

Sex work

a labour issue

SWEAT (Sex Worker Education and Advocacy Taskforce) is a Cape Town based NGO that provides information and education to sex workers on the issues of safer sex and human rights.

Its service delivery programmes over the past seven years have focused on direct outreach work with sex workers, working both indoors (in massage parlours, escort agencies and brothels) and outdoors (on the streets).

The term 'sex worker' has been adopted by sex workers themselves. The word 'prostitute' has many negative connotations. It implies specifically a woman who refuses to obey the rules for 'good' women in our communities. It has often been used to suggest that there is something 'wrong' with the woman - it is a comment on her psychological state. It also focuses on the ways in which sex workers are different from other workers, and reinforces the idea that sex workers should be outcasts from society. This exclusion makes the sex worker vulnerable to abuse, because outcast status denies sex workers the legal, social and other protections that are available to workers.

The phrase 'sex worker' points out that people (both men and women) who sell sex for a living are engaged in a form of work. It shifts the emphasis from a moral judgement to a discussion about labour

Natasha Distiller outlines the conditions that sex workers work under and calls for decriminalising and regulating the adult commercial sex work industry.

and human rights. The relationship between sex worker and client is one of an exchange of labour for remuneration. Accordingly, different services have different prices. In addition, sex workers offer a variety of services, from sexual acts of all descriptions, to stripping, escorting, and massaging.

When SWEAT talks about sex workers, we mean adult commercial sex workers. Children are legally protected against sexual abuse by laws that already exist, and the exploitation of underage sex workers is a different issue from that of consensual adult commercial sex work.

Issues facing sex workers in a criminalised system are strongly related to struggles for basic human rights, and for decent working conditions, particularly for the poor who work in informal sectors. While not all sex workers are women, there are also important intersections with the problem of violence against women in South Africa.

Human rights vs morality

There are many reasons why people enter into the sex industry. Some sex workers work full-time, some work to supplement incomes or pay off student loans. Some enter the industry for limited periods of time, some remain in the industry for years. Poverty and unemployment are also factors, and for many workers, especially on the streets, sex work is a means of survival. Some of these women and men have limited other choices. Some sex workers hate what they do, as people in many other jobs hate what they do. However, it is very important to realise that not all sex workers are victims. Many sex workers do see their work as a job.

Furthermore, there are many kinds of work done mainly by poor women that can be exploitative, like some work done on farms or in factories. This is why it is important that sex workers access their labour rights. That way, sex workers can begin to be protected from:

- doing work they do not want to do;
- being forced to work by managers, gangs, or abusive partners;
- being forced to work in conditions that are exploitative.

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workers come from all classes, races and educational backgrounds, means that sex work is here to stay. The most important thing is to create a society where sex workers have more choices than they do currently. This means that if they want to leave sex work, they should be able to do so without being stigmatised for the sex work they have done. It means sex workers should be able to speak up for themselves without fear of arrest, abuse, or marginalisation. It is possible that the most damaging aspect of sex work is the way sex workers are judged by their communities. This judgement often forces sex workers to lie about what they do, or to remain silent about the various abuses they may have survived or continue to survive, from clients, managers, partners, or service providers such as police or health workers.

If an individual has reservations about or objections to sex work, that person is free to choose not to go to a sex worker, not to become a sex worker, not to associate with sex workers. But we have an obligation, as members of a society that is working very hard for human rights for all its members not to allow abuse, violence and exploitation to continue.

Working conditions

Many sex workers face violence, abuse and exploitation within the sex industry. Sex workers are particularly vulnerable to rape, physical assault and verbal abuse. But it is not only clients and exploitative pimps who are violent to sex workers. Because of the criminalisation of the industry, the police, passers by and larger social communities can also perpetuate violence against sex workers freely.

The stigma and difficulties faced by all rape survivors apply to sex workers as well. However, sex workers face additional stigma and difficulty because of the

attitudes of police and the public to their work. As a result, sex workers are hesitant to report rape. Sometimes sex workers are subject to being raped by the police themselves.

The continued criminalisation of sex work in South Africa is a major factor preventing effective HIV prevention programmes amongst sex workers. Because of the criminalised nature of their work, street sex workers are often forced to work in remote or poorly lit areas where they are less visible. This means they are more vulnerable to forced unprotected sex or other forms of violence, from clients and non-clients alike. Within the broader context of violence in the criminalised industry, sex workers may face violence and abuse if they try to insist on condom use. In addition, some clients refuse to use condoms. Some sex workers, particularly those in disadvantaged socioeconomic communities, when faced with this refusal, are not in a position to argue. Alternatively, clients may offer more money for sex without a condom. In addition to this economic reality, and the threat of violence that can accompany a request for condom use, sex workers engaged in survival sex may well risk an illness that may manifest in five years if they have to feed their children today.

This raises the important question of clients' equal responsibility for practising safer sex. There is obviously a need for intervention targeted at clients. However,



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clients constitute an extremely hard-to-reach population, especially when sex work is criminalised.

There are also specific labour issues faced by sex workers indoors and on the street.

The indoor industry

Although supportive and respectful management does exist within the sex industry, labour practices which would be considered illegal under the LRA and the BCEA are common within the industry. No regulatory body exists to enforce

standards for work. Even where sex workers do have contracts with an agency, they have in practice no recourse to the law to enforce their rights. This means that management can break contracts at will.

Conditions faced by sex workers working for exploitative agencies include:

- very long working hours (up to 18 hours a day);
- little time off;
- arbitrary spot fines for breaking house rules, sometimes without a list of rules ever being provided;
- limitations on their freedom of movement;
- abuse by clients and managers, including the assumed right for managers to 'test drive' workers;

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- sex workers having to share beds and/or sleep in the same beds that they work in, sometimes without a change of linen.

In addition, the gains made for workers by the HIV movement cannot be enjoyed by sex workers. Management can insist on an HIV test, and SWEAT knows of at least one agency where workers were not informed of the results. In addition, confidentiality is not always respected.

Last year SWEAT's Indoor Outreach Project worked with a group of male-to-male agencies in Cape Town and formulated a code of conduct. This included respecting the labour rights of

sex workers, not employing underage workers, and not allowing drugs on the premises. However, there is no way to enforce this code.

One of the ways forward could be for local municipalities, which currently license escort agencies and massage parlours in the same way as other businesses, to take responsibility for enforcing a code of conduct that has been mutually agreed upon by all stakeholders, including sex workers themselves. However, for this to be effective, it would require the recognition of sex work as a legitimate form of labour and an end to the criminalisation of the industry.

The outdoor industry

One controversial labour issue on the streets is that of pimping. It is important to differentiate between exploitative pimping and supportive pimping.

When a sex worker pays someone to watch over him/her to ensure his/her safety, to arrange work, or to handle his/her money, the question of who is the employer and who is the employee arises. Pimps, or managers, can also be husbands or partners of sex workers, which complicates the business relationship.

There has been an increase in gang involvement on the streets of Cape Town in recent years. This has led to exploitative pimping, more drugs in the outdoor industry, and an alarming increase in underage sex workers on the streets. It is imperative that the link between the sex industry and organised crime is broken, to ensure that workers are not being forced into working, or selling drugs, or working under exploitative conditions.

The way forward

There are a number of labour issues that need immediate attention. Sex workers,

like many informal or seasonal workers, have fluctuating incomes. Street sex workers would need to be taxed in the same way as other informal workers. For the indoor industry, the Department of Labour has to decide if sex workers are employees or independent contractors, and tax them accordingly. A sectoral determination process for the sex industry would help to clarify the many issues facing workers and employers in the industry. However, sex work needs to be decriminalised in order for this to occur.

The unionisation of sex workers is also an important way to ensure that workers' labour rights are protected. However, as a result of the stigmatisation and criminalisation of their work, it is almost impossible for sex workers to mobilise publicly at the moment.

Legal reform debate

- Sex work is criminalised in South Africa under the Sexual Offences Act (1957). It is illegal to sell sex, to profit from the sale of sex, or to run a brothel. Notably, it is not a crime to buy sex. The South African Law Commission is currently reviewing the legislation that criminalises adult commercial sex work. The two broad models that are available as alternatives to criminalisation are legalisation and decriminalisation. It is important to understand the differences between the two, especially as the Law Commission's discussion document will be available for public comment, hopefully early next year.



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Legalisation

Legalisation suggests that the sex industry is tolerated, but is still seen to require special regulation in a way that implies its difference to other industries. In a legalised system, certain conditions under which sex work is allowed to occur are defined by law. If sex work happens outside these laws, it remains illegal. Many of the laws typical to a legalised system (such as zoning, mandatory registration or health checks) do not take workers' needs into account. This makes it difficult or impossible for some workers, typically the most vulnerable, to comply with the

legislation. Accordingly, they continue to work in a criminalised industry, with little recourse to any kind of protection or access to services. In this way legalisation differs from decriminalisation in that it implies the existence of a legal industry, with an illegal industry still operating outside its borders.

Decriminalisation

Decriminalisation means the removal of laws that criminalise adult commercial sex work. This does not mean the removal of laws against abuse or underage sex work. It implies that those sections of the Sexual Offences Act that criminalise adults selling sex or profiting from the sale of sex will be abolished and will not be replaced with other laws. It is also possible to decriminalise sex workers but continue to criminalise third party involvement, like managers or pimps. However, this results in a situation where significant aspects of the industry are still criminalised, and the problems associated with criminalisation continue to exist.

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Decriminalisation has to exist with regulation, just as all industries have regulations specific to their conditions. Labour legislation that applies to other workers in South Africa offers starting-point regulation. There are many stakeholders in the sex industry: management, clients,

communities within which sex work takes place, and sex workers. Any special regulation, over and above labour legislation, would need to take into account the needs of all the stakeholders.

Decriminalisation is the model most likely to take into account the needs of sex workers themselves. This is a vital aspect of any regulation of the sex industry, if the regulation is to be effective in controlling the industry within a human rights framework. Decriminalisation allows as its starting point the idea that sex work should not be seen as intrinsically different to other work, and thus has more potential to address the real needs of the workers.

Unfortunately the criminalisation of sex work in South Africa has meant there is very little sex worker activism here, but organised movements of sex workers internationally are unanimous in calling for decriminalisation as the system that best protects their rights.

The decriminalisation of the sex industry is not an automatic solution to the issues that will face local authorities when it comes to regulating the industry. But it is the only viable starting point to ensuring the rights of workers. Sex workers, like other workers, are just trying to make a living in a country where employment opportunities are limited for many. In order to give meaning to our human rights culture, their work must be recognised so that no working sector of our society is unable to benefit from the human and labour rights enshrined in our Constitution. ★

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