the age of 18 years, is delivered by ...his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour" (Article 1(d)).

The commercial transaction between sex worker and client, however, is not characterised by employment relations. He is the customer for the service provided, not the employer, and the relationship contained in the commercial transaction is limited in time and scope. Within the sex worker-client transaction, consent is continually negotiated. [7] The 'right of ownership' implied by "unconditionally sexually available" and "in whatever manner he chose" is not possible in this relationship. The sex worker has no reason to accept a particular client or to submit to acts to which she does not consent or to refrain from seeking redress in the case of assault by a client which she cannot resist, unless she is constrained by pressures from an employer or other authority, in whose power she remains.

Where an individual's ability to negotiate is constrained by another person; where another person has the power to decide which or how many clients she will service, and what services may be performed, or the consent of the individual is overridden in any direction, then indeed we find slavery. There is, moreover, no need to qualify the abuse that is slavery with terms such as 'sexual slavery' -- the condition of slavery is itself violation enough under any circumstances. [8]

It is no coincidence that slavery and slavery-like practices are disproportionately associated with the sex industry. The sex industry exists on the margins of society, beyond the legal and customary restraints on commercial and social behaviour which regulate the mainstream, and out of sight of those not directly involved. Moreover, the labour force is overwhelmingly made up of persons -- women and young persons, transgendered persons and men who have sex with men -- whose ability to defend their rights and whose economic opportunities are already restricted in society, limiting their ability to resist exploitation. Those most vulnerable are the poor, who face exploitation in every industry. However, the fact that some sex workers are subject to conditions of slavery does not constitute a logical basis for claims that all sex work amounts to slavery.

The sex worker who works outside an employment relationship may find her capacity to freely withhold consent is constrained by immediate economic necessity, rather than another person. This does not constitute slavery, as slavery means that a person is subject to "any or all of the powers attaching to the right of ownership". The street worker who accepts a client she would prefer to reject, for fear of being unable to meet daily expenses, or the worker in hired premises who must earn a minimum amount to pay the proprietor for that day's hire of the premises, is facing not slavery but simple economic and social injustice, of the kind which constrains workers in every field to accept inequitable or dangerous conditions. The solution to this injustice lies beyond the scope of law alone, in the field of economic and social rights.

As the Abolitionist model does not allow for the existence of the independent sex worker, the image of the 'pimp' has arisen, as the 'third party' associated with sex work outside the commercial sex-based business. The 'pimp' is a man who uses physical and emotional threats to force a woman into prostitution, and extorts from her the proceeds. Sex workers are understood to operate in association with male pimps, and male associates of sex workers are taken to be pimps and may be penalised as criminal.

While some sex workers, like women outside the sex industry, are in abusive relationships with partners, evidence would be needed to justify the assertion that there is a form of domestic violence uniquely associated with the sex industry. The lives of sex workers cannot be examined in isolation from recent discussions on violence against women. The Special Rapporteur on Violence against Women noted in her 1994 Report to the UN Commission on Human Rights that "violence against women within the family is a significant pattern in all countries of the globe" and cited studies from industrialised and developing countries demonstrating the prevalence of domestic, especially marital, violence. [9] It is unclear that the violent partner of a sex worker is always using violence to extort money. There is, furthermore, a lack of research about men who use violence or the threat of violence to extort money from partners who generate income by means other than the sex industry. The only conclusion possible so far is that the protection against assault and extortion already enshrined in local law must be extended into the domestic sphere in order to protect all women effectively.

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## **Violations of Sex Workers' Rights**

The research leading up to this report revealed that rather than facing slavery, most people working as prostitutes are subjected to abuses which are similar in nature to those experienced by others working in low status jobs in the informal sector. Their predicament is made much worse, however, by the stigma and criminal charges widely attached to prostitution, which allow police and other officials to harass them without ever intervening to uphold their most elementary rights.

This means that even in the many countries where prostitution itself is not illegal, sex workers cannot secure the minimum basic standards which other workers have acquired as far as conditions of work or their personal safety are concerned. It also means that the police frequently fail to take action to help the significant minority among prostitutes who really are victims of slavery.

To ensure the protection of sex workers' rights, it may be necessary to

challenge, on human rights grounds, the very principle of restricting the sex industry under criminal law. The argument that sex workers should be entitled to the free choice of work, or indeed any of the labour or human rights discussed here, is of course, void if the State does not choose to define prostitution as work, but simply as unlawful activity.

However, the concept of Human Rights established by the UN requires governments to restrict their actions according to principles of justice. The legitimacy of legislation, in human rights terms, is dependent upon its conformity to the principle laid down in the Universal Declaration of Human Rights Article 29. This states that law may limit the individual's rights and freedoms "solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society". The right of the state to legislate on sexual morality is under question in many societies, while the effect of anti-prostitution legislation, by limiting the organisation of prostitution and encouraging its association with organised crime, can be widely observed to have a detrimental effect on "public order and the general welfare." The justice and legitimacy of penal restriction of the sex industry is not self-evident: the onus must be moved to States to defend or repeal such restriction.

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## **Defining sex work as a form of labour**

We propose the following definition of sex work:

Negotiation and performance of sexual services for remuneration

- i. with or without intervention by a third party
- ii. where those services are advertised or generally recognised as available from a specific location
- iii. where the price of services reflects the pressures of supply and demand.

In this definition, 'negotiation' implies the rejection of specific clients or acts on an individual basis. Indiscriminate acceptance by the worker of all proposed transactions is not presumed -- such acceptance would indicate the presence of coercion.

The location of sex work in the realm of personal services, combined with the legal sanctions associated with it, means that even under a 'tolerant' regime, such as in the Netherlands, it is likely to take place in the informal sector.

There are difficulties associated with defining and regulating labour in the informal sector. In the case of sex work, the division between social and commercial contacts, between the public domain of labour and the purchase of services, and the private domain of sexual behaviour is not always clear. It is easy enough to identify sex work in a formal work setting, such as a brothel or flat, but less easy to separate sexual services provided within informal networks from sexual relations with multiple social contacts where gifts are expected.

Human rights are universal, and no boundary need therefore be drawn to apply human rights standards. However, for the purpose of applying labour standards, a distinction must be made between private, or social, and public, or commercial, behaviour. We have chosen therefore to define sex work in the public domain by association with a public 'market place'. The marketplace may be a publication or a physical location where services are advertised or generally known to be available, and transactions are based at least partially on a competitive price structure.

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## **Conclusions**

Sex workers face systematic discrimination throughout the world and are therefore at risk of a variety of abuses. These include police extortion and arbitrary detention, and other violations of their human and labour rights, which in some cases even amount to slavery, especially resulting from debt bondage or child servitude under Article 1, sections (a) and (d), of the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. It is recommended that all national legislation which, in intent or in practice, results in the placing of sex workers outside the scope of the rule of law, should be repealed. No category of human beings should be denied their basic human rights.

Furthermore, many of the standards agreed by the United Nations and the International Labour Organization over the past 75 years could be invoked to prevent abuses against sex workers. It is therefore suggested that existing standards be more closely examined and their interpretation expanded where appropriate to give sex workers access to the rights concerned and promote respect for these rights in the sex industry. Social discrimination against sex workers can be fully addressed under existing human rights standards and most issues relating to working conditions in the sex industry could be subject to existing ILO standards. Further investigation is needed of the mechanisms which have prevented the incorporation of sex workers' rights into the mainstream human rights and labour rights arenas, and hindered the protection of sex workers under these standards.

There are, however, some special features of the sex industry with respect to the right to security of person. The right to refuse a client, to perform a sexual service, or to participate in the sex industry at all must be protected from penalties imposed by employers and from social security restrictions. Such unique features in other industries are addressed by ILO Conventions concerning particular occupational sectors, from seafaring or nursing to hotels and restaurants. On the basis of this report, it is suggested that the regulation of working practices to accommodate special features is a role best suited to the ILO, and that it should be this intergovernmental organisation which establishes minimum standards for working conditions in the sex industry.

The research process revealed the absence of a platform for sex workers' human rights in many countries. Organisation among sex workers can be impeded by the stigma and legal penalties attached to the sex industry, which can make them reluctant to assert themselves publicly. Where remarkable women and men have overcome these obstacles to start sex worker organisations, it may be difficult for them to find the allies they need among women's and human rights NGOs, and trade unions. Action is needed to support sex worker organisations and their linkage to other activist groups.

A further programme of research to develop and support discussion in these areas is proposed in the concluding recommendations.

This research has been principally funded by the Overseas Development Administration of the British Government. The researcher interviewed sex worker activists, health professionals working with sex workers and human rights activists in six focus countries: Brazil, Ghana, the Netherlands, Thailand, Turkey and the UK. The participation of the Network of Sex Work Projects proved invaluable in locating informants. Further information on the sex industry has been drawn from a wide range of published sources.

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## 3. Country Overviews: Law and Practice

### 3a. Brazil

Under the current penal code prostitution itself, and unusually, soliciting, are not illegal in Brazil. Brazil is a signatory to the 1949 Convention and its Abolitionist model is apparent in legislation designed to outlaw commercial sex-based businesses: procuring and trafficking in women are prohibited, as is benefiting from the proceeds of prostitution, and maintaining premises used for sexual liaisons. The involvement of minors in the sex industry is prohibited under the **1990 Estatuto da Crianca e do Adolescente** based on the **Convention on the Rights of the Child**.

As in other countries, a study of the law on prostitution in Brazil does not provide an accurate picture of the status of the industry. Local police practice varies enormously across this vast and diverse country, according to political and financial contingencies. The legal structures which have most impact on sex workers do not affect them alone: the use of the Vagrancy Act by the police, and debt bondage in inaccessible areas characterised by the absence of the rule of law. The absence of specific legal penalties for selling sexual services in no way protects sex workers from social exclusion and there is a marked stigma attached to sex work.

Vagrancy under the Act is a misdemeanour and anyone may be charged who is "usually idle, is able to work, and does not have enough income to live without working". [10] Sex workers lack the documentation provided by formal employment and can therefore be charged, regardless of actual earnings. A human rights lawyer, E. Kosovski, notes that legal toleration of prostitution without its recognition as a profession providing legitimate income is of little value given the existence of the Act. A few sex workers have taken formal employment as domestic workers in order to obtain the requisite papers.

In the current situation, relations between police and street sex workers range from peaceful coexistence, maintained by varying levels of extortion, to straightforward antagonism. **The Vagrancy Act** can potentially be invoked against the majority of the population at any time and thus represents a police power of arbitrary arrest. Sex worker groups say that it is used selectively, sometimes at the behest of residents or of private security firms and property developers, in existing or prospective commercial areas. Once in police hands there may be violence, particularly against transgendered [11] and male sex workers.

Commercial sex-based businesses -- motels and escort agencies -- are similarly dependent on informal arrangements with the police, generally involving extortion. The motels offering rooms by the hour are evident in all the major cities, advertising openly in the press. In Rio de Janeiro they are so established that there is even a city regulation that management must supply each couple with condoms on arrival. Recent campaigns against the commercial sexual exploitation of children have provoked police raids. Sex workers say that the police make no effort to target locations known for under age girls, but instead target premises used mainly by adults, taking everyone to the police station.

Away from the cities, Alison Sutton's 1994 book, **Slavery in Brazil**, identifies women and girls in the brothels of Amazonia's gold-mining camps as one of the groups affected by Brazil's prevalent form of debt bondage "the physical immobilisation of workers ... until they can pay off debts, which are often incurred through fraud, and are provoked by their very working conditions". [12] The women and girls arrive in remote areas, often in the belief that they will be waitresses or cooks or that they will earn enough as sex workers to remit money to their families. Once there they find that the person who recruited them demands repayment of their transport costs and that, if the brothel owner did not recruit them personally, they may also be required to repay the fee paid to the intermediary.

Once in the brothel, resistance provokes violence or starvation, work rates can be extremely high, and the workers rarely see their earnings -- payment is made direct to the manager, who keeps the accounts. Malaria is common, and the cost of treatment and subsistence while unable to work adds to the worker's debt. Workers may be confined to brothel premises and letters home or to the authorities intercepted. Notwithstanding the laws against prostitution-based businesses, or indeed against slavery (penal code, article 149), "private incarceration" (article 148) or "bodily injury" (article 129), the police receive money from brothel owners and work with them to return those trying to escape. For the women and the miners themselves, indebted for their transport costs and for the basic commodities they purchase from mine canteens, escape from the camp is almost impossible, as it requires expensive transport on

boats or small planes. [13]

'No one helps us when we are in trouble -- they don't understand'. [14] Stigma and its concomitant social exclusion are manifested in a variety of ways. With few exceptions, the human rights and women's movements have been reluctant to defend the rights of sex workers, and sex workers trying to organise accept that many do not want to identify as sex workers, to themselves or to outsiders. Some sex worker activists are particularly resentful of the medical profession -- they find that doctors who know of their activity are disrespectful and focus only on their reproductive health, neglecting their general health needs. Sex workers have been a scapegoat in public health responses to Brazil's HIV/AIDS epidemic. An internationally-sponsored project in 1997 to monitor HIV infections was originally planned to involve a mobile bus testing 400 sex workers in Rio -- the activists say that no other social group would be expected to submit to this. They say that assaults on sex workers, even murder, go unpunished. Transgendered and male sex workers face additional stigma, with associated violence. Sex workers in general face rejection from their families. [15]

It is illegal in Brazil for a minor, defined as a person under 18, to have sexual relations with an adult. Minors are nevertheless widely involved in the sex industry in Brazil, with those in their early teens generally in the lowest-paid sectors, as street children selling sexual services among other economic activities, and as debt-bonded workers in the brothels of the mining camps or around construction sites. Health workers find the law an obstacle to providing care: they fear charges of promoting illegal relations if they supply teenagers with condoms. Recent exposes of child sex tourism have resulted in new government plans for child protection and in publicity campaigns in tourist areas. Their impact has yet to be assessed.

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### **3b. England and Wales**

The law in England and Wales in general follows the Abolitionist model. Prostitution itself is not a criminal offence, but public manifestations of prostitution: soliciting, advertising, making agreements with clients, brothel-keeping, and living on the earnings of prostitution are illegal. The law heavily restricts the life of the sex worker and the only sex work which cannot attract prosecution is carried out by a woman working alone in a house or flat that she owns.

The main legislation regulating prostitution is contained in the **Sexual Offences Act 1956**, the **Street Offences Act 1959** and the **Sexual Offences**

**Act 1985.** The 1956 Act deals with off street prostitution, the 1959 and 1985 Acts relate to street prostitution and 'kerb crawling' -- driving slowly in a car in a sex work area to attract the attention of sex workers. Other Acts of Parliament are invoked when the evidential requirements of the 1956, 1959 and 1985 Acts cannot be met, for example the Justice of the **Peace Act of 1361** and the **Vagrancy Act of 1824**. As in other countries, enforcement of the laws differs widely between police forces.

Under the **Sexual Offences Act 1956**, a man who lives with or, is frequently in the company of a prostitute, is presumed to be living on the earnings of prostitution and guilty of a criminal offence, unless he can prove to the contrary. In theory, this means that a sex worker's partner, cohabit or son (over 18) may be prosecuted but in practice successful prosecutions usually involve evidence of coercion. [16] Anyone advertising on behalf of a prostitute is also liable to prosecution for living off immoral earnings, for example a shopkeeper displaying advertisements in the window or contact magazines.

It is a criminal offence to keep a brothel, or to let premises for use as a brothel, with 'brothel' defined as a "house resorted to by more than one woman for fornication". In practice these means that sex workers may not share premises, as one of them can be prosecuted as the brothel keeper, and that landlords inflate the rent charged to sex workers to compensate for the risk of prosecution. Police action varies enormously in this area "police response in many areas seems to be a function of relatively autonomous local and indeed individual decisions rather than a product of a national publicly endorsed policy". [17]

Some forces do not 'actively police' off-street prostitution, unless there is a complaint from a member of the public and sex workers operating legally, alone in their own homes, find them sympathetic to calls for assistance in case of violence or robbery. [18],[19] Other forces target even the women working legally, enlisting help from planning authorities who can forbid the running of a 'business' in a residential zone. [20] Saunas and escort agencies are required to state that they are not offering sexual services in order to obtain a licence, but once licensed the rule may be ignored in areas where an informal policy of toleration exists, while in other areas costly surveillance operations may be mounted to obtain evidence of unlawful activity. Health projects suggest that organised crime is associated with some saunas and massage parlours, and that migrant workers are held in very poor conditions in a few such places. [21]

Sex workers on the street are highly vulnerable to police intervention. On the third occasion that a woman is suspected of loitering or soliciting, she is labelled a 'common prostitute', on a national register. Only a 'common prostitute' may be charged with soliciting. She can be arrested on the

uncorroborated word of a single police officer. If the woman is not subsequently prosecuted the caution will be expunged after a year. The charge must be challenged in the (local) Magistrates Court within 14 days. The police must then satisfy the Court that the woman was guilty of "loitering in a street or public place for the purposes of prostitution" under the **1959 Street Offences Act**.

Legal precedent has established that a "street or public place" includes a balcony, doorway or window. [22] There is no requirement for the woman accused of 'loitering' to verbally communicate with the man, nor for any annoyance to be caused. [23] The definitions of "street or public place" and "loiter" are thus so broad that sex workers are vulnerable to arbitrary arrest, depending on local police policy. This increases pressure on them to conclude negotiations with clients quickly, limiting their ability to assess the client before entering his car.

Prostitutes rarely challenge police evidence in court for fear of further court proceedings and possible police harassment. [24] The declaration in court of the woman's status as a prostitute constitutes a violation of the principle that a person is innocent until proven guilty. Prostitution is the only offence in law which allows previous convictions to be made known to the court before sentencing. [25] The term 'common prostitute' is used to describe a woman in a legal hearing, even where the case does not relate to commercial sex.

Arrest rates between vice squads (special police with responsibility for prostitution) vary according to individual squad policy. Some vice squads have indicated that they operate an informal selective system of arrests, depending on whether the woman co-operates with police, while other squads take the location used for soliciting into account -- they are more likely to arrest in a residential area, as residents will complain to the police about sex worker presence. [26] Such policies can drive sex workers into deserted industrial areas where the risk of assault is higher. It also appears that the cautioning procedure is not widely adhered to. Police in most areas do not apply it to 'new girls' -- local women new to the business or women from outside the area, but arrest them immediately. This practice is regarded as a 'short sharp shock' which will deter them from prostitution in the future, or at least from soliciting in that area. [27]

**The Sexual Offences Act 1985** makes kerb crawling illegal. Soliciting need not be in words or action but the client must indicate that he requires the services of a prostitute. [28] The evidential rules are more stringent for kerb crawling than soliciting, limiting the success of prosecutions. Some police forces do not try to prosecute, but have experimented with verbal warnings and letters to a man's home, informing him that he has been observed kerb crawling. The legislation means that clients are more anxious for the prostitute to get into the car quickly, thus giving the woman less opportunity to evaluate the client. [29]

The sex industry continues to be heavily stigmatised and most sex workers take care to keep their occupation secret from their families. Projects established to provide sexual health services to sex workers report that general medical services treat sex workers with disrespect. [30][31] The adjudication of cases involving the sexual assault of sex workers continues to reveal the belief that sex workers are prepared to have sex with any man, and thus suffer less than other women from the effects of rape. [32] Conflicts have arisen between street workers and residents in many areas. Residents' action usually takes the form of lobbying police and political authorities, but in some cases has involved violence inflicted upon sex workers by vigilantes. [33]

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### **3c. Ghana**

Prostitution itself is not illegal in Ghana, but soliciting in a public place incurs a small fine on first offence, and is a misdemeanour on subsequent occasions. Brothel-keeping is an offence, and sex workers have also apparently been charged with causing a nuisance. Sex workers were included in former President Nkrumah's promotion of workers' associations in the 1960s, and their national association, the Ghana Widows' Association, is still affiliated to the national women's movement. However, the national association is inactive, and the Government never legally recognised its members as workers nor repealed the section of the Criminal Code on soliciting. Nevertheless, women soliciting are clearly visible in the public places of the capital, Accra, and many Ghanaians are surprised to hear that any prohibition exists. As in other countries, police practice is highly variable and the law simply renders sex workers vulnerable to arbitrary arrest, and to exploitation by clients, and by staff of the hotels and other establishments they use.

A study in 1995 identified two major systems of sex work: 'Seated' and 'Roaming'. [34] Seaters are home-based sex workers, mainly widows or divorcees, but with some younger women now entering this sector, generally under the auspices of an older woman. They live in settlements, city areas traditionally associated with the sex industry, where they sit in the front part of the house and invite clients. Roamers are from a younger age group, seeking clients in bars, hotels or streets. Many rely on intermediaries to avoid charges of soliciting clients.

Roamers working on the street are always at risk of arrest. Those working from hotels or bars try to evade legal restrictions on soliciting and house rules against unaccompanied women in many establishments by relying on male 'pilots' or taxi drivers to help them make contact with clients. The pilots collect a fee both from the sex worker and the client, but the fee is generally not unreasonable for the service provided, and the pilots do not exercise control over the women for whom they work. Women who work without pilots risk being cheated by the client or losing their client to the pilots and their groups. They must anyway establish a relationship with service staff to receive permission to stay, and sometimes help in identifying clients. Violence and assault does occur at the hands of clients, but a more common problem is refusal to pay or demanding money back.

Of sex workers surveyed in 26 towns and cities, one third reported problems with the police "citing intimidation, periodic raids on hotels from which they operate, extortion of moneys and threats". Moreover, the report goes on to suggest that "being arrested by the police and freed after having sex with the officers is common". [35] A former health worker had challenged a police plan to round up sex workers and forcibly test them for HIV, asking what they would do with the sex workers if found to be HIV positive. [36]

The Seaters appear to be less vulnerable to police intervention. Nevertheless, health workers report that women in settlements visited were sometimes raided in their homes. [37] They are charged with brothel-keeping, soliciting or causing a nuisance, then detained at the police station and fined before release. Some police treat condoms as evidence, even though selling sexual services is not itself illegal. On some occasions a health worker has been able to hasten the women's release, with or without fines, apparently by asserting that they are co-operating with her AIDS prevention programmes and do not represent a health risk. Health workers also report rumours that the Seater community leaders collect money to bribe police to keep away.

At the same time, some districts of Accra have only a few arrests each year, and many police officers share a widespread public perception of sex workers as acting out of genuine economic necessity. "I am a police officer, but I am a human being first. I know what's going on in our country. What are these women to do?" [38]

The sex industry is believed to be growing in response to current economic pressures. The agricultural and informal sectors which traditionally provided female employment are being squeezed by the Structural Adjustment Programme, and the industry is perceived as having low entry qualifications and high returns. Increased competition is driving down prices and standards in both Seater and Roamer sectors but it is still possible to match the minimum wage without taking very many clients. A quarter of workers in Ghana receive the minimum wage or less and women's incomes tend to be at the lower end of the scale.

Sex work is acknowledged, from government ministries to the person in the street, to be primarily an economic issue and a woman is not automatically rejected by family and friends for engaging in sex work. Seaters generally have good relations with neighbours and they run their own traditional women's mutual aid societies. Ethnic sub-divisions of the association mediate between the individual and outsiders, approve and initiate newcomers to the settlement, and mediate disputes. Many Roamers consider the occupation a temporary one to allow them to build up capital: they do not regard it as an obstacle to having another business later, or another jobs concurrently, nor to finding a husband.

The pragmatic attitude nevertheless coexists with the notion that prostitution is a social and religious evil, and public awareness of HIV/AIDS reinforces the notion of sex workers as a source of disease. Groups concerned with human and women's rights do not take account of sex workers or else try to avoid the issue of sex work, and governmental and non-governmental interventions in the sex industry generally focus only on public health. In fact most sex workers have heard of AIDS and how to prevent it. Some Seater associations now include safe sex information in their induction procedures and many sex workers carry condoms, although it is not clear how often these are used. The risk comes from clients: safe sex is difficult to negotiate as most sex workers are in immediate financial need and cannot risk losing a client.

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### 3d. The Netherlands

*By Jo Doezema, Network of Sex Work Projects.*

Until very recently, prostitution in the Netherlands took place in the context of 'Abolitionist' laws. Under the **Brothel Prohibition Act of 1911**, working as a prostitute was not punishable, but it was an offence to profit from the earnings of a prostitute. In practice, however, prostitution -- even where illegally operated by a third party -- was widely tolerated. Since 1981, repeated unsuccessful attempts were made to bring the law in line with practice. In the autumn of 1996 the Dutch government finally adopted new legislation to abolish the criminalisation of brothels. Key elements of the new policy are:

- the distinction between 'forced' and 'voluntary' prostitution. 'Trafficking' and other forms of coercion and violence remain offences in the penal code.
- the regulation of prostitution is delegated by the state to the various regional and city governments.

The city can thus regulate, through the licensing of brothels, the number, if any, and type of commercial sex based businesses it will accept. Individual sex-workers will not, however, be required to register.

Some cities have begun, in anticipation of the new legislation, to regulate prostitution by issuing licenses. Conditions for licensing include those related to planning laws, building requirements for safety and sanitation, and those related to management of the business. Examples are the prohibition on requiring brothel workers to drink alcohol with clients, and the requirement that all sex workers using the premises have legal resident status in the Netherlands. This last provision that has had a major effect on sex workers. The number of police inspections of brothels has risen dramatically and several window brothels, where workers sit behind a large window to be visible from the street, in cities such as Amsterdam have been closed. Many non-resident sex workers have been deported, and it is expected that the new regulation will make it even more difficult for non-residents to migrate and work independently in the sex industry in the Netherlands. Non-resident migrant sex workers are thus excluded from the benefits of the authorised brothels and forced 'underground' into illegal brothels.

Sex work is organised in a variety of ways in the Netherlands. There is the well-known 'window prostitution' in Amsterdam and several other cities. Window workers usually work independently, paying a fixed amount of rent to the window owner, who takes no further commission on earnings. Street prostitution occurs in several cities. A few cities have established 'zones of

tolerance' in which street prostitution may be practised. Outside these zones, and or in cities where they have not been established, street sex workers are often arrested by police and/or harassed by local residents. The tolerance zones are located in remote areas of the city, far from amenities such as shops, cafes and public toilets or telephones. To fill this gap, night shelters run by social workers provide a place for workers to buy food and drink, and offer medical advice and examination facilities.

Sex workers also work in brothels, which vary from simple 'private houses' with just a few women working where no alcohol is served, to larger clubs with up to 20 women working. Labour relations in these clubs are essentially 'employer-employee'. Workers are expected to adhere to rules on working times, dress, and behaviour with clients and may be expected to perform additional duties, such as cleaning the premises. Prices for sexual services are set by the management, and the worker receives from 30 to 60 per cent of the money paid by the client. Some sex workers use escort services, who mediate between sex workers and clients. These workers visit clients in their hotel rooms or at home. Prices are set by the agency, and the worker's share is comparable to that in brothels.

The sex worker population in the Netherlands is very diverse, and includes women, men, and transgender workers, Dutch nationals and migrants from many different countries. Working conditions for migrant prostitutes, especially those illegally in the country or legally in the country but without a work permit (i.e. on a tourist visa), are often significantly worse than those of legal workers. There is no recognised way for a non-EU citizen to obtain a working permit to work as a sex worker in the Netherlands. These and other immigration restrictions, force those from outside the EU who wish to engage in sex work in the Netherlands to seek the services of middlemen or agents to facilitate their entry into the industry. These services can be outrageously expensive, and may lead to situations of debt bondage.

In 1985, some sex workers established their own organisation: De Rode Draad (The Red Thread). The organisation focuses on sex workers' rights: on attempting to end the exclusion of sex workers from society. They run an information line for sex workers, organise discussion groups, publish a quarterly magazine for sex workers, and mount campaigns directed both at the general public and policy-makers.

The Netherlands' reputation for tolerance, often leads outsiders to assume that working conditions for sex workers in the Netherlands are always good or comparable to conditions in other industries. However, sex workers report that this appearance is misleading. It is true that the public and policy makers in the Netherlands have tended to take a pragmatic attitude towards sex work. However, stigma, and with it marginalisation and exclusion from human rights protection, continues to be a significant aspect of the lives of sex

workers in the Netherlands.

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### 3e. Thailand

Thailand has a variety of laws relating to the sex industry. In addition to the **Contagious Diseases Prevention Act of 1908** and the **Entertainment Places Act of 1966**, the **1960 Prostitution Suppression Act**, by far the most commonly invoked, was replaced in 1996 by a new Prevention and Suppression of **Prostitution Act**. [\[39\]](#) Various relevant sections of the Penal Code, which carry heavier penalties than the other laws, are not used: Articles 282-286, which relate to procuring for and profiting from prostitution; Article 310 which prohibits confinement of another person; and Article 344, which prohibits the deception over payment which lies behind debt bondage. [\[40\]](#)

The new law is intended particularly to punish those involved in the commercial sexual exploitation of minors, with severe penalties for owners of sex service establishments, recruitment agents, clients and even parents, if they can be shown to have knowingly sent their children into the sex industry. The new law also has special penalties where coercion is used to put others into the sex industry, although abuse of persons already in the industry is not addressed. The law now also includes male sex workers and criminalises the selling of sexual services, where the **1960 Act** stopped at penalising soliciting for prostitution. Penalties are in general lighter than under the Penal Code. [\[41\]](#)

The new law is not expected to have much impact on the sex industry as, like the **1960 Act**, it will most likely provide the basis for habitual extortion from sex establishments and sex workers on the part of the police. Sex workers fear contact with the police, which may include demands for cash or sexual favours, or detention in a 'rehabilitation' centre which is regarded as little different from a prison.

The country is known internationally for two kinds of commercial sex-based business. One is the neon-lit, relatively expensive bar aimed at male tourists. The other is the squalid closed brothel where the men who provide Thailand's cheapest labour, many of them illegal migrants themselves, visit debt-bonded migrant women. Neither of these examples can be regarded as the norm. The sex industry in Thailand is highly diversified and conditions vary widely.

Most of the sex industry in Thailand consists of businesses; brothels, hotels, massage parlours, restaurants, and bars of various types, such as karaoke or 'go-go'. These establishments are generally registered by the Sexually Transmitted Disease section of the Ministry of Health, which may attempt to

provide health services to workers. In most of the establishments, the sex workers have a direct financial relationship with the management, but in hotels, some bars and discos, freelance sex workers, some of whom have other jobs, are tolerated or encouraged as a customer attraction, and many other service sector workers may offer sexual services as a sideline. Street trade is limited to those rejected by businesses as too old, too young or obviously drug addicted.

Local police are generally on very good terms with sex establishments, from whom they receive regular remittances. They may assist in returning debt-bonded runaways to brothels or otherwise enforce employer discipline. Police officers, like other Thai men, are often patrons of prostitution-based businesses and some invest in them. Raids on businesses, temporary closures or restrictions on opening hours may be used to discipline managers who do not meet financial or other obligations to the police, or as a political response to public pressure. Campaigns against child sexual exploitation have provoked more raids, and many establishments now take great care to avoid employing minors. These raids have however been criticised for heavy-handedness -- all employees may be detained or fined, and provision for the minors removed is inadequate.

The operation of the sex industry through businesses shields sex workers from exposure to the authority of the police, although they may pay for this security via deductions from their pay to cover the police bribes that are part of management overhead. This employment structure puts most of the problems faced by Thai sex workers into the realm of labour regulation. The worst conditions are associated with the slavery like practices of debt bondage and child servitude especially of migrants and others without full legal documentation.

Straightforward brothels, which offer no services aside from sex, represent the lower end of the market. These are most common outside Bangkok, serving low-income Thai men, and relying on high turnover for profits. Although many employ only adult workers, who are not confined to the accommodation offered and can choose which and how many shifts to work, this is the sector in which labour and human rights violations are most common. In closed premises, where communication with the client is not important, it is possible to profit from bonded and abused workers, some made more vulnerable by their young age or migrant status.

Girls, especially from the North, may arrive in a brothel with a debt, when an advance paid to her family must be worked off in the brothel. Further charges -- the price paid to the agent by the brothel manager, interest on the original sum, food, lodgings etc., -- may be added to the debt, and all accounts are kept by the manager. Where women do repay the debt it is under circumstances of extraordinary financial exploitation. Actual debt bondage occurs when 'repayment' of the debt is in fact a fiction manipulated by the manager: he may keep a profitable worker by telling her that she has not paid or that her family have taken further loans, or he may encourage her to send remittances so that her family will want her to stay or be prepared to allow more girls to enter the brothel. He may tell an unsuccessful worker that she has paid off her debt in order to send her home. Conditions in these ordinary brothels are unhygienic and cramped, and workers have little control over the type or number of clients received. [42]

Illegal migrant workers from neighbouring countries, especially Burma, are a significant source of cheap labour in Thailand. The poverty and political repression they face at home and their illegal status in Thailand render them extremely vulnerable to exploitation. The debt bondage of Burmese women and girls in closed brothels in border areas of Thailand has been well documented. [43] The workers are recruited in their home village and arrive in the brothel with a debt. This includes an initial advance to the family or other person who arranged for them to go, and the transport and other costs associated with bringing them into Thailand. Interest is added to the debt, along with charges for board and lodgings and any other expenses, and all accounts are kept by the brothel manager. Workers actually see only tips or a small daily allowance.

The women and girls are obliged to work until the debt is declared paid, whereupon they will be escorted home again. Workers are often confined to the brothel, sometimes physically, by violence or high walls, more often by fear. Women are told that if they leave they may be returned by the police, deported as illegal immigrants, abducted by other brothel keepers, or be unable to return home -- they must rely on the agents who brought them in to take them out of Thailand and locate their home village again.

The bonded women have no control over which clients or how many they service. Beatings may be used to enforce compliance, and workers anyway have an incentive not to resist high turnover as they want to pay off the debt and return home as soon as possible. They have no authority to negotiate condom use and some find condoms too painful after repeated intercourse. They are also at risk of HIV infection from common needles used by management for contraceptive or antibiotic injections. Some women may be obliged to take the contraceptive pill without accurate instructions for its use, or be forced to have abortions or to give up their babies to the management.

Other contact with medical services is avoided as women fear adding to their debt.

Abuses of this kind are not conducive to profit in the more expensive sectors: the massage parlours and tourist bars, where clients expect to be welcomed and put at ease. Exploitation is therefore limited by demand for a cheerful, healthy and adequately-nourished appearance. However, discipline may be strict, with financial penalties for failing a quota of hours worked or clients secured, for dress code violations or lack of punctuality. In theory, workers may reject any client, but as the emphasis is on keeping a pleasant atmosphere, in practice a worker would find it very hard to do so. [44]

Female virginity is prized, and many women only enter the sex industry when they are no longer virgins or their marriages have failed. Sex workers are generally regarded with disdain, or at best pity, and now as dangerous carriers of HIV. Sex work reduces the likelihood of a later marriage and may result in social or familial ostracism. However many commentators report that in the North, where filial obligations are very important, stigma may be reduced by the perception that a daughter who works in the sex industry is doing her duty to support her parents, and by the status attached to obvious material success, in the form of new property or consumer goods. This reduction does not generally take the form of overt approval, but more a willingness to avoid asking about the woman's activities 'down South' -- sex workers rarely work in their home area. Nevertheless, almost all sex workers, regardless of regional origin, attempt to conceal the nature of their work from family and others.

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### **3f. Turkey**

*Based on interviews with registered and unregistered sex workers and health workers in Istanbul, 1996.*

In Turkey the state-licensed brothel, which was once common throughout western Europe, persists, and with it local commissions which must administer a plethora of restrictions upon the management of the brothel (called a *genelev*) and upon the life of the registered sex worker within it. Those women who attempt to evade the restrictions by working outside a *genelev* are to be forcibly registered following their third arrest and delivered to one. In fact, the practice of the authorities and police toward *genelev* and illegal sex workers varies, and most sex workers operate outside the licensed system.

Women who choose to register as prostitutes and work in the genelevs are assured protection from police intervention most of the time, and from abuse by clients. It is not customary for a woman to be forced to accept a customer she has rejected. In the case of any dispute, the manager is summoned and will usually decide in favour of the employee. However, the law places severe constraints upon their personal freedom at all times, although enforcement varies among local police forces. Genelevs may only employ registered sex workers. Only single, Turkish women over the age of 18 may register and registered women cannot marry while registered. The children of registered sex workers are barred from occupying high rank in the army or police, or marrying persons of such rank, although they can work in other areas of government service.

Registered women are forbidden to live or work outside a genelev and must inform the police if they change premises. They exchange the identity card carried by every ordinary citizen for special ones identifying them as prostitutes. They may later 'renounce' prostitution in order to obtain an ordinary identity card, but many women feared that files were kept which could be obtained by a future employer or husband. Married or foreign women, and men, can open genelevs but may not work in them.

Police enforcement of the rules varies. In many large cities the exchange of identity cards is not always required. In Istanbul registered workers can leave the genelev to accompany clients to hotels and even live outside it. They are not required to spend every night in their place of residence but they must declare the residence to the police and prove that it is not being used for prostitution: the mere presence of a man in their home can subject them to police attention. In other areas, prostitutes are confined to the brothel, perhaps with one day off per week, or only with permission, and must carry permits from the management to show that they are allowed out. Registered women complain that they are from time to time summarily called to the police station without any indication of the reason. This is seen as a way for new police officials to establish their authority over the prostitutes, and display that authority to subordinates. The renewal of registration may also be used to display authority, for example by demanding an employment history or other information for no apparent reason.

Registered women can expect a secure source of income, as there is apparently no shortage of clients in the genelevs. However, the genelev management takes the largest share of earnings. The genelev worker receives only 40 to 50 per cent of the set price paid at reception. Upstairs, the women bargain for tips, which are also shared with management. The enforcement of the tip rules is one of the working conditions considered when choosing to stay in a brothel, in an area where mobility is possible. In addition, a significant charge must be paid daily to the management for tea, electricity, water, paperwork and other overheads. It may also be forbidden to bring

cigarettes, snacks etc., into the genelev -- these must then be purchased via the genelev servants. Agreements between brothel owners and local shop-keepers maintain prices at an artificially high level.

Brothel owners, unlike other employers, are not required to pay social security contributions for their employees. Although in other sectors of the economy this neglect is common, the other workers concerned can potentially sue the employer. A test case is underway: a genelev prostitute demanded a pension from her former employer but was refused. The case is now with a higher court but the legal system is very slow.

Registered sex worker informants felt that it was hard for them to assert their rights in the brothel, as a woman whose virginity is gone cannot command respect, and there is a threat of physical violence in those genelevs controlled by organised crime. Having a lover, especially if he works in the brothel or in organised crime, can make a woman more powerful in the brothel because he can defend her interests. In general, registered women can express their dissatisfaction with the level of financial exploitation there only by leaving the protection of the genelev system and joining the precarious life of the illegal sex workers.

Unregistered workers can potentially avoid some of the stigma and legal implications of prostitution by retaining their ordinary legal identity. The practice of forcible registration now appears to be rare. There are rumours of young women seduced and delivered to brothels in rural areas of Anatolia, but this has not been confirmed. The prevailing trend is against registration. Istanbul is no longer registering any new prostitutes and even outside Istanbul local authorities apparently no longer monitor suspected prostitutes. It has been suggested that the rise of religious political parties has made them reluctant to involve themselves with prostitution at all. In Kurdish towns the police apparently refuse to register women brought to them, or make it easy for them to revert to normal legal status.

Although no longer subject to compulsory confinement in a genelev, unregistered sex workers are still at the mercy of the police, facing violence and sexual abuse, and arbitrary detention in police stations. Police may also deliver sex workers to medical facilities and enforce detention therein. The head doctor at a hospital for sexually transmitted diseases in Istanbul described the staff as "at the same time psychologists, doctors, nurses, servants and prison managers." Prostitutes sometimes bribe the police to avoid being sent to the hospital, because of its overcrowded conditions and the loss of income that they suffered from missing work. Moreover, the food provided in the dormitory is poor, and the women are forced to depend on the expensive cafeteria for additional rations and for cigarettes until they are released.

The purpose of the medical detention programme is apparently to prevent women working while infected with sexually transmitted diseases. Women are detained for up to 10 days while treatment takes place, with severe restrictions on telephone calls and visitors. Testing for diseases, including HIV, is mandatory and doctors and police are informed of HIV status before the woman concerned. HIV-positive women are in fact discharged with the others, without counselling or treatment. All foreign women, mainly from Eastern Europe, are simply deported on removal from the hospital.

"The law says everyone is equal, but if arrested, the police do not treat everyone equally. They treat prostitutes even worse than other people," commented a registered sex worker in Istanbul. In addition to official violations of their rights, all sex workers are marginalised and former sex workers will be refused other employment if their history is revealed. Commenting on a proposed new law to bar prostitutes from giving evidence in a court, which is not expected to succeed, sex workers agreed that their evidence was routinely dismissed in court anyway. Transvestites and transsexuals, who invariably support themselves by prostitution as they are refused other work, face additional discrimination. Some sex workers have begun to organise, and women's groups have successfully campaigned in the past for the repeal of a law prescribing lighter sentences for men who rape sex workers. However, the stigma attached to their profession has made it very difficult for sex workers to work successfully with unions, women's, gay or human rights groups.

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## 4. List of Issues of Concern

A survey of conditions affecting local and migrant workers in the sex industry in three continents conducted by the Global Alliance Against Trafficking in Women (GAATW) [45] in 1996 gave rise to a list of over twenty reported abusive practices. This list has been supplemented below from a variety of sources.

### A. Discrimination

### B. Restriction Under Criminal Law

#### i. Discriminatory Treatment By Police And Judicial Authorities

- Discrimination against sex workers as women, as male customers are rarely prosecuted.

- Risk of arbitrary arrest
- Police violence
- Deprived of personal belongings following arrest
- Lack of equality before the law as victim/defendant/witness
- Convicted on accusation/police evidence alone
- Unable to work in house together because of prohibition of brothels

**ii. Discriminatory Treatment By Other Authorities**

- Legal or customary restrictions on sex workers' children
- Compulsory HIV/AIDS testing/Compulsory STD testing
- Employment discrimination/registration
- Unable to claim social security, even if pay tax
- Unable to form a union, because isolated or forbidden
- Discriminatory immigration conditions

**iii. Restrictions On Private Life**

- Forbidden to marry
- Associates criminalised
- Children removed by authorities
- Residence restrictions

**C. Employment Conditions**

**i. Exploitative terms of employment**

- Wages withheld; not paid regularly or paid less than agreed
- Denial of time off/holidays
- Work day routinely longer than 12 hours

**ii. Health and safety**

- No access to medical/health care
- Unsafe, cramped or unhygienic working environment
- Access to Occupational Health Services
- No right/opportunity to use condoms
- Use of communal needle for contraceptive/antibiotic injections

**D. Slavery And Self-Determination**

**i. Security of person and slavery**

**Physical interventions without free or fully informed consent:**

- Coercion involving drugs: administering drugs without consent; inducing/exploiting drug dependency/ compulsory alcohol consumption
- Forced abortion/dangerous abortion practices

### **Assaults which secure or express control:**

- Threat of reprisals against family
- Personal belongings taken away
- Psychological abuse (name-calling, insults, humiliation etc.)
- Physical abuse (hitting, kicking, threatening with violence etc.) including murder
- Sex without consent (including attempted or threatened); no right to refuse certain sexual acts/ no right to refuse certain customers/forced minimum number of customers per day
- 'Pimping' (domestic violence and/or extortion)

### **ii. Slavery -- ownership by another**

#### **Treatment as an object:**

- Not paid at all
- No regular food

#### **Denial of self-determination:**

- Illegal confinement (movements controlled/restricted, no permission to leave the work place or allowed out only under supervision)
- Isolation (prohibited from normal social contacts, interception of letters, calls)
- Identity papers/passport confiscated/ false identity papers Lack of confidentiality of medical records

### **iii. Slavery-like practices**

- Debt Bondage
- Coercion by agents in the course of migration
- Deception/extortion by employment agencies
- Forced to buy necessities through employer
- Child servitude

## **E. Transnational Migrant Sex Workers**

- Vulnerability to abusive practices
- Worse working conditions than local workers
- Deception during recruitment of migrants

#### **F. Minors In The Sex Industry**

- Child labour
- Child sexual exploitation
- Children and judicial authorities

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## **5. Relevant Instruments**

### **United Nations**

#### **UDHR**

Universal Declaration of Human Rights, 1948

#### **ICESCR**

International Convention on Economic, Social and Cultural Rights, 1966

#### **ICCPR**

International Covenant on Civil and Political Rights, 1966

#### **CEDAW**

Convention on the Elimination of all forms of Discrimination against Women, 1979

#### **CRC**

Convention on the Rights of the Child, 1989

#### **DEVAW**

Declaration on the Elimination of Violence against Women, 1994

#### **WHA 41.24**

World Health Assembly Resolution: Avoidance of discrimination in relation to HIV-infected people and people with AIDS, 1988

#### **WHA 45.35**

World Health Assembly Resolution: Global strategy for the prevention and control of AIDS, 1992

**1926**

Slavery Convention

**1956**

Supplementary Convention on the Abolition of Slavery, The Slave Trade, and Institutions and Practices Similar to Slavery

**1990**

International Convention on the Protection of the Rights of all Migrant workers and their families

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## **International Labour Organization**

**C29**

Forced Labour Convention, 1930

**C52**

Holidays with Pay Convention, 1936

**C79**

Convention concerning the Restriction of Night Work of Children and Young Persons in Non-Industrial Occupations

**C87**

Convention concerning the Freedom of Association and Protection of the Right to Organise

**C95**

Convention for the Protection of Wages

**C96**

Convention concerning Fee-Charging Employment Agencies (Revised 1949)

**C97**

Convention concerning Migration for Employment (Revised 1949)

**C98**

Convention concerning the Application of the Principles of the Right to Organise and to Bargain collectively, 1949

**C106**

Convention concerning Weekly Rest in Commerce and Offices, 1957

**C111**

Convention concerning Discrimination in Respect of Employment and Occupation, 1958

**C132**

Convention concerning Annual Holidays with Pay (Revised), 1970

**C138**

Convention concerning the Minimum Age for Admission to Employment, 1973

**C143**

Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, 1975

**C155**

Occupational Safety and Health Convention 1981

**C161**

Occupational Health Services Convention, 1985

**R35**

Recommendation concerning Indirect Compulsion to Labour, 1930 (further to C29)

**R85**

Recommendation concerning the Protection of Wages, 1949 (further to C95)

**R86**

Recommendation concerning Migration for Employment (Revised 1949), (further to C97)

**R97**

Recommendation concerning the Protection of the Health of Workers in Places of Employment, 1953

**R100**

Recommendation concerning the Protection of Migrant Workers in

Underdeveloped Countries and Territories, 1955 (further to C97)

**R111**

Recommendation concerning Discrimination in Respect of Employment and Occupation, 1958 (further to C111)

**R146**

Recommendation concerning Minimum age for Admission to Employment, 1973 (further to C138)

**R151**

Recommendation concerning Migrant Workers, 1975 (further to C143)

**R164**

Recommendation concerning Occupational Safety and Health and the Working Environment, 1981 (further to C155)

**R171**

Recommendation concerning Occupational Health Services, 1985 (further to C161)

**R178**

Recommendation concerning Night Work, 1990 (further to C171)

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## **6. The Application of Existing Standards to the Sex Industry**

In the following discussion of standards in relation to the sex industry, relevant extracts of international instruments are applied to a list of issues of concern to sex workers in different situations. The instruments include both human rights instruments adopted by the UN and ILO Conventions and Recommendations. ILO Conventions represent international labour standards but are only binding on a state once it ratifies the Convention in question. There is a single exception to this, Convention 87 on freedom of association, which all member states are required to respect. ILO Recommendations also represent international standards, but are not formally binding on states and do not have to be ratified. Interpretation of the instruments for use in the context of the sex industry is not intended to be conclusive but to provide a starting point for more detailed investigation.

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## 6a. Discrimination

Sex workers can face discrimination in almost every aspect of their lives and rarely enjoy full rights as citizens. This section looks at ways of understanding the nature of the discrimination in terms of existing human rights standards.

In order to bring sex workers under the protection of UDHR Article 2 (and both ICCPR Article 2, ICESCR Article 2.2), which prohibits discrimination on the grounds of 'status' it seems reasonable to argue that they are discriminated against on the basis of their special 'status' as sex workers. While it is undeniably clear that much discrimination against sex workers, male and female, derives from their membership of a stigmatised group, there are dangers inherent in this approach.

The identifying of female prostitution as a characteristic or status, and not as an activity, can itself be considered an act of direct **sex discrimination**, thereby also violating ICCPR Article 3 and ICESCR Article 3 on the equality of the sexes. This identification defines a woman's status primarily in terms of her sexual behaviour. There is no corresponding status for men, based simply on sexual behaviour. Moreover, the sexual behaviour in question -- the acceptance of multiple sexual partners -- is widely considered to be transgressive in women, but is not always judged harshly in men.

CEDAW Article 5 obliges states to take measures against prejudice and stereotypes based on gender. The definition of the sex worker's economic activity as a characteristic, and the stigma which attends that characteristic, reflect prejudice and stereotypes around female sexual roles and states should be encouraged to take appropriate measures under this article.

Notwithstanding the discussion above, discrimination against sex workers can often be described in terms of **indirect sex discrimination** because the industry is predominantly female and so women are disproportionately affected. ICCPR Article 3 and ICESCR Article 3 guarantee equal treatment of men and women, and CEDAW Article 2 requires States Parties to eliminate discrimination against women by, **inter alia**, taking "all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women."

ICCPR Article 2.1 and ICESCR Article 2.2 require States Parties to ensure rights without discrimination in their territory and jurisdiction and ICCPR Article 2.1 demands incorporation of its terms into State legislation.

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## 6b. Restriction under criminal law

*In Slovenia, for example, prostitution is covered by the Law on Offences against Public Order and Peace, which penalises any person who is engaged or assists in prostitution, allows or supports prostitution, or organises, prepares or supports practices of 'sexual immorality', with the exclusion of clients.*

Wijers, Marjan and Lap-Chew, Lin, 1997. **Trafficking in Women, Forced Labour and Slavery-like Practices in Marriage, Domestic Labour and Prostitution.** Foundation Against Trafficking in Women (STV), Utrecht, The Netherlands. p. 113.

*In Greece, non-registered prostitutes are considered guilty of an illegal act; they are arrested, tried and imprisoned.*

Europap, 1995. 1994: **Final Report.** Europap (European Intervention projects Aids Prevention for Prostitutes). Ghent, Belgium, cited in Wijers, Marjan and Lap-Chew, Lin, 1997. **Trafficking in Women, Forced Labour and Slavery-like Practices in Marriage, Domestic Labour and Prostitution.** Foundation Against Trafficking in Women (STV), Utrecht, The Netherlands. p. 116.

Can the principle of restricting the sex industry under a penal code itself be challenged on human rights grounds? Such a challenge begins with the right to the free choice of work enshrined in UDHR Article 23.1, ICESCR Article 6.1 and CEDAW Article 11, and to just and favourable work conditions in UDHR Article 23.1, which are violated by the placing of legal obstacles to engagement in sex work. This argument, and indeed the argument that sex workers should be entitled to any of the labour or human rights discussed here, is, of course, void if the State does not choose to define prostitution as work, but simply as unlawful activity.

However, UDHR Article 29.2 declares that the law may limit the individual's rights and freedoms "solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society." The right of the state to legislate on **sexual** morality is under question in many societies, while the effect of anti-prostitution legislation, by limiting the organisation of prostitution and encouraging its association with organised crime, can be widely observed to have a detrimental effect on "public order and the general welfare." The justice and legitimacy of penal restriction of the sex industry is not self-evident: the onus must be moved to States to defend or repeal such restriction.

*Some women feel safer working on the street because of all the people around, but negotiations with clients are too hurried, the women are looking for the vice squad [police], so they can't decide if the client is all right or not.*

Health Worker, Praed St. Project, London, UK, personal communication, 1997.

*The legal definition of procuring is the cause of many problems for prostitutes, especially for those working in flats, who, according to the law, are compelled to be the owners. Indeed, if they rent their work place, the owner can be immediately prosecuted for brothel procurement. Similarly, two prostitutes cannot become co-owners of the same flat, for in legal terms one of them is automatically considered as the tenant and the other as the owner and can therefore be prosecuted for procuring. Furthermore, this law prevents any true solidarity between prostitutes, since any loan or financial donation from one person to another can be considered procurement.*

Europap, 1995. 1994: **Final Report**. Europap (European Intervention projects Aids Prevention for Prostitutes). Gent, Belgium. p62, and

Europap, 1996. France, in **Final Report '95-'96**. Europap, Gent, Belgium, p. 145.

In fact, anti-prostitution laws have a significant effect on sex worker welfare. Prohibitions on soliciting or on brothel-keeping mean that a worker's safety is compromised. On the street, she must often conclude negotiations as quickly as possible, reducing her ability to assess a potential client, to avoid being seen by police. Workers off the street may be obliged to work alone in premises, unable to share them with another worker for security if the two together would be regarded as operating a brothel. Prohibitions in this case violate the rights to freedom of association (UDHR Article 20.1) and to freedom of movement and choice of residence (ICCPR Article 12.1 and CEDAW Article 15.4).

*In 1985, it became an offence for a male client to solicit prostitutes on the street. However, clients are prosecuted less often than prostitutes.*

Europap, 1996. United Kingdom, in **Final Report '95-'96**. Europap (European Intervention projects Aids Prevention for Prostitutes), Gent, Belgium, pp. 317-8.

*The stringent standards of proof which must be satisfied for the*

*Crown Prosecution Service to proceed with a case [against a client] under the present legislation, were ...felt to be a major problem.*

Benson, Catherine and Matthews, Roger, 1995. **National Vice Squad Survey**. School of Sociology and Social Policy, Middlesex University, Enfield, UK. p. 31.

The nature of legal restriction which obtains in almost every country clearly constitutes indirect sex discrimination, as the majority of sex workers are female and the clients male. In some countries prostitution is identified in law as an exclusively female activity. The penalisation of a primarily female form of work constitutes a restriction of the right to work, discussed above, on grounds of sex. [46] The application of laws against the sex industry almost exclusively to the sex worker, and not to the client, violates the principle of equality of men and women enshrined in UDHR Article 2 on discrimination, ICCPR Article 3, ICESCR Article 3, and CEDAW Article 2, particularly section (g) calling on States Parties "to repeal all national penal provisions which constitute discrimination against women".

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## **6b.i. Discriminatory treatment by police and judicial authorities**

*Before the penal code reform on 1 March 1994, French legislation did not distinguish between passive soliciting, that is for a woman to stand or wander along a street while staring at passers by, and active soliciting. Simply the fact of being seen in the street could be considered by the police as a sufficient cause to report a prostitute.*

Europap, 1996. France, in **Final Report '95-'96**. Europap (European Intervention projects Aids Prevention for Prostitutes), Gent, Belgium, p. 145.

*...repression by the **Carabineros** (national police) is frequent. It doesn't matter if we have the proper documents, they often arrest us or force us to have sexual relations with them to avoid fines or jail.*

Elizabeth, president of the Chilean sex workers' organisation Angela Lina Pro-Women's Rights Association (APRODEM), quoted in Cabieses, Javier, 1995. Sex workers demand rights. **Latin America Press**. 19 October 1995.

*We are at the same time psychologists, doctors, nurses, servants and prison managers. We keep the women for up to 10 days, or until they have completed treatment.*

Head Doctor, Clinic for Sexually Transmitted and Skin Diseases,  
Istanbul, personal communication 1996.

It is rarely in the interest of the police or within their capacity to arrest everyone suspected of engaging in sex work. Instead laws against prostitution or soliciting custom are used to arrest on an arbitrary basis, often as an instrument of intimidation or extortion. Moreover, the denial of sex work as a legitimate source of income, even where selling sex itself is not illegal, allows the arbitrary arrest of sex workers under laws prohibiting vagrancy, in contravention of ILO R35(c). Sex workers may be detained on police authority in medical facilities, for a predetermined period or subject to medical treatment. Such practices violate the right to liberty enshrined in UDHR Article 3 and to freedom from arbitrary arrest and detention in ICCPR Article 9.1. Male and transgendered sex workers may be particularly vulnerable to police attention.

*[Of sex workers surveyed in 26 Ghanaian towns and cities], one third (40) reported problems with the police citing intimidation, periodic raids on hotels from which they operate, extortion of moneys and threats.*

Pappoe, Dr Matilda, 1996. **The Status of Prostitution in Ghana**. GTZ Regional AIDS Programme for West and Central Africa, Accra, Ghana. p. 44.

*Even in so-called democratic countries the list of mundane abuses against prostitutes carried out by the authorities will include raids, rapes, beatings, extortion, 'confiscation' of property and compulsory medical intervention.*

Overs, Cheryl, 1994. Unfair cop. **New Internationalist** No.252. pp. 26-28.

*Often the police rounds up women with their clients from the brothel on some pretext for extorting money from them. In such cases they also beat up women and manhandle their clients. Protesting prostitutes are taken to the police station where the physical abuse increases and the rates of fines go up.*

Khan, Zarina Rahman and Arefeen, Helaluddin Khan, 1992.  
Prostitution in Bangladesh, draft report. Dhaka, Bangladesh.

*In Bombay, for example, the police arrested 447 sex workers in raids on brothels. They were taken from the brothels without their belongings and, in some cases, without their children.*

*Though prostitution in itself is not illegal in India, the women were kept in detention. They were tested for HIV and other sexual diseases without their consent, but were not given any medical treatment. Those who wanted to go back to work were not released: "If these women were in different occupations, there would have been considerable public outrage about this abuse and violation of rights."*

GAATW (Global Alliance Against Trafficking in Women), 1996. Report of fact finding tour on trafficking in Nepal, India, Bangladesh, Hong Kong, Taiwan and Japan. GAATW, Bangkok, Thailand. p. 22.

In many countries, an encounter with the police implies physical and psychological abuse, including sexual assault, especially where a sex worker is involved. These abuses violate the right to security of person (UDHR Article 3) and the right under ICCPR Article 10.1 to be "treated with humanity and with respect for the inherent dignity of the human person". They also constitute "physical, sexual and psychological violence perpetrated or condoned by the State," as described in Article 2, (c) of DEVAW. Detention may also result in the appropriation of cash or possessions by the management of a prostitution-based business during the absence of the sex worker.

*Forty eight [prostitutes murdered in British Colombia over 8 years]. Imagine if it were 48 policemen, imagine if it were 48 women working in their homes, what kind of reaction you would see? ...The whole reaction of police, of newspapers, of anybody you can sort of look at, the reaction is the same: people don't seem to be particularly alarmed. The whole fabric of our society pretty much treats prostitutes as disposable.*

Bindman, Stephen, 1996. Prostitute murders hard to solve, and no one cares. **Ottawa Citizen**, July 29 1996.

*Local magistrates' courts hear cases brought by the police ... Prostitutes generally plead guilty because of perceived difficulties in negotiating the legal system and fears that they will be targeted subsequently by the police. Thus, the nature of the evidence against them remains unclear.*

Europap, 1996. United Kingdom, in **Final Report '95-'96**. Europap (European Intervention projects Aids Prevention for Prostitutes), Gent, Belgium, p. 318.

Few sex workers feel able to seek the protection of the law as victims of

fraud, extortion or assault, as they are often not regarded by police as citizens deserving of normal protection. Where police and judicial authorities are considering prosecuting an offence committed against a sex worker, they may drop a case on the grounds that the sex worker's testimony is unreliable. Police and judicial prejudice is particularly marked in cases of sexual assault of sex workers. Such exclusions violate UDHR Articles 6, 7 and 8, ICCPR Article 2.3 and 26, and CEDAW Article 15.1, on recognition and equality of protection by the law. As defendants on prostitution-related charges, sex workers in some countries may be convicted on police evidence alone in violation of the right to a fair hearing under UDHR Article 11 and ICCPR Article 14.

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## 6b.ii. Discriminatory treatment by other authorities

*This may be illustrated by Canada, where the Criminal Code penalises "procuring or living on the avails of prostitution", including partners, room mates and children who share a dwelling with a woman who works as a prostitute. Even if another source of income can be proven the simple fact that one member of a household works as a prostitute can be held against any other member of that house as "living off the avails of prostitution":...it has been enforced frequently against innocent family members and friends of prostitutes.*

Sanghera, Jyoti, 1996. Preliminary Report on Forced Labour, Slavery-like Practices and Traffic in Women. Prepared for GAATW/STV. Canada, cited in Wijers, Marjan and Lap-Chew, Lin, 1997. **Trafficking in Women, Forced Labour and Slavery-like Practices in Marriage, Domestic Labour and Prostitution.** Foundation Against Trafficking in Women (STV), The Netherlands. p. 133.

*Brothel prostitutes [in Nevada] are required to register with police and, once hired, they are required to live on the premises while working.*

Anderson, Laura, 1994. Working the Nevada Brothels. Gauntlet 1: 40, cited in Chapkis, Wendy, 1997. Live Sex Acts. Women performing erotic labour. Routledge, New York, p.163.

*In France, the legal definition of this offence [procuring] forbids any prostitute from living with the person of her choice to form a genuine couple. Furthermore, Women who do not want or cannot find other employment (prostitution itself is not*

*illegal), find it difficult to get national health insurance for themselves or their children since they are indirectly forbidden to have a family or a fixed address.*

Europap, 1996. France, in **Final Report '95-'96**. Europap (European Intervention projects Aids Prevention for Prostitutes), Gent, Belgium, p. 145.

*A criminal record clearly has further implications; ...known prostitutes may find it difficult to keep custody of their children....individuals encounter problems when they want to buy a house, pay tax, get a job, or register with the state for some other purpose.*

Europap, 1996. United Kingdom, in **Final Report '95-'96**. Europap (European Intervention projects Aids Prevention for Prostitutes), Gent, Belgium, p. 319.

Sex workers may face a variety of restrictions on their private lives, violating UDHR Article 12 which protects against arbitrary interference with privacy, family and home. In some countries, registered sex workers lose their permission to work if they marry, despite UDHR Article 16 which protects the right to marry. In others, laws against profiting from prostitution, which can be used to punish associates of sex workers, restrict sex workers freedom of association (UDHR Article 20) and the ability to establish a home with others (ICCPR Article 12 on freedom to choose one's residence). The location of a sex worker's home may also be restricted, contravening UDHR Article 13 and ICCPR Article 12.1 on freedom of movement and residence, and CEDAW Article 15.4, which requires equal enjoyment of these rights by men and women.

In the context of an established system of welfare intervention in the family, sex work itself may constitute sufficient evidence that a parent is unfit to care for children. The removal of a child by authorities in this case is a violation of both the sex worker's and the child's rights under UDHR Article 12, and the sex worker's right under UDHR Article 16 to found a family. The child is further protected against interference in family life by CRC Article 16, and separation from his parents by CRC Articles 7 and 9, and by the freedom of association guaranteed by CRC Article 15.

*In Turkey, the children of registered sex workers may not rise to high rank in the army or police, nor marry such persons. ... Registered women are forbidden to live or work outside a genelev and must inform the police if they change premises.*

Health project worker, Human Resource Development Foundation,

Istanbul, personal communication 1996.

Employment discrimination, registration, legal or customary restrictions upon the children of sex workers, and residence restrictions, are associated with the regulatory systems which persist in some countries. The registration of sex workers, declaring and recording their membership of a stigmatised group, constitutes violation of the principle of non-discrimination laid down in UDHR Article 2, ICCPR Article 2 and ICESCR Article 2.2), and ICCPR Article 3, ICESCR Article 3 on the equal rights of the sexes -- registration is generally confined to women. It violates several sections of CEDAW Article 2, notably (d), requiring States Parties to "refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation" and (f), to "take all appropriate measures, including legislation, to abolish or modify existing laws, regulations, customs and practices which constitute discrimination against women."

*Registered women can renounce prostitution and get an ordinary identity card, but the police keep records. An employer or a man who wants to marry you can go and look.*

Registered sex worker, Istanbul, personal communication 1996.

Employment discrimination, on the basis of registration or other evidence, against sex workers or former sex workers, can be prohibited under C111 Article 1 as "nullifying or impairing equality of opportunity or treatment in employment or occupation" while CEDAW Article 11 (b) and (c) require equal selection criteria and opportunity for men and women. R111 Article 11.2 calls for national policies to prevent discrimination.

*In contrast to the civil rights afforded to other professional businesses, no similar protection is given to the profession of prostitution in Germany. The business' fundamental premise -- the agreement to provide a sexual service in return for payment -- offends the moral basis of the rules of the German Civil Code and is, therefore, not regarded as valid. Conflicting criminal laws also mean that it is not possible to conclude regular employment contracts. This leads to the total absence of social security.*

Europap, 1996. Germany, in **Final Report '95-'96**. Europap (European Intervention projects Aids Prevention for Prostitutes), Gent, Belgium, p. 176.

The failure to recognise sex work as a legitimate source of income means that

even where sex workers are regulated and taxed, they may not automatically be entitled to claim social security payments. This exclusion violates the right of everyone, and of women on a basis of equality with men, to social security under UDHR Articles 22 and 25, ICESCR Article 9, and CEDAW Article 11.1 (e).

*Over the last years prostitutes have started to organise themselves to defend their rights and improve their working and living conditions. However, not in all countries are prostitutes permitted to do so. ...But, even when they are allowed to have their own organisation, it does not mean they are allowed to form their own labour or trade unions or join any existing ones as a specific population of workers. In general, prostitutes are denied union rights.*

Wijers, Marjan and Lap-Chew, Lin, 1997. **Trafficking in Women, Forced Labour and Slavery-like Practices in Marriage, Domestic Labour and Prostitution.** Foundation Against Trafficking in Women (STV), The Netherlands. p. 121.

*Numerous attempts to organise have been blocked by violence or social control. In Ireland, for example, a prostitute who tried to organise her colleagues was killed; fire was set to her house and she was burnt to death. In Thailand, a few women tried to organise a kind of union called 'Thai Night Guard', but they failed because of family pressure, police harassment and threats from their managers. In Ecuador, brothel managers purposely rotate prostitutes each week to prevent them from grouping together and expressing their grievances about ill-treatment and bad working conditions.*

Pheterson, Gail (ed.), 1992. **A Vindication of the Rights of Whores.** The Seal Press, USA. p. 7.

The right to establish or join free trade unions is protected by UDHR Article 23.4, ICESCR Article 8.1(a), C87 Articles 2 and 3, and C98. However, the nature of the sex industry, wherein workers may be isolated or reluctant to identify themselves for fear of social stigma or legal penalty, often precludes enjoyment of this right. Where isolation or illegality have not prevented them, the potential of sex workers to form unions to campaign for their rights has been amply demonstrated in various countries, most notably Australia. However, they often face reactions ranging from indifference to hostility from established labour unions or confederations if they try to join the established labour movement.

*Some countries like the US, Japan, Turkey and Cyprus,*

*explicitly exclude prostitutes from legal emigration or immigration. In Cyprus the Aliens and Immigration Law provides the "any prostitute or any person living on the proceeds of prostitution are prohibited immigrants and are not permitted to enter the country. These persons having entered the country, are ordered to be deported". In Turkey prostitutes are barred from entering the country under the **Passport Act**.*

Council of Europe, 1994. Amended Summary of national replies to the questionnaire of forced prostitution and traffic in women, CDEG (94)32. **Steering Committee for Equality between men and women**. Strasbourg, France.

*An alien can be refused entry on the basis of the **Aliens Act** if he/she plans to apply for residence in Sweden and it is assumed that he/she will not earn his/her livelihood or de facto not earn his/her livelihood in an honest fashion. What is meant in this case is professional prostitution. A person's residence permit can be revoked for the same reasons -- within two years of it being granted.*

Europap, 1996. Sweden, in **Final Report '95-'96**. Europap (European Intervention projects Aids Prevention for Prostitutes), Gent, Belgium, p. 272.

Sex workers also face discriminatory immigration conditions -- some countries refuse to admit persons with previous prostitution-related offences.

The use of 'anti-trafficking' regulations or guidelines to restrict the movement of women from certain countries or in certain categories, for example, defined by age or marital status, on suspicion of engagement in sex work at destination, itself contravenes especially CEDAW Article 15.4 on equal freedom of movement, UDHR Article 2, ICCPR Article 2 and ICESCR Article 2.2) on discrimination, ICCPR Article 3, ICESCR Article 3 on the equal rights of the sexes.

See also [6e. Transnational Migrants in the Sex Industry](#), below.

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## 6c. Employment conditions

*Due to the prohibition of exploitation and the frequent imposition of raids on bars and private houses by various police services, the managers are against keeping condoms on their premises.*

Europap, 1996. Belgium, in **Final Report '95-'96**. Europap (European Intervention projects Aids Prevention for Prostitutes), Gent, Belgium, p. 118.

Under ICESCR Articles 2 and 3, all people, men and women, are guaranteed enjoyment of economic and social rights, and CEDAW Article 11, in particular sections 1.(d) and 1(f), calls upon States Parties to ensure equal protection for women from poor working conditions. Although some of the problems covered here -- in particular access to general health services and opportunities to use condoms -- lie in the realm of State responsibility. In the main, however, they relate to employer behaviour or negligence: poor working environments and a neglect of occupational health and safety, especially with regard to protection from disease; inadequate remuneration and time off; and long working hours. These problems are by no means exclusive to the sex industry, but are common throughout informal, and parts of formal, economies.

A large proportion -- probably the largest -- of sex work takes place outside the formal employment relationships which are regulated by the ILO and national authorities. It is performed on the casual, piece-work, or commission bases which characterise the informal sector. Conditions are not dictated by explicit contracts, but by legal and social restrictions on sex work combined with competition between individual sex workers for clients, or by systems of remuneration which are tied to shift work. The ILO and national authorities are very conscious of the difficulties of implementing labour standards in this context.

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## 6c.i. Terms of employment

*Unfortunately, they can seldom get a proper income from their work because the income depends on the whims of the brothel owners, not on a law or contract. Interviews with many Burmese sex workers, as well as those of other nationalities working in Thailand, make it clear that it is almost impossible for sex workers to speak with the brothel owners about their rightful income.*

Images Asia, 1995. Burmese women sex workers in Thailand. Paper prepared for the NGO Forum on Women, Beijing. Thailand. p. 8.

*We cannot have any guarantees in a place where we cannot sign a collective work contract. If you are a sex worker you cannot work on your own terms. There is always someone behind you, to whom you give one half of your earnings.*

Cabezas, Amalia Lucia, 1996. Interview with Claudia Colimoro (Mexico), in Kempadoo, Kamala, and Doezema, Jo (eds.), **Transnational Sex Work: Prostitution, Migration and Empowerment**. Routledge, New York. (Jan. 1998)

Much sex work does, however, take place in the context of employer-employee relations and the clear recognition of this status would facilitate implementation of international and local standards by employers. Employers are prohibited from withholding wages under C95 Article 5, or making deductions from wages as a condition of retaining employment under C95 Articles 9. C95 Article 12 requires that wages be paid regularly, and R85 suggests acceptable intervals for the payment of wages and details about the wage payment, such as the conditions under which deductions may be made, which should be supplied to the worker and recorded by the employer. \*\*\*

*Nearly every Burmese women and girl interviewed had to work between ten and fourteen hours a day, with only a few days off each month during menstruation. Some interviewees explained that they could get time off only if they were very sick or sore, and they only dared to do so if absolutely necessary.*

Human Rights Watch, 1995. **The Human Rights Watch Global Report on Women's Human Rights**. Human Rights Watch, New York. p. 214.

*A standard shift in a Nevada brothel runs twelve to fourteen hours a day, seven days a week, for a twenty-one day stretch.*

Anderson, Laura, 1994. Working the Nevada Brothels. Gauntlet 1: 42, cited in Chapkis, Wendy 1997. **Live Sex Acts. Women performing erotic labour**. Routledge, New York, p. 163.

The long shifts and penalties for absence demanded of sex workers in many establishments violate the rights laid down in UDHR Article 24 and ICESCR Article 7 to reasonable limitation of working hours and periodic holidays with pay. R78 suggests special limitations on hours for night workers. C132 Articles 3, 5, 6 and 10 prescribe entitlements to and duration of paid holiday, and C132 Article 12 allows agreements to relinquish holiday to be declared null and void. C106, which includes establishments providing personal services, requires 24 hours of continuous rest in every seven days under Article 6.1. C52 protects annual paid holiday and defines the areas of work covered to include Article 1(i) "hotels, restaurants, boarding-houses, clubs, cafes and other refreshment houses;" and (j) "theatres and places of public amusement". Many of the establishments which employ sex workers fall into these categories, and the workers' holiday is therefore protected under this Convention.

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## 6c.ii. Health and safety

*Informal lectures are arranged by the Institute of Social Hygiene. If she (the prostitute) misses a session she is further sanctioned by way of a three-day [health] pass suspension.*

Tandia, Omar, 1997. Prostitution in Senegal: Study of prostitution conducted by ENDA-SYNFEV, in Kempadoo, Kamala, and Doezema, Jo (eds.), **Transnational Sex Work: Prostitution, Migration and Empowerment**. Routledge, New York. (Jan 1998)

*Our project began after research showed that local sex workers were not using health services. They didn't like disclosing their work to new doctors and dealing with their reactions. They wanted their own, sympathetic service, where they could see the same doctor regularly.*

Health worker, Praed St. Project, London, UK, personal communication 1997.

Sex workers often find that they are treated disrespectfully when seeking health care: medical personnel may identify sex work itself as a health problem and not offer appropriate care; or focus on sexually transmitted disease to the exclusion of other aspects of the sex worker's health. In some

cases they are detained in hospital subject to health clearance or required to participate in health education (see Discrimination by Police and Judicial Authorities above). These practices violate the right to access to medical care under UDHR Article 25.1, and to public services without discrimination under ICCPR Article 25(c), while CEDAW Article 12.1 specifically requires equal access to health care for men and women.

*What finishes a prostitute, what takes away her dignity and her health, is not to do sex professionally. What finishes her is the lack of working conditions.*

Gabriela Silva Leite, Brazilian ex-prostitute, now engaged in the prostitutes' rights movement. Quoted in Brussa, Licia, (ed.) 1995. Hamburg, in 1994 **Tampep: Final report**. Tampep (Transnational AIDS/STD Prevention Among Migrant Prostitutes in Europe), Amsterdam. p. 69.

*In recent legal cases some rulings go so far as to construe all forms of good working conditions in brothels, or brothel like businesses, such as good sanitary equipment, internal social arrangements, and even the supplying of condoms, as a promotion of prostitution. In such cases punishments have been imposed in line with the legal possibilities. The background to this is the idea that good working conditions are not conducive to turning women away from the 'deviant' way of life they have entered. This is nothing short of misanthropy.*

Europap, 1996. Germany, in **Final Report '95-'96**. Europap (European Intervention projects Aids Prevention for Prostitutes), Gent, Belgium, p. 180.

*Provision of health care at [Thai] brothels is sporadic at best, and in most cases non-existent. In six of the nineteen different brothels where women we interviewed had worked, they reported routine contact with health care providers, but this was to provide birth control and test for STDs, including AIDS. Most brothels had basic medications and creams available for their employees, frequently for a price. Serious illnesses usually went untreated.*

Human Rights Watch, 1995. **The Human Rights Watch Global Report on Women's Human Rights**. Human Rights Watch, New York. pp. 214-5.

C155 Article 4 requires States to implement a policy to prevent accidents and injuries arising from hazards in the work place. Under C155 Articles 2 and 3,

all employed persons are included, and States must declare and explain any exclusions. Sex workers in employment should therefore be included, and their work places subject to measures to eliminate hazards as laid down in R164 Article 3. R97, calling for conditions which provide adequate protection for the health of workers, applies to places of employment and no exceptions are specified. C161 Articles 3 and 5 require Member States to establish occupational health services, providing surveillance of working conditions, advice and other services to promote occupational health, for all workers. Further guidelines for the nature of these services are laid down in R171 Article 5.1.

Sexually Transmitted Diseases (STDs), including HIV/AIDS, are an important health issue in the sex industry. If these are defined as a health hazard, then employers are required to ensure the practice of safer sex, especially the use of condoms as protective equipment. Provision of condoms and enforcement of their use could then be required under C155 Article 16, whereby employers must ensure that "...equipment and processes under their control are safe and without risk to health." Moreover, condoms must be supplied by the employer, as C155 Article 21 specifies that "occupational safety and health measures shall not involve any expenditure for the workers" and R97 Article 3 requires employers to provide workers with protective equipment. Provision of safer sex advice and could be required under C161 Article 5(e), and the obligations to be presented to workers under R97 Article 4 and R164 Article 16(c) to observe safety procedures can help to avoid differential practice between employees.

*Protima [Bangladesh], 22, told us that she had been infected with gonorrhoea within a fourth night of her entry into prostitution. In this connection she informed us that most prostitutes have V.D. when they work under sardarni [third parties] as they are forced to take clients indiscriminately. Independent prostitutes can choose having V.D. Also an independent prostitute can abstain from taking clients if she is ill or under treatment.*

Khan, Zarina Rahman and Arefeen, Helaluddin Khan. 1992.  
**Prostitution in Bangladesh**, draft report. Dhaka, Bangladesh.

Another significant aspect of the definition of STD, including HIV/AIDS, as a health hazard, is that a sex worker who is an employee and who refuses a client on the basis that the client will not agree to practice safer sex, can be protected under C155. Article 13 protects from "undue consequences" a worker who "has removed himself from a work situation which he has reasonable justification to believe presents an imminent and serious danger to his life or health", while Article 19(f) states that "an employer cannot require workers to return to a work situation where there is continuing imminent and

serious danger to life or health."

*When an applicant goes to register ... she is tested for any sexually transmitted disease. There is clearly a connection between a police file and a health file, initiated by an institute of public health. ...She must also make regular appearances (every 45 days) for the purpose of health checks. There, she undergoes a bacteriological test (taking of blood and vaginal cells). If she tests positive for any sexually transmitted disease (STD), her health booklet/pass is taken away, an action which makes it legally impossible for her to practice. She is given a prescription that she must fill with her own money and her Health Pass suspended, until the time that a subsequent visit shows that she is completely cured. With respect to these mandatory medical appointments, any late show results in a suspension of her health pass, as a form of penalty.*

Tandia, Omar, 1997. Prostitution in Senegal: Study of prostitution conducted by ENDA-SYNFEV, in Kempadoo, Kamala, and Doezema, Jo (eds.), **Transnational Sex Work: Prostitution, Migration and Empowerment**. Routledge, New York. (Jan. 1998)

*Because implementation of the National AIDS Plan is not monitored carefully, forced HIV testing of women and girls in brothels without their informed consent depended on the inclination of the local authorities. For instance, 'Chit Chit' was tested four times in her first brothel in Chiangmai. Then she was tested twice while in another brothel in Bangkok. After her arrest by a plain clothes policeman, she was tested again in Pakkret. She was not given the results of any of these tests.*

Human Rights Watch, 1995. **The Human Rights Watch Global Report on Women's Human Rights**. Human Rights Watch, New York. p. 228.

The classification of STD, including HIV/AIDS, as an occupational health issue, in no way legitimises mandatory testing for disease, imposed by the state or the employer (see Security of Person and Slavery below). The 45th World Health Assembly resolution 45.35, commenting on HIV/AIDS, recognises "that there is no public health rationale for any measures that limit the rights of the individual, notably measures establishing mandatory screening." Nor does such classification allow the disclosure of health information to employers or clients. In addition to the protection of privacy offered by UDHR Article 12, the principle that all health information should be confidential is enshrined in several ILO Conventions and Recommendations (listed below in Slavery -- Ownership by Another). On a

purely practical level, the issuing of 'disease-free' certificates in fact creates a false sense of security for clients and sex workers alike, as STD, including HIV/AIDS, may be present but undetectable for a limited period. Health can only be protected by the universal practice of safe sex, using condoms where appropriate, and the general public should be the target of sex education, as much as the more readily-identifiable sex worker.

*Police expect a large number of the women from this brothel to test positive for HIV as they found that the girls had shared the same old syringes during rudimentary examinations carried out on the premises.*

Bangkok Post, July 16 1993, cited in Asia Watch and Women's Rights Project. 1993. **A Modern form of Slavery. Trafficking of Burmese women and girls into brothels in Thailand**, Human Rights Watch, New York. p. 71.

At the same time, a very serious risk to health in the sex industry is posed by some attempts to avoid the pregnancies and STDs to which the sex worker can be exposed. Rather than, or in addition to, promoting condoms, contraceptive and/or antibiotic injections may be administered, with the use of a single needle for several workers in an establishment. This practice is suspected of spreading HIV and other blood-borne infections. It therefore violates UDHR Article 3, the right to life and to security of person, and C155 Article 16, making employers responsible for the safety of processes in the workplace, and should attract the attention of occupational health services under R171 Article 5.1.

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## **6d. Slavery and self-determination**

A range of abuses in the sex industry can be described in terms of slavery: as abuses arising from subjection to "the rights of ownership" or resulting from slavery-like practices, in particular debt bondage and child servitude as described in Article 1, sections (a) and (d), of the 1956 Supplementary Convention on Slavery. Associated with these abuses are those which violate the individual's right to security of person as asserted in UDHR Article 3 "everyone has the right to life, liberty and security of person." The division of the different types of violation below is necessarily somewhat arbitrary, and different Conventions may be invoked simultaneously.

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## Security of person and slavery

The abuses considered here are violations primarily of UDHR Article 3. They violate also UDHR Article 5 on "torture or cruel, inhuman or degrading treatment" and similar provisions under ICCPR Articles 6.1, 7 and 9.1. These abuses also fit the description of Violence Against Women in DEVAW Articles 1 and 2(b) and (c). They fall loosely into two groups.

*There are clubs where the sex workers are forced to drink alcohol, in some cases they receive a percentage of these profits.*

Brussa, Licia, (ed.) **1994 Tampep: Manual**. Tampep (Transnational AIDS/STD Prevention Among Migrant Prostitutes in Europe), Amsterdam. p 24.

*In India, women [in the sex industry] who become pregnant are forced to undergo an abortion, usually under illegal and dangerous conditions.*

Poudel, Meena, 1994. **Trafficking in Women in Nepal: an overview**. WATCH (Women Acting Together for Change, Nepal). Paper prepared for the First Planning Meeting of Regional Project Against the Trafficking in Women in East, South East and South Asia, organised by International Movement Against All Forms of Discrimination and Racism (IMADR), March 15-16, 1994. Tokyo, Japan.

*The women and girls themselves appeared to have no choice of which contraceptives they would be given nor did they understand how they worked. In at least one case, the owner found it in his interest to keep the girls from menstruating so that there would be no excuse to stop work during the month. He did this apparently by giving them improper instructions for taking the pills and never allowing them to take the one week placebo pill for menstruation.*

Asia Watch and Women's Rights Project, 1993. **A Modern form of Slavery. Trafficking of Burmese women and girls into brothels in Thailand**, Human Rights Watch, New York. p. 69.

The first group is physical interventions which are not abusive when they take place with the consent of the affected individual but become so when that consent is not freely given or fully informed. These violations include the administration of drugs, including alcohol, without free consent; and forced or unsafe abortion. CEDAW Article 16(e) addresses a woman's right to decide

freely on number and spacing of children.

*A common tactic involves certain brothel staff treating the victim abusively, telling her repeatedly that she is dirty or defiled, for example, while another ...consoles her and tells her that she is among family.*

Human Rights Watch / Asia, 1995. Rape for profit. **Trafficking of Nepali Girls and Women to India's Brothels.** Human Rights Watch, New York, p. 35.

*Whoever refused was hit or kicked in the face. One was hit on the head with a bunch of keys. A friend of mine had her jaw broken. They did all that. Another friend of mine was shot dead, and nobody did anything. the brothel owner sold her things afterwards. ...There wasn't a torture chamber. Everything happened out on the street. We got tired of seeing girls being dragged along and beaten. They pulled them by the hair.*

Interviews with the press given by prostitutes from Cuiú-Cuiú mining town, Brazil, February 1992, cited in: Sutton, Alison, 1994. Mining and prostitution: violence and entrapment in the mining camps. **In Slavery in Brazil. A link in the chain of modernisation.** Anti-Slavery International. pp. 98-99.

*I was supposed to earn 600 guilders a day, and if I didn't I was beaten and kicked.*

Testimony of Grazyna, a victim of forced prostitution and trafficking, Amsterdam 1993, in Chapkis, Wendy, 1997. **Live Sex Acts. Women performing erotic labour.** Routledge, New York, p. 58.

*Dependence on mood-altering drugs may also be encouraged, both to assist in adapting to the work and to tie the girl more heavily to her owner. The cost of the drug is added to the girl's debt.*

Bindman, Jo, 1997. Taiwan: Indigenous Peoples in the Taiwanese Sex Industry. In **Enslaved Peoples in the 1990s.** Anti-Slavery International and IWIGIA, Copenhagen, Denmark. p. 39.

The second set of abuses consists of assaults, or threatened assaults, upon an individual, or upon persons or property of significance to that individual. Violations of this kind may be used as a means of establishing control over a person, and are therefore prohibited under C29 Articles 2.1 and 4 on "forced or compulsory labour... for the benefit of private individuals, companies or

associations." They may also be an expression of that control. These include psychological and physical abuse, and threatened reprisals against family members of the sex worker, and confiscation of property (which is also a violation of UDHR Article 17). Inducing drug dependency by administration of drugs without free consent could also be considered in this category, as allowing the control of a person through the supply or withholding of the drug, or even as "inducing another person ... into.. servile status" as described in the 1956 Supplementary Convention on Slavery. Into the second set of abuses fall also various violations of particular relevance to the sex industry, and which can go beyond forced labour to the exercise of the "powers of ownership" described in the 1926 Slavery Convention. These are sex without consent and 'pimping'.

## **Sex without consent**

**Non-consensual sex in the context of ownership: when a sex worker cannot refuse a particular client, a particular act, or must receive a certain number of clients per day.**

*It's very difficult to refuse a client. Most clubs won't come right out and say, "You have to go with everybody that wants you," but they put a lot of pressure on you. If somebody wants you and you say to the management, "No, I don't think so," they go, "What's the matter with him? You're not here for your fun, you're here to make money." It's really difficult to stand up under that kind of pressure. And if you do hold your ground, they can just say, "Well, get out then, we don't need that."*

Interview with Jo Doezema, Amsterdam 1993, in Chapkis, Wendy, 1997. **Live Sex Acts. Women performing erotic labour.** Routledge, New York, USA. pp. 98-99.

*Those interviewed had an average of ten clients a day (some with as many as 20 on weekends) with no power to negotiate who their clients were or what they did with them.*

Human Rights Watch, 1995. **The Human Rights Watch Global Report on Women's Human Rights.** Human Rights Watch, New York, USA. p. 214.

Sex without consent in fact falls into both groups discussed here. Sexual contact is not inherently an abuse, but can occur without consent in the sex industry both as a form of violence -- sexual assault, and where the person enacting the coercion of a sex worker is different from the person engaging in the sexual act to which she has not consented.

It is not logical to define a sexual act taking place between a sex worker who faces coercion to submit from a third party and a client ignorant of the coercive circumstances, as sexual assault, even though the sex worker does not freely consent. The offence is on the part of the person constraining the sex worker, who is thereby responsible for the violation of her rights to security of person and freedom from slavery.

The right to refuse a drunk or violent client, or one who refuses to accept safer sex practices is protected by C155 Article 13 which protects from "undue consequences" a worker who "has removed himself from a work situation which he has reasonable justification to believe presents an imminent and serious danger to his life or health". C155 Article 19(f) states that "an employer cannot require workers to return to a work situation where there is continuing imminent and serious danger to life or health."

### **Sexual assault in independent sex work**

*The... concept of a 'scale of female chastity', deciding the seriousness of the crime, is found in the criminal codes of a number of other Latin American countries, for example in Venezuela, El Salvador and Paraguay, where the penalty for rape is reduced by one fifth if the victim is a prostitute. In Paraguay the penalty is reduced when the victim is a prostitute, no matter the age of the girl involved.*

Wijers, Marjan and Lap-Chew, Lin, 1997. **Trafficking in Women, Forced Labour and Slavery-like Practices in Marriage, Domestic Labour and Prostitution.** Foundation Against Trafficking in Women (STV), The Netherlands. p. 153.

In the non-coercive working environment, the stigmatisation of sex workers creates a context in which a person outside the sex industry seeking to bring about the subjection of another through sexual assault may regard a sex worker as an appropriate target. This is not only because she is perceived as having already broken social and sexual rules and being therefore 'deserving' of violence, but because he has less reason to fear consequences than if he were to attack a non-sex worker.

According to the Special Rapporteur on Violence Against Women, "consent has been defined as the legal dividing line between rape and sexual intercourse. In court, the argumentation over consent, however, often degenerates into a contest of wills and credibility". [47] Nowhere is this more evident than in cases of rape involving sex workers, and while existing rape laws in many countries have the capacity to protect sex workers, public and judicial understanding of the entitlement of sex workers to human rights must be enhanced before the law can be truly effective.

Sex workers operating independently can be forced to engage in a sexual act to which they do not consent. This case is clearly recognisable as a sexual assault, since the sex worker is able to express her lack of consent, and the perpetrator is responsible for violating her rights by acting despite her refusal. However, obstacles may be placed in the way of conviction or appropriate sentencing where the judiciary discriminates against the sex worker: some judges and members of the public believe that engagement in prostitution by itself constitutes continual consent to any sexual act, or that a sex worker is the less reliable witness when a case rests upon just her word and that of the accuses assailant. (See Discrimination by police and judicial authorities above.)

There is another situation which is sometimes described as sexual assault. This is when a client agrees payment in return for services but withholds payment or demands the money back under threat of violence, when the services have been performed. However, as consent is secured under false pretences, but violence or coercion are not involved in the sexual act, it is more appropriate to address this problem using local law against fraud and robbery, than to invoke protection against assault and rape. \*\*\*

### **'Pimping' (domestic violence and/or extortion)**

See introduction for a discussion of 'pimping' as domestic violence or extortion.

Where a person is compelled by another, whether the relationship is characterised as an emotional or an employment one, to accept a type of work -- prostitution -- or a client or practice, which she would otherwise refuse, it is unnecessary to name a special crime of 'pimping.' This case is already covered by the ILO Forced Labour Convention of 1930 or the Slavery Conventions of 1926 and 1956. Where another person exercises control over her work, in the sex industry or elsewhere, existing local law on extortion, menace or violence should be sufficient to protect her from extortion.

Sex workers who are subjected to domestic violence are entitled to protection. Domestic violence violates a woman's rights to life, liberty and security of person, and freedom from torture or cruel, inhuman or degrading treatment or punishment. [48] The Special Rapporteur argues that "violence against women is a violation of human rights for which States are accountable" and that "... States may be responsible for their failure to meet international obligations even when violations originate in the conduct of private individuals." She notes that "State failure to exercise due diligence in the control of private actors" renders States legally responsible for acts or omissions of private persons. [49][50]

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## 6d.ii. Slavery -- ownership by another

*Lea worked as a prostitute in Manila. A recruiter approached her and offered her a job in a club in Japan. In Japan she was sold to the YAKUSA [organised crime] and forced to work without pay. When one day she refused to have sex with her employer, he locked her up for two months and denied her enough food. During her detainment she was gang raped. Finally she managed to escape and reported to the police.*

BATIS Centre for Women, 1996. Traffic in women: Philippine country report, cited in Wijers, Marjan and Lap-Chew, Lin, 1997. **Trafficking in Women, Forced Labour and Slavery-like Practices in Marriage, Domestic Labour and Prostitution.** Foundation Against Trafficking in Women (STV), The Netherlands. p. 146.

*She never had access to the money as the men paid the brothel owners directly, and they kept the money in a safe. In fact the money was paid in gold. She never received any and had to ask the men she went with to pay for things for her.*

Sutton, Alison, 1994. Mining and prostitution: violence and entrapment in the mining camps. In *Slavery in Brazil. A link in the chain of modernisation.* Anti-Slavery International. p. 100.

At the Flashop brothel it was like this. It was bad because they wouldn't give you food, they beat the women. If a woman didn't spend the night with a man she wouldn't eat during the day and she'd have to see what she could do to have lunch, dinner and breakfast.

Rodrigues, Rita Maria, 1992. **As Mulheres de Ouro: A Força de**

**Trabalho Feminino nos Garimpos do Tapajós (The Women of Gold: Female Labour Force in the Garimpos of Tapajós)**, Secretaria de Indústria, Comércio e Mineração do Estado do Pará, Belém, Brazil, cited in Sutton, Alison, 1994. "Mining and prostitution: violence and entrapment in the mining camps." **In Slavery in Brazil: A link in the chain of modernisation.** Anti-Slavery International. p. 98.

Forced labour, proscribed by C29, and slavery are differentiated by the condition of 'ownership.' The 1926 Convention defines slavery as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised." Slavery is prohibited under UDHR Article 4 and ICCPR Article 8. The violations described here go beyond simple compulsion to perform work, to deny the victim's capacity for self-determination. They reduce the victim to the status of a chattel or possession, to be used for the benefit of another. The individual is no longer able to act to protect her life, liberty or security. To compel someone to perform work without pay also violates ICESCR 7, which requires fair wages, while to deny food violates UDHR Article 5 as a form of "cruel, inhuman or degrading treatment or punishment".

*Inhabitants of a brothel are generally kept confined and movement is commonly restricted. Girls, especially minors, are not permitted to leave the brothel without a bodyguard, apparently for fear of abduction by other agents as much as to prevent escape.*

Bindman, Jo, 1997. "Taiwan: Indigenous Peoples in the Taiwanese Sex Industry." **Enslaved Peoples in the 1990s.** Anti-Slavery International and IWIGIA, Copenhagen. p. 37.

*In Sita's case [a Nepali girl in India], no one in the brothel was allowed to leave unescorted. Everything was brought by vendors into the brothel to sell: food, clothes, even videos. They were allowed no contact with their families. Sita, who could not read or write herself, said that none of the women in the brothel was permitted to write or to have pens and paper.*

Human Rights Watch, 1995. **The Human Rights Watch Global Report on Women's Human Rights.** Human Rights Watch, New York. p. 248.

*I left my children and my mother waiting for me. It's already been eight months and I've never been back, and I can't send anything back to them, I can't even communicate with them, because they won't let us.*

Rodrigues, Rita Maria, 1992. **As Mulheres de Ouro: A Força de Trabalho Feminino nos Garimpos do Tapajós (The Women of Gold: Female Labour Force in the Garimpos of Tapajós)**, Secretaria de Indústria, Comércio e Mineração do Estado do Pará, Belém, Brazil, cited in Sutton, Alison, 1994. "Mining and prostitution: violence and entrapment in the mining camps." **In Slavery in Brazil: A link in the chain of modernisation**. Anti-Slavery International. p. 95.

Other abuses violate also the right to "life, liberty and security of person", guaranteed under UDHR Article 3. Illegal confinement, where the worker's movements are restricted or they are forbidden to leave the workplace unsupervised, violates also the right to freedom from arbitrary arrest or detention, guaranteed under UDHR Article 9 and ICCPR Article 9.1; and UDHR 13.1, ICCPR 12.1 and CEDAW Article 15 on the right to freedom of movement. Isolation, where the worker is forbidden normal social contacts, and letters or telephone calls are intercepted, violates UDHR Article 12, on arbitrary interference with privacy and correspondence.

*Women often get nothing or just a fraction of their earnings and are kept isolated to prevent them from escaping, like this Kenyan woman, who met a woman who assured her she could earn well in Germany: On reaching Germany, she realised that this was not to be when the brothel owner took away her passport. She only got a pinch of her daily earnings. She had to live like a prisoner because the woman ensured her that all her movements were monitored to avoid escaping or 'making business' else where. The brothel owner would also intercept her letters. When her visa expired, she was told that it would only be renewed if she found another Kenyan woman to replace her.*

Butegwa, Florence, 1996. Preliminary report on Trafficking in Women in Africa. Paper prepared for STV/GAATW. Kampala, Uganda. p. 7.

*[Ronny] wanted my passport and became furious when I tried to keep it from him. I felt like I had no choice but to give it to him. ...After about eight weeks, I went to Ronny and told him that I thought I had paid off my debt and I wanted my passport back. I figured that I had seen at least 250 clients by then and showed him the records I had been keeping. He got really angry ...picked up a chair and started beating me with it.*

Testimony of Luisa, indentured brothel worker, Amsterdam 1993, in Chapkis, Wendy, 1997. **Live Sex Acts. Women performing erotic**

**labour.** Routledge, New York. pp. 60-61.

It has been suggested by Wijers and Chew that the taking possession of a person's passport or other official documents, or inducing them to travel on illicit documents, is tantamount to the "appropriation of the legal identity... the act of claiming ownership of a person, acting as if one owns the person" and therefore falls under the definition of slavery in the 1926 Convention. [51] It operates also as a form of confinement, violating UDHR Article 3, denying the victim freedom of movement and rendering her vulnerable to abuse.

*The Washington state Senate has passed a bill that would ... also make available results from prisoners who are routinely tested when they are arrested for prostitution, drug or sex offences.*

**AIDS Weekly Plus**, March 4 1996.

*When women are taken to the clinic by the police, testing for diseases, including HIV, is mandatory and doctors and police are informed of HIV status before the woman concerned.*

Health worker, Human Resource Development Foundation, Istanbul, personal communication 1997.

The claiming of access to confidential medical records, namely those which indicate status with respect to HIV or other sexually transmitted disease is prohibited under UDHR Article 12, on interference with privacy and correspondence, and C161 Articles 10, 11.2, 14.3 and 15 which guarantee the independence of occupational health professionals and protect the confidentiality of occupational health information. Further guidelines for maintaining confidentiality in occupational health are contained in R171 Articles 11.2, 12, 15, 16, and R97 Article 12. WHA 41.24 "urges Member States...to ensure the confidentiality of HIV". The power of the state to claim access to medical information will need further discussion if STDs, including HIV/AIDS, are considered an occupational safety issue (see Health and Safety above), as some states require the notification of occupational disease, as required under R97 Article 14.1.

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### 6d.iii. Slavery-like practices

Conveying slaves and inducing another person into servile status are prohibited under the 1926 Convention Article 1.2 and 1956 Articles 3.1 and 6. Conditions of slavery are rarely brought about simply by the use of force, in the form of abduction, confinement or violence. They usually reflect the ability of employers to impose highly exploitative conditions upon groups of workers made vulnerable by their marginal status: women, young people and the poor in general. Once the employment relationship, however exploitative, has been entered into, social and legal obligations, real or implicit, become an effective bond.

The contemporary forms of slavery most commonly associated with the sex industry are debt bondage, where a debt is to be paid off with services but "the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined" (1956 Supplementary Convention Article 1 (a)) and child servitude, "any institution or practice whereby a ...person under the age of 18 years, is delivered by ...his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour" (Article 1(d)). These derive, in the first case, from the obligation to honour an agreement and to repay a debt, and in the second from the obligation to obey parents. Prevailing social conditions may mean that the situation is not generally identified as unjust, and the rules are enforced not only by individual's conscience and/or the threat of force from the exploiter, but also by outside authorities, in particular the police.

*In Thai brothels Cambodian women are locked up and guarded until they have paid back their purchasing price. They are not allowed to shop on their own, instead the brothel owners do the shopping and charge them exorbitant prices. They are over-charged for everything they need, so the 'debt' increases instead of being paid. Earnings are also deducted for bribes. In the end women even lose their investment capital. The brothel owners keep their earnings for safe-keeping, so they never know how much they really earn.*

CWHR (Cambodian Women's Human Rights, Working Group on), 1996. Notes on the Situation of Women working in Cambodia (taken from a comprehensive report on The Human Rights of Women in Cambodia prepared by the Working group on Cambodian Women's Rights), cited in Wijers, Marjan and Lap-Chew, Lin, 1997.

**Trafficking in Women, Forced Labour and Slavery-like Practices in Marriage, Domestic Labour and Prostitution.** Foundation Against Trafficking in Women (STV), The Netherlands. p. 93.

*...a profitable business has emerged around the provision of loans for the airfare and documents for travel. Few women can afford to pay these costs on their own, and thus money is borrowed. In the case of Curaçao, money was loaned to the women either in their country of origin by a local broker, or by a 'hotel' manager in Curaçao in order to acquire a round trip ticket to the island. The initial period in sex work becomes for the women, a struggle to ensure that this debt, with interest, is paid off. Extras also add up considerably, such as 'assistance' with the application process from Colombia which can cost up to US \$100, transport to and from airports, costs for health certificates, visas, birth certificates and passports as well as for false papers, and the women may be indebted for large sums to men both at home and in Curaçao.*

Kempadoo, Kamala, 1997. "The migrant tightrope: experiences from the Caribbean, in Kempadoo," Kamala, and Doezema, Jo (eds.), **Transnational Sex Work: Prostitution, Migration and Empowerment**. Routledge, New York. (Jan 1998)

*...the owner...further exacts money from the prostitutes she indirectly employs by selling them relatively high priced food and drinks (since they live in the casa [brothel] and cannot cook for themselves, they are compelled to buy their meals at restaurant prices), and by making loans to them then charging interest at around 20%. Other Dominican casa owners, especially those in Santa Domingo, stipulate that the prostitutes who work for them must buy overpriced treatments from beauty salons which they also own.*

O'Connell-Davidson., Julia, 1998. Chapter 3. In: **To enter in these bonds -- prostitution, power and freedom**. Polity Press, Cambridge. (Draft)

Debt bondage is particularly associated with migrant workers, both those moving within and across national borders. The costs of documentation and transportation, or a fee for job placement, can create an initial debt to an agent, and on arrival the migrant's lack of family and social contacts and of familiarity with the geography, language, customs or law of the new place can result in a dependence on the agent which can be exploited. The terms of the debt are then dictated by the agent, and the initial sum can be expanded by inflating the original travel costs; adding interest at far beyond the prevailing commercial rate; and by forcing the worker to pay for board, lodgings and goods through the agent, again at inflated prices. The worker may never actually see the wages, as accounts are controlled by the agent.

Various practices associated with or likely to permit debt bondage are prohibited under standards. The deduction from wages of "payment for the purpose of obtaining or retaining employment" is prohibited by C95 Article 9 and C96 Articles 4 and 10 require strict supervision of employment agencies to prevent abuses. C95 Articles 3, 6 and 7 guarantee access by workers to their wages and the control of "works stores for the sale of commodities to the workers" so that they "are not operated for the purpose of securing a profit but for the benefit of the workers concerned." R85 Article 3 limits deductions from wages for working equipment and R100 Article 44 limits credit and other arrangements in works stores.

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## 6e. Transnational migrant workers

### Vulnerability to abusive practices

*In many cases women are threatened with reprisals if they dare to escape or go to the police. These threats do not lose their effect when the police gets involved, even if the police are understanding and motivated to support them, which is obviously not the rule. Moreover, their families and children at home are easy targets for reprisals.*

Wijers, Marjan and Lap-Chew, Lin, 1997. **Trafficking in Women, Forced Labour and Slavery-like Practices in Marriage, Domestic Labour and Prostitution.** Foundation Against Trafficking in Women (STV), The Netherlands. p. 104.

*There have been many stories in the press about young girls imprisoned in brothels and forced to work against their will. This is particularly true in many of the border provinces. Many women confined in this manner are illegal immigrants from Southern China and Burma, and hence are not likely to try to escape.*

Boonchalaksi, Wathinee and Philip Guest. 1994. **Prostitution in Thailand.** Institute for Population and Social Research, Mahidol University. ISPR Publication No. 171, Nakhon Pathom, Thailand. p. 45.

Fear of exposure to the authorities as an illegal migrant or as a sex worker makes the migrant sex worker extremely vulnerable to abuse and slavery-like practices. Expulsion from the country of employment following exposure is to be avoided at all costs, especially in the context of debt bondage. The migrant

who is forced to return home with the debt outstanding may face reprisals.

C143 recognises that migrants are particularly vulnerable to abusive practices, especially if their status is irregular. Articles 2-6 call upon Members to investigate and eliminate illegal migration and treatment of migrants involving "conditions contravening relevant international, multilateral or bilateral instruments or agreements, or national laws or regulations" and to cooperate with each other to secure prosecutions. C143 Article 9 and R151 Article 34 protect the past earnings and entitlements of illegal migrants, even where there is no possibility of regularising their status. R100 Article 19 calls for protection of workers whose migration is unregulated. R151 Article 8 calls upon Members to provide swift decisions on the regularisation of status of workers who have migrated illegally. Where they cannot be regularised, Article 8 calls for protection of their past entitlements and from bearing the cost of their own expulsion. R100 Articles 27-36, 42, 44, 49(b) and 54 provide detailed guidelines for employer practice to prevent the manipulation of wages, deductions and debt which can be used to exploit the migrant worker or render her vulnerable to debt-bondage.

### **Worse working conditions than local workers**

*No Burmese sex worker can get the full of her rightful income because the brothel owners do not feel obliged to give them more than a 'Burmese' (i.e., lower than Thai women) income.*

Images Asia, 1995. Burmese women sex workers in Thailand. Paper prepared for the NGO Forum on Women, Beijing. Thailand. p. 8.

*In Turkey, though it has a legalised brothel system, migrant women are not allowed to engage in prostitution, since Turkish citizenship is required for prostitutes.*

Anti-Slavery International, 1993. **Forced Prostitution in Turkey: Women in the Genelevs.** ASI Human Rights Series No.6. London, UK. p. 16.

C97 Article 6.1 requires equal treatment of lawful migrants with respect to remuneration, social security, taxes and legal proceedings. R86 Article 18 restricts the circumstances under which a lawful migrant may be expelled. Prohibition of foreign sex workers in legal brothels contravenes R151 Article 2 (b), which calls for equality of opportunity of lawful migrant workers, and is an obstacle to protection under other instruments requiring equal treatment of lawful migrants. The exposure of migrant sex workers to worse working conditions than local sex workers violates R100 Article 5 which calls for the elimination of any discrimination against migrant workers. Articles 45 and 46

(g) call for the protection of occupational health of migrant workers. R151 Articles 21 and 22 call for adequate instruction in occupational safety and hygiene for migrant workers. \*\*\*

### **Deception during recruitment of migrants**

C97 Articles 2 and 3 require Members to provide an "adequate and free service to assist migrants for employment" and in particular to counter "misleading propaganda relating to emigration and immigration." Co-operation between states to enable prosecution of agents for trade description offences under national law in the country of origin should also be considered.

False promises about the nature or conditions of work are also used to recruit women from the CEECs for Western European Countries. As described in "One Year La Strada":

*Some women thought they would be waitresses, nannies or domestic servants. Others knew the job was to be in prostitution, with enormous profits to be made (up to D-Mark 3,000 [US \$1800] a month). Little did they know about the real circumstances in which they had to work and that the profits would not go to them, but to their perpetrators.*

Kootstra, Trinte (ed.), 1996. One year La Strada, results of the First Central and East European Programme on Prevention of Traffic in Women. Polish YWCA, PSF, STV, ProFem, Dutch Foundation Against Traffic in Women/La Strada Programme. p. 14.

The entitlement of migrant workers and their families to the full enjoyment of all human rights is reiterated in detail in the 1990 Convention on Migrant Workers and their Families.

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## 6f. Minors in the sex industry

The involvement of minors in the sex industry is already prohibited by the Declaration of the Rights of the Child: Articles 32, 35 and 36 prohibit child labour, sale and exploitation, while Article 34 prohibits sexual exploitation and abuse. In addition, the 1956 Supplementary Convention on Slavery prohibits the delivery of a minor by parents to another person "with a view to the exploitation of the child or young person or of his labour," and C138 Article 1 requires States Parties to abolish child labour, and progressively raise the age of admission to employment, and minors under 18 could be barred from employment in the sex industry under Article 3, on labour likely to "jeopardise the health, safety or morals of young persons" -- health and safety are sufficient grounds, even if sexual morality is removed from state jurisdiction. Further measures for regulating the labour of young people are suggested in R146, while C79 limits the employment of minors in night work.

*Carlene, aged 13, had been working as a prostitute for 3 months. She used the money earned to buy clothes for her mother and four brothers and sisters, saying: 'she helped me since I was a little thing, and now I'm big I want to help her.' On a good night she would make 3 'keys' [clients]. On the previous night she had done six 'keys' and one man had slept the night with her.*

Interview in Dom Pedro, Maranhão, September 1992, cited in Sutton, Alison, 1994. "Mining and prostitution: violence and entrapment in the mining camps." **In Slavery in Brazil. A link in the chain of modernisation.** Anti-Slavery International. p. 101.

A new ILO Convention is being developed to eliminate the most Abusive and Hazardous Forms of Child Labour, which is expected to include commercial sexual exploitation of children in its focus on child slavery and children in hazardous work. It is expected to produce differential age limits for different categories of work. The discrepancy in national laws between the age at which a minor may work and the age at which a minor may consent to sexual intercourse will continue to present a problem when addressing the needs of the 15-18 year age group.

Despite the existing prohibitions, children continue to be involved in commercial sex all over the world. Their presence is in part a reflection of the unregulated status of the industry, as in many countries, especially in the North, minors below a certain age are barred from most kinds of formal employment. \*\*\*

*One can frequently hear girls saying that if they do not provide*

*money to police officers, they are beaten up or arrested. Some of them say they pay the police with sex.*

US Department of Labor, 1996. **Forced Labor: The prostitution of children.** US Department of Labor and Bureau of International Labor Affairs. Washington, DC, USA. p. 74.

As with adults, the effect of prohibition can simply marginalise children who do sell sex. While businesses can be barred from employing children, children who sell sex on the street or otherwise outside formal employment face actual or perceived criminalisation. Minors may fear the authorities more than exploiters -- sometimes with reason. Police do not approach children sympathetically, especially children who display 'un-childlike' behaviour such as sexual experience; defiance of authority; abusive language; and engagement in petty crime. The child's right to freedom from arbitrary arrest and disrespectful treatment is, however, subject to particular protection under CRC Article 37. The due involvement of parents or guardians and legal assistance in the judicial process, as required under CRC Articles 37 and 40 may not be respected where children are not clearly attached to a family. Police and penal institutions may not be equipped to hold children separately from adults or provide for non-custodial or other measures, as required by CRC Articles 37 and 40 and ICCPR Article 10, and the home or rehabilitation facility to which children may be consigned can seem like a prison to a child.

Minors on the street may be denied health services, as there are often restrictions on treatment of minors without parental consent, or may be barred from programmes aimed at street children on account of their commercial sexual activity.

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## 7. Concluding Recommendations

### 7a. Recommendations for a further programme of research

This report concludes that sex workers face systematic discrimination throughout the world and are therefore at risk of a variety of abuses. These include police extortion and arbitrary detention, and other violations of their human and labour rights, which in some cases even amount to slavery.

A general recommendation which emerges from the report is that all national legislation which, in intent or in practice, results in the placing of sex workers

outside the scope of the rule of law, should be repealed. However, the removal of penal sanctions alone will not be sufficient to guarantee the rights of the men and women who work in the sex industry.

Many of the standards agreed by the United Nations and the International Labour Organization over the past 75 years could be invoked to prevent abuses against sex workers. Social discrimination against sex workers can be fully addressed under existing human rights standards and most issues relating to working conditions in the sex industry could be subject to existing ILO standards. It is therefore suggested that existing standards be more closely examined and their interpretation extended where appropriate to give sex workers access to the rights concerned and to promote respect for these rights in the sex industry.. Further investigation is needed of the mechanisms which have prevented the incorporation of sex workers' rights into the mainstream human rights and labour rights arenas, and hindered the protection of sex workers under these standards.

There are, however, some special features of the sex industry with respect to the right to security of person. The right to refuse a client, to perform a sexual service or to participate in the sex industry at all must be protected from penalties imposed by employers and from other restrictions which come about as a result of social security obligations. After closer examination of the working conditions in the sex industry other specific and even unique features may appear. Such special or unique features in other industries are addressed by ILO Conventions concerning particular occupational sectors, from seafaring or nursing to hotels and restaurants. On the basis of this report, it is suggested that the regulation of working practices to accommodate special features is a role best suited to the ILO, and that it should in principle be this intergovernmental organisation which establishes minimum standards for working conditions in the sex industry.

The research process revealed the absence of a platform for sex workers' human rights in many countries. Organisation among sex workers can be impeded by an official prohibition on organising as sex workers, but also by the stigma and legal penalties attached to the sex industry, which can make them reluctant to assert themselves publicly. Where remarkable women and men have overcome these obstacles to start sex worker organisations, it may be difficult for them to find the allies they need among women's and human rights NGOs, and trade unions. Action is needed to support sex worker organisations and their linkage to other activist groups.

Elsewhere, concern for human rights has been a consistent feature of both national and international sex worker organising. At the Second World Whores Congress, in Brussels, in 1986, organised by the International Committee for Prostitutes' Rights, delegates adopted a Statement on Sex Work and Human Rights, specifically relating the experiences of sex workers

to the European Convention on Human Rights. This was the first time that the actual conditions and demands of sex workers were presented in the context of an international instrument. The Network of Sex Work Projects (NSWP) was formed in 1991 and is likewise based upon a commitment to sex workers human rights. The Network is made up of sex workers and organisations which provide services to sex workers in over 40 countries. One of the objectives of the NSWP is to advocate policies and actions at regional and global level which promote the human rights of sex workers.

The Global Alliance Against Trafficking in Women (GAATW) has approached many of the same issues from the perspective of 'trafficking in women', looking at the situation of women, especially migrant women, in the sex and the domestic sectors. Several of the concluding recommendations of their 1996 report for the UN Commission on Human Rights Special Rapporteur on Violence against Women suggest similar areas for further research. [52] In summary, these recommendations call for the interpretation or amendment of international standards and national laws to reflect women's experience of human rights and labour rights violations, in the context of informal sector labour. The need to include affected persons in the process of bringing about change is also emphasised. The GAATW has already begun a programme of education about human rights standards in the context of 'trafficking in women.' [53]

At the same time the Social Cohesion, Compatibility and Law Programme of the E.M. Meyers Instituut of the Faculty of Law at Leiden University is considering the inclusion or exclusion of different groups from society, and the role of the law in this process. A central concept of this programme is that the law is only a translation of reality, not reality itself. A part of this programme is intended to consider the exclusion and inclusion of sex workers from society, especially by the law and its operation. It will examine the question of whether legal concepts reflect the realities of sex work. If not, it may be necessary to redefine these concepts in the light of sex workers' experience, or to find new concepts which can incorporate rather than exclude new experience.

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## **7b. The sex, work and human rights programme of research**

On the basis of these conclusions and recommendations, Anti-Slavery International (ASI), the Network of Sex Work Projects (NSWP), the Global Alliance Against Trafficking in Women (GAATW) and the University of Leiden are working together to develop the programme of research -- Sex, Work and Human Rights.

### **Programme aims**

To promote the enjoyment by sex workers of their full human and labour rights on international, regional and national levels, by incorporating sex workers' rights into the mainstream human rights and labour standards agenda at international, regional and national level. To include sex workers in the development of strategies, including the formulation of human rights and labour standards.

### **Programme objectives**

The sex, work and human rights programme will consist of two closely-linked sub-programmes which will address human rights and labour standards mechanisms at national, regional and international level. It will examine existing legal and social mechanisms which act to prevent or to support the treatment of sex work and sex workers in accordance with human rights and labour standards. In addition, the research process will be used to develop the organisational and research capacity of sex workers' groups and to promote linkages between sex worker organisations and the human rights and labour movements, to encourage the inclusion of sex workers in the mainstream human rights and labour agendas.

The human rights sub-programme will examine strategies for and obstacles to the enjoyment by sex workers of their full human rights, at national, regional and international level. It will undertake the specific steps needed to bring about the consideration of violations of the human rights of sex workers within the UN human rights system. The labour standards sub-programme will develop detailed analysis of working conditions in the sex industry in the context of ILO standards. This will enable the protection of sex workers' rights under existing international instruments and will be aimed at the promotion and support of a discussion at the ILO and other appropriate intergovernmental bodies of new minimum standards in the sex industry.

A description of some programme elements which have so far been identified and of two pilot projects are presented here. One of the pilot projects looks at Labour Rights, one at Human Rights. In all projects, the "top down" approach,

from the institutional viewpoint of international, regional and national processes, will meet the "bottom up" approach, which is based upon the experience of sex workers and others at grassroots level. Close communication between all projects will be a priority of the programme, to ensure the relevance of the entire programme both to sex worker concerns and to advocacy strategies. A full, revised programme proposal is expected to be ready by early 1998.

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## **7c. Labour sub-programme**

### **Project -- Analysis of labour standards and their interpretation.**

This project will identify relevant national (in selected countries), regional and international labour standards. These will be examined for applicability to the sex industry. The interpretation of these standards in the context of other industries will be considered in order to highlight the similarities and differences between the sex industry and other industries. Particular attention will be paid to the analysis of the sex industry as a case of an informal sector industry, and the experience of applying labour standards to the informal sector.

### **Project -- Evaluating labour conditions in the sex industry**

This project will involve collaboration between programme staff and partner sex workers' organisations to collect and analyse information about working conditions in the sex industry. The pilot project (described below) will develop and test research instruments for evaluating conditions with reference to labour standards. On the basis of the criteria established by the pilot project, actual conditions in many countries will be documented and evaluated. By linking findings here with those of the Human Rights sub-programme, the adequacy of existing labour standards to accommodate unique features of the sex industry will be assessed and new specific standards proposed. The pilot project Developing Criteria for Evaluating Working Conditions is described at the end of this section.

### **Project -- Improving working conditions: obstacles and strategies at local or national level**

This project will identify ways in which existing national and local laws, policies and practices, both those related to labour and others, operate such that they result in the exclusion of sex work and sex workers from being protected by labour standards. This will include investigating barriers to the legal recognition of sex work, even when sex work is not subject to criminal

law. The project will also document and analyse successful strategies employed by sex workers to improve their working conditions within existing socio-legal constraints. It will consider individual strategies and collective strategies, and factors which impede or promote the development of collective strategies from individual ones.

The project will, in particular, evaluate labour organisation as a strategy to improve working conditions in the sex industry. It will consider: the impact of prevailing working conditions and of diversity within the sex industry upon the nature and effectiveness of organisation among sex workers; the suitability of different local or national unions as partners or hosts for sex workers, and any obstacles to the inclusion of sex workers in existing unions; and the role of the state with respect both to the sex industry and to the organisation of labour.

### **Project -- Bringing sex work to the attention of the ILO**

This project will identify appropriate long-term strategies for bringing the regulation of working conditions in the sex industry into the remit of the ILO. In particular, it will consider whether the information and conclusions supplied by the research projects should be presented in the context of existing ILO programmes, or of the Committee of Experts on the Application of Conventions and Recommendations, or by other means.

Pilot project -- Developing criteria for evaluating working conditions.

### **Pilot project aims**

The pilot project will aim to develop research instruments which will make it possible to relate actual labour conditions in the sex industry to relevant existing labour standards at international, regional and national level. It is intended to establish the industry-specific criteria, that is the specific conditions which may be considered tolerable or intolerable, by which situations in the sex industry should be assessed against existing or new standards.

### **Pilot project objectives**

- To develop criteria by focusing on the sex industry in two countries
- To test these criteria in a further four countries
- By working with sex worker organisations in each country to describe the issues of concern to them and to compare conditions in different sectors of the sex industry;

- By comparing conditions in the sex industry in each country with conditions in a recognised local industry with similar characteristics to which minimum labour standards have been applied;
- By comparing conditions in the sex industry in different countries;
- By examining the development of minimum standards for other types of work at the ILO.

Countries for this pilot project will be selected to ensure that both the North and the South are represented in the process of developing criteria. Selection will also be based upon ease of communication with the project centres in London and the Netherlands, and the existence of local sex worker organisations with the desire and capacity to support the project. The interest of local trade unions who can provide ongoing local support will be another factor.

The initial two countries are likely to be drawn from: Australia, India, Ireland, the Netherlands and Scotland (UK), South Africa, Venezuela. Additional possible countries for testing the criteria are Brazil, Finland, Germany, Ghana, Malaysia, Mexico, the Netherlands, Turkey and the United States of America.

Industries for comparison at local level will be selected on the basis of characteristics shared with the sex industry. These characteristics may include: an intermediary between worker and client; the possibility of self-employment or employer-employee relations; legal and illegal sectors within the industry, with restrictions on entry to the legal sector; the presence of migrants in the industry; the number of workers being very responsive to the wider economic environment; variations in conditions between countries reflecting the prevailing economic and social environment; aspirations of workers to have their own business; or participation in the industry as a secondary job. Possible industries for comparison therefore include taxi services, hairdressing and food preparation.

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## **Human Rights sub-programme**

### **Project -- Analysis of human rights standards and their interpretation**

This project will identify relevant national, regional and international human rights instruments, to consider their application to sex workers and to the clients, families and others associated with them. Looking where appropriate at comparable industries, it will consider whether the instruments contain a full and accurate reflection of experience in the sex industry, and how the instruments have been interpreted in the past to accept or reject an abuse as a human rights violation.

The project will seek to understand the possible consequences, at international and national level, of increasing the attention given to sex work by human rights activists. Building on the existing work of the organisations involved in the programme, the impact of previous measures will be examined. The project will look at recent developments in the understanding of women's rights as human rights and associated debates on state responsibility for protection from the acts of non-state actors. The advantages and disadvantages of linking the human rights of sex workers to a wider debate on sexuality as a human rights issue will also be considered.

The pilot project, International Human Rights Standards and "Trafficking in Women" is described at the end of this section.

### **Project -- Human rights priorities in the sex industry at grassroots level**

Closely tied to the project 'Evaluating labour conditions in the sex industry', and the project 'Analysis of human rights standards and their interpretation', this project will involve collaboration between programme staff and partner sex workers' organisations to identify which human rights are of particular concern for diverse groups of sex workers at grassroots level. It will consider whether existing human rights instruments contain a full and accurate reflection of experience in the sex industry.

### **Project -- Human rights documentation**

This project will enlist specialist help to provide training in the techniques of human rights documentation to groups of sex workers and other activists working with them. The project will begin with a pilot scheme in 2 countries. Expansion of the project will, if appropriate, include the development of a specialised training package. The resulting reports will be directed to UN or other mechanisms which monitor human rights.

### **Project -- Improving human rights: Obstacles and strategies at local or**

## **national level**

This project will identify ways in which existing customary and legal structures and interests at local and national level, operate such that they impede or promote the inclusion of sex work and sex workers under the protection of human rights standards and mechanisms. It will document and analyse successful and unsuccessful strategies by sex workers' to defend their human rights and to link with the wider human rights movement in their country.

It will evaluate organising around human rights issues and concerns as a strategy to improve the legal and social position of sex workers and their protection from human rights abuses, the suitability of different local and national advocacy organisations as partners for sex workers and any obstacles to the inclusion of sex workers and their concerns in existing human rights organisations.

## **Project -- Bringing sex work into the UN human rights system**

This project will identify and implement long-term strategies for bringing the monitoring of the human rights of sex workers into the UN system. It will bring the information supplied by the aforementioned projects to the appropriate mechanism. It will consider evident conflict of principle or process with existing mechanisms within the United Nations, such as those related to the 1949 Convention on the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others.

## **Pilot project: International human rights standards and "trafficking in women"**

The **Special Rapporteur on Violence Against Women**, in paragraph 168 of her report to the Commission on Human Rights recommends that "the international community should begin a dialogue to work towards new international standards with regard to trafficking and prostitution". [54]

The Commission on Human Rights resolution 1997/44, tabled by Canada, section 15, "encourages the Special Rapporteur to examine and compile information on existing human rights, humanitarian and other standards and instruments relating to trafficking of women and girls, in dialogue with Governments, inter-governmental organisations and non-governmental organisations".

## **Pilot project aims**

The project is intended to further the aims of the programme by providing timely support to constructive dialogue on the development of effective international standards to address the issues often referred to under the heading of "trafficking in women. It will also form the basis of the wider study of the relevance and capacity of human rights standards and mechanisms to address human rights abuses in the context of sex work within the project: Analysis of human rights standards and their interpretation. The examination of the set of violations of sex workers' human rights experienced in the context of what is referred to as "trafficking in women" will be used to develop the methodology for the complete project.

### **Pilot Project Objectives**

to identify and evaluate the existing human rights, humanitarian and other standards and procedures relevant to what is commonly referred to as "trafficking" (defined here as abusive practices on the level of recruitment and in working/living conditions, in the context of prostitution, domestic labour and marriage.) [\[55\]](#)

by examining how sex work, domestic work and marriage have been approached on the international agenda by relating the existing standards and processes to the issues of concern to affected persons, in order to evaluate their effectiveness by analysing obstacles to the effectiveness of those standards and processes to provide this information for the Special Rapporteur on Violence Against Women to provide this information for other groups for use as a lobbying tool

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## Appendix

# Survey of Relevant Human Rights and Labour Standards

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## Appendix Contents

### Relevant Instruments

1. **Discrimination**
  
2. **Restriction Under Criminal Law**
  - a. **Discriminatory treatment by police and judicial authorities**
    - Discrimination against sex workers as women, as male customers are rarely prosecuted
    - Risk of arbitrary arrest
    - Police violence

- Deprived of personal belongings following arrest
- Lack of equality before the law as victim/defendant/witness
- Convicted on accusation/police evidence alone
- Unable to work in house together because of prohibition of brothels

**b. Discriminatory treatment by other authorities**

- Legal or customary restrictions on sex workers' children
- Compulsory HIV/AIDS testing/Compulsory STD testing
- Employment discrimination/registration
- Unable to claim social security, even if pay tax
- Unable to form union, because isolated or forbidden
- Discriminatory immigration conditions

**c. Restrictions on private life**

- Forbidden to marry
- Associates criminalized
- Children removed by authorities
- Residence restrictions

### **3. Employment Conditions**

**a. Exploitative terms of employment**

- Wages withheld; not paid regularly or paid less than agreed
- Denial of time off/holidays
- Work day routinely longer than 12 hours

**b. Health and safety**

- No access to medical/health care
- Unsafe, cramped or unhygienic working environment
- Access to occupational health services
- No right/opportunity to use condoms
- Use of communal needle for contraceptive/antibiotic injections

### **4. Slavery and Self-Determination**

**a. Security of person and slavery**

- Coercion involving drugs: administering drugs without consent; inducing/exploiting drug dependency/compulsory alcohol consumption
- Forced abortion/dangerous abortion practices
- Threats of reprisals against family
- Personal belongings taken away
- Psychological abuse (name-calling, insults, humiliation)

etc.)

- Physical abuse (hitting, kicking, threatening with violence etc.) including murder
- Sex without consent (including attempted or threatened); no right to refuse certain sexual acts/no right to refuse certain customers/forced minimum number of customers per day
- 'Pimping' (domestic violence and/or extortion)

**b. Slavery -- ownership by another**

- Not paid at all
- No regular food
- Illegal confinement (movements controlled/restricted, no permission to leave the work place or allowed out only under supervision)
- Isolation (prohibited from normal social contacts, interception of letters, calls)
- Identity papers/passport confiscated/false identity papers
- Lack of confidentiality of medical records

**c. Slavery-like practices**

- Debt Bondage
- Coercion by agents in the course of migration
- Deception/extortion by employment agencies
- Forced to buy necessities through employer
- Child servitude

## **5. Transnational Migrant Workers**

- Vulnerability to abusive practices
- Worse working conditions than local workers
- Deception during recruitment of migrants

## **6. Minors in the sex industry**

- Child labour
  - Child sexual exploitation
  - Children and judicial authorities
-

# 1. Discrimination

## **UDHR Article 2**

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

## **ICESCR Article 2**

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

## **ICESCR Article 3**

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

## **ICCPR Article 2**

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the present Covenant.

## **ICCPR Article 3**

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

## **CEDAW Article 2**

States parties condemn discrimination against women in all its forms, agree to

pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- a. to embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realisation of this principle;
- b. to adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- c. to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- d. to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- e. to take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise;
- f. to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- g. to repeal all national penal provisions which constitute discrimination against women.

### **CEDAW Article 5**

States Parties shall take out all appropriate measures:

- a. to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

### **CEDAW 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.

## **CEDAW Article 11**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:
  - a. the right to work as an inalienable right of all human beings;
  - b. the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
  - c. the right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
  - d. the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
  - e. the right to social security, particularly in the cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
  - f. the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

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## **2. Restriction Under Criminal Law**

### **UDHR Article 2**

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

### **UDHR Article 23**

1. Everyone has the right to work, to free choice of employment, to just

and favourable conditions of work . . .

### **UDHR Article 29**

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by the law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

### **ICESCR Article 6**

1. The States Parties to the present Convention recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

### **ICCPR Article 2**

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the present Covenant.

### **CEDAW Article 2**

States parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- a. to embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realisation of this principle;
- b. to adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against

women;

- c. to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- d. to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- e. to take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise;
- f. to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- g. to repeal all national penal provisions which constitute discrimination against women.

## **CEDAW Article 11**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:
  - a. the right to work as an inalienable right of all human beings;
  - b. the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
  - c. the right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
  - d. the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
  - e. the right to social security, particularly in the cases of retirement, unemployment, sickness, invalidity and old age and

other incapacity to work, as well as the right to paid leave;

- f. the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

### **R35, II**

The desirability of avoiding indirect means of artificially increasing the economic pressure upon populations to seek wage-earning employment, and particularly such means as:

- c. extending abusively the generally accepted meaning of vagrancy.

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## **2a. Discriminatory treatment by police and judicial authorities**

**Discrimination against sex workers as women, as male customers are rarely prosecuted.**

### **ICESCR Article 3**

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

### **ICCPR Article 3**

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

### **Risk of arbitrary arrest**

### **UDHR Article 3**

Everyone has the right to life, liberty and security of person.

### **ICCPR Article 9**

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

### **R35, II**

The desirability of avoiding indirect means of artificially increasing the economic pressure upon populations to seek wage-earning employment, and particularly such means as:

- d. adopting such pass laws as would have the effect of placing workers in the service of others in a position of advantage as compared with that of other workers.

## **Police violence**

### **UDHR Article 3**

Everyone has the right to life, liberty and security of person.

### **ICCPR Article 10**

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
  - a. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

### **DEVAW Article 2**

Violence against women shall be understood to encompass, but not be limited to, the following:

- c. physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

## **Deprived of personal belongings following arrest**

### **UDHR Article 17**

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

## **Lack of equality before the law as victim/defendant/witness**

### **UDHR Article 6**

Everyone has the right to recognition everywhere as a person before the law.

### **UDHR Article 7**

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

### **UDHR Article 8**

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

### **ICCPR Article 2**

3. Each State Party to the present Covenant undertakes:
  - a. to ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.

### **ICCPR Article 26**

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

### **CEDAW Article 15**

1. States Parties shall accord to women equality with men before the law.

## **Convicted on accusation/police evidence alone**

### **UDHR Article 11**

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

### **ICCPR Article 9**

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been victim of unlawful arrest or detention shall have an enforceable right to compensation.

#### **ICCPR Article 14**

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law ...

#### **Unable to work in house together because of prohibition of brothels**

#### **UDHR Article 20**

1. Everyone has the right to freedom of peaceful assembly and association.

#### **ICCPR Article 12**

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

#### **CEDAW Article 15**

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

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## **2b. Discriminatory treatment by other authorities**

### **Legal or customary restrictions on sex workers' children**

#### **UDHR Article 25**

2. ...All children, whether born in or out of wedlock, shall enjoy the same social protection.

#### **ICESCR Article 10**

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions . . .

#### **CRC Article 2**

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

### **Compulsory HIV/AIDS testing/Compulsory STD testing**

#### **WHA 45.35**

The Forty-fifth World Health Assembly [recognises] that there is no public health rationale for any measures that limit the rights of the individual, notably measures establishing mandatory screening;

#### **1926 Slavery Convention, Article 1**

1. Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

### **R97 Article 13**

1. Medical examination made in accordance with this Recommendation should not involve the worker concerned in any expense.

### **Employment discrimination/registration**

#### **ICESCR Article 2**

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

#### **CEDAW Article 5**

States Parties shall take out all appropriate measures:

- a. to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

#### **C111 Article 1**

1. For the purposes of this Convention the term 'discrimination' includes:
  - a. any distinction, exclusion or preference make on the basis of race, colour, sex. religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;
  - b. such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.

#### **R111 Article 2**

Each member should formulate a national policy for the prevention of discrimination in employment and occupation. This policy should be applied by means of legislative measures, collective agreements between representative employers' and workers' organisations or in any other manner consistent with national conditions and practice, and should have regard to the following principles:

- a. the promotion of equality of opportunity and treatment in employment and occupation is a matter of public concern;
- b. all persons should, without discrimination, enjoy equality of opportunity and treatment in respect of:
  - i. access to vocational guidance and placement services;
  - ii. access to training and employment of their own choice on the basis of individual suitability for such training or employment;
  - iii. advancement in accordance with their individual character, experience, ability and diligence;
  - iv. security of tenure of employment;
  - v. remuneration for work of equal value;
  - vi. conditions of work including hours of work, rest periods, annual holidays with pay, occupational safety measures and welfare facilities and benefits as well as social security measures and welfare facilities and benefits provided in connection with employment;
3. government agencies should apply non-discriminatory employment policies in all their activities;
4. employers should not practise or countenance discrimination in engaging or training any person for employment, in advancing or retaining such person in employment, or in fixing terms and conditions of employment; nor should any person or organisation obstruct or interfere, either directly or indirectly, with employers in pursuing this principle;
5. in collective negotiations and industrial relations the parties should respect the principle of equality of opportunity and treatment in employment and occupation, and should ensure that collective agreements contain no provisions of a discriminatory character in respect of access to, training for, advancement in or retention of

employment or in respect of the terms and conditions of employment;

6. employers' and workers' organisations should not practice or countenance discrimination in respect of admission, retention of membership or participation in their affairs.

### **R111 Article 6**

Application of the policy should not adversely affect special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status are generally recognised to require special protection or assistance.

### **Unable to claim social security, even if pay tax**

#### **UDHR Article 22**

Everyone, as a member of society, has the right to social security ...

#### **UDHR Article 25**

Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

#### **ICESCR Article 9**

The States Parties to the present Covenant recognise the right of everyone to social security, including social insurance.

### **Unable to form a union, because isolated or forbidden**

#### **UDHR Article 23**

4. Everyone has the right to form and to join trade unions for the protection of his interests.

#### **ICESCR Article 8**

1. The States Parties to the present Covenant undertake to ensure:
  - a. the right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organisation concerned, for the promotion and protection of his economic and social interests.

#### **C87 Article 2**

Workers and employers, without distinction whatsoever, shall have the right

to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

### **C87 Article 3**

1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.
2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

### **C98 Article 1**

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.
2. Such protection shall apply more particularly in respect of acts calculated to:
  1. make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;
  2. cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

## **Discriminatory immigration conditions**

### **ICESCR Article 3**

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

### **ICCPR Article 3**

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

### **CEDAW Article 15**

4. States Parties shall accord to men and women the same rights with

regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

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## **2c. Restrictions on private life**

**UDHR Article 12** No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

### **Forbidden to marry**

#### **UDHR Article 16**

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family ...

#### **CEDAW Article 11**

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:
  1. to prohibit, subject to the imposition of sanctions, ... discrimination in dismissals on the basis of marital status;

### **Associates criminalised**

#### **UDHR Article 20**

1. Everyone has the right to freedom of peaceful assembly and association.

#### **ICCPR Article 12**

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

### **Children removed by authorities**

#### **UDHR Article 16**

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family ...

### **CRC Article 7**

1. States Parties shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

### **CRC Article 9**

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no

adverse consequences for the person(s) concerned.

### **CRC Article 15**

1. States Parties recognise the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

### **CRC Article 16**

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, not to unlawful attacks on his or her honour and reputation.
2. The child had the right to the protection of the law against such interference or attacks.

### **Residence restrictions**

#### **UDHR Article 13**

1. Everyone has the right to freedom of movement and residence within the borders of each State.

#### **ICCPR Article 12**

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

#### **CEDAW Article 15**

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

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## 3. Employment Conditions

### ICESCR Article 2

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

### ICESCR Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

### CEDAW Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:
  - d. the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
  - e. the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

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### 3a. Exploitative terms of employment

#### Wages withheld; not paid regularly or paid less than agreed

##### C95 Article 5

Wages shall be paid directly to the workers concerned except as may be otherwise provided by national laws or regulations, collective agreement or arbitration award or where the worker concerned has agreed to the contrary.

##### C95 Article 9

Any deduction from wages with a view to ensuring a direct or indirect payment for the purpose of obtaining or retaining employment, made by a worker to an employer or his representative or to any intermediary (such as a

labour contractor or recruiter), shall be prohibited.

### **C95 Article 12**

1. Wages shall be paid regularly. Except where other appropriate arrangements exist which ensure the payment of wages at regular intervals, the interval for the payment of wages shall be prescribed by national law or regulations as fixed by collective agreement or arbitration award.
2. Upon the termination of a contract of employment, a final settlement of all wages due shall be effected in accordance with national laws or regulations, collective agreement or arbitration award or, in the absence of any applicable law, regulation, agreement or award, within a reasonable period of time having regard to the terms of the contract.

### **R85 Article 4**

The maximum intervals for the payment of wages should ensure that wages are paid:

- a. not less often than twice a month at intervals not exceeding sixteen days in the case of workers whose wages are calculated by the hour, day or week; and
- b. not less often than once a month in the case of employed persons whose remuneration is fixed on a monthly or annual basis.

### **R85 Article 6**

The details of the wages conditions which should be brought to the knowledge of the workers should include, wherever appropriate, particulars concerning:

- a. the rates of wages payable;
- b. the method of calculation;
- c. the periodicity of wage payments;
- d. the place of payment; and
- e. the conditions under which deductions may be made.

### **R85 Article 7**

In all appropriate cases, workers should be informed, with each payment of wages, of the following particulars relating to the pay period concerned, in so

far as such particulars may be subject to change:

- a. the gross amount of wages earned;
- b. any deduction which may have been made, including the reasons therefor and the amount thereof; and
- c. the net amount of wages due.

### **R85 Article 8**

Employers should be required in appropriate cases to maintain records showing, in respect of each worker employed, the particulars specified in the preceding paragraph.

### **Denial of time off/holidays**

#### **UDHR Article 24**

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

#### **ICESCR Article 7**

The States Parties to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- d. rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

#### **C52 Article 1**

1. This convention applies to all persons employed in any of the following undertakings or establishments, whether public or private:
  - h. hotels, restaurants, boarding-houses, clubs, cafés and other refreshment houses;
  - i. theatres and places of public amusement;
  - j. mixed commercial and industrial establishments not falling wholly within any of the foregoing categories.

#### **C52 Article 2**

1. Every person to whom this Convention applies shall be entitled after one year of continuous service to an annual holiday with pay of at least

six working days.

3. The following shall not be included in the annual holiday with pay:
  - a. public and customary holidays;
  - b. interruptions of attendance at work due to sickness.
4. National laws or regulations may authorise in special circumstances the division into parts of any part of the annual holiday with pay which exceeds the minimum duration prescribed by this Article.
5. The duration of the annual holiday with pay shall increase with the length of service under conditions to be prescribed by national laws or regulations.

### **C52 Article 3**

Every person taking a holiday in virtue of Article 2 of this Convention shall receive in respect of the full period of the holiday either:

- a. usual remuneration, calculated in a manner which shall be prescribed by national laws or regulations, including the cash equivalent of his remuneration in kind, if any; or
- b. the remuneration determined by collective agreement.

### **C52 Article 4**

Any agreement to relinquish the right to an annual holiday with pay, or to forgo such a holiday, shall be void.

### **C106 Article 3**

1. This Convention shall also apply to persons employed in such of the following establishments as the Member ratifying the Convention may specify in a declaration accompanying its ratification:
  - a. establishments, institutions and administrative services providing personal services;

### **C106 Article 6**

1. All persons to whom this convention applies shall, except as otherwise provided by the following Articles, be entitled to an uninterrupted weekly rest period comprising not less than 24 hours in the course of each period of seven days.

## **C132 Article 2**

1. This convention applies to all employed persons, with the exception of seafarers.

## **C132 Article 3**

1. Every person to whom this convention applies shall be entitled to an annual paid holiday of a specified minimum length.
2. Each Member which ratifies this Convention shall specify the length of the holiday in a declaration appended to its ratification.
3. The holiday shall in no case be less than three working weeks for one year of service.
4. Each Member which has ratified this Convention may subsequently notify the Director-General of the International Labour Office, by a further declaration, that it specifies a holiday longer than that specified at the time of ratification.

## **C132 Article 5**

1. A minimum period of service may be required for entitlement to any annual holiday with pay.
2. The length of any such qualifying period shall be determined by the competent authority or through the appropriate machinery in the country concerned but shall not exceed six months.
3. The manner in which length of service is calculated for the purpose of holiday entitlement shall be determined by the competent authority or through the appropriate machinery in each country.
4. Under conditions to be determined by the competent authority or through the appropriate machinery in each country, absence from work for such reasons beyond the control of the employed person concerned as illness, injury or maternity shall be counted as part of the period of service.

## **C132 Article 6**

1. Public and customary holiday, whether or not they fall during the annual holiday, shall not be counted as part of the minimum annual

holiday with pay prescribed in Article 3, paragraph 3, of this Convention.

2. Under conditions to be determined by the competent authority or through the appropriate machinery in each country, periods of incapacity for work resulting from sickness or injury may not be counted as part of the minimum annual holiday with pay prescribed in Article 3, paragraph 3, of this Convention.

### **C132 Article 10**

1. The time at which the holiday is to be taken shall, unless it is fixed by regulation, collective agreement, arbitration award or other means consistent with national practice, be determined by the employer after consultation with the employed person concerned or his representatives.
2. In fixing the time at which the holiday is to be taken, work requirements and the opportunities for rest and relaxation available to the employed person shall be taken into account.

### **C132 Article 12**

Agreements to relinquish the right to the minimum annual holiday with pay prescribed in Article 3, paragraph 3, of this Convention or to forgo such a holiday, for compensation or otherwise, shall, as appropriate to national conditions, be null and void or be prohibited.

### **Work day routinely longer than 12 hours**

#### **UDHR 24**

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

#### **ICESCR Article 7**

The States Parties to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- d. rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

#### **R164 Article 10**

The obligations placed upon employers with a view to achieving the objective set forth in Article 16 of the Convention [C155] might include, as appropriate for different branches of economic activity and different types of work, the

following:

- e. to ensure that work organisation, particularly with respect to hours of work and rest breaks, does not adversely affect occupational safety and health;

#### **R178 Article 4**

1. Normal hours of work for night workers should not exceed eight in any 24-hour period in which they perform night work, except in the case of work which includes substantial periods of mere attendance or stand-by, in cases in which alternative working schedules give workers at least equivalent protection over different periods or in cases of exceptional circumstances recognised by collective agreements or failing that by the competent authority.
2. The normal hours of work of night workers should generally be less on average than and, in any case, not exceed on average those of workers performing the same work to the same requirements by day in the branch of activity or the undertaking concerned.
3. Night workers should benefit to at least the same extent as other workers from general measures for reducing normal weekly hours of work and increasing days of paid leave.

#### **R178 Article 5**

1. Work should be organised in such a way as to avoid, as far as possible, overtime by night workers before or after a daily period of work which includes night work.
2. In occupations involving special hazards of heavy physical or mental strain, no overtime should be performed by night workers before or after a daily period of work which includes night work, except in cases of force majeure or of actual or imminent accident.

#### **R178 Article 6**

Where shift work involves night work:

- a. in no case should two consecutive full-time shifts be performed, except in cases of force majeure or of actual or imminent accident;
- b. a rest period of at least 11 hours between two shifts should be guaranteed as far as possible.

### **R178 Article 7**

Daily periods of work which include night work should include a break or breaks to enable workers to rest and eat. The scheduling and total length of these breaks should take account of the demands placed on workers by the nature of night work.

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## **3b. Health and safety**

### **ICESCR Article 7**

The states Parties to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- b. safe and healthy working conditions.

### **No access to medical/health care**

### **UDHR Article 25**

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

### **ICCPR 25**

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- c. to have access, on general terms of equality, to public service in his country.

### **CEDAW Article 12**

1. States Parties shall take all appropriate measure to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

## **Unsafe, cramped or unhygienic working environment**

## **C155 Article 1**

1. This Convention applies to all branches of economic activity.

## **C155 Article 2**

1. This Convention applies to all workers in the branches of economic activity covered.
2. A Member ratifying this Convention may, after consultation at the earliest possible stage with the representative organisations of employers and workers concerned, exclude from its application, in part or in whole, limited categories of workers in respect of which there are particular difficulties.
3. Each Member which ratifies this Convention shall list, in the first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation, any limited categories of workers which may have been excluded in pursuance of paragraph 2 of this Article, giving the reasons for such exclusion, and shall indicate in subsequent reports any progress towards wider application.

## **C155 Article 3**

For the purpose of this Convention:

- a. the term 'branches of economic activity' covers all branches in which workers are employed, including the public service;
- b. the term 'workers' covers all employed persons, including public employees;
- c. the term 'workplace' covers all places where workers need to be or to go by reason of their work and which are under the direct or indirect control of the employer;
- d. the term 'regulations' covers all provisions given force of law by the competent authority or authorities;
- e. the term 'health', in relation to work, indicates not merely the absence of disease or infirmity; it also includes the physical and mental elements affecting health which are directly related to safety and hygiene at work.

## **C155 Article 4**

2. The aim of the policy shall be to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment.

### **R97 Article 2**

All appropriate measures should be taken by the employer to ensure that the general conditions prevailing in places of employment are such as to provide adequate protection of the health of the workers concerned, and in particular that:

- a. dirt and refuse do not accumulate so as to cause risk of injury to health;
- c. adequate and suitable lighting, natural or artificial, or both, is provided;
- d. suitable atmospheric conditions are maintained so as to avoid insufficient air supply and movement, vitiated air, harmful draughts, sudden variations in temperature, and, so far as is practicable, excessive humidity, excessive heat or cold, and objectionable odours;
- e. sufficient and suitable sanitary conveniences and washing facilities, and adequate supplies of wholesome drinking water, are provided in suitable places and properly maintained;
- f. in cases where the workers are prohibited from consuming food or drink at their workplaces, there is on the premises suitable accommodation for taking meals, unless appropriate arrangements exist for the workers to take their meals elsewhere;

### **R164 Article 3**

As appropriate for different branches of economic activity and different types of work and taking into account the principle of giving priority to eliminating hazards at their source, measures should be taken in pursuance of the policy referred to in Article 4 of the Convention, in particular in the following fields:

- design, siting, structural features, installation, maintenance, repair and alteration of workplaces and means of access thereto and egress therefrom;
- lighting, ventilation, order and cleanliness of workplaces;
- temperature, humidity and movement of air in the workplace;

- design, construction, use, maintenance, testing and inspection of machinery and equipment liable to present hazards and, as appropriate, their approval and transfer;
- prevention of harmful physical or mental stress due to conditions of work;
- handling, stacking and storage of loads and materials, manually or mechanically;
- use of electricity;
- manufacture, packing, labelling, transport, storage and use of dangerous substances and agents, disposal of their wastes and residues, and, as appropriate, their replacement by other substances or agents which are not dangerous or which are less dangerous;
- radiation protection;
- prevention and control of, and protection against, occupational hazards due to noise and vibration;
- control of the atmosphere and other ambient factors of workplaces;
- prevention and control of hazards due to high and low barometric pressures;
- prevention of fires and explosions and measures to be taken in case of fire or explosion;
- design, manufacture, supply, use, maintenance and testing of personal protective equipment and protective clothing;
- sanitary installations, washing facilities, facilities for changing and storing clothes, supply of drinking water, and any other welfare facilities connected with occupational safety and health;
- first-aid treatment;
- establishment of emergency plans;
- supervision of the health of workers.

### **Access to occupational health services**

### **C161 Article 3**

Each member undertakes to develop progressively occupational health services for all workers, including those in the public sector and the members of production co-operatives, in all branches of economic activity and all undertakings. The provision made should be adequate and appropriate to the specific risks of the undertakings.

If occupational health services cannot be immediately established for all undertakings, each Member concerned shall draw up plans for the establishment of such services in consultation with the most representative organisations of employers and workers, where they exist.

Each Member concerned shall indicate, in the first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation, the plans drawn up pursuant to paragraph 2 of this Article, and indicate in subsequent reports any progress in their application.

### **C161 Article 5**

Without prejudice to the responsibility of each employer for the health and safety of the workers in his employment, and with due regard to the necessity for the workers to participate in matters of occupational health and safety, occupational health services shall have such of the following functions as are adequate and appropriate to the occupational risks of the undertaking:

- identification and assessment of the risks from health hazards in the workplace;
- surveillance of the factors in the working environment and working practices which may affect workers' health, including sanitary installations, canteens and housing where these facilities are provided by the employer;
- advice on planning and organisation of work, including the design of workplaces, on the choice, maintenance and condition of machinery and other equipment and on substances used in work;
- participation in the development of programmes for the improvement of working practices as well as testing and evaluation of health aspects of new equipment;
- advice on occupational health, safety and hygiene and on ergonomics and individual and collective protective equipment;

- surveillance of worker's health in relation to work;
- promoting the adaptation of work to the worker;
- contribution to measures of vocational rehabilitation;
- collaboration in providing information, training and education in the fields of occupational health and hygiene and economics;
- organising of first aid and emergency treatment participation in analysis of occupational accidents and occupational disease.

### **R171 Article 5**

The surveillance of the working environment should include:

- identification and evaluation of the environmental factors which may affect the workers health;
- assessment of conditions of occupational hygiene and factors in the organisation of work which may give rise to risks for health of workers;
- assessment of collective and personal protective equipment;
- assessment where appropriate of exposure of workers to hazardous agents by valid and generally monitoring methods;
- assessment of control systems designed to eliminate or reduce exposure.

### **No right/opportunity to use condoms**

### **UDHR Article 3**

Everyone has the right to life, liberty and security of person.

### **C155 Article 13**

A worker who has removed himself from a work situation which he has reasonable justification to believe presents an imminent and serious danger to his life or health shall be protected from undue consequences in accordance with national conditions and practice.

### **C155 Article 16**

Employers shall be required to ensure that, so far as is reasonably practicable, the workplaces, machinery, equipment and processes under their control are

safe and without risk to health.

Employers shall be required to ensure that, so far as is reasonably practicable, the chemical, physical and biological substances and agents under their control are without risk to health when the appropriate measures of protection are taken.

Employers shall be required to provide, where necessary, adequate protective clothing and protective equipment to prevent, so far as is reasonably practicable, risk of accidents or of adverse effects on health.

### **C155 Article 19**

There shall be arrangements at the level of the undertaking under which:

- d. workers and their representatives are given appropriate training in occupational safety and health;
- e. a worker reports forthwith to his immediate supervisor any situation which he has reasonable justification to believe presents an immediate and serious danger to his life or health; until the employer has taken remedial action, if necessary, the employer cannot require workers to return to a work situation where there is continuing imminent and serious danger to life or health.

### **C155 Article 21**

Occupational safety and health measures shall not involve any expenditure for the workers.

### **C161 Article 5**

Without prejudice to the responsibility of each employer for the health and safety of the workers in his employment, and with due regard to the necessity for the workers to participate in matters of occupational health and safety, occupational health services shall have such of the following functions as are adequate and appropriate to the occupational risks of the undertaking:

- advice on occupational health, safety and hygiene on ergonomics and individual and collective protective equipment;

### **R97 Article 3**

With a view to preventing, reducing or eliminating risks to health in places of employment, all appropriate and practicable measures should be taken:

- e. to provide the workers with such protective clothing and equipment and other means of personal protection as may be necessary to shield them from the effects of harmful agents, where other measures to

protect the health of workers against these agents are impracticable or are not sufficient to ensure adequate protection, and to instruct the workers in the use thereof.

#### **R97 Article 4**

1. The workers should be informed:
  - a. of the necessity of the measures of protection mentioned in Paragraphs 2 and 3 above;
  - b. of their obligation to co-operate in and not to disturb the proper functioning of such measures; and
  - c. of their obligation to make proper use of the appliances and equipment provided for their protection.
2. Consultation with workers on measures to be taken should be recognised as an important means of ensuring their co-operation.

#### **R164 Article 10**

The obligations placed upon employers with a view to achieving the objective set forth in Article 16 of the Convention [C155] might include, as appropriate for different branches of economic activity and different types of work, the following:

- c. to provide adequate supervision of work, of work practices and of application and use of occupational safety and health measures;

#### **R164 Article 16**

The arrangements provided for in Article 19 of the Convention [C155] should aim at ensuring that workers:

- c. use safety devices and protective equipment correctly and do not render them inoperative;

### **Use of communal needle for contraceptive/antibiotic injections**

#### **UDHR Article 3**

Everyone has the right to life, liberty and security of person.

#### **C155 Article 16**

1. Employers shall be required to ensure that, so far as is reasonably practicable, the workplaces, machinery, equipment and processes

under their control are safe and without risk to health.

2. Employers shall be required to ensure that, so far as is reasonably practicable, the chemical, physical and biological substances and agents under their control are without risk to health when the appropriate measures of protection are taken.
3. Employers shall be required to provide, where necessary, adequate protective clothing and protective equipment to prevent, so far as is reasonably practicable, risk of accidents or of adverse effects on health.

## **R171 Article 5**

1. The surveillance of the working environment should include:
  - b. assessment of conditions of occupational hygiene and factors in the organisation of work which may give rise to risks for health of workers;

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## **4. Slavery And Self-Determination**

### **4a. Security of person and slavery**

#### **UDHR Article 3**

Everyone has the right to life, liberty and security of person.

#### **UDHR Article 5**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

#### **ICCPR Article 6**

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

#### **ICCPR Article 7**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment ...

#### **ICCPR Article 9**

1. Everyone has the right to liberty and security of person ...

### **DEVAW Article 1**

For the purposes of this Declaration, the term 'violence against women' means any act of gender-based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

### **DEVAW Article 2**

Violence against women shall be understood to encompass, but not be limited to, the following:

- a. 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;
- b. physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

### **Physical interventions without free or fully informed consent**

### **Coercion involving drugs: administering drugs without consent; inducing/exploiting drug dependency/compulsory alcohol consumption**

### **1926 Slavery Convention, Article 1**

1. Slavery is the status of a person over whom any or all of the powers attaching to the right of ownership are exercised.
2. The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.

### **1956 Supplementary Convention on the Abolition of Slavery, Article 6**

1. The act of enslaving another person or of inducing another person to give himself or a person dependent upon him into slavery, or of attempting these acts, or being accessory thereto, or being a party to a

conspiracy to accomplish any such acts, shall be a criminal offence under the laws of the States Parties to this Convention and persons convicted thereof shall be liable to punishment.

## **Forced abortion/dangerous abortion practices**

### **CEDAW Article 16**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
  - e. the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

### **1926 Slavery Convention, Article 1**

1. Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

## **Assaults which secure or express control**

### **C29 Article 2**

1. For the purposes of this Convention the term 'forced or compulsory labour' shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

### **C29 Article 4**

1. The competent authority shall not impose or permit the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations.

## **Threat of reprisals against family**

## **Personal belongings taken away**

### **UDHR Article 17**

1. Everyone has the right to own property alone as well as in association

with others.

2. No one shall be arbitrarily deprived of his property.

**Psychological abuse (name-calling, insults, humiliation etc.)**

**Physical abuse (hitting, kicking, threatening with violence etc.) including murder**

**Sex without consent (including attempted or threatened); no right to refuse certain sexual acts/no right to refuse certain customers/forced minimum number of customers per day**

### **WHA 45.35**

The Forty-fifth World Health Assembly [recognises] that there is no public health rationale for any measures that limit the rights of the individual, notably measures establishing mandatory screening;

### **1926 Slavery Convention, Article 1**

1. Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

### **C155 Article 13**

A worker who has removed himself from a work situation which he has reasonable justification to believe presents an imminent and serious danger to his life or health shall be protected from undue consequences in accordance with national conditions and practice.

**'Pimping' (domestic violence and/or extortion)**

### **1926 Slavery Convention, Article 1**

1. Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

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## **4b. Slavery -- ownership by another**

### **UDHR Article 4**

No one shall be held in slavery or servitude.

### **ICCPR Article 8**

1. No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
  - a. No one shall be required to perform forced or compulsory labour;

### **1926 Slavery Convention, Article 1**

1. Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

### **C29 Article 2**

1. The term 'forced or compulsory labour' shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

### **C29 Article 4**

1. The competent authority shall not impose or permit the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations.

## **Treatment as an object**

### **Not paid at all**

### **ICESCR Article 7**

The States Parties to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- a. remuneration which provides all workers, as a minimum, with:
  - i. fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being

guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

- ii. a decent living for themselves and their families in accordance with the provisions of the present Covenant;

### **No regular food**

#### **UDHR Article 5**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment

### **Denial of self-determination**

#### **UDHR Article 3**

Everyone has the right to life, liberty and security of person.

**Illegal confinement (movements controlled/restricted, no permission to leave the work place or allowed out only under supervision)**

#### **UDHR Article 9**

No one shall be subjected to arbitrary arrest, detention or exile.

#### **UDHR Article 13**

Everyone has the right to freedom of movement and residence within the borders of each State.

#### **ICCPR Article 9**

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

#### **ICCPR Article 12**

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

#### **CEDAW Article 15**

4. States Parties shall accord to men and women the same rights with

regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

## **Isolation (prohibited from normal social contacts, interception of letters, calls)**

### **UDHR Article 12**

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

## **Identity papers/passport confiscated/ false identity papers**

### **1990 International Convention on the Protection of the Rights of all Migrant Workers and their Families, Article 21**

It shall be unlawful for anyone other than a public official duly authorised by law, to confiscate, destroy or attempt to destroy identity documents, documents authorising entry to or stay, residence or establishment in the national territory or work permits. No authorised confiscation of such documents shall take place without delivery of a detailed receipt. In no case shall it be permitted to destroy the passport or equivalent document of a migrant worker or a member of his or her family.

## **Lack of confidentiality of medical records**

### **UDHR Article 12**

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to protection of the law against such interference or attacks.

### **WHA 41.24, Article 1**

The Forty-first World Health Assembly urges Member States, particularly in devising and carrying out national programmes for the prevention and control of HIV infection and AIDS:

3. to ensure the confidentiality of HIV testing and to promote the availability of confidential counselling and other support services to HIV-infected people and people with AIDS.

### **C161 Article 10**

The personnel providing occupational health services shall enjoy full professional independence from employers, workers, and their representatives, where they exist ...

### **R97 Article 12**

Measures to ensure the observance of medical secrecy should be adopted in connection with all medical examinations and the registration and filing of related documents.

### **R97 Article 14**

1. National laws or regulation should require the notification of cases and suspected cases of occupational disease.
2. Such notifications should be required with a view to:
  - a. initiating measures of prevention and protection and ensuring their effective application;
  - b. investigating the working conditions and other circumstances which have caused or are suspected to have caused occupational diseases;
  - c. compiling statistics of occupational diseases; and
  - d. allowing the initiation or development of measures designed to ensure that victims of occupational diseases receive the compensation provided for such diseases.
3. The notification should be made to the labour inspectorate or other authority concerned with the protection of the health of workers in places of employment.

### **R171 Article 11**

2. Provisions should be adopted to protect the privacy of the workers and to ensure that health surveillance is not used for discriminatory purposes or in any other manner prejudicial to their interests.

### **R171 Article 12**

1. In the case of exposure of workers to specific occupational hazards, in addition to the health assessments provided for in Paragraph 11 of the Recommendation, the surveillance of the workers' health should include, where appropriate, any examinations and investigations which may be necessary to detect exposure levels and early biological effects and responses.
2. When a valid and generally accepted method of biological monitoring

of the workers health for the early detection of the effects on health of exposure to specific occupational hazards exists, it may be used to identify workers who need a detailed medical examination, subject to the individual worker's consent.

### **R171 Article 14**

3. Personal data relating to health assessments may be communicated to others only with the informed consent of the worker concerned.

### **R171 Article 15**

The conditions under which, and time during which, personal health files should be kept, the conditions under which they may be communicated or transferred and the measures necessary to keep them confidential, in particular when the information they contain is placed on computer, should be prescribed by national laws or regulations or by the competent authority or, in accordance with national practice, governed by recognised ethical guide-lines.

### **R171 Article 16**

1. On completing a prescribed medical examination for the purpose of determining fitness for work involving exposure to a particular hazard, the physician who has carried out the examination should communicate his conclusions in writing to both the worker and the employer.
2. These conclusions should contain no information of a medical nature; they might, as appropriate, indicate fitness for the proposed assignment or specify the kinds of jobs and the conditions of work which are medically contra-indicated, either temporarily or permanently.

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## **4c. Slavery-like practices**

### **Debt bondage**

#### **1956 Supplementary Convention, Article 1**

1. Each of the States Parties to this Convention shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices, where they still exist and whether or not they are covered by the definition of

slavery contained in article 1 of the Slavery Convention signed at Geneva on 25 September 1926:

- a. Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;

### **C95 Article 9**

Any deduction from wages with a view to ensuring a direct or indirect payment for the purpose of obtaining or retaining employment, made by a worker to an employer or his representative or to any intermediary (such as a labour contractor or recruiter), shall be prohibited.

## **Coercion by agents in the course of migration**

### **1926 Slavery Convention, Article 1**

1. Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.
2. The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.

### **1956 Supplementary Convention on Slavery, Article 3**

1. The act of conveying or attempting to convey slaves from one country to another by whatever means of transport, or of being accessory thereto, shall be a criminal offence under the laws of the States Parties to this Convention and persons convicted thereof shall be liable to very severe penalties.

### **1956 Supplementary Convention on Slavery, Article 6**

1. The act of enslaving another person or of inducing another person to give himself or a person dependent upon him into slavery, or of attempting these acts, or being accessory thereto, or being a party to a conspiracy to accomplish any such acts, shall be a criminal offence under the laws of the State Parties to this Convention and persons convicted thereof shall be liable to punishment.

2. Subject to the provisions of the introductory paragraph of article 1 of this Convention, the provisions of paragraph 1 of the present article shall also apply to the act of inducing another person to place himself or a person upon him into the servile status resulting from any of the institutions or practices mentioned in article 1, to any attempt to perform such acts, to being accessory thereto, and to being a party to a conspiracy to accomplish any such acts.

## **Deception/extortion by employment agencies**

### **1926 Slavery Convention, Article 1**

2. The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.

### **1956 Supplementary Convention on Slavery, Article 6**

2. Subject to the provisions of the introductory paragraph of article 1 of this Convention, the provisions of paragraph 1 of the present article shall also apply to the act of inducing another person to place himself or a person dependent upon him into the servile status resulting from any of the institutions or practices mentioned in article 1, to any attempt to perform such acts, to being accessory thereto, and to being a party to a conspiracy to accomplish any such acts.

### **C95 Article 9**

Any deduction from wages with a view to ensuring a direct or indirect payment for the purpose of obtaining or retaining employment, made by a worker to an employer or his representative or to any intermediary (such as a labour contractor or recruiter), shall be prohibited.

### **C96 Article 1**

1. For the purpose of this Convention the expression 'fee-charging employment agency' means:
  - a. employment agencies conducted with a view to profit, that is to say, any person, company, institution, agency or other organisation which acts as an intermediary for the purpose of procuring employment for a worker or supplying a worker for an employer with a view to deriving either directly or indirectly

any pecuniary or other material advantage from either employer or worker; the expression does not include newspapers or other publications unless they are published wholly or mainly for the purpose of acting as intermediaries between employers and workers;

- b. employment agencies not conducted with a view to profit, that is to say, the placing services of any company, institution, agency or other organisation which, though not conducted with a view to deriving any pecuniary or other material advantage levies from either employer or worker for the above services an entrance fee, a periodical contribution or any other charge.

2. This Convention does not apply to the placing of seamen.

#### **C96 Article 4**

1. During the period preceding abolition, fee-charging employment agencies conducted with a view to profit;
  - a. shall be subject to the supervision of the competent authority; and
  - b. shall only charge fees and expenses on a scale submitted to and approved by the competent authority or fixed by the said authority.
2. Such supervision shall be directed more particularly towards the elimination of all abuses connected with the operations of fee-charging employment agencies conducted with a view to profit.

#### **C96 Article 10**

Fee-charging employment agencies conducted with a view to profit as defined in paragraph 1(a) of Article 1;

- a. shall be subject to the supervision of the competent authority;
- b. shall be required to be in possession of a yearly license renewable at the discretion of the competent authority;
- c. shall only charge fees and expenses on a scale submitted to and approved by the competent authority or fixed by the said authority;
- d. shall only place or recruit workers abroad if permitted so to do by the competent authority and under conditions determined by the laws or regulations in force.

## **Forced to buy necessities through employer**

### **C95 Article 3**

1. Wages payable in money shall be paid only in legal tender, and payment in the form of promissory notes, vouchers or coupons, or in any other form alleged to represent legal tender, shall be prohibited.
2. The competent authority may permit or prescribe the payment of wages by bank cheque or postal cheque or money order in cases in which payment in this manner is customary or is necessary because of special circumstances, or where a collective agreement or arbitration award so provides, or where not so provided, with the consent of the worker concerned.

### **C95 Article 6**

Employers shall be prohibited from limiting in any manner the freedom of the worker to dispose of his wages.

### **C95 Article 7**

1. Where works stores for the sale of commodities to the workers are established or services are operated in connection with an undertaking, the workers concerned shall be free from any coercion to make use of such stores or services.
2. Where access to other stores or services is not possible, the competent authority shall take appropriate measures with the object of ensuring that goods are sold and services provided at fair and reasonable prices, or that stores established and services operated by the employer are not operated for the purpose of securing a profit but for the benefit of the workers concerned.

### **R85 Article 3**

Appropriate measures should be taken to limit deductions from wages in respect of tools, materials or equipment supplied by the employers to cases in which such deductions:

- a. are a recognised custom of the trade or occupation concerned; or
- b. are provided for by collective agreement or arbitration award; or
- c. are otherwise authorised by a procedure recognised by national laws or regulations.

## **R100 Article 44**

1. Where stores are attached to undertakings, only cash payment should be accepted in them.
2. If local circumstances do not yet permit the application of the preceding provision, the credit granted to migrant workers should be limited to a proportion of wages, to be fixed by the competent authority, and restricted to a fixed period which should be as short as possible. It should be forbidden to charge interest on credit given or to accept its repayment in work.
3. There should be no coercion on the migrant workers concerned to make use of such stores.
4. Where access to others stores is not possible the competent authority should take appropriate measures with the object of ensuring that goods are sold at fair and reasonable prices and that stores operated by the employer are not operated for the purpose of securing a profit but for the benefit of the workers concerned.

## **Child servitude**

### **1956 Supplementary Convention on Slavery, Article 1**

Each of the States Parties to this Convention shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices, where they still exist and whether or not they are covered by the definition of slavery contained in article 1 of the Slavery Convention signed at Geneva on 25 September 1926:

- d. any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

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## 5. Transnational migrant sex workers

1990 International Convention on the Protection of the Rights of all Migrant Workers and their Families, Preamble:

*Taking into account the principles embodied in the basic instruments of the United Nations concerning human rights, in particular the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child,*

*.... Convinced... of the need to bring about the international protection of the rights of all migrant workers and members of their families, reaffirming and establishing basic norms in a comprehensive convention which could be applied universally,*

*Have agreed...*

[Articles 1-93 of the Convention]

### Vulnerability to abusive practices

#### C143 Article 2

1. Each member for which this convention is in force shall systematically seek to determine whether there are any illegally employed migrant workers on its territory and whether there depart from, pass through or arrive in its territory any movements of migrants for employment in which the migrants are subjected during their journey, on arrival or during their period of residence and employment to conditions contravening relevant international and multilateral or bilateral instruments or agreements, or national laws or regulations.

#### C143 Article 3

Each Member shall adopt all necessary and appropriate measures, both within its jurisdiction and in collaboration with other Members:

- a. to suppress clandestine movements of migrants for employment and illegal employment of migrants, and

- b. against the organisers of illicit or clandestine movements of migrants for employment departing from, passing through or arriving in its territory, and against those who employ workers who have immigrated in illegal conditions, in order to prevent and to eliminate the abuses referred to in Article 2 of the Convention.

#### **C143 Article 4**

In particular, Members shall take such measures as are necessary, at the national and international level, for systematic contact and exchange of information on the subject with other States, in consultation with representative organisations of employers and workers.

#### **C143 Article 5**

One of the purposes of the measures taken under Article 3 and 4 of this Convention shall be that the authors of manpower trafficking can be prosecuted whatever the country from which they exercise their activities.

#### **C143 Article 6**

1. Provision shall be made under national laws or regulations for the effective detection of the illegal employment of migrant workers and for the definition and the application of administrative, civil and penal sanctions, which include imprisonment in their range, in respect of the illegal employment of migrant workers, in respect of the organisation of movements of migrants for employment defined as involving the abuses referred to in Article 2 of this Convention, and in respect of knowing assistance to such movements, whether for profit or otherwise.
2. Where an employer is prosecuted by virtue of the provision made in pursuance of this article, he shall have the right to furnish proof of his good faith.

#### **C143 Article 9**

1. Without prejudice to measures designed to control movements of migrants for employment by ensuring that migrant workers enter national territory and are admitted to employment in conformity with the relevant laws and regulations, the migrant worker shall, in cases in which these laws and regulations have not been respected and in which his position cannot be regularised, enjoy equality of treatment for himself and his family in respect of rights arising out of past employment as regards remuneration, social security and other benefits.

2. In case of dispute about the rights referred to in the preceding paragraph, the worker shall have the possibility of presenting his case to a competent body, either himself or through representative.
3. In case of expulsion of the worker or his family, the cost shall not be borne by them.
4. Nothing in this Convention shall prevent Members from giving persons who are illegally residing or working within the country the right to stay and to take up legal employment.

### **R100 Article 19**

While unregulated migrations continue the governments concerned should, as far as practicable, strive to secure, for workers who migrate under such conditions, the protection provided for in this Recommendation.

### **R100 Article 27**

Employers should be required to keep records of wage payments and deductions in respect of each worker. The amounts of wages and of deductions therefrom should be communicated to the workers concerned.

### **R100 Article 28**

Deduction from wages should be permitted only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreement or arbitration award.

### **R100 Article 29**

Wages should normally be paid in legal tender direct to the individual worker.

### **R100 Article 30**

Unless there is an established local custom to the contrary, and the competent authority is satisfied, after consulting representatives of the workers or of their representative organisations, that the continuance of this custom is desired by the workers, wages should be paid regularly and at such intervals as will minimise the likelihood of indebtedness among the wage earners.

### **R100 Article 31**

The substitution of alcohol or any harmful substance for all or any part of wages should be prohibited.

### **R100 Article 32**

Payment of wages in taverns or stores should be prohibited except in the case of workers employed therein.

### **R100 Article 33**

Employers should be required to restrict any advances to workers to a small proportion of their monthly remuneration.

#### **R100 Article 34**

Any advance in excess of the amount fixed by the competent authority should not be legally recoverable either by the withholding of amounts of pay due to the worker at a later date or in any other way. No interest should be chargeable on advances.

#### **R100 Article 35**

A worker to whom minimum rates are applicable and who, since they became applicable, has been paid wages at less than these rates, should be entitled to recover, by judicial or other means authorised by law, the amount by which he has been underpaid, subject to such limitation of time as may be determined by law or regulation.

#### **R100 Article 36**

Where food, housing, clothing and other essential supplies and services form part of the remuneration, the competent authority should, with the co-operation of the representative organisations of employers and workers, take all practicable steps to ensure that they are adequate, that their cash value is properly assessed and that the payment in kind does not exceed in value a certain proportion, to be fixed by the competent authority, of the basic cash wage.

#### **R100 Article 42**

1. Steps should be taken to ensure the availability of consumer goods, particularly essential products and foodstuffs, to migrant workers and their families at reasonable prices and in sufficient quantities.

#### **R100 Article 44**

1. Where stores are attached to undertakings, only cash payments should be accepted in them.
2. If local circumstances do not yet permit the application of the preceding provision, the credit granted migrant workers should be limited to a proportion of wages, to be fixed by the competent authority, and restricted to a fixed period which should be as short as possible. It should be forbidden to charge interest on credit given or to accept its repayment in work.
3. There should be no coercion on the migrant workers concerned to make use of such stores.

4. Where access to other stores is not possible the competent authority should take appropriate measures with the object of ensuring that goods are sold at fair and reasonable prices and that stores operated by the employer are not operated for the purpose of securing a profit but for the benefit of the workers concerned.

#### **R100 Article 49**

Arrangements should be made to ensure the material, intellectual and moral welfare of migrant workers, including:

- b. arrangements to protect the migrant workers against usury, in particular by action to reduce interest rates on loans, by the control of the operations of money-lenders and by the encouragement of facilities for borrowing money for appropriate purposes through co-operative credit organisations or through institutions under the supervision of the competent authority.

#### **R100 Article 54**

In particular, in cases where the terms and conditions of employment the language, customs, or the currency in use in the region of employment are not familiar to migrant workers, the appropriate administrative service or services ensure the observance of any procedure for entering into employment contracts so as to make certain that each worker understands the terms and conditions of his employment, the provisions of his contract, the details in regard to the rates and payment of wages, and that he has accepted freely and knowingly these terms and conditions.

#### **R151 Article 8**

1. Without prejudice to measures designed to ensure that migrant workers and their families enter national territory and are admitted to employment in conformity with the relevant laws and regulations, a decision should be taken as soon as possible in cases in which these laws and regulations have not been respected so that the migrant worker should know whether his position can be regularised or not.
2. Migrant workers whose position has been regularised should benefit from all rights which, in accordance with Paragraph 2 of this Recommendation, are provided for migrant workers lawfully within the territory of a Member.
3. Migrant workers whose position has not been or could not be regularised should enjoy equality of treatment for themselves and their families in respect of rights arising out of present and past employment

as regards remuneration, social security and other benefits as well as regards trade union membership and exercise of trade union rights.

4. In case of dispute about the rights referred to in the preceding subparagraphs, the workers should have the possibility of presenting his case to a competent body, either himself or through a representative.
5. In case of expulsion of the worker or his family, the cost should not be borne by them.

### **R151 Article 34**

1. A migrant worker who leaves the country of employment should be entitled, irrespective of the legality of his stay therein:
  - a. to any outstanding remuneration for work performed, including severance payments normally due;
  - b. to benefits which may be due in respect of any employment injury suffered;
  - c. in accordance with national practice:
    - i. to compensation in lieu of any holiday entitlement acquired but not used;
    - ii. to reimbursement of any social security contributions which have not been given and will not give rise to rights under national laws or regulations or international arrangements: Provided that where social security contributions do not permit entitlement to benefits, every effort should be made with a view to the conclusion of bilateral, or multilateral agreements to protect the rights of migrants.
2. Where any claim covered by subparagraph (1) of this Paragraph is in dispute, the worker should be able to have his interests represented before the competent body and enjoy treatment with national workers as regards legal assistance.

### **Worse working conditions than local workers**

#### **C97 Article 6**

1. Each Member for which this convention is in force undertakes to apply, without discrimination in respect of nationality, race, religion or

sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of the following matters:

- a. in so far as such matters are regulated by law or regulations, or are subject to the control of administrative authorities:
  - i. remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age for employment, apprenticeship and training, women's work and the work of young persons;
  - ii. membership of trade unions and enjoyment of the benefits of collective bargaining;
  - iii. accommodation;
- b. social security (that is to say, legal provision in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities, and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:
  - i. there may be appropriate arrangements for the maintenance of acquired rights and in course of acquisition;
  - ii. national laws or regulations of immigration countries may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension;
- c. employment taxes, dues or contributions payable in respect of the person employed; and
- d. legal proceedings relating to the matters referred to in the Convention.

## **R86 Article 18**

1. When a migrant for employment has been regularly admitted to the territory of a Member, the said Member should, as far as possible, refrain from removing such person or the members of his family from its territory on account of his lack of means or the state of the

employment market, unless an agreement to this effect has been concluded between the competent authorities of the emigration and immigration territories concerned.

2. Any such agreement should provide:

- a. that the length of time the said migrant has been in the territory of immigration shall be taken into account and that in principle no migrant shall be removed who has been there for more than five years;
- b. that the migrant must have exhausted his rights to unemployment insurance benefit;
- c. that the migrant must have been given reasonable notice so as to give him time, more particularly to dispose of his property;
- d. that suitable arrangements shall have been made for his transport and that members of his family;
- e. that the necessary arrangements shall have been made to ensure that he and the members of his family are treated in a humane manner; and
- f. that the costs of the return of the migrant and the members of his family and of the transport of their household belongings to their final destination shall not fall on him.

**R100 Article 5**

Any discrimination against migrant workers should be eliminated.

**R100 Article 20**

Every effort should be made to assure to migrant workers as favourable working and living conditions as those provided by law or in practice to other workers engaged in the same employment and to apply them, as to such other workers, the standards of protection set out in the following paragraphs of this recommendation.

**R100 Article 45**

The steps to be taken for migrant workers should in any case include in the first instance appropriate arrangements, without discrimination on grounds of nationality, race or religion, for workmen's compensation, medical care for workers and their families, industrial hygiene and prevention of accidents and occupational diseases.

**R100 Article 46**

- g. an obligation on the employers to bring to the attention of migrant workers by notices, talks or any other means any dangerous or unhealthy features of their work.

### **R151 Article 2**

Migrant workers and members of their families lawfully within the territory of a Member should enjoy effective equality of opportunity and treatment with nationals of the Member concerned in respect of:

- a. access to vocational guidance and placement services;
- b. access to vocational training and employment of their own choice on the basis of individual suitability for such training or employment, account being taken of qualifications acquired outside the territory of and in the country of employment;
- c. advancement in accordance with their individual character, experience, ability and retraining;
- d. security of employment, the provision of alternative employment, relief work and retraining;
- e. remuneration for work of equal value;
- f. conditions of work, including hours of work, rest periods, annual holidays with pay, occupational safety and occupational health measures, as well as social security measures and welfare facilities and benefits provided in connection with employment;
- g. membership of trade unions, exercise of trade union rights and eligibility for office in trade unions and in labour-management relations bodies, including bodies representing workers and undertakings;
- h. rights of full membership in any form of co-operative;
- i. conditions of life, including housing and the benefits of social services and educational and health facilities.

### **R151 Article 21**

1. Every effort should be made to ensure that migrant workers receive training and instruction in occupational safety and occupational hygiene in connection with their practical training or other work

preparation, and, as far as possible, as part thereof.

2. In addition, a migrant worker should during paid working hours and immediately after beginning his employment, be provided with sufficient information in his mother tongue, or, if that is not possible, in a language with which he is familiar, on the essential elements of laws and regulations and on provisions of collective agreements concerning the protection of workers and the prevention of accidents as well as on safety regulations and procedures particular to the nature of the work.

### **R151 Article 22**

1. Employers should take all possible measures so that migrant workers may fully understand instructions, warnings, symbols and other signs relating to safety and health hazards at work.
2. Where, on account of the migrant workers' lack of familiarity with processes, language difficulties or other reasons, the training or instruction given to other workers is inadequate for them, special measures which ensure their full understanding should be taken.
3. Members should have laws or regulations applying the principles set out in this Paragraph and provide that where employers or other persons or organisations having responsibility in this regard fail to observe such laws or regulations, administrative, civil and penal sanctions might be imposed.

### **Deception during recruitment of migrants**

#### **C97 Article 2**

Each member for which this Convention is in force undertakes to maintain, or satisfy itself that there is maintained, an adequate and free service to assist migrants for employment, and in particular to provide them with accurate information.

#### **C97 Article 3**

1. Each member for which this Convention is in force undertakes that it will, so far as national laws and regulations permit, take all appropriate steps against misleading propaganda relating to emigration and immigration.
2. For this purpose, it will where appropriate act in co-operation with other Members concerned.

[\[Appendix Contents\]](#)

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## **6. Minors In The Sex Industry**

### **Child labour**

#### **ICESCR Article 10**

The States Parties to the present Covenant recognise that:

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

#### **CRC Article 32**

1. States Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
  - a. provide for a minimum age or minimum ages for admission to employment;
  - b. provide for appropriate regulation of the hours and conditions of employment;
  - c. provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

#### **CRC Article 35**

States Parties shall take all appropriate national, bilateral and multilateral

measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

### **CRC Article 36**

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

### **1956 Supplementary Convention on Slavery, Article 1**

Each of the States Parties to this Convention shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices, where they still exist and whether or not they are covered by the definition of slavery contained in article 1 of the Slavery Convention signed at Geneva on 25 September 1926:

- d. any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

### **C79 Article 2**

1. Children under fourteen years of age who are admissible for full-time or part-time employment and children over fourteen years of age who are still subject to full-time compulsory school attendance shall not be employed nor work at night during a period of at least fourteen consecutive hours, including the interval between eight o'clock in the evening and eight o'clock in the morning.
2. Provided that national laws or regulations may, where local conditions so require, substitute another interval of twelve hours of which the beginning shall not be fixed later than eight thirty o'clock in the evening nor the termination earlier than six o'clock in the morning.

### **C79 Article 3**

1. Children over fourteen years of age who are no longer subject to full-time compulsory school attendance and young persons under eighteen years of age shall not be employed nor work at night during a period of at least twelve consecutive hours, including the interval between ten o'clock in the evening and six o'clock in the morning.
2. Provided that, where there are exceptional circumstances affecting a particular branch of activity or a particular area, the competent authority may, after consultation with the employers' and workers'

organisations concerned, decide that in the case of children and young persons employed in that branch of activity or area, the interval between eleven o'clock in the evening and seven o'clock in the morning may be substituted for that between ten o'clock in the evening and six o'clock in the morning.

### **C138 Article 1**

Each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.

### **C138 Article 3**

1. The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years.

### **R146 Article 6**

The minimum age should be fixed at the same level for all sectors of economic activity.

### **R146 Article 9**

Where the minimum age for admission to types of employment or work which are likely to jeopardise the health, safety or morals of young persons is still below 18 years, immediate steps should be taken to raise it to that level.

### **R146 Article 10**

1. In determining the types of employment or work to which Article 3 of the Minimum Age Convention, 1973 [C138], applies, full account should be taken of relevant international labour standards, such as those concerning dangerous substances, agents or processes (including ionising radiations), the lifting of heavy weights and underground work.
2. The list of the types of employment or work in question should be re-examined periodically and revised as necessary, particularly in the light of advancing scientific and technological knowledge.

## **Child sexual exploitation**

### **CRC Article 34**

States Parties undertake to protect the child from all forms of sexual

exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- a. the inducement or coercion of a child to engage in any unlawful sexual activity;
- b. the exploitative use of children in prostitution or other unlawful sexual practices;
- c. the exploitative use of children in pornographic performances and materials.

## **Children and judicial authorities**

### **ICCPR Article 10**

- b. Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be reformation and social reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

### **CRC Article 37**

States Parties shall ensure that:

- a. no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age;
- b. no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- c. every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

- d. every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

## **CRC Article 40**

1. States Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human right and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
  - a. no child shall be alleged as, be accused of, or recognised as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
  - b. every child alleged as or accused of having infringed the penal law has at least the following guarantees:
    - i. to be presumed innocent until proven guilty according to law;
    - ii. to be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
    - iii. to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
    - iv. not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to

obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

v. if considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to the law;

vi. to have the free assistance of an interpreter if the child cannot understand or speak the language used;

vii. to have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law, and, in particular:

a. the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

b. whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

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## Analysis

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