



SUBMISSION TO THE SPECIAL RAPPORTEUR ON

Violence Against Women and Girls on Prostitution and Violence Against Women and Girls

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iProbono¹ submits this document in response to the call for inputs issued by the United Nations Special Rapporteur on Violence Against Women and Girls on Prostitution and Violence Against Women and Girls to be presented to the Human Rights Council at its 56th session in June 2024. This submission addresses the efficacy of legislative frameworks and policies in mitigating and addressing instances of violence against women and girls engaged in prostitution in Sri Lanka and Bangladesh.

1. SRI LANKA

1.1. Effectiveness of Legislative Frameworks and Policies in Preventing and Responding to Violence Against Women and Girls in Prostitution

The legislative frameworks and policies addressing prostitution and trafficking in Sri Lanka are complex and ambiguous, involving multiple ordinances such as the Vagrants Ordinance² and the Brothels Ordinance,³ along with relevant provisions in the Penal Code.⁴ Prostitution itself is not explicitly criminalised in Sri Lanka - the act of providing sexual services for money is not expressly cited as a criminal offence. The Vagrant Ordinance targets activities associated with prostitution, penalising soliciting⁵ and living off the earnings of prostitution.⁶ Similarly, the Brothels Ordinance criminalises the management of brothels⁷ but does not explicitly define or declare prostitution as illegal. Legal precedent⁸ affirms this position. This legal approach creates ambiguity regarding the status of sex work, rendering sex workers vulnerable and impeding their ability to assert their rights without fear of arrest or harassment. The societal stigma against sex workers exacerbates this situation, perpetuating discrimination.

Worsened by the ambiguities within the legal framework, unlawful arrests, and mistreatment of sex workers⁹ are prevalent in Sri Lanka. Sex workers are arrested during the day and held in custody until night time when they are “duly arrested” for sex work,¹⁰ and for carrying condoms,¹¹

¹ iProbono’s mission is to enable people to access their rights in pursuit of a just society. By promoting active citizenship and engaging a holistic model we advance justice for all by representing people in need, strengthen the impact of civil society, and advocate for policies that promote social equity and end discrimination. iProbono provides holistic counsel with a strong, lean team that delivers strategic direction and execution, while also leveraging the expertise and commitment of a wide community of pro bono lawyers. A global organisation established in 2009 in the United Kingdom, we work across South Asia. iProbono started working in Bangladesh and in Sri Lanka in 2015/16. Our thematic areas cross-cut equality law in the region, and our team has expertise in child rights, housing rights, disability rights, gender equality, trafficking in persons, street law, LGBT+ rights, sexual and reproductive health rights, migrant rights, refugee rights, and economic, social and cultural rights. For more information, please visit our website - www.i-probono.com

² Vagrant Ordinance, No. 4 of 1841

³ Brothels Ordinance, No. 5 of 1889

⁴ Penal Code Ordinance of Sri Lanka, No. 2 of 1883, s 360C

⁵ Vagrant Ordinance, No. 4 of 1841, s 7(1)(b)

⁶ Vagrant Ordinance, No. 4 of 1841, s 9(1)(a)

⁷ Brothels Ordinance, No. 5 of 1889, s 3

⁸ *Hewagam Koralalage Maximus Danny v. IP Sirinimal Silva, Police Station, Chilaw and Others* [2001] SLR 4

⁹ B. Mohan, ‘Sex workers in Sri Lanka battle a raw deal’ (*Colombo Gazette*, 8 March 2020)

<<https://colombogazette.com/2020/03/08/sex-workers-in-sri-lanka-battle-a-raw-deal/>> accessed 19 January 2024

¹⁰ *Ibid*

¹¹ National STD/AIDS Control Programme, Ministry of Health Nutrition & Indigenous Medicine, and United Nations Population Fund, ‘Situation Assessment of Condom Programming in Sri Lanka’ (*Sri Lanka United Nations Population Fund*, 2015)

highlighting the deficiencies in the existing legal structure. Transgender sex workers, in particular, experience heightened discrimination during police detentions, with instances of degrading tasks¹² being imposed for release. Such incidents not only violate the dignity of sex workers but also expose them to increased harm and stigma. Law enforcement's misuse of legal ambiguities is evident in arrests made under the Vagrant Ordinance, deviating from the law's actual provisions, and contributing to unwarranted arrests.

The police use health concerns as a pretext for detention, conducting medical examinations under the guise of public health.¹³ This practice poses a direct threat to the well-being of sex workers, particularly transgender individuals undergoing transition, who may be forced to forgo necessary medication during prolonged detentions or be subjected to humiliating and unnecessary medical examinations.

The legal ambiguity within Sri Lanka's legislative framework fails to protect sex workers. Urgent reforms are imperative to clarify and align the law with international human rights standards, ensuring the safety and dignity of all individuals engaged in sex work.

Although Sri Lanka does not meet the minimum standards for the elimination of trafficking, it is making significant efforts to do so despite capacity-based challenges posed by the COVID-19 pandemic.¹⁴ These efforts include increased prosecutions and convictions of traffickers,¹⁵ collaboration with foreign officials on trafficking investigations,¹⁶ identification of more victims, and support for the repatriation of Sri Lankans abroad. The government has also established shelters for victims of crime, including trafficking victims, and reformed migration policies to reduce vulnerabilities. Official complicity,¹⁷ lenient sentences for convicted traffickers,¹⁸ and inconsistencies in a victim-centred approach¹⁹ remain areas where the government falls short of the minimum standards.

<https://srilanka.unfpa.org/sites/default/files/pub-pdf/Situation%20Assessment%20of%20Condom%20Programming%202015_0.pdf> accessed 31 January 2024

¹² *Ibid*

¹³ *Ibid*

¹⁴ US Department of State, '2023 Trafficking in Persons Report: Sri Lanka' (US Embassy in Sri Lanka, 2023) <<https://lk.usembassy.gov/wp-content/uploads/sites/149/2023-Trafficking-in-Persons-Report-Sinhala.pdf>> accessed 19 January 2024

¹⁵ iProbono, 'Survivors of trafficking get relief from Court in Sri Lanka' (*iProbono*, October 2022) <<https://i-probono.com/case-study/survivors-of-trafficking-get-relief-from-court-in-sri-lanka/>> accessed 19 January 2024

¹⁶ *Ibid*

¹⁷ Kapila Bandara, State officials complicit in trafficking of women into Oman for sex trade (*The Sunday Times*, 20 November 2022) <<https://www.sundaytimes.lk/221120/news/state-officials-complicit-in-trafficking-of-women-into-oman-for-sex-trade-502404.html>> accessed 19 January 2024

¹⁸ Kapila Bandara, Convictions of human traffickers remain low, sentences lenient (*The Sunday Times*, 18 June 2023) <<https://www.sundaytimes.lk/230618/news/convictions-of-human-traffickers-remain-low-sentences-lenient-523103.html>> accessed 19 January 2023

¹⁹ Such as the lack of sensitization among police, immigration officials, and judges, particularly at the local level, which creates an impediment to proper screening for trafficking victims.

1.2. PROFILE OF WOMEN AND GIRLS AFFECTED BY PROSTITUTION WITH DISAGGREGATED DATA

The first National Report on the Status of Sex Workers in the Country for 2022 - 2023²⁰ presents a comprehensive analysis of the profile of women and girls affected by prostitution in Sri Lanka. The study, conducted with a representative group of 283 sex workers, claims to mirror the demographic composition of the nation. The report reveals a diverse distribution of sex workers across various communities²¹ and gender identities.²²

The findings of the report highlight the variety in marital status among sex workers²³ and the economic significance they hold within their households.²⁴

The study also reveals that lack of sufficient remuneration, poor working conditions, and continued violence lead sex workers to abandon other kinds of work or engage in part-time sex work. Poor economic status of the household was stated as the primary reason for entering sex work by 62% of the workers. Other important reasons include being caught in a debt cycle and the reality of not finding any other source of income. Some turned to sex work due to the health conditions of a family member or after leaving their household, known places, etc., due to violence in the home.

Sri Lanka has seen a significant increase of 30% in prostitution in the last few months²⁵ as women were forced to turn to sex work to earn a livelihood, attributed to the economic turmoil that swept the nation in 2022.²⁶ Former garment factory workers make up a majority of this percentage,²⁷ reporting that they had to resort to this in order to survive the economic hardships they faced as a result of massive lay-offs and low wages in the wake of the nationwide crisis.

2. BANGLADESH

2.1. Effectiveness of Legislative Frameworks and Policies in Preventing and Responding to Violence Against Women and Girls in Prostitution

²⁰ Paba Deshapriya and Dr. Ponni Arasu, 'Status of Sex Workers in Sri Lanka: A National Report 2022-2023' (*Sri Lanka Brief*, 2023) <<https://srilankabrief.org/wp-content/uploads/2023/05/Status-of-sex-workers-in-sri-lanka-2022-2023-EN.pdf>> accessed 19 January 2024

²¹ Page 21, *Ibid*

²² Page 23, *Ibid*

²³ Page 23, *Ibid*

²⁴ Page 25 and 26, *Ibid*

²⁵ Asian News International, 'Sri Lanka crisis: Makeshift brothels crop up as economic hardship pushes women into prostitution' (*Firstpost*, 30 July 2022) <<https://www.firstpost.com/world/sri-lanka-crisis-makeshift-brothels-crop-up-as-economic-hardship-pushes-women-into-prostitution-10982861.html>> accessed 19 January 2024

²⁶ Jessie Yeung, 'Sri Lanka is facing an economic and political crisis. Here's what you need to know' (*CNN*, 6 April 2022) <<https://edition.cnn.com/2022/04/05/asia/sri-lanka-economic-crisis-explainer-intl-hnk/index.html>> accessed 19 January 2024

²⁷ Joe Wallen and Nishantha Hewage, 'It is my only hope': Women forced to sell sex to survive as Sri Lanka's turmoil escalates (*The Telegraph*, 28 May 2022) <<https://www.telegraph.co.uk/world-news/2022/05/28/made-clothes-ms-now-selling-body-make-ends-meet/>> accessed 29 January 2024

In Bangladesh, there is no specific legislative framework and policies which expressly prohibit²⁸ or legalise prostitution, creating a complex landscape for the prevention and response to violence against women and girls involved in prostitution. Prostitution is 'technically' legal in Bangladesh since the Supreme Court of Bangladesh recognised 'prostitution' as an occupation on voter identification cards.²⁹ The profession is not recognised under labour laws³⁰ despite approximately 200,000 women and girls engaged in this profession, particularly in municipal towns and cities experiencing rapid urbanisation.³¹ Internal and overseas migration further fuels the demand for sex workers in Bangladesh, with floating sex workers facing heightened vulnerabilities with persistent violence.³² Legislative frameworks and policies, such as the National Women Development Policy, 2011, to a certain degree, ensure the safety of women and girls involved in prostitution such as addressing issues of abuse and discrimination, ensuring the full and equal participation of women in mainstream socio-economic development and promoting socio-economic, political, administrative and legal empowerment of women in recognition of the fact that men and women are all equal in all the areas of human rights and fundamental freedom.³³ National Health Policy, 2011 prioritises HIV/AIDS prevention and awareness, advocating for health check-ups at ports for those returning from abroad for the safety of women and girls. Although there is no specific law for the protection of women and girls in prostitution except for a few non-binding policies, certain provisions within existing legislation have been historically employed against sex workers, for example, Section 290 of the Penal Code, 1860³⁴ and Section 74 of the Dhaka Metropolitan Police (DMP) Ordinance 1976,³⁵ which penalises sex workers for solicitation and public nuisance.

The challenge lies not only in the absence of a specific legislative framework and policies that respond to violence against women and girls in prostitution but also in the abuse and misinterpretation of the provisions routinely used to harass them.³⁶ There is a need for specific laws providing special protection to women and girls in prostitution.

²⁸ Article 18(2), prescribing state action against prostitution and gambling, is a non-justiciable principle of Bangladesh's Constitution

²⁹ *Bangladesh Society for the Enforcement of Human Rights and Ors v. Government of Bangladesh and Ors* [2000] 53 DLR(HCD) 1.

³⁰ Labour laws in Bangladesh i.e. the Labour Act 2006 and Labor Rules 2015 cover employees working for commercial and industrial enterprises.

³¹ Hosna J. Shewly and others, 'Invisible Mobilities: Stigma, Immobilities, and Female Sex Workers Mundane Socio-Legal Negotiations of Dhaka's Urban Space' (2020) 4 Mobilities 15, 500–13; 510; Udisa Islam, 'Inside the world of Dhaka sex workers' (Dhaka Tribune, 12 July 2020) <<https://www.dhakatribune.com/bangladesh/dhaka/320222/inside-the-world-of-dhaka-sex-workers>> accessed 22 January 2024.

³² UNAIDS, 'Vulnerability mapping to help sex workers in Bangladesh and Myanmar' <https://www.unaids.org/en/resources/presscentre/featurestories/2021/january/20210112_sex-work-bangladesh-myanmar> accessed 22 January 2024.

³³ National Women Development Policy 2011 <https://mowca.portal.gov.bd/sites/default/files/files/mowca.portal.gov.bd/policies/64238d39_0ecd_4a56_b00c_b834cc54f88d/National-Women-Policy-2011English.pdf> accessed 29 January 2024.

³⁴ Section 290 of the Penal Code 1860

³⁵ Section 74 of the The Dhaka Metropolitan Police Ordinance, 1976

³⁶ Roundtables on Violence against female sex workers in Dhaka city (The Daily Star, 20 October 2022) <<https://www.thedailystar.net/round-tables/news/violence-against-female-sex-workers-dhaka-city-3147246>> accessed 29 January 2024.

2.2. Factors Impacting the Perpetration of Violence Against Women and Girls in Prostitution

In Bangladesh, women and girls involved in prostitution are stigmatised and face extreme violence, threats and exploitation throughout their working lives.³⁷ Their entry into prostitution is often marked by violence, with experiences of rape, betrayal or being trafficked.³⁸ In major cities in Bangladesh, women and girls involved in prostitution work on the streets, in hotels and in residences, while in small towns and other areas, they work in brothels under the control of brothel owners or leaders who are locally known as 'Sardar/Sardarni'.³⁹ Recent studies reveal that apps like Facebook, Telegram and Tinder are contributing to the exponential growth of online prostitution and sexual exploitation, with pimps and agents recruiting women and girls through apps-based platforms and involving them in prostitution in apartments and hotels with exploitative income splits.⁴⁰

Most women and girls in prostitution cannot operate without the support of the pimps, brokers and agencies.⁴¹ The perpetration of violence against women and girls in prostitution in Dhaka and other areas is primarily orchestrated by unscrupulous pimps, brokers, agencies, and brothel owners or leaders who ask or take majority income shares.⁴² These pimps, brokers, agencies and brothel owners exploit vulnerable women and girls, luring them into prostitution through deception and coercion. The powerful grip and networks of pimps, brokers and agencies create a reality where women and girls involved in prostitution face discrimination, meagre pay, and violence while lacking autonomy and living in fear of retribution. The complex power dynamics extend to a nexus and unholy alliance between pimps, brokers and agencies and law enforcement agencies, hindering victims' ability to seek justice or break free from the exploitative cycle.⁴³ The absence of a safe working environment further exposes women and girls in prostitution to abuse and financial loss as law enforcement agencies often make surprise raids entangling them in cases of solicitation, public nuisance and sometimes in drug cases. More so, law enforcement agencies

³⁷ Corinne Redfern, 'The living hell of young girls enslaved in Bangladesh's brothels' (The Guardian, 06 July 2019) <<https://www.theguardian.com/global-development/2019/jul/06/living-hell-of-bangladesh-brothels-sex-trafficking>>accessed 23 January 2024.

³⁸ Md Nazmul Huda, 'The Involvement of Bangladeshi Girls and Women in Sex Work: Sex Trafficking, Victimhood, and Agency' (2022) International Journal of Environmental Research and Public Health (IJERPH).

³⁹ AKM Ahsan Ullah, 'Prostitution in Bangladesh: An Empirical Profile of Sex Workers' (2005) 7(2) Journal of International Women's Studies 111-122.

⁴⁰ Arifur Rahman Rabbi, 'Escort services thrive on social media' (Dhaka Tribune, 19 April 2018) <<https://www.dhakatribune.com/bangladesh/crime/143638/escort-services-thrive-on-social-media>>accessed 23 January 2024; Staff Correspondent, 'Apps, social media fuel 'booming' online prostitution: Study' (The Daily Prothom Alo, 04 June 2019) <<https://en.prothomalo.com/science-technology/Apps-social-media-fuel-booming-online>>accessed 23 January 2024.

⁴¹ Bethany Jennings, Vivienne E Cree, and Steve Kirkwood, 'Agency and exploitation: Two sides of one coin? Women's experiences of selling sex and engaging with NGOs in Dhaka' (2022) 65(4) International Social Work 761-772.

⁴² *ibid*

⁴³ Sex Workers Network (SWN), Bangladesh and Sex Workers and Allies in South Asia (SWASA), Bangladesh Chapter, 'Submission on The Status of Sex Workers In Bangladesh to The United Nations Committee On The Elimination Of Discrimination Against Women 65th Session, 24 October – 18 November 2016' <https://www.nswp.org/sites/default/files/cedaw_report_bangladesh_swasa_-_2016.pdf>accessed 23 January 2024.

often arbitrarily detain women and girls in prostitution and extort money under threat of arrest and physical violence.⁴⁴

2.3. Measures In Place to Assist and Support Women and Girls Who Wish to Leave Prostitution

In Bangladesh, a significant number of women and girls in prostitution wish to leave prostitution and lead a standard life with happiness and social acceptance.⁴⁵ The most common ways and reasons for leaving prostitution are through forming families, receiving support from local and international NGOs on moral and ethical training,⁴⁶ alternative job opportunities provided by NGOs and CSOs with skills development, having satisfactory savings, following love and affection with the clients and visitors, and giving up the prostitution for reduced demand stemming from factors such as advancing age, diminishing physical attractiveness, health issues, and other related factors.⁴⁷ However, the women and girls who wish to leave prostitution face myriad challenges due to the lack of assistance and support from the family and society. Besides, there is no government support or rehabilitation mechanisms in place for those who wish to leave prostitution.⁴⁸ However, NGOs and CSOs like Friends of Basha, Bachte Chai, Christian Service Society (CSS), etc., help the survivors with rehabilitation, skill development and empowerment. Additionally, the children of rehabilitated women and girls encounter constant problems in their studies and social life, including discrimination, insults, and admission issues.⁴⁹

Rehabilitated women and girls often struggle to maintain their daily lives in mainstream society due to pervasive societal stigma and prejudice.⁵⁰ The absence of adequate support measures such as providing alternative job opportunities, educating on HIV/AIDS and related information, and societal attitudes hinder the successful rehabilitation and reintegration of women and girls.

⁴⁴ ibid

⁴⁵ Promila Kanya, 'A chance at a better life: Floating sex workers get to learn tailoring skills' (The Business Standard, 30 May 2022) <<https://www.tbsnews.net/features/panorama/chance-better-life-floating-sex-workers-get-learn-tailoring-skills-429522>> accessed on 23 January 2024.

⁴⁶ The training propagates the idea that prostitution is morally questionable and ethically objectionable but these aims to address ethical concerns surrounding the profession and provide women and girls with information and resources to explore various life options beyond prostitution.

⁴⁷ Md Al Shahriar and Md Sohel Abu Bashir, 'The Situation of Rehabilitated Sex Worker in the Society: A Study on Tangail City' (2013) 12 Bangla Vision Research Journal.

⁴⁸ Md. Kamrul Hasan, 'Sex workers awaiting proper rehabilitation' (Dhaka Tribune, 23 February 2017) <<https://www.dhakatribune.com/bangladesh/nation/15183/sex-workers-awaiting-proper-rehabilitation>> accessed on 23 January 2024.

⁴⁹ Farhana Nila, 'The children left behind' (Asia Democracy Chronicles, 30 January 2024) <<https://adnchronicles.org/2023/06/22/the-children-left-behind/#:~:text=If%20we%20mention%20we%20are,call%20us%20for%20the%20exam.%E2%80%9D&text=It's%20an%20open%20secret%20in,extends%20even%20to%20their%20children.>>> accessed 29 January 2024.

⁵⁰ Naimul Karim, 'As coronavirus bites in Bangladesh, a former sex worker helps women still on the streets' (Thomson Reuters Foundation News, 29 July 2020) <<https://news.trust.org/item/20200729124111-mwqej>> accessed on 23 January 2024.

3. RECOMMENDATIONS

iProbono recommends strengthening legislative frameworks to prevent and address trafficking in persons and prostitution in women and girls. Specifically -

3.1. SRI LANKA

The Government of Sri Lanka must -

- Undertake law reform to align laws on the subject with international human rights standards.
- Increase efforts to investigate and prosecute suspected traffickers and exploitative entities.
- Prevent the misuse of existing legal provisions contributing to the harassment of sex workers.
- Proactively identify trafficking victims, including among undocumented migrant workers and women working in the commercial sex trade.
- Provide targeted support to victims and survivors, which is grounded in an understanding of their lived realities.
- Improve the quality and accessibility of victim services, providing shelters and specialised support for all identified victims and survivors participating in trials.
- Provide comprehensive rehabilitation support for individuals leaving prostitution and alternative job opportunities.
- Promote safe and legal migration, ensuring non-discriminatory migration regulations and increasing awareness among prospective migrants. Monitor and regulate subagents, referring criminal violations to law enforcement.
- Increase training for various stakeholders, including police, prosecutors, judges, immigration officials, and service providers, emphasising victim-centred and trauma-informed approaches.

3.2. BANGLADESH

The Government of Bangladesh must -

- Promulgate specific laws for the protection of the rights of women and girls in prostitution.
- Enforce existing policies and judicial decisions in the absence of specific legislation to significantly enhance the protection of women and girls engaged in prostitution while mitigating potential abuses and harassment.
- Employ a multi-faceted approach involving collaboration between government authorities, non-governmental organisations, and civil society organisations, with stringent measures against exploitative individuals/entities.
- Create alternative livelihood opportunities for women and girls in prostitution willing to leave the profession to break the chains of exploitation and foster a more inclusive and compassionate society.
- Include the establishment of Sex Worker Restoration Centres in government policies, ensuring awareness campaigns, equal facilities for the children of rehabilitated women

and girls, and societal acceptance without stigmatisation for those wishing to leave prostitution.

- Establish a dedicated helpline for sex workers so that they can report violence and seek support.
- Establish day care centres or shelter homes for sex workers' children.
- Sensitise government officials, especially the law-enforcing officials, about the rights of sex workers.
- Provide internet safety orientation to sex workers.
- Improving access to health facilities for sex workers.