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Coffee, beer and women – same same but different

A critical analysis of UN:s stance on prostitution

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Contents

SUMMARY	1
SAMMANFATTNING	2
ABBREVIATIONS	3
1 INTRODUCTION	4
1.1 Background	4
1.2 Purpose and research question	5
1.3 Delimitations	5
1.4 Method, disposition and material	6
1.4.1 <i>Method and disposition</i>	6
1.4.2 <i>Material</i>	8
1.5 Definition of prostitution	8
2 GENDER AND EQUALITY	10
2.1 Feminist theory	10
2.1.1 <i>Radical feminism as a way of explaining gender inequality</i>	11
2.1.2 <i>Radical feminism's view on prostitution</i>	11
2.1.2.1 Prostitution as a harmful traditional practice	13
2.1.3 <i>Radical feminism's influence on the human rights system</i>	13
2.2 An intersectional perspective	14
2.3 Analysis of the radical feminism's view on prostitution	16
3 THE POSITION ON PROSTITUTION WITHIN THE UN REGIME	18
3.1 The legal position	18
3.1.1 <i>Convention on the Suppression of the Traffic in Persons and Exploitation of Prostitution of Others</i>	18
3.1.2 <i>Convention on the Elimination all forms of Discrimination Against Women</i>	18
3.1.3 <i>UN Declaration on the Elimination of all Violence Against women</i>	19
3.2 UN agencies, institutes and organisations	19
3.2.1 <i>UN Women</i>	20
3.2.2 <i>Special Rapporteur on Violence Against Women</i>	21
3.2.3 <i>The International Labour Organization</i>	22
3.2.4 <i>United Nations Office on Drugs and Crime</i>	23

3.2.5	<i>World Health Organization</i>	23
3.2.6	<i>UNAIDS</i>	24
3.3	Analysis of UN:s stance on prostitution	25
4	WHAT ARE THE CORE VALUES OF HUMAN RIGHTS?	27
4.1	The UN definition of human rights	27
4.2	Human dignity	28
4.2.1	<i>Bodily integrity</i>	29
4.3	Summary: what constitutes a human right	30
5	PERSONAL SECURITY, HUMAN DIGNITY AND BODILY INTEGRITY	31
5.1	Comparison with torture	32
5.1.1	<i>Cruel, inhuman or degrading treatment</i>	34
5.1.2	<i>Consent or coercion</i>	34
5.2	Objectification	37
5.2.1	<i>Trading in humans</i>	38
5.2.2	<i>Prostitution is a violation of bodily integrity</i>	39
5.3	Analysis of prostitution as a violation of personal security, human dignity and bodily integrity	41
6	CONCLUDING REMARKS	44
	BIBLIOGRAPHY	45
	TABLE OF CASES	51

Summary

The sex industry is a lucrative, multi-billion dollar business around the world. Many women and girls are trapped in prostitution with the consequences it gives. Prostitution as such is not seen as a human rights violation today. Trafficking and so-called 'enforced prostitution' are on the other hand seen as serious abuses of fundamental rights.

The purpose of this thesis is to investigate and analyse whether prostitution could or should fit into the existing United Nations (UN) human rights regime.

The root cause of prostitution is the gender inequality in the world. Men are seen as superior and women as inferior. This unequal distribution of power is being produced and reinforced in prostitution.

The UN stance on prostitution is quite allowing. The UN institutes and agents refer to prostitution as sex work and distinguish between forced and voluntary prostitution/sex work. It is obvious that UN:s knowledge of prostitution is limited but also that factors such as power and money might be important elements regarding UN:s view on prostitution.

Some of the core values of the human rights are human dignity and bodily integrity. Two examples of violations of human rights in this regard are torture and organ trading. When comparing prostitution with these two practices, it is easy to see the similarities. One thing that differs prostitution from torture is that in torture, there is an explicit use of force whereas in prostitution the coercion is implicit. In organ trading, there is also an implicit form of coercion but it is still seen as a human rights violation. What separates prostitution from organ trading is the gender perspective.

Even though UN claims to work for gender equality and women's rights, it does not want to acknowledge prostitution as a human rights violation, even though it could and should. Prostitution fits into the existing human rights regime since it violates many fundamental rights. But on the other hand, it does also create money and power – for men, at least.

Sammanfattning

Sexindustrin är en lukrativ, multimiljardindustri runt om i världen. Många kvinnor och flickor är fast i prostitution med de konsekvenser det innebär. Idag ses inte prostitution som en kränkning av mänskliga rättigheter. Trafficking och så kallad 'tvingad prostitution' är å andra sidan betraktade som grova kränkningar av fundamentala rättigheter.

Syftet med denna uppsats är att undersöka och analysera om prostitution kan och bör passas in i Förenta Nationernas (FN) rådande system för mänskliga rättigheter.

Grundorsaken till att prostitution existerar är ojämställdheten mellan könen i världen. Män ses som överordnade och kvinnor som underordnade. Den här ojämställdheten skapas och förstärks i prostitutionen.

FN:s inställning till prostitution är ganska tillåtande. FN:s institutioner och aktörer kallar prostitution för sexarbete och skiljer mellan frivillig och tvingad prostitution. Det är uppenbart att FN:s kunskap om prostitution är begränsad men även att faktorer som makt och pengar kan vara viktiga element när det gäller FN:s åsikter om prostitution.

Några av grundvärdena i de mänskliga rättigheterna är mänsklig värdighet och kroppslig integritet. Två exempel på brott mot mänskliga rättigheter som kränker dessa värden är tortyr och organhandel. När man jämför prostitution med dessa två är det lätt att se likheter. En sak som skiljer prostitution från tortyr är att tortyr innefattar ett explicit tvång medan ofrivilligheten i prostitution är implicit. Vad gäller organhandel innefattar även den implicit tvång men ses ändå som en kränkning av mänskliga rättigheter. Det som skiljer prostitution från organhandel är genusperspektivet.

Fast FN påstår sig jobba för jämställdhet mellan könen och för kvinnors rättigheter vill organisationen inte erkänna prostitution som ett brott mot mänskliga rättigheter, fast den både kan och bör. Prostitution passar in i det nuvarande systemet för mänskliga rättigheter eftersom det kränker fundamentala rättigheter. Å andra sidan genererar det också pengar och makt – i alla fall för män.

Abbreviations

CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
FN	Förenta Nationerna
GFE	Girlfriend experience
ICC	International Criminal Court
ICTY	International Criminal Tribunal for former Yugoslavia
ILO	International Labour Organization
NSWP	Global Network of Sex Work Projects
PTSD	Post-traumatic stress disorder
UDHR	Universal Declaration of human rights
UN	United Nations
WHO	World Health Organization

1 Introduction

1.1 Background

Prostitution often referred to as “the world's oldest profession”, directly affects millions of women and girls around the world. It is very difficult to obtain adequate statistics on the exact number of women and girls who have been or are currently in prostitution, probably because the sex industry is, to a large extent, an underground business. Prostitution is illegal in many countries (either the selling of sexual services, the buying or both) and comes with a social stigma attached. This makes it difficult to achieve the correct data as both the prostitutes and the buyers might not admit what they are in fact doing.

However, by looking at different countries' volumes of business of the sex industry will show that prostitution is a very lucrative business around the globe. For example, in Switzerland alone the turn over in the sector is over 2,65 billion USD per year.¹ In Indonesia, the turn over in the sex industry is 1,2 – 3,3 billion USD annually.² The Japanese prostitution industry has a multibillion-dollar turnover and entails 1% of the country's GNP – which is the same as Japan's defence budget.³ In Canada, the escort service industry alone has a turn over of a half billion USD each year.⁴ In 2004, the Women's committee in the European Parliament estimated that the sex industry's turn over was 5-7 billion USD every year in the member states of the European Union. That is more money than all states' military budgets combined.⁵ According to the United Nations (UN), the estimated number of people who have been trafficked is 2,4 million people. Trafficking in human beings generates 32 billion USD yearly.⁶ Of the 2,4 million people, two-thirds are women. 80% of the victims of trafficking are used for sexual exploitation, *i.e.* the prostitution industry.⁷

These figures give a hint of how widely spread and common the practice of prostitution is. Every day, everywhere, millions of women and girls are

¹Bradley, S, *Swiss Sex Industry is Thriving*, Swissinfo, 2006, <http://www.swissinfo.ch/eng/Home/Archive/Swiss_sex_industry_is_thriving.html?cid=53556>

²*Sex industry assuming massive proportions in Southeast Asia*, ILO, 1998, <http://www.ilo.org/global/about-the-ilo/press-and-media-centre/news/WCMS_007994/lang—en/index.htm>

³*Japan Trafficking*, CATW, <<http://www.catwinternational.org/factbook/Japan.php>>

⁴*Canada Trafficking*, CATW, <<http://www.catwinternational.org/factbook/Canada.php>>

⁵Eriksson, Marianne, *Draft report on the consequences of the sex industry in the European Union*, Committee on Women's Rights and Equal Opportunities, European Parliament, 2004, p. 6

⁶General Assembly President calls for redoubling of efforts to end human trafficking, UNODC, 2012, <<http://www.unodc.org/unodc/en/frontpage/2012/April/un-general-assembly-president-calls-for-re-doubled-efforts-to-end-human-trafficking.html?ref=fs1>>

⁷UNODC and UNGIFT, *Global report on trafficking in persons*, February 2009, p. 11

being sold and bought for men's sexual satisfaction. This is why it is so important to write about prostitution; to emphasise these human rights violations that are being conducted towards so many people on a daily basis with the acceptance of the international community. The fact that UN, the world's largest organisation promoting human rights, has not declared prostitution a violation of human rights is nothing but a betrayal towards all women and girls trapped in the sex business.

My starting-point for this thesis is that prostitution is a harmful practice and it is something that cannot be accepted from a human rights perspective. My approach to prostitution is neo-abolitionist, which means that only the buyers should be criminalised, not the sellers. This is the approach taken by for example Sweden, the first country in the world to penalise only the buyers in the transaction. The Swedish legislators chose to criminalise the buyers since the prostitute is, in most cases, the weaker part being used by others to satisfy their sex drives.⁸ I believe that the women who are selling themselves are victims of a patriarchal system and the men who buy them are perpetrators.

With the advancement of people calling for prostitution to be named “sex work”, it is crucial to point out and highlight what prostitution really is: a harmful practise that is rooted in stereotyped gender perceptions.

1.2 Purpose and research question

My research question is: could and should prostitution be seen as a human rights violation within the UN human rights system? Why/why not? Many scholars describe prostitution as a human rights violation but does not specify nor clarify why it is so. This has made me curious and eager to investigate what it is about prostitution that could make it be seen as a violation of the most fundamental rights.

My purpose is to write a thesis that will provide a thorough legal argumentation if and/or why prostitution should be seen as a human rights violation from the perspective of human dignity and equality, two of the cornerstones of the human rights system. With this thesis, I want to show why it is important to change the existing human rights regime in order to protect people, foremost women and girls, from human rights violations.

1.3 Delimitations

The chapter named “What are human rights?” is quite brief as this topic is so broad it could be the subject of a separate thesis alone. Therefore I have cut it down to the most necessary elements that are important for my thesis.

⁸Proposition 1997/98:55 *Kvinnofrid*, p. 104

I have chosen to focus only on women as prostitutes and men as buyers since this is the most common form of prostitution. This is also the most interesting kind of prostitution as the practice of prostitution, in my opinion, is an expression of the gender unequal society all live in.

Though trafficking for sexual exploitation is intertwined with prostitution, this thesis focuses solely on the so-called ‘voluntarily’ prostitution. This is because trafficking already attains a lot of attention and is prohibited in the international human rights agenda. More attention needs to be paid to prostitution, as this practice too often is being overlooked, even though this also is of a coercive nature.

The chapter on the intersectional perspective is very brief. My reason for having this chapter is to show how prostitution not only disproportionately affects women, but women who are on the low end of society. The chapter is used as part of my argumentation that prostitution should not be seen as a free choice of work.

Furthermore, it is important to point out that I am not criticizing the legal system or the human rights regime as such. My thesis is about investigating whether prostitution as a violation of human rights could, and should, fit into the already existing international human rights system.

1.4 Method, disposition and material

1.4.1 Method and disposition

The thesis begins with a chapter (no. 2) where I am applying a feminist theory on prostitution. The feminist theory provides a power analysis of the society and explains why prostitution exists. I start with this chapter to give a background to the phenomenon of prostitution.

When using a feminist theory, one must start from the position that in society, men and women are being treated fundamentally different. Men have a dominating position whereas women are being subordinated. I am also using an intersectional perspective as part of the feminist theory. This is because it is important to highlight that even though gender is the basic factor in prostitution; class and social status, age, nationality and ethnicity are also key ingredients.

In chapter three, I am describing *de lege lata*, what the law regarding prostitution is right now. In this chapter, I am using a legal dogmatic method. I am describing the current legal system regarding prostitution within the UN regime by looking at the relevant conventions and declarations and how these are being interpreted in general comments, guidelines and publications from different UN bodies and agencies. Using a legal dogmatic method usually means that you look at preparatory work, case law and doctrine. However, when it comes to prostitution, there is not

any preparatory work, case law nor doctrine, which is why I have used other forms of publications from the UN, for example general comments, guiding principles and various reports.

Even though the focus is on the UN human rights regime, I am using other regional and international human rights system as well. This is because it is common in international law to compare with other human rights system in decision-making. Furthermore, as my thesis is *de lege ferenda* it is important to find justification for my thoughts. By looking at other human rights system, it is possible to find arguments why the UN should include prostitution within its human rights regime.

In the next chapter (no. 4), I am using a legal philosophical method. I am looking into and investigating what the cornerstones of human rights are. What makes something a human right? How does the UN classify a human right? Two of the essential ingredients of human rights are human dignity and equality. These two components are the most referred in the literature regarding prostitution as a human rights violation. In this chapter, I am examining what human dignity is, especially one of its components bodily integrity, from a philosophical perspective.

Chapter five is about investigating how prostitution fits within the existing framework of human rights. Using the outcome of previous chapter, I will establish if, how and why prostitution is a violation of human rights, with a focus on human dignity and bodily integrity. In sub-chapter 5.1, I am using a comparative and sociological method by comparing prostitution to torture and other cruel, inhuman or degrading treatment. The comparison is made on a basis of case law on torture from international courts and sociological studies made on the impact of prostitution on its victims. Sub-chapter 5.1.1.3 is written as an argumentation where the issue of free choice is discussed from a political, pragmatic and legal point of view.

Sub-chapter 5.2 starts with a philosophical and pragmatic briefing on what objectification entails. The chapter continues with a comparative section, where the prohibition of organ-selling is being discussed in comparison with a possible prohibition of prostitution, on the basis of human dignity. The sub-chapter ends with a philosophical and pragmatic analysis of the essence of bodily integrity and its connection to prostitution.

Chapter five is about the individual harm a person in prostitution faces whereas chapter two is more about societal structures and why prostitution is detrimental for society at large.

Throughout the thesis, I am using an analytical jurisprudence, meaning I am asking: what are human rights? What are the criteria for legal legitimacy? I also apply a normative jurisprudence; what the law ought to be.

The analysis will be integrated throughout the whole text instead of being presented as an individual chapter at the end. The thesis will end with some concluding remarks to wrap up the argumentation.

1.4.2 Material

I have used a great variety of material for this thesis. As adequate statistics and facts on prostitution are difficult to obtain it is important to collect data from several different sources. Some authors are more frequently referred to than others, *inter alia* Melissa Farley, founder of Prostitution Research and Education. This is simply because these authors have done a profound amount of research on prostitution and can therefore provide facts and numbers that lack its equivalent anywhere else.

Another reason for using a variety of sources is that this thesis is a *de lege ferenda* paper. As I have previously written, to make a norm a human right, one must have broad justification why this norm is important enough to get the status of a human right.

I have used official commentaries on international conventions, for example the Committee's on the Elimination of All Forms of Discrimination against Women general comments on Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). I have used UN publications and case law from the European Court of Human Rights (ECtHR), International Criminal Tribunal for the former Yugoslavia (ICTY) and the Inter-American court. Many legal and sociological books and publications have been read and studied to find facts, statistics and opinions on prostitution. Articles from law journals have been used to find arguments pro and con prostitution. Several web pages, created by organisations and universities have been read to find facts about human rights, philosophy and prostitution.

1.5 Definition of prostitution

The traditional form of prostitution is the purchase of a sexual service, whether it is on the street, in a brothel or online. Lap dancing and pole dancing in strip clubs are forms of prostitution. Paying to have sex via a telephone or for someone to strip in front of a web camera is also prostitution.

Other forms of prostitution that involve other acts than the purely sexual are the girlfriend experience (GFE) and the mail-order bride phenomenon. GFE means that you rent a woman to be your pretend girlfriend, for a dinner, a weekend or a longer period of time. The “girlfriend”, apart from performing sexual services, has to act as if she is in love with her buyer around the clock during the time she is being rented. A mail-order bride is a woman from a developing country, usually from poor countries, who comes to a western country to live with a man who has ordered her online or found her

when he has been on vacation in another country. There are many, many organisations working as bride agencies, bringing together a wealthy man with a poor woman. The man gets a wife whom he can have sex with and who cleans the house and cooks dinner, the woman gets an escape from poor living conditions, at the cost of her freedom.

This list gives examples of different kinds of prostitution and is not exhaustive.

2 Gender and equality

One of the foundations in the human rights system is equality between all living persons. Equality is about everyone's equal value and worth as human beings. No person should ever be considered more or less valuable than someone else. Gender equality is about men and women being equal and having the same rights and conditions in life. Men and women should have the same opportunities regarding education, work, relationships, freedom from violence etc. That is however not the case today and it is usually women who suffer the most from the inequality.

The strive for gender equality has high priority on UN:s human rights agenda. CEDAW, the women's convention, came into force in 1979. In 1993, the General Assembly created the Declaration on the Elimination of Violence against Women. UN Women, a UN agency working for women's rights, was established in 2010. Within the UN regime, there have so far been four world conferences on women, with the purpose of strengthening equality between the sexes. A fifth one is planned to occur during 2015. In 2008, UN:s secretary-general Ban Ki-Moon launched the campaign UNiTE, a project that aims at ending violence against women. By 2015, UNiTE has the goal to make all countries “adopt and enforce national laws to address and punish all forms of violence against women and girls”.⁹ Prostitution is however not included in the list of actions that are considered to be violence against women.¹⁰

Despite the high priority, women continue to be victims of gender-based violence, discrimination and suppression.

In this chapter, the focus will be on a structural level, explaining the root causes of prostitution.

2.1 Feminist theory

I am using feminist theory as a method to explain the gender inequality in society. There are different feminist theories and the one I am using is commonly known as radical feminism. I use the core of radical feminist theory because according to me, it is the most thorough and comprehensive societal analysis. Even though one might not agree with radical feminism, the theory can still be applicable on prostitution.

⁹About UNiTE, UNiTE, <<http://endviolence.un.org/about.shtml>>

¹⁰Violence against women: the situation, UNiTE, <<http://endviolence.un.org/situation.shtml>>

2.1.1 Radical feminism as a way of explaining gender inequality

Radical feminism believes that women are oppressed because they are women. The oppression of women is the most fundamental and widespread of all oppressions. The oppression is expressed in the control men have over women, the sexual oppression within and outside family and contempt of women.

Radical feminism states that this oppression concerns all women, everywhere, and the common enemy for all women is the patriarchy. Patriarchy is an expression for male power and domination over women. This power relation – male domination and female subordination – exists everywhere in our society. From birth, women are taught that they are inferior to men. The subordination of women is not only on an ideological basis, but also violence and the threat of violence. The furthest expression of patriarchy is the control of women as sexual beings where rape is the most extreme weapon of control.

One of main standpoints made by radical feminists is that there should be no division between the private and the public sphere. Issues concerning women usually happen at home, the private sphere, which has not been as regulated legally as much as the public sphere.¹¹ For example, according to radical feminism, sexuality should not be seen as something private, in the sense that one cannot commit crimes in the bedroom and get away with it.¹² Men's control over women's bodies and sexualities is one of the most basic principles of patriarchy. This control is the actual root of women's subordination. If women want to be free, they must flee from this control.¹³

2.1.2 Radical feminism's view on prostitution

According to radical feminists, prostitution is not a free choice. All prostitution is forced, directly or indirectly. Some feminists compare prostitution with torture. The fact that only state agents can be held responsible for torture is a clear example of the way civil rights do not include women's experience. For women (the sellers), prostitution is about losing freedom, whereas for men (the buyers) it is the opposite; they gain freedom.¹⁴ Most, maybe all, prostitution includes element of some of the most basic kinds of coercion, for example poverty. The fact that women are forced into prostitution has been overlooked since prostitution is about sex and sex is what women are all about. When it comes to force and coercion,

¹¹Gemzöe, L, *Feminism*, Bilda Förlag, Smedjebacken, 2004, p. 45ff

¹²Ibid, p. 96

¹³Weedon, C, 'Radical and revolutionary feminism' in F Ashton and G, Whitting (eds.), *Feminist theory and practical policies*, School for advanced urban studies, Dorchester, 1987, p. 10f

¹⁴MacKinnon, C, *Women's lives, men's laws*, The Belknap Press of Harvard University Press, Cambridge, 2005, p. 151f

one should not look upon the means of subjection but rather the obstacles that hinders a person from leaving the state of subjection.¹⁵

Prostitution turns the woman into an object instead of a human being. As the legal scholar MacKinnon puts it; “prostitution gives men personhood, deprives women of it”.¹⁶ Radical feminism emphasizes that we all live in a world that is defined by and circles around men. Prostitution is not something private and harmless but rather a powerful tool to create, reinforce and continue objectification of women by sexuality. The fact that society at large accepts that men constantly buy women in prostitution shows that “all women are thought to be accessible (for a price) and that their commodification is natural”.¹⁷

In the view of radical feminism, prostitution is both an expression for the patriarchal sexual structures and a way to legitimise these structures since the mere existence of prostitution is a public acknowledgement that men as a group has a right to women's sexuality.¹⁸

Sexuality is at the bottom line of the male domination of women and the gender hierarchy in the world. Part of being a man is to have access to women's bodies.¹⁹

Radical feminists view prostitution as a form of violence against women, since the woman in prostitution is denied pleasure and personhood and she has to dissociate herself to be able to survive.²⁰

Prostitution is not only harmful to the women who are actually forced to practice it, but also to all women in society. For example, when specific areas in cities are designated red-light districts, most women – who are not in the industry themselves – will probably feel excluded from these areas. Men usually take access to public space for granted but women have always felt restricted in this area because of male violence or the threat thereof.²¹

By legalizing prostitution, it normalizes the subordination of women – all women. Or as one woman in prostitution put it: “I basically just thought that women were put on this earth for men's sexual pleasure in exchange for a roof over your head and food in your stomach”.²²

¹⁵MacKinnon, *Women's lives, men's laws*, p. 157ff

¹⁶Ibid, p. 153

¹⁷Freeman, J, ‘The feminist debate over prostitution reform’, *Berkeley Women's Law Journal*, 5, 1989-1990, p. 92f

¹⁸Gemzöe, p. 96

¹⁹Freeman, J, *The feminist debate over prostitution reform*, p. 92f

²⁰Jeffreys, S, ‘Prostitution, trafficking and feminism: An update on the debate’, *Women's Studies International forum*, no. 32, 2009, p. 318

²¹Jeffreys, S, ‘Keeping women down and out: The Strip club Boom and the Reinforcement of Male Dominance’, *Signs special issue: Feminists theorize international political economy*, vol 34, no.1, 2008, p. 164f

²²Giobbe, E, ‘Confronting the liberal lies about prostitution’, in *The sexual liberals and the attack on feminism*, Pergamon Press, New York, 1990, p. 69

2.1.2.1 Prostitution as a harmful traditional practice

Some radical feminists are of the opinion that prostitution can be seen as a harmful traditional practice, *i.e* practices that “reflect values and beliefs held by members of a community for periods often spanning generations”.²³ Harmful traditional practices damage the health and well-being of women and girls. The practices are done for the benefit of men and are a corollary of the value women and girls entail in society, where women are inferior and men are superior.²⁴ In CEDAW article 2(f) it says that all states shall take all appropriate measures, including legislation, to stop customs and practices that discriminate against women. In article 5(a) it is said that states shall take all appropriate measures 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. Thereby, all state parties to CEDAW must try to stop harmful traditional practices in order to fulfil their obligations.

Phenomenon commonly referred to as harmful traditional practices include female genital mutilation, female infanticide, dowry, early marriage, early pregnancies etc.²⁵ Prostitution is not included among these practices but could easily be as it fits the criteria established by the UN for harmful traditional practices. Prostitution is harmful to women, both psychologically and physically. Prostitution is a consequence of women's subordination. The sexual desire which is the foundation for the practice of prostitution is male, not female. Prostitution exploits the fact that women have less power regarding economy, physique and social life, to serve an exclusively male desire. Prostitution is definitely seen as something traditional since it is commonly referred to as “the world's oldest profession”. This should not be seen as a justification for prostitution, but rather an expression of the contradiction many states uphold, by on one hand claiming to be socially progressive and striving for equality, and on the other hand allow a “centuries-old forms of slavery in relation to women”.²⁶

2.1.3 Radical feminism's influence on the human rights system

Radical feminism has had an impact on lawmaking at the UN level. The line between the private and public sphere has been loosened up and the power differences between men and women are acknowledged.

This impact can, for example, be seen in the Declaration on the Elimination of Violence against Women. In the preamble to the declaration, one can read the following section: “[r]ecognizing that violence against women is a

²³Winter, B, *et al*, 'The UN Approach to Harmful Traditional Practices', *International Feminist Journal of Politics*, vol. 4, no. 1, 2002, p. 75

²⁴Ibid, p. 80

²⁵Ibid, p. 76

²⁶Ibid, p. 87

manifestation of *historically unequal power relations between men and women*, which have led to *domination over and discrimination against women by men* and to the prevention of the full advancement of women, and that *violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men*” (my italicizing).²⁷

The influence of radical feminism can also be seen in the general recommendations made by the CEDAW Committee. In the Committee's general recommendation no. 19, on violence against women, it is stated that “[t]raditional attitudes by which *women are regarded as subordinate to men* or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or *control of women*. The effect of such violence on the physical and mental integrity of women is to deprive them of the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. While this comment addresses mainly actual or threatened violence the underlying consequences of *these forms of gender-based violence help to maintain women in subordinate roles*” (my italicizing).²⁸ The Committee further states that “[t]hese attitudes also contribute to ... commercial exploitation of women as sexual objects, rather than as individuals. This in turn contributes to gender-based violence.”²⁹

Despite the fact that the Committee seems to see the link between women's subordination, sexual objectification and violence, it does not condemn prostitution as such. Regarding trafficking, sex tourism and mail order brides, it stresses the fact that “[t]hese practices are incompatible with the equal enjoyment of rights by women and with respect for their rights and dignity”.³⁰ Regarding prostitution, the committee says that “poverty and unemployment *force* many women, including young girls, into prostitution. Prostitutes are especially vulnerable to violence because *their status, which may be unlawful*, tends to marginalize them” (my italicizing).³¹

2.2 An intersectional perspective

The feminist perspective is the most crucial one regarding prostitution, as the relationship between men and women in a patriarchal society is the foundation of prostitution. During certain circumstances, any woman could end up in prostitution. However, the risk is bigger for some women than

²⁷Declaration on the Elimination of Violence against Women, General Assembly, 1993, <<http://www.un.org/documents/ga/res/48/a48r104.htm>>

²⁸The Committee on the Elimination of Discrimination against Women, *General Recommendation no. 19*, 11th session, 29/01/1992, para 11

²⁹Ibid, para. 12

³⁰Ibid., para. 14

³¹Ibid, para. 15

other. If you are a woman with no higher education, living in a rural area in a poor country you are much more likely to end up in the prostitution industry than if you are a middle-class woman from, *inter alia*, Western Europe, the US or Australia.

In many countries in West Europe, the amount of foreign prostitutes outnumbers the local prostitutes.³² For example, in the Netherlands, it is estimated that 80% of the prostituted women working in brothels have been trafficked there from other countries.³³ The same number goes for the city of London where less than a fifth of the women working in prostitution are of British origin.³⁴

The women who are trafficked to Western Europe mainly come from Czech Republic, Poland, Russia, Ukraine, Morocco, Thailand, Ghana, Nigeria, Brazil and the Dominican Republic.³⁵

Poverty is the most fundamental reason why women enter into prostitution. Most of the women in prostitution have not finished high school and have no work experience other than prostitution.³⁶ In developing countries, many women in prostitution come from rural areas. In a study from India, almost 93% of the interviewed women came from the rural districts.³⁷ As stated in the previous sub-chapter, the CEDAW Committee has acknowledged the fact that poverty and unemployment are the important factors regarding that force women into prostitution. However, it is important to remember that poverty is not the root cause of prostitution. Men are also poor, but they do usually not solve their financial situation by entering the sex industry.³⁸

Another important aspect is age, as the middle age for entry into prostitution is usually very low. This will be further discussed in chapter 5.

Many women in prostitution share a traumatized childhood. Almost all studies done on women in prostitution show that a vast majority have, in some way, been abused as children. For example, in one survey (a research project documenting common experiences shared by women in prostitution by interviewing 19 women), 90% of the participating women had been subject to physical or sexual assault as children. Within this group, 57% had been assaulted during one to five years. 43% had been victims of two or three different perpetrators.³⁹ In another survey (an inquiry on current and lifetime history of sexual and physical violence among 854 prostitutes in

³² *Europe Trafficking*, CATW, <<http://www.catwinternational.org/factbook/europe.php>>

³³ Justice [ACTs], *Prostitution and Trafficking Research*, 2009, p. 3

³⁴ Dickson, S, *Sex in the city: Mapping Commercial Sex across London*, The Poppy Project 2004, p. 19

³⁵ *Europe Trafficking*, CATW <<http://www.catwinternational.org/factbook/europe.php>>

³⁶ Giobbe, p. 72

³⁷ Dasgupta, SD and I, Sinha, 'Desiring Motherhood, Selling Sex: Women in Kolkata's Commercial Sex Trade' in RL Dalla *et al* (eds.), *Global Perspectives on Prostitution and Sex Trafficking*, Lexington Books, Plymouth, 2011, p. 106

³⁸ Jeffreys, S, 'Prostitution, trafficking and feminism', p. 317

³⁹ Giobbe, p. 73

nine different countries), 70% of the interviewees said that abuse during their childhood had been a factor that pushed them into the sex industry.⁴⁰ In a third survey (aiming at assessing the lives of 105 Native women in Minnesota, US), 79% of the interviewed women had been victims of sexual abuse during their childhood.⁴¹

Racism is another factor that is relevant in prostitution. Non-Caucasian women are much more likely to be in a poor and marginalized position in society than Caucasian women, as educational systems and work opportunities tend to favour them. Prostitution might be only possible way to earn money as a non-Caucasian woman.⁴²

Men who buy sex often choose the woman they buy on the basis of racial or ethnic preferences. In a survey (comparing attitudes and knowledge of, *inter alia*, prostitution, rape and trafficking among 101 men who buy sex and 100 men who don't), 50% of the interviewed male sex buyers said they chose women due to their ethnicity. These preferences are often based on stereotypes. The men were seeking someone that was "ethnically different or exotic, the racial other".⁴³ Ethnicity is perceived by sex buyers as something erotic. One interviewed sex buyer in another study said that: "I had a mental check list in terms of race; I have tried them all". Foreign women are often described by sex buyers as fetishlike objects and were seen as collectable items. This ethno-sexualisation of "other" women can be used as a justification to objectify and exploit foreign women.⁴⁴

I would like to summarize this sub-chapter on the intersectional perspective with a question posed by MacKinnon: "[i]f prostitution is a free choice, why are the women with the fewest choices most often found doing it?"⁴⁵

2.3 Analysis of the radical feminism's view on prostitution

It is clear to me that the radical feminist theory has influenced UN:s work and has had an impact on, for example, the interpretation of CEDAW. It is also clear that UN is only following the feminist train of thought to a certain degree. If UN was fully adapting the feminist theory, it would view prostitution as a harmful practice that is a corollary of gender hierarchy and a reinforcement of the traditional gender stereotypes in society - exactly the things UN claims to work against. It would also acknowledge the fact that prostitution is a consequence of society's failure to protect its most vulnerable female citizens, who have to prostitute themselves to survive.

⁴⁰Farley, M, *et al*, *Prostitution and trafficking in nine countries*, p. 35

⁴¹Farley, M, *et al*, *Garden of Truth*, p. 3

⁴²Giobbe, p. 69

⁴³Farley, M, *et al*, *Comparing Sex Buyers with Men Who Don't Buy Sex*, Prostitution Research & Education, 2011, p. 18

⁴⁴Farley, M, *et al*, *Men who buy sex*, Eaves, London and Prostitution Research & Education, San Francisco, 2009, p. 21

⁴⁵MacKinnon, C, *Women's lives, men's laws*, p. 159

I think the reason why the UN only half-heartedly has adopted the feminist theory is because UN, like all other institutions, organisations and agencies in the world are acting in a patriarchal system. By acknowledging that prostitution is a way of controlling women and their sexuality and try to combat that, it would mean that men lose power over women. It would mean that UN and the rest of the world would have to accept the radical notion that women are, in fact, human beings - subjects with a personhood. Not objects that men have the right to buy and do whatever they want with. Power can be hard to let go of as it gives you money, freedom and access to the public sphere.

I do not think that this is intentional by the UN. I believe it is a result of the different political, cultural and social circumstances in each Member State. There is no international consensus on the issue of prostitution and until there is, UN will not be able to change the interpretation of CEDAW 's article 6, nor the standpoints of the UN agencies. As long as the countries of the world are not ready to recognize every person's inherent worth and dignity, including women, it will be difficult to acknowledge that prostitution is in fact a violation of some of the most basic and fundamental rights: personal security, human dignity, bodily integrity and equality.

On the other hand – UN is the leading agency in the world for promoting, protecting and fulfilling human rights. Shouldn't UN lead the way and show what human rights are or ought to be? Shouldn't UN, that claims to be working for gender equality, be arguing and fighting for women's and girls' right to be free from prostitution?

Perhaps power is not the only factors contributing to UN:s acceptance of prostitution. Another element to take into consideration is money. As shown in the introduction chapter, prostitution in its various forms is big business. It is a lucrative industry with a turn over of many, many million dollars every year. For states that legalizes and encourages the practice of prostitution, the sex industry is a reliable source of income. Of course it would not be popular among Member States if one of their biggest incomes would disappear.

3 The position on prostitution within the UN regime

3.1 The legal position

Prostitution as such is not a human rights violation in any international treaty but it is mentioned in a number of international law conventions, both regarding human rights and other areas of law. In this thesis, the focus will be only on the human rights treaties and declarations within the UN context. The purpose of this chapter is to clarify how the UN regards prostitution from a human rights perspective.

3.1.1 Convention on the Suppression of the Traffic in Persons and Exploitation of Prostitution of Others

In the Convention on the Suppression of the Traffic in Persons and Exploitation of Prostitution of Others (1949), article 1, it is stated that “[t]he Parties to the present Convention further agree to punish any person who: [...] Exploits the prostitution of another person, even with the consent of that person.” In the preamble to the convention, it is stated that prostitution is not compatible with human dignity and worth. Prostitution destroys the welfare of persons, families and societies.

The Convention does not call for states to prohibit purchases of sexual services, but to abolish brothels, pimping etc (article 2).

This convention is monitored by, *inter alia*, the Special Rapporteur on contemporary forms of slavery. The Special Rapporteur has made a comparison between prostitution and forced labour.⁴⁶ The Special Rapporteur does however make a distinction between people who are forced, due to economic reasons, to work under unacceptable standards and those who are in fact forced by a third party to perform work or services involuntarily. The first group is being exploited because of their vulnerability but it is not certain that it amounts to forced labour.⁴⁷

3.1.2 Convention on the Elimination all forms of Discrimination Against Women

In article 6 in CEDAW (1979), it is stated that “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic

⁴⁶Shahinian, G, *Document no. A/HRC/12/21*, Human Rights Council, 2009, p. 9

⁴⁷Ibid, p. 15

in women and exploitation of prostitution of women.” In the CEDAW Committee's General Comment no. 19, the Committee has different views on different forms of prostitution. Sex tourism and organised marriages are seen as practices incompatible with human rights and dignity. 'Traditional' prostitution as described in the introduction chapter, on the other hand, is not viewed as a violation of human rights.⁴⁸

When the text of the Convention was drafted, there was a debate between member states of the UN as to how the wording of article 6 should be. For example, Morocco wanted it to be “States parties shall... suppress prostitution... and exploitation of prostitution”. The Netherlands and other states voted against this proposal as it would include an unacceptable aspect to the article.⁴⁹

3.1.3 UN Declaration on the Elimination of all Violence Against women

The UN Declaration on the Elimination of Violence Against Women, adopted in 1993, is not a legally binding instrument. It can still be interesting to look at, however, as it is the newest UN human rights instrument regarding prostitution and since it was adopted to strengthen CEDAW.⁵⁰ The Declaration can serve as a guiding principle on how the UN views violence against women.

Article 2(b) of the Declaration states that “[v]iolence against women shall be understood to encompass... forced prostitution.”

3.2 UN agencies, institutes and organisations

The human rights are the basic foundations of the UN system. In the preamble to the UN Charter, it is stated that all Member States of the UN must “reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women”.⁵¹

⁴⁸ The Committee on the Elimination of all Discrimination Against Women, para 14-15

⁴⁹Rehof, LA, *Guide to the Travaux Préparatoires of the United Nations Convention of the Elimination of All Forms of Discrimination against Women*, Martinus Nijhoff Publishers, Dordrecht, 1993, p. 91

⁵⁰ *How CEDAW works internationally*, Equality and Human Rights Commission, <<http://www.equalityhumanrights.com/human-rights/international-framework/un-convention-on-the-elimination-of-discrimination-against-women/how-cedaw-works-internationally/>>

⁵¹ *United Nations Documentation: Research Guide*, UN, <<http://www.un.org/depts/dhl/resguide/spechr.htm#intro>>

This section of the thesis seeks to establish how different UN bodies view the issue of prostitution and how they deal with the problem, *i.e.* how the UN practically interpret the human rights obligations set out in treaties and declarations. I have chosen these particular UN bodies because they all deal with issues that are relevant regarding prostitution, such as women's rights, gender equality, labour rights, health, criminalisation etc. Furthermore, since they represent different areas of the UN regime, they can display a wide range of UN:s stance on prostitution.

The number of reports and publications used in this sub-chapter is low. This is because, as far as I am concerned, the documents from these agencies on prostitution are few and limited. I have used the ones I could find.

3.2.1 UN Women

UN Women is UN:s organ for gender equality and empowerment of women. UN Women is aiming at eliminating discrimination against girls and women, empower women and achieve equality between men and women.⁵²

UN Women does not make any explicit statements regarding prostitution or sex work on its website. The only report I have been able to find, that is specifically focused on prostitution, is from 2011 on dynamics and vulnerabilities of HIV transmission among sex workers in Palestine, made by The Palestinian National AIDS committee together with UN Women. In this report, the writers clearly distinguishes between forced and voluntary sex work but do acknowledge that sometimes it can be difficult to tell if the self-claimed chosen sex work is in fact chosen. Among the interviewed people claiming to have entered the sex industry by choice, there is a woman and mother of two whose husband had borrowed a lot of money and could not pay back. She entered into prostitution to support her family. Another woman, also mother of two, was a drug addict whose husband died. She did not get any help from anyone and started to work in the sex industry to provide for her children. A third example is Reem. Her husband had a drug addiction “and forced her into prostitution as a means of paying for drugs. He then got her addicted to drugs as well and after his death she began sex work voluntarily in order to pay for her own drug addiction.”⁵³

In 2011, UN Women and other UN agents wrote a joint UN Commentary on a European Union-directive regarding trafficking. In the commentary, there is a discussion on how to decrease the demand of prostitution, as a way to limit trafficking in human beings. An example of a successful campaign, according to the UN, to raise awareness on trafficking and forced prostitution is the Dutch Crime Stoppers “Appearances Deceive”. The

⁵²About UN Women, UN Women, <<http://www.unwomen.org/about-us/about-un-women/>>

⁵³UN Women and The Palestinian National AIDS Committee, *Exploring the Dynamics and Vulnerabilities of HIV Transmission Amongst Sex Workers in the Palestinian Context*, 2011, p. 26f

purpose of this campaign was to educate clients and others involved in the sex industry to spot factors of possible forced prostitution and report suspicious cases to the authorities.⁵⁴

3.2.2 Special Rapporteur on Violence Against Women

The Special Rapporteur's on Violence Against Women mandate is to find information about violence against women, why it exists and what consequences it has. The Special Rapporteur recommends ways to end violence against women by adopting a “comprehensive and universal approach to eliminate all forms of violence against women and its causes and to remedy its consequences”.⁵⁵

The Special Rapporteur has acknowledged that trafficking and forced prostitution is violence against women. However, if states criminalize prostitution or commercial exploitation of prostitution, it makes women in prostitution more vulnerable and less inclined to seek help from authorities.⁵⁶

One of the Special Rapporteur's main focus areas is reproductive health, including sexual health. This means women should be able to make their own decisions regarding sexuality and reproduction without discrimination, force or violence. Women should be able to control their own sexuality and it is the State that has that the primary duty to ensure that women's rights are being fulfilled.⁵⁷

Controlling women's sexuality is used as a way to maintain men's domination and women's subordination at social, cultural and State levels. Gender-based violence is used as a way for men to control women's sexuality “in ways that cast women as male property”.⁵⁸ The Special Rapporteur is critical towards protectionist laws. To end violence against women, one must go beyond sexual violence and -discrimination and instead create positive rights relating to sexuality. “[A] focus on sexual wrongs and regulation will only perpetuate sexual stereotypes, sexism and orthodoxies that reinforce the control over female sexuality—ideologies that underscore gender inequality.”⁵⁹

⁵⁴ OHCHR *et al*, *Prevent Combat Protect Human Trafficking. Joint UN Commentary on the EU-directive – A Human Rights Based Approach*, 2011, p. 96f

⁵⁵ *Special Rapporteur on violence against women, its causes and consequences.*

Introduction, Office of the High Commissioner for Human Rights,

<<http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/SRWomenIndex.aspx>>

⁵⁶ The Special Rapporteur on Violence Against Women, its causes and consequences, *15 years of the Special Rapporteur on Violence Against Women, its causes and consequences (1994-2009)*, A Critical Review, p. 21f

⁵⁷ *Ibid*, p. 20

⁵⁸ *Ibid*, p. 37

⁵⁹ The Special Rapporteur on Violence Against Women, its causes and consequences, *15 years of the Special Rapporteur on Violence Against Women, its causes and consequences (1994-2009)*, A Critical Review, p. 47

The Special Rapporteur's opinion about prostitution is that many women in it are being coerced to enter the industry, either by a third person or because of economic or social difficulties. Some women are tricked into prostitution by mail-order bride agencies who have given the women a promise of a job or a husband in another state. The Special Rapporteur demands states to ensure that girls do not get recruited into prostitution and to watch recruitment agencies.⁶⁰

3.2.3 The International Labour Organization

The International Labour Organization (ILO) is a specialized agency within the UN system, with a mandate to create and monitor international labour standards. Governments, employers and workers sit together and make policies and programs that promote decent work.⁶¹

In a report published by ILO in 1998, *The Sex Sector: The economic and social bases of prostitution in Southeast Asia*, the sex industry is considered a booming economic sector that contributes to employment and the national income. ILO recognizes that it can be difficult for governments to handle the growing industry, as it can be difficult to know who entered the industry by free choice and who did it by force. According to ILO studies, many sex workers began their lives in prostitution for pragmatic reasons and were quite aware of the choice they made. Prostitution is seen as an easy way to make money. Working in the sex industry is more flexible, takes less time and gives more money than working in a factory or in the service sector.

The ILO further claims that the sex industry is “a phenomenon that is mainly economic in nature” - but is also “deeply rooted in a double standard of morality for men and women”. It is outside the scope of ILO's mandate to say whether countries should legalise prostitution but the organisation does give some guidance to states: “[f]or adults who freely choose sex work, the policy concerns should focus on improving their working conditions and social protection so as to ensure that they are entitled to the same labour rights and benefits as other workers.”⁶²

The ILO does recognize that prostitution can have serious consequences concerning public morality, social welfare, HIV/AIDS transmission, violations of human rights of sex workers, criminality and commercial sexual exploitation.⁶³

⁶⁰*Women and violence*, United Nations Department of Public Information, 1996, <<http://www.un.org/rights/dpi1772e.htm>>

⁶¹*About the ILO*, ILO, <<http://www.ilo.org/global/about-the-ilo/>>

⁶²*Sex industry assuming massive proportions in Southeast Asia*, ILO, 1998 <http://www.ilo.org/global/about-the-ilo/press-and-mediacentre/news/WCMS_007994/lang-en/index.htm>

⁶³*Ibid.*

3.2.4 United Nations Office on Drugs and Crime

United Nations Office on Drugs and Crimes (UNODC) is working to enhance Member States' capacity to combat drug trade, international crimes and terrorism. The entity always makes an effort to implement a gender perspective while striving to reach its objectives.⁶⁴

UNODC's stance on prostitution is to be strictly neutral. UNODC is mainly interested in prostitution from the view of trafficking. Since there is no international consensus on which approach – legalisation or criminalisation - towards prostitution that is the most effective when it comes to combat trafficking, the UNODC does not choose a side. The Member States of the UN has decided to leave the decision-making regarding prostitution to its own domestic authorities. It is up to each state to make a policy on prostitution.⁶⁵

3.2.5 World Health Organization

The World Health Organization (WHO) “is responsible for providing leadership on global health matters, shaping the health research agenda, setting norms and standards, articulating evidence-based policy options, providing technical support to countries and monitoring and assessing health trends”.⁶⁶

In a publication from 2002 by WHO, *Defining sexual health*, sexual health is defined as “physical, emotional, mental and social well-being in relation to sexuality”. It is about a “respectful approach to sexuality and sexual relationships” and being able to enjoy sexual experiences without “coercion, discrimination and violence”.⁶⁷ Sexual rights include the right to, *inter alia*, respect for bodily integrity and to “pursue a satisfying, safe and pleasurable sexual life” without force, discrimination or violence.⁶⁸ In the same report, it is stated that forced prostitution is considered sexual violence and has a deep impact on the health of the victim.⁶⁹

In a WHO pamphlet from 2005, regarding women in prostitution and HIV prevention, the organisation prefers to call prostitution sex work and makes a difference between voluntary and coerced sex work. According to WHO, many sex workers face violence because of stigma and discrimination. Every society in the world stigmatizes sex workers which make them

⁶⁴ *About UNODC*, UNODC, 2012, <<http://www.unodc.org/unodc/en/about-unodc/index.html?ref=menutop>>

⁶⁵ *Human Trafficking FAQs*, UNODC, <http://www.unodc.org/unodc/en/human-trafficking/faqs.html#What_is_UNODC's_stance_on_prostitution>

⁶⁶ *About WHO*, WHO, 2012, <<http://www.who.int/about/en/>>

⁶⁷ WHO *et al*, *Defining sexual health*, Geneva. 2006, p. 5

⁶⁸ *Ibid*, p. 5

⁶⁹ *Ibid*, p. 9

vulnerable. Sex workers are considered immoral by many and therefore deserve to be punished.⁷⁰

The primary focus of WHO regarding the health of women in prostitution seems to be HIV prevention. According to WHO:s website, in order to avoid transmissions of HIV, it is important to empower sex workers, by promoting usage of condoms and HIV testing. The needs and vulnerabilities sex workers face must be taken into consideration together with a legal framework that is compatible with human rights.⁷¹

On WHO:s website,⁷² in the Policy and advocacy section, one can find a report by the organisation Global Network of Sex Work Projects (NSWP). NSWP is an organisation claiming that many women in prostitution enter the industry by free will and that sex work should be seen as a regular kind of job with rights attached, such as sick leave, maternity leave and holidays.⁷³ NSWP also challenges that prostitution can be seen violence against women and believes that this statement is a myth.⁷⁴ Furthermore, NSWP is an advisory group to the UN organ UNAIDS. The purpose of the advisory group is to “support and advise UNAIDS ... from a perspective that is informed by human rights principles, the best available evidence and the lived experience of sex workers.”⁷⁵

3.2.6 UNAIDS

UNAIDS is a joint UN program on HIV and AIDS, with the aim to achieve “universal access to HIV prevention, treatment, care and support.” One of the ways to fulfil this goal is to speak out “in solidarity with the people most affected by HIV in defence of human dignity, human rights and gender equality”.⁷⁶

In a guidance note on HIV and sex work written in 2009, UNAIDS state that not all, but some, enter the sex industry willingly, without being forced. Others have been indirectly forced through poverty, gender inequality, lack of education and/or employment options, drug addictions, family problems etc. The UN and other actors should make sure that sex workers get all essential tools to be able to make a free choice, in consistency with their human rights. No matter what the legal status of “sex work” is, it must always be approached through a human rights based perspective. A human

⁷⁰WHO, *Violence against women and HIV/AIDS: Critical intersections, Violence against sex workers and HIV prevention*, Information bulletin Series number 3, 2005, p. 1f

⁷¹HIV/AIDS, *Sex work*, WHO, 2012, <http://www.who.int/hiv/topics/sex_work/about/en/index.html>

⁷² *HIV/AIDS, Sex work*, WHO, 2012, <http://www.who.int/hiv/topics/sex_work/en/index.html>

⁷³ Colectivo Hetaira, ‘Some uncomfortable questions’, in *Research for sex work*, NSWP, issue 12, 2010, p. 17f.

⁷⁴ NSWP, *Research for sex work*, issue 12, December 2010, p. 40

⁷⁵ *UNAIDS Advisory Group*, NSWP, <<http://www.nswp.org/unaids-advisory-group>>

⁷⁶*About UNAIDS*, UNAIDS, <<http://www.unaids.org/en/aboutunaids/>>

rights perspective means that, for example, the approach to HIV must be taken without discrimination to a real or perceived status of HIV and that vulnerable groups must get adequate protection.⁷⁷ A human rights based approach further means that sex workers and their clients should have the same right to enjoy human rights as everyone else.⁷⁸

In the guidance note, it is also stated that it is important to reduce the demand for sex workers, so that HIV transmissions will decrease.⁷⁹ The demand for sex workers has several causes, for example “social and cultural norms and individual circumstances, including work-related mobility and spousal separation; social isolation and loneliness; access to disposable income; and attitudes based on harmful gender norms, including a desire for sexual dominance and sense of entitlement, which may manifest in sexual and economic exploitation and violence against sex workers.”⁸⁰

Inequality between men and women is one of the factors that put women into the sex industry. By providing men and boys education and information about gender inequality, it is possible to reduce violence towards girlfriends and wives and it will also make the men use condoms to a higher degree.⁸¹

3.3 Analysis of UN:s stance on prostitution

This section of the thesis reaffirms what has been stated in the previous chapter: UN:s stance on prostitution is ambiguous. We know that UN is aware of and has been influenced by the radical feminist theory, yet this is not reflected in the agencies' opinion, or lack thereof, on prostitution. From the standpoints of the different UN agencies, it is clear that they all avoid making a direct statement regarding the status of prostitution. However, all of them do make a difference between “forced” and “voluntary” prostitution, which indicates that the organisations do not consider prostitution a human rights violation in itself. Furthermore, they refer to prostitution as “sex work”, pointing out that prostitution is work, not a violation of anyone's fundamental rights.

The UN agencies deliver a variety of reasons why prostitution exists, gender structures (men's domination and women's subordination) being one of many. The ILO, for example, believes that the root cause of prostitution is economy. This is a striking example of lacking knowledge, or care, of gender hierarchy in the UN world.

⁷⁷UNAIDS, *Guidance Note on HIV and Sex Work*, 2009, p. 6

⁷⁸Ibid, p. 7

⁷⁹Ibid, p. 21

⁸⁰Ibid, p. 5

⁸¹Ibid, p. 21

Are the agencies really fulfilling their mandates? For example, UN Women and the Special Rapporteur are supposed to work towards gender equality and try to end violence against women but fail to acknowledge prostitution as a form of violence against women. Of the UN agencies, it is the Special Rapporteur that is the most vague and dubious. Reading between the lines, it seems like she is taking an allowing approach and distinguishes between elective and coerced prostitution. I interpret the statement regarding protectionist laws and positive sexual rights as statements in favour of calling prostitution sex work, as these positions are usually taken by advocates pro-legalising prostitution, claiming that prohibition of the purchases of sex is violating women's rights to do whatever they want with their bodies.

The primary concern for the UN regarding prostitution seems to be the diminishing of HIV and AIDS transmission, not the violence the prostitutes are subject to. The focus of UN:s action towards prostitution is harm reduction – *i.e.* making sex buyers wear a condom and pay attention to possible victims of trafficking or forced labour – not to stop the existence of prostitution.

By not taking a stand, UN is legitimising and normalising prostitution, renaming it sex work. WHO for example is a norm-setting organisation – it should be working to establish the norm that prostitution is not work, it is a human rights violation.

The UN agencies all claim to be working for human rights, human dignity and gender equality – but are they really? Is it possible to work towards those goals while allowing prostitution? The latter has been discussed in the previous chapter and the other two will be further developed in the upcoming sections of the thesis.

4 What are the core values of human rights?

In order to decide whether prostitution fits in the ambit and scope of the UN human rights concept, one must first establish what the human rights concept actually is. What are the fundamental building blocks of human right? To do that, I will examine how UN and other actors define human rights.

4.1 The UN definition of human rights

According to the UN, human rights are rights that all human beings possess, no matter what nationality, place of residence, sex, national or ethnic origin, colour, religion, language or other status they have. Every single person is entitled to these rights in an equal and non-discriminatory way.

There are obligations attached to human rights. These obligations are maintained by states and their governments; either to perform in certain ways or to not perform. States must do this to promote and protect human rights of individual persons or groups of persons. It is states' duty to respect, protect and fulfil human rights. To respect means that states cannot interfere in the enjoyment of human rights, to protect means that states must shield people from violations of human rights and to fulfil means that states must act to make it easier for persons to enjoy their human rights.

Human rights are universal, meaning they apply to everyone everywhere. States must always protect and promote human rights, regardless of the state's political, economic and cultural structures. Human rights are inalienable, meaning they cannot be given or taken away. However, sometimes there can be restrictions, for example if a person commits a crime, the person's right to liberty and freedom of movement can be limited. These limitations can only be applied in certain situations and must be subject to due process.

Human rights cannot be divided. They are all essential and dependent on each other. All rights affect other rights; if one right is more strongly enforced, it will impact other rights, and the other way around.⁸²

To decide if a norm should have the status of a human right, one can ask these following questions:

1) Does the norm have governments as its main stakeholders?

⁸²*What are human rights?*, Office of the High Commissioner for Human Rights, <<http://www.ohchr.org/en/issues/Pages/WhatareHumanRights.aspx>>

- 2) Does the norm ensure that individuals can have minimally decent living conditions?
- 3) Does the norm have high priority?
- 4) Can the norm be supported by strong reasons why it should be universal and highly prioritized?

If the answers are affirmative, the norm could be considered a human right.⁸³

It is common in international law to divide human rights into different classifications, depending on what human interest they are meant to protect. Beitz, professor of politics, divides the human rights into four categories, the first one being: rights to liberty and personal security: right to life, prohibition of torture, slavery, cruel or degrading punishment, right to fair trial, no arbitrary arrests and equality before the law.⁸⁴

Some rights are absolute and can never be subject to compromise. Such rights are for example the right not to be tortured, held in slavery or arbitrarily deprived of liberty and freedom of movement.

4.2 Human dignity

One important essence of human rights is the aspect of human dignity. It is mentioned in the preamble of the Universal Declaration of Human Rights (UDHR) as one of the foundations upon which human rights rest. Article 1 of the declaration states that all human beings are born free and equal in dignity and rights. In article 23(3) it says that “everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity”. Basically all main human rights treaties and conventions on the UN level, including CEDAW, mention human dignity in their preambles. Human dignity is so fundamental to the work of the UN that the Declaration and Programme of action adopted in 1993 on the Vienna World Conference on Human Rights not only mentioned human dignity as fundamental to human rights in general, but also to specific human rights provisions. Such provisions include the prohibition of torture and prohibition of gender-based violence.⁸⁵

On a regional level, the European Convention on Human Rights (ECHR) does not explicitly mention human dignity. In caselaw, it has been viewed as an underlying value of the whole convention. It has been used particularly in cases regarding the prohibition of torture and cruel, inhuman and degrading treatment in article 3 of the convention.⁸⁶ The Court has

⁸³ *What are human rights?*, Office of the High Commissioner for Human Rights, <<http://www.ohchr.org/en/issues/Pages/WhatareHumanRights.aspx>>

⁸⁴ Beitz, C, *The Idea of Human rights*, Oxford University Press, Oxford, 2009, p. 27f

⁸⁵ McCrudden, C, 'Human Dignity and Judicial Interpretation of Human Rights', *The European Journal of International Law*, vol. 19, no. 4, 2008, p. 669f

⁸⁶ McCrudden, p. 683

stated that one of the *raisons d'être* for article 3 is to safeguard “a person's dignity and physical integrity”.⁸⁷

Human dignity can either be seen as a human right on its own or as a basic foundation of other rights, such as the right to bodily integrity, equality and prohibition of slavery. The concept of human dignity is being used as a tool to interpret and justify human rights.⁸⁸ One can also say that all human rights and freedoms come from all persons' inherent human dignity. Human dignity is the source, the mother, of all human rights.⁸⁹

Human dignity has no monolithic, universal meaning. This does not mean, however, that human dignity is just a term without content – rather, it means that everyone can fill it with the content of one's own preference.⁹⁰

Even though human dignity is based on individual conception, there are three characteristics that together found the minimum core of the human dignity concept:

- 1) every individual person has an immanent worth, just for being a human,
- 2) this immanent worth must be respected by others and
- 3) to recognize the immanent worth of persons, states are required to exist for the sake of human beings, not the other way around.⁹¹

Respect for the immanent worth that every person possess should mean that all human beings are not treated as instruments or objects, left to the will and mercy of others. Individuals should be treated as ends, not means.⁹²

4.2.1 Bodily integrity

As mentioned in the previous section, human dignity is fundamental to the right to bodily integrity of a person. Bodily integrity includes both mental and physical integrity. It means that every individual has the right to decide for oneself what to do with one's body because you own your body, no-one else does. In human rights law, the right to bodily integrity and security is an underlying, basic foundation in several rights, such as right to life, prohibition of torture and inhuman or degrading treatment, forced labour, slavery and the right to security of one's person.⁹³ This will further be developed in the sub-chapter regarding torture and cruel, inhuman or

⁸⁷ *Tyrer v. The United Kingdom*, 25 April 1978, para. 33

⁸⁸ McCrudden, p. 681

⁸⁹ Schatcher, O, 'Human dignity as a normative concept', *The American Journal of International Law*, vol. 77, no. 4, 1983, p. 850

⁹⁰ McCrudden, p. 678

⁹¹ *Ibid.*, p. 679f

⁹² Schatcher, p. 849

⁹³ *Rights of individuals: Civil and Political*, Human and Constitutional Rights Resource page, <http://www.hrcr.org/chart/civil+political/personal_security.html>

degrading treatment. As stated earlier, bodily integrity is part of sexual health and sexual rights, according to WHO.

Violations of bodily integrity do not necessarily have anything to do with physical injuries. For example, if a woman has been victim of a rape without pain or physical harm, has she still been violated then? The answer is of course yes – because her integrity has been subject to violation. One can say that the bodily integrity of a person has been violated if 1) it is spatially invaded, 2) there is an interference with the body's normal functioning or 3) both 1 and 2.⁹⁴

Martha C. Nussbaum, professor of law and ethics, identify bodily integrity as “[b]eing able to move freely from place to place; being able to be secure against violent assault, including sexual assault, marital rape, and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction”.⁹⁵ Bodily integrity is one of the main elements for a good human life – meaning that if it is not fulfilled, people do not enjoy their lives in a way that they should.⁹⁶

Bodily integrity is closely linked with autonomy and the right to make your own choices about your body. Bodily integrity is about enjoying one’s body in its fullness without disturbances from others. Not only do your body belong to you – you *are* your body. Your bodily integrity is linked with personality, identity and personal freedom. As a British judge described it, bodily integrity is about “the right to have one’s body whole and intact”.⁹⁷

4.3 Summary: what constitutes a human right

Human rights are something that every person has because he or she is a human being. The rights are based on everyone's equal worth, human dignity and bodily integrity. Equality has been previously discussed in the thesis and in the next chapter, human dignity and bodily integrity will be thoroughly analyzed as components of prostitution as a human rights violation.

For something to obtain the status of a human right, it must have high priority and broad justification. The next chapter will provide data, facts and arguments why prostitution has high priority and wide justification.

⁹⁴Wilkinson, G and Gerrard, E, 'Bodily integrity and the sale of human organs', *Journal of Medical Ethics*, no. 22, 1996, p. 39f

⁹⁵Nussbaum, MC, *Sex and social justice*, Oxford University Press, New York, 1999, p. 41

⁹⁶Ibid, p. 42

⁹⁷*Bodily integrity is a human right*, Foregen, 2010 <<http://www.foregen.org/learn-more/bodily-integrity/>>

5 Personal security, human dignity and bodily integrity

In the previous chapter, I went through some general aspects of human rights. Two main characteristics of human rights are human dignity and bodily integrity. For some rights, the aspect of personal security is an essential feature. This chapter will provide arguments and facts why prostitution does entail violations of all these three features and therefore should be seen as a human rights abuse. One can compare it with torture and cruel, inhuman or degrading treatment, as these practices share several characteristics.

Torture and cruel, inhuman or degrading treatment are serious human rights violations that are prohibited in several human rights instruments, for example in the International Covenant on Civil and Political Rights art. 7, ECHR art. 3, UDHR art. 6 and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Torture and other forms of ill-treatment has reached the status of *jus cogens*, which means that it is a right without any acceptable exceptions and that it has the highest position among norms and principles.⁹⁸

Art. 1 of CAT defines torture as “any act by which *severe pain or suffering, whether physical or mental, is intentionally inflicted* on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or *intimidating or coercing him or a third person, or for any reason based on discrimination of any kind*, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a *public official or other person acting in an official capacity*” [my italicizations].

In order to compare prostitution with torture, I will go through the different elements of torture, italicized in the paragraph above. I have chosen to compare prostitution with torture because both practices are contrary to personal security, human dignity and bodily integrity. They also share the fact that another human being must cause the violation to the person being tortured or kept in prostitution.

⁹⁸McCourt, K and Lambert, M, 'Interpretation of the definition of torture or cruel, inhuman or degrading treatment or punishment in the light of European and international case law', *OMCT Europe*, 2004, p. 12

5.1 Comparison with torture

In order to do the comparison, I have looked at several quantitative and qualitative studies made on prostitution. To my knowledge, there are few surveys made on the consequences for people in prostitution and I have used the ones I could find.

Prostitution does cause severe *physical and mental pain or suffering*. In a study made among 105 prostitutes from an ethnic minority regarding their life circumstances, 84% had been physically assaulted and 72% has suffered brain injuries while being prostituted. 52% had post traumatic stress disorder (PTSD) and 71% suffered from dissociation.⁹⁹

A survey among 130 prostitutes (75% women, 13% men, 12% transgendered) concerning prevalence of violence and symptoms of PTSD, in San Francisco, displayed that 68% of the interviewees met the criteria for PTSD and 76% were assumed to have partial PTSD. 68% had been raped and 82% had been physically assaulted while working in prostitution. Of those who had been raped in prostitution, 48% had been victims of rape more than five times. 8% were infected with HIV and 5% said they were suicidal at the present.¹⁰⁰

In an American study (Victim Survivor Testimony, collected by The Council for Prostitution Alternatives between 1990-92) where 55 prostitutes were interviewed, 49% had been victims of kidnapping at an average of ten kidnappings a year. 53% had been subjected to torture, at an average of 54 times a year. The torture included, *inter alia*, penetration with animals or objects, deprivation of sleep or liberty and having their mouth, nipples or labias pinched, clamped or stapled. During a period of 14 months, ten women in prostitution disappeared or were killed in Portland, Oregon.¹⁰¹

In a study made in 2001 by the Coalition against trafficking in women, aiming at describing social consequences of trafficking and prostitution, 40 women in prostitution were interviewed. 45% of the interviewees had experienced suicidal thoughts. 75% felt sad or depressed. A third of the women had sleeping problems.¹⁰²

A survey made in Colorado Springs, US, estimating overall and cause-specific mortality rate among prostitute women, had made interviews with 1969 prostitutes. The study showed that women who were or had been involved in prostitution had a mortality rate that was 200 times higher than

⁹⁹Farley, M, et al, *Garden of Truth*, p. 3

¹⁰⁰Farley, M & H Barkan, *Prostitution, Violence Against Women, and Posttraumatic Stress Disorder*, Prostitution Research & Education, 1998, retrieved at <<http://www.prostitutionresearch.com/ProsViolPosttrauStress.html>>

¹⁰¹Hunter, SK, *Prostitution is cruelty and abuse to women and children*, Michigan Journal of Gender and Law, vol. 01, no. 91, 1993, p. 92ff

¹⁰²Raymond, J, et al, *Sex trafficking on women in the United States*, Coalition Against Trafficking in Women, 2001, p. 83

of women in the same age and ethnic group.¹⁰³ Women in prostitution were 18 times higher at risk of murder than women of the same age and ethnicity.¹⁰⁴

The pain or suffering is *intentionally inflicted*, in my opinion, since a purchase of a human being cannot be done unintentionally. Just like rape, it is an attack on the bodily integrity of a person. It is *coercive* and *intimidating* since prostitution in itself is based on coercion and it is used as a way of oppressing and controlling women. Prostitution is also *discriminatory* as it is a practice based on women's subordination and lower worth and men's superiority and higher worth. Prostitution is an expression for the present gender stereotypes in society; where women are passive, sexualized objects and men are active with a never-ending sex drive that must be satisfied. As it is traditionally the woman's duty to help the man, she must be available for him when he wants her.

Furthermore, some groups in society are considered more vulnerable than others, for example women and children. These groups require special protection and positive measures by the state. States must take on more responsibility regarding these groups, which means that even if the torture is not done with a certain purpose, it can still be torture.¹⁰⁵

According to CAT, it must be *state agents* who perform the torture. In prostitution, it is usually regular men who buy sex. Indirectly, however, one can say the state is providing for prostitution when not prohibiting purchases of sexual services. One can compare it with trafficking, which is considered a gross human rights violation – even though it is not the state itself that does the actual trafficking. The state has an obligation to prevent and punish trafficking, just as it should have regarding prostitution.

According to ECtHR, the perpetrators of the crime of torture or cruel, inhuman or degrading treatment must not be state officials. In *H.L.R v. France*, the court stated that, since art. 3 is an absolute right, it is possible that it is applicable even when the perpetrators are private individuals and not state actors.¹⁰⁶ In the *Velasquez Rodriguez v. Honduras* case, the Inter-American court of human rights came to the conclusion that states can be held responsible for the acts of private persons, “not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as is required by the Convention”.¹⁰⁷ ICTY, in the case of *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic*, said

¹⁰³Potterat, John J. et al, *Mortality in a Long-term Open Cohort of Prostitute Women*, in American Journal of Epidemiology, Vol. 159, no. 8, 2004, p. 780

¹⁰⁴Ibid, p. 782

¹⁰⁵McCourt, K and Lambert, M, p. 11

¹⁰⁶*H.L.R. v. France*, 29 April 1997, para. 40

¹⁰⁷*Velasquez Rodriguez v. Honduras*, 29 July 1988, para. 172

that what constitutes the crime of torture should not be found in the perpetrator but rather in the “nature of the act committed”.¹⁰⁸

5.1.1 Cruel, inhuman or degrading treatment

None of the treaties that entail a prohibition of torture have a definition of cruel, inhuman or degrading treatment. The International Criminal Court (ICC) has defined inhuman treatment as causing someone “severe physical or mental pain or suffering”. The International Criminal Tribunal of former Yugoslavia has stated that inhuman treatment is when an act “causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity”. Case law from human rights bodies show that it is more common to use a definition similar to ICC’s.¹⁰⁹

ICC has defined degrading treatment as actions that humiliate, degrade or violate the dignity of a person. The European Commission of Human Rights defines inhuman treatment as acts that “grossly humiliates the victim before others or drives the detainee to act against his/her will or conscience”.¹¹⁰

For an act to be considered torture or cruel, inhuman or degrading treatment it must reach a certain threshold of seriousness. There is no specific international standard for when this threshold is reached.¹¹¹ In *Ireland v. The United Kingdom*, the ECtHR stated that, when deciding if an act is within the scope of art. 3, one must look at “all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc”.¹¹²

5.1.2 Consent or coercion

What separates torture, cruel, inhuman or degrading treatment from prostitution is that the former violations contain a clear element of coercion whereas prostitution is based on (formal) consent. Many spokespersons of legalizing prostitution use the argument of free choice; that women choose to work in the sex business by their own free will. They are not forced into it and therefore it is paternalistic to claim that prostitution is a violation of human rights. Instead, one can say that a prohibition of prostitution is a violation of the right to work.

¹⁰⁸*Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic*, 22 February 2001, para. 495

¹⁰⁹*Rule 90. Torture and Cruel, Inhuman or Degrading Treatment*, ICRC, <http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule90>

¹¹⁰*Ibid*

¹¹¹McCourt, K and Lambert, M, p. 8

¹¹²*Ireland v. The United Kingdom*, 18 January 1978, para. 162

The vast majority of the working force works to get money to be able to buy food and pay rent and other living expenses. Why not earn that money by selling sex? It is an easy, fast way of earning quite a lot of money – or?

First of all, let us discuss if prostitution is a free choice or not. In several research projects, it has been shown that around 90% of women in prostitution want to leave it. In the San Francisco survey, mentioned in sub-chapter 5.1.1, 88% of the interviewees wanted to quit prostitution.¹¹³ In another study from the US assessing Native women's in prostitution life circumstances, 92% of the interviewed women wanted to leave the sex industry.¹¹⁴

In a survey from India, with the purpose of collecting data on women working in brothels regarding *inter alia* violence, it was shown that only two out of 322 interviewed so-called 'voluntary' prostitutes had prostitution as their first choice of 'work'.¹¹⁵ The main reason why women entered prostitution was due to poverty and lack of a supporting family.¹¹⁶

Most women in prostitution are teenagers when they enter the sex industry. For example, in an American study regarding the lives of prostitutes in Chicago, out of 222 women 35% started to work as prostitutes before they were 15 years old and 62% started before they were 18.¹¹⁷ According to FBI, the average age for girls to enter prostitution is 12-14 years.¹¹⁸ In San Francisco, 200 women and children were interviewed in a study on why people enter prostitution in 1982. Among the interviewees, the medium age for entering the sex industry was 16,1 years. 62% had been younger than 16 when they started working as prostitutes and 78% had been below the age of 18. Some had started working when being 9, 10, 11 or 12 years old.¹¹⁹

From these facts, I find that it is quite clear that the vast majority of women in prostitution do not choose their 'profession' but rather feel like they have no other options. Furthermore, I do not think that even the most open-minded people think you make informed, rational and thought-through decisions about your life when you are 12, 13 or 14 years old.

¹¹³Farley, M & H Barkan., *Prostitution, Violence Against Women, and Posttraumatic Stress Disorder*, Prostitution Research & Education, 1998, retrieved at <<http://www.prostitutionresearch.com/ProsViolPosttrauStress.html>>

¹¹⁴Farley, M, *et al*, *Garden of truth*, p. 3

¹¹⁵Carey, C & E Farao, 'Galtung's Unified Theory of Violence and Its Implications for Human Trafficking: A Case Study of Sex Workers in West Bengal India' in RL Dalla *et al* (eds.), *Global Perspectives on Prostitution and Sex Trafficking*, Lexington Books, Plymouth, 2011, p. 98

¹¹⁶Ibid, p. 88

¹¹⁷Raphael, J & Shapiro, D, *Sisters speak out: The Lives And Needs Of Prostitute Women In Chicago*, Center for Impact Research, 2002, p. 4

¹¹⁸Harrington, TJ, *Speeches*, FBI, 2010, <<http://www.fbi.gov/news/speeches/fighting-child-exploitation>>

¹¹⁹Silbert, M & Pines, A, *Entrance into prostitution*, in *Youth & Society* vol 13 no. 4, June 1982, p. 483

Even though prostitution is not the result of obvious coercion it can still be coercion. Coercion must not be that someone points a gun to your head and threatens to shoot you if you do not agree to work at his brothel. Coercion can be that you are in desperate need of money to feed your children and prostitution is the only way you can get money. If you feel forced to do something, because you have no other choice, it is coercion. One can say that there are two forms of coercion – the direct kind and the indirect kind.

One example of indirect coercion is the case of *Siliadin v. France* from the ECtHR, about a girl being trafficked to France to work as a domestic slave. Even though there was no penalty if she did not do her chores, there were still coercive circumstances. She was young, not yet of age, in an unknown country where she was not legally allowed to reside, and in fear of being arrested if the police found out she was there. The family she lived with encouraged her fear.¹²⁰ Furthermore, she had no resources, no friends and barely any family members that could support her.¹²¹ To the Court, it was beyond any doubt that she was forced to stay with the family and perform her work.¹²² The Court emphasized the fact that she was a minor – just like most girls are when they enter into prostitution.

The case of *Siliadin v. France* is not that different from the vast majority of prostitution cases. Poverty and social vulnerability is what drives most women into prostitution, as shown by the statistics above.

Second, even if prostitution is a free choice and women willingly consent to it, it can still be a human rights violation. Some things are considered to be so harmful that consent is irrelevant. For example, even if a person consents to being tortured or trafficked, it would still be a human rights violation.

But, one might argue, shouldn't people have the right to harm themselves if they want to? Sure, people who are into violent sex should of course be able to do that without state interference. One can compare it with physical violence – it is acceptable to consent to a mild degree of battery but not to torture. Furthermore, one should not be able to pay someone else to do the abuse – because then it is no longer about two equals with the same sexual preferences. Then it is about one person's sexual preferences persuading another person to perform a sexual act. It is about one person buying access to someone else's body.

What it all comes down to is what kind of responsibility the state should have for its inhabitants. Should everyone do whatever they want, including hurting themselves, or should the state protect the people? One example of the state protecting its citizens is laws regarding custodial care. Persons who are a danger for others or themselves, due to for example alcohol abuse or mental illness, can be forced to undergo medical treatment. To be in prostitution is of course not a sickness but it is a harmful practice, as

¹²⁰*Siliadin v. France*, 26 October 2005, para. 118

¹²¹*Siliadin v. France*, 26 October 2005, para. 22

¹²²*Ibid*, para. 119

previously stated facts have shown. It is my strong belief that states should take care of and protect all inhabitants. To say the opposite, that everyone can do whatever they want to themselves, is just a way to avoid responsibility.

5.2 Objectification

The main purpose of a prohibition of prostitution should be to protect human dignity, just like the prohibition of torture in ECHR. Why is prostitution a violation of human dignity? Because it objectifies the women in prostitution, encourages trading of human beings and inflicts on people's bodily integrity.

Objectification means dehumanization. It hinders women from being able to fully express themselves and be in control of their own lives.¹²³

According to Nussbaum, there are seven different ways of treating a human being as an object:

- 1) Instrumentality. The objectifier uses the object as a tool to fulfil his purposes.
- 2) Denial of autonomy. The objectifier sees the object as someone without autonomy and self-determination.
- 3) Inertness. The objectifier sees the object as a non-agent and maybe also as a passive person.
- 4) Fungibility. The object is seen as exchangeable, either to objects of the same type and/or objects of other kinds.
- 5) Violability. The objectifier does not acknowledge that the object has boundaries and integrity and therefore thinks it is acceptable to break or smash the object.
- 6) Ownership. The object is owned by someone else and can be sold or bought.
- 7) Denial of subjectivity. The feelings and experiences of the object are not important to the objectifier.¹²⁴

Objectification must be put in a context. The relationship between the objectifier and the object is of fundamental importance.¹²⁵

According to MacKinnon, being a sexual object means that you are defined on the basis of your physical appearance and usability for sex.¹²⁶ All women are being defined based on what men want from sex.¹²⁷ In pornography, women are being treated as dehumanized things or commodities that men

¹²³Nussbaum, MC, *Sex and social justice*, Oxford University Press, New York, 1999, p. 214

¹²⁴Ibid, p. 218

¹²⁵Ibid, p. 223

¹²⁶MacKinnon, C, *Feminism unmodified*, p. 173

¹²⁷Ibid, p. 171

can rape, humiliate, tie, up, cut up, mutilate, bruise, hurt, penetrate, torture – and the women enjoy it.¹²⁸

The notion of women being objectified in prostitution is further entrenched by the men who buy sex. In a survey investigating why men buy sex, a male sex buyer explained what it was like to buy access to another person's body: “[i]t’s like having a cup of coffee, when you’re done, you throw it out.”¹²⁹ Buying women in prostitution has also been compared to buying a hamburger at McDonald’s¹³⁰ or getting a beer¹³¹ by other sex buyers.

Prostitution is commonly referred to as the selling and purchasing of sex. The woman in prostitution is a sex seller and the john is a sex buyer. The sex is just there like any other commodity on the market. The way the word “sex” is used, it seems like sex is a thing, produced in a factory, just laying around, waiting to be transferred to someone.¹³² There is no mentioning about to whom all this sex belongs or how it takes place.¹³³ The sex is being separated from the individual, from the woman. The sex is also being separated from the body into a free-standing service and prostitution gets the fancier name “sexual services”. Sex is transformed into an abstract thing, not related to actual, physical persons, something that is exchangeable and is possible to value and evaluate. However, the abstraction of sex is nothing but an illusion – because it is not possible to buy or sell sex without human beings present.¹³⁴

5.2.1 Trading in humans

The second part of the human dignity aspect is the wrongness of buying other human beings.

As mentioned in the previous section, buying sexual services means you are buying access to another person’s body. The sex is not something free-standing, it is part of a human being. When a man “buys sex” from a woman, he buys her body, soul and mind.

One can make a comparison between prostitution and the trading with human organs as both practices treat humans as commodities on the market. Trading with organs for financial gain is prohibited by almost all nations and by all human rights systems.

WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation states that cells, tissues and organs should be donated freely, by choice, and without any kind of financial gain. This is because trading with human body

¹²⁸Ibid, p. 176

¹²⁹Ibid, p. 27

¹³⁰Ibid, p. 19

¹³¹Farley et al, *Men who buy sex*, p. 8

¹³²Ekman, KE, *Varat och varan*, Leopard Förlag, Stockholm, 2010, p. 87f

¹³³Ibid, p. 87

¹³⁴Ibid, p. 95

parts will most likely lead to exploitation of the most poor and vulnerable groups in society. The consequences will be profiteering and trafficking. Paying for organs etc expresses the opinion that some people do not have any dignity, they exist only as objects to be used by others.¹³⁵

When body parts become things to be sold and bought it sends the message that not every person has a value that is priceless. Instead, it shows an utilitarian point of view where maximising the greatest good for as many as possible becomes the most important. Organ trading is exploitative as those who sell their organs usually are poor and poverty can be seen as the most important element when making someone vulnerable to coercion.¹³⁶

5.2.2 Prostitution is a violation of bodily integrity

As previously stated,¹³⁷ bodily integrity is *inter alia* about security, autonomy and feeling whole and intact as a person. Prostitution is a violation of bodily integrity because it is an act that invades and intrudes the body and splits its wholeness. It denies women of their autonomy and sexual rights.

Many of those who are in favour of legalizing prostitution think that a prohibition of prostitution is a violation of bodily autonomy and sexual rights, since women should be able to do whatever they want with their bodies.

On the other hand, one can also argue that yes, women should be able to do anything they want with their bodies, but they should not be able to make a deal where they sign off their rights. Because that is what happens in prostitution: the buyer pays the woman so he can do whatever he wants with her without having to pay attention to her wants and needs. She gives up her right to bodily autonomy – and he pays her to do so. Prostitution has nothing to do with fulfilling the woman's sexual and autonomy rights but all to do with the man's sexual pleasure.¹³⁸

As mentioned earlier in this paper,¹³⁹ human rights are something eternal and universal. Something that every person possesses, just for being human. This also means that human rights cannot be given or taken away. As a general principle, you cannot sign a contract stating that you give up your inherent rights.

¹³⁵WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation, WHO, p. 5, retrieved at <<http://www.who.int/transplantation/en/index.html>>

¹³⁶Phadke, K.D, and U, Anandh, 'Ethics of paid organ donation', *Pediatric Nephrology*, vol. 17, no. 5, 2002 , p. 2

¹³⁷In sub-chapter 3.3.1

¹³⁸Farley, M, et al, *Prostitution and Trafficking in Nine Countries*, p. 34

¹³⁹In sub-chapter 4.1

Another argument used by advocates that are pro legalizing prostitution is that other jobs can also be dangerous and draining. For example, working in a mine is considered a very exhausting and demanding kind of job where you use your body in a very intense way. The difference is that working in a mine is not an intrusion on your integrity. That kind of job does not cause a person to split one's persona. As previously discussed, the sex industry lobbying for legalisation of prostitution is about selling sex as a free-standing product or service. Since sex is not something independent, existing on its own, this approach becomes problematic. There is a human person attached to the sex.

In order for a woman in prostitution to maintain the illusion that she is in fact not selling herself, only her vagina, she needs to divide herself and separate her body from her inner self. The self, the soul, is the driven entrepreneur who sells a commodity, the vagina. The entrepreneur is an independent, strong businesswoman who is not being sold – it is only her body that is being put on the market.¹⁴⁰

MacKinnon talks about “out-of-it-ness”, the ability to distance yourself from your body. This is a survivalist strategy used by people who have been tortured.¹⁴¹ This coping strategy is also used in by women in prostitution. They must be present, physically, during the act of prostitution, but at the same time try to not be there mentally. Many women in prostitution have testified how they use “out-of-it-ness” as a coping mechanism.¹⁴²

“[I] enter into another reality. And it was inside my head. So I didn't think I had a body either.[...]I shut off completely. So one could do anything they wanted with my body without me feeling it.” [My translation]¹⁴³

“You just have to shut off and don't think about what you're doing.” [My translation]¹⁴⁴

"I was abused for too many years, I learnt to survive by never allowing it in. I was obsessed with film and TV, so I made it fiction. Then I thought none of the pain and humiliation would go into me. It was not me that was being treated like a piece of dirt. It was an actress. I thought if it was a only a film, then I could make a happy ending. I thought I had that much control."¹⁴⁵

“I thought a lot about this before I did it. I knew I was crossing a line and had to shut down my emotions to survive... I have to just shut down and do it.”¹⁴⁶

¹⁴⁰ Ekman, KE, p. 88ff

¹⁴¹ MacKinnon, C., *Feminism unmodified*, p. 128

¹⁴² *Ibid*, p. 95f

¹⁴³ *Ibid*, p. 26

¹⁴⁴ *Ibid*, p. 26

¹⁴⁵ *About prostitution. Survivors' testimonies*, European Women's Lobby,
<<http://womenlobby.org/spip.php?rubrique205&lang=en>>

¹⁴⁶ *Testimonies and Case Studies*, Turn Off the Red Light,
<<http://www.turnofftheredlight.ie/learn-more/testimonies/>>

Shutting off one's body is common for people who have gone through very difficult traumas and violations of their integrity. The splitting of one's body has severe consequences; PTSD and dissociation.¹⁴⁷

PTSD can be the consequence when people have been subjected to “extreme traumatic stressors involving direct personal experience of an event that involves actual or threatened death or serious injury; threat to one's personal integrity; witnessing an event that involves death, injury or threat to the physical integrity of another person; learning about unexpected or violent death, serious harm, or threat of death or injury experienced by a family member or other close associate.”¹⁴⁸

The symptoms of PTSD will most likely be worse or last longer when stressors are caused by humans, for example war, rape, physical assault, incest, torture and prostitution, than when they are caused by natural disasters.¹⁴⁹ To be diagnosed with PTSD one must have some of these symptoms: numbing, avoidance of trauma, physiological hyperarousal and intrusive re-experiencing of trauma symptoms.¹⁵⁰

In a survey made among 854 people in nine different countries, currently or previously in prostitution, it was found that 68% of the interviewees could be diagnosed with PTSD.¹⁵¹ The seriousness of the PTSD symptoms was on the same level as symptoms in groups of war veterans, assaulted women seeking help in shelters, victims of rape and torture survivors.¹⁵²

5.3 Analysis of prostitution as a violation of personal security, human dignity and bodily integrity

To say whether prostitution fits within the system of human rights, I will answer these four questions stated in sub-chapter 4.1:

1. Does the norm have governments as its main stake-holders?
2. Does the norm ensure that individuals can have minimally decent living conditions?
3. Does the norm have high priority?
4. Can the norm be supported by strong reasons why it should be universal and highly prioritized?

¹⁴⁷Ekman, KE, p. 104

¹⁴⁸Farley, M, et al, *Prostitution and Trafficking in Nine Countries*, p. 36

¹⁴⁹Ibid, p. 36

¹⁵⁰Ibid, p. 44

¹⁵¹Ibid, p. 33f

¹⁵²Ibid, p. 56

Firstly – yes, the norm has governments as its main stakeholders. It is the government that must incite a law that prohibits purchases of sexual services and it is the government that must make sure that such a law is being implemented correctly. Furthermore, the state must prevent women from ending up in prostitution and make sure that sex-buyers, brothel owners, pimps and so on are prosecuted and punished.

Secondly – making prostitution a violation of human rights would definitely set a minimum of decent living standard. This is obvious, as prostitution in itself is indecent and harmful and therefore must be abolished for everyone to achieve a decent minimal living standard. The stated facts, statistics and statements have showed this. This is not only for the women in prostitution but also for all human beings – living in a society where it is legal and acceptable to buy another person can never be truly decent.

Thirdly – yes, the norm has high priority. As has been shown, prostitution has serious consequences for the persons in it, both mentally and physically. It is a violation of human dignity, as it objectifies women and girls. In prostitution, the buyer is the objectifier and the prostitute and her sexuality is the object. The seven different ways of objectifying a person, mentioned earlier, can all be seen in the practice of prostitution. The woman is used as a tool to fulfil the man's sexual desire, she is passive and able to make any decisions, she can be exchanged for another woman, she is being sold and bought and her emotions are of no interest to the buyer. The objectification of women in prostitution is enhanced by the statements made by sex-buyers on how they view the women they buy.

I think it is established that prostitution can be compared with torture, inhuman, degrading and cruel treatment. It is not important, however, to specify which of these categories that is most similar to prostitution – the same article in the treaties covers them all. It does not make sense that torture and inhuman, degrading and cruel treatment is seen as one of the grossest human rights violations in the world while prostitution – which is in many ways similar to these practices – is seen by many as a regular kind of work.

The same can be said about organ trade – why is that practice seen as a violation of human dignity, bodily integrity and exploitation of the vulnerable in society when prostitution is not? When considering organ trade, the eventual consent is deemed irrelevant, because the practice is seen as such a severe violation of human rights. Prostitution on the other hand is freely chosen.

The answer to UN:s different approaches to torture and organ trade on the one hand and prostitution on the other might be found in the patriarchal system explained in chapter two. The sex industry comes with power and money and can be legitimised by being renamed sex work. It is more difficult to find a justification to torture and organ trading as these are more obvious forms of human rights violations. Besides, prostitution entails

something that torture and organ trading does not – sexual power and control for men over women.

6 Concluding remarks

The answer to my question in the beginning is – yes. Prostitution could and should fit into the existing UN human rights regime. I think this thesis has clearly shown that prostitution violates human rights as it is in itself contrary to human dignity and equality, two of the cornerstones of the human rights system. It is clear that prostitution is not a free choice, a profession that women willingly consent to. Either way – why is the consent considered relevant here when it is not regarding torture and organ trading, two practices similar to prostitution that are clearly labeled as human rights violations?

It is obvious that UN is acting in a contradictory way, claiming to be promoting women's rights but at the same time allowing prostitution, a practice that is fundamentally incompatible with gender equality and should be seen as a form of violence against women.

If UN really is interested in ending violence and discrimination against women and girls, it must stop the practice of prostitution. It must admit that the allowing, open attitude its institutes are promoting right now is nothing but a betrayal towards all women and girls in the sex industry. If UN does not take action to label prostitution as a violation of fundamental rights, it will continue to fail its obligation to ensure that states respect, protect and fulfill human rights.

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