

Sex workers

Criminals without rights

Sex workers are the world's forgotten workers. In 2001 however 25 000 Indian sex workers gathered to assert their existence and their rights. Since then 3 March has been celebrated as International Sex Workers' Rights Day. Here **Anna Weekes** from Sex Worker Education and Advocacy Taskforce (Sweat) talks about the conditions of sex workers in South Africa and what the organisation will be fighting for when it celebrates the international day.

Sex workers work indoors, in agencies or in homes and outdoors on streets and highways.

Sex workers can have exploitative employers like any other workers. Research with indoor sex workers in Cape Town revealed that employers fine workers as much as R1 000 for coming a few minutes late to work, force workers not to leave the premises and charge high fees for the use of rooms. They also force workers to work excessively long shifts, even 24 hour shifts, and sometimes prevent them from accessing basic health and safety equipment. On top of this sex workers are often abused by their clients.

CAN LABOUR LAW PROTECT CRIMINALS?

Many see sex workers as sub-human. The stigma attached to sex work comes partly from conservative elements in society objecting to the nature of the work

itself. But the main problem is that the state sees them as criminals. In terms of the Sexual Offences Act of 1957, an apartheid law previously called the Immorality Act, selling sex is a criminal offence. This means that society does not give sex workers the same value that society gives other legal workers. As criminals they are associated with many negative and untrue stereotypes.

A researcher, Coriaan de Villiers, argues that criminalisation infringes sex workers' constitutional rights to healthcare, labour rights and right to be free from violence. "Criminalisation results in a denial of the equal protection and benefit of the law. Whereas the police are there to protect citizens from violence, in these circumstances sex workers are not only denied such protection but are subject to violence at the hands of the police," comments De Villiers.

There are different opinions on this. The first is that because the work itself is criminalised,

protection under the Labour Relations and Basic Conditions of Employment Acts cannot exist for sex workers. According to De Villiers, "The general approach is that under a criminalised system sex workers are denied *all* labour rights. Our law does not enforce illegal contracts."

The second opinion, which has not been legally tested, is that workers engaged in illegal work can still use labour law. For example if one of the duties of a farm worker is to cultivate a field of dagga, that worker still deserves to be protected by labour laws.

The CCMA (Commission for Conciliation Mediation & Arbitration) would be the forum to test such a case. Sweat is looking at this possibility. The limitations to launching a test case in the CCMA are that many sex workers keep their work a secret and have concerns about confidentiality. Most sex workers' families think that they are in legal employment. Because sex workers are not unionised,

JUST who

DO YOU THINK WE ARE?

there is no forum where they can acquire knowledge of labour laws and build confidence to take collective action.

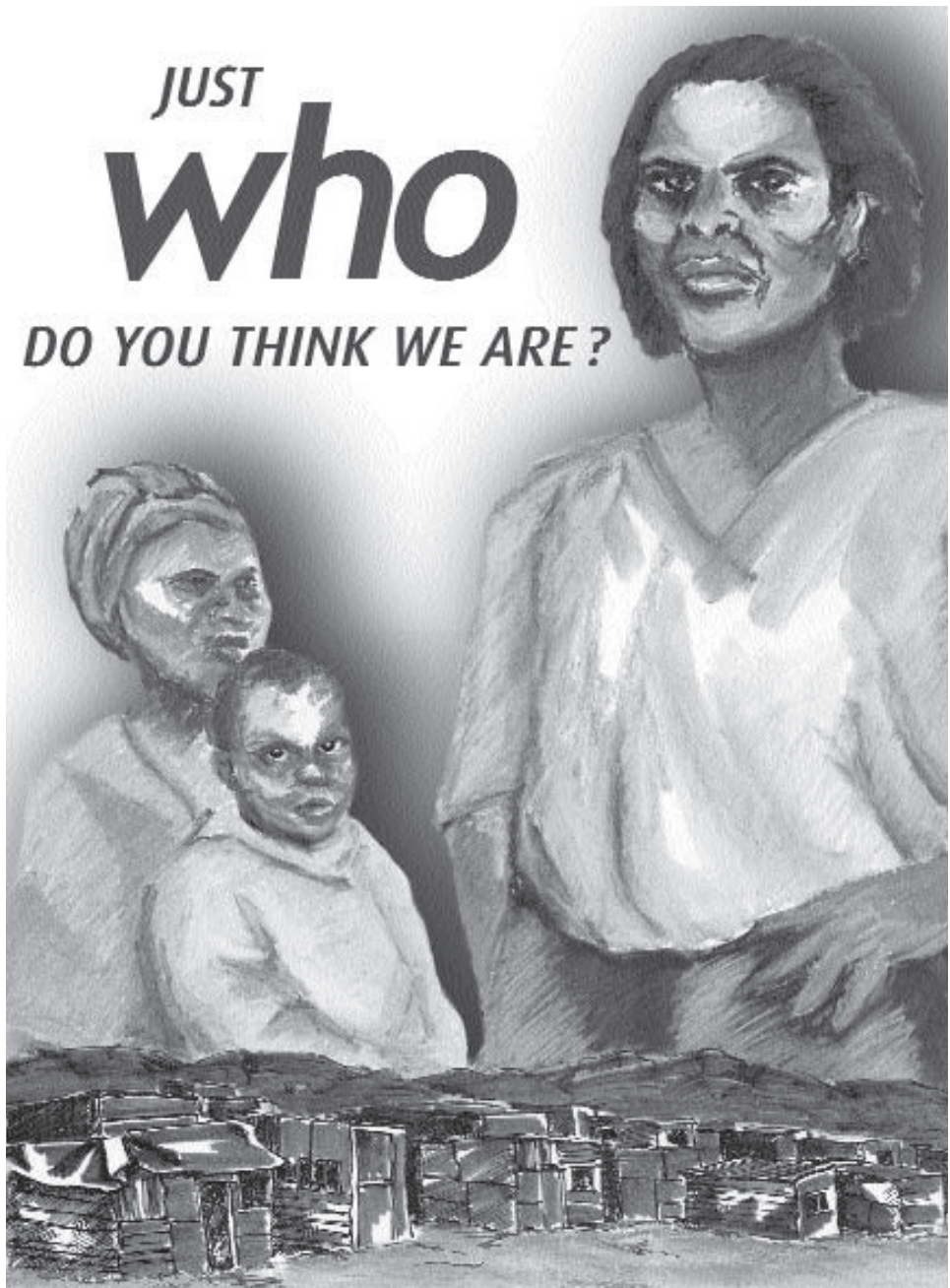
UNIONISING SEX WORKERS

There is no sex work union in South Africa although thousands of sex workers exist. The unionisation of sex workers is clearly one avenue that could assist workers to access protection. Saccawu (SA Commercial Catering & Allied Workers Union) took a resolution that sex work should be decriminalised and has shown an interest in organising sex workers.

Last year, Cosatu discussed 'confronting the challenge of organising sex workers' in a commission on organisational development. Cosatu and its affiliates seem to accept that sex work is a legitimate form of work and that sex workers should be unionised. In the meantime, Sweat is trying to set up meetings with Popcru (Police & Prisons Civil Rights Union) and Sapu (SA Police Union) to discuss the problem of police union members harassing and abusing sex workers.

It can be difficult to organise sex work as they are often transient and isolated from one another. But unions could begin organising the indoor sex work sector. In cities or big towns where agencies are often very close to each other, the possibility exists for calling groups of sex workers together for meetings.

The question of whether sex workers are independent contractors or employees needs to be resolved in order to unionise them. Indoor sex workers need to resist contracts which label them independent contractors which




*We're wives, mothers, sisters,
breadwinners, brothers and neighbours*

SEX WORKERS' RIGHTS ARE HUMAN RIGHTS !

SWEAT SUPPORTS THE DECRIMINALISATION OF ADULT SEX WORK

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Carol Burmeister



puts them outside of protective labour laws.

Sweat's research shows that sex workers who sign contracts as independent contractors are denied rights that are granted to other contractors. For example, independent contractors have some freedom of choice over what work they do and how and when they do it. But sex workers employed as independent contractors are often treated as if they are employees by agencies. Agency employers often control their working hours, their right to choose or refuse clients, and the amount they can charge for their work.

In determining whether sex workers are employees or independent contractors, De Villiers refers to Smit versus Workman's Compensation Commissioner. "The court noted that perhaps the most prominent test in deciding whether a person has placed her productive capacity at the disposal of another is that of control. The control must be not only over the work to be done but the manner in which it is to be done. An independent contractor is on the same footing as the employer, while an employee is at the 'beck and call' of the employer. Other relevant factors include the power of selection and dismissal, the nature of the worker's obligations, remuneration and the

duration of the relationship."

FIGHTING THE EXPLOITATIVE PIMP

The attorney Deborah Quénet has argued that indoor sex work is the formal sector in the industry, and outdoor sex work is the informal sector.

In the outdoor sex work industry, if there is an employer, this person is known as the pimp. "The relationship between the pimp and the sex worker is contingent on her engaging in sex work and relinquishing all or part of her earnings to the pimp. The relationship is controlled by the pimp for his economic gain. He will normally handle the money she earns, may bail her out of jail in the event that she gets arrested and act as her protector. There is often a relationship of coercion, control and emotional dependence between the sex worker and the pimp. It has been found that the pimp will often assault, harass, rape or even kidnap the sex worker and therefore her ability to leave the relationship becomes limited," says Quénet.

The pimp as an exploitative employer plays a largely negative role in the sex work industry. Many sex workers have solved this problem by eliminating the pimp from the workplace and either working alone, or forming sex

worker collectives. This makes these workers 'self-employed'. These self-employed sex workers' main workplace hazards are the police, and the clients.

BY-LAWS AND OUTDOOR WORKERS

City police and municipalities use by-laws which disrupt the working life of hawkers, sex workers and male artisans who wait on roadsides for casual labour. All these workers face arrest, fines and confiscation of their goods under these by-laws.

In 2000, Sweat and the Women's Legal Centre made an agreement with the Western Cape Attorney-General that prosecutions on loitering charges would stop in the Western Cape. This has not however stopped police from harassing and arresting artisans, hawkers and sex workers or imposing fines on these workers for contravening loitering by-laws.

Lately the police have also arrested and fined outdoor sex workers who work on highways under the Road Traffic Act. Although these workers stand off the road and do not constitute a traffic hazard, the Act is a convenient excuse for police to harass sex workers, "whose boyfriends create problems in the area" according to a comment made by a policeman to Sweat. This amounts to a form of illegal, collective punishment.

SEX WORKERS' MOVEMENTS

Social movements function to help stamp out stigma and create acceptance for previously unacceptable groups. Gay and lesbian activist organisations, the Treatment Action Campaign (TAC) and other HIV/AIDS activist groups

have waged long struggles in this way.

Sex workers have formed a national sex worker controlled movement called Sisonke (We are together). Sisonke currently consists of a leadership core of sex workers from around the country who are developing strategies to recruit more workers and are taking sex worker issues forward. In two Cape Town townships, grassroots sex workers have come together to 'fight for their rights' as workers. These groups have involved Sweat in engaging with clients around safer sex, and in fighting for respect and equal rights to treatment from health workers at clinics.

DECRIMINALISATION AND ITS FORM

The Sexual Offences Act is due for reform and a new Sexual Offences Bill is before parliament. Workers have been waiting for reform since 1998. However, the sections dealing with adult sex work were removed from this bill. A separate Adult Sex Work paper is due in 2006 from the South African Law Reform Commission. Although this paper will not contain draft legislation, it is the re-start of a process that will lead to law reform in the area of sex work.

Sweat supports the total decriminalisation of adult sex work and is opposed to legal models that criminalise certain aspects of sex work. These include zoning, where anyone operating outside of certain zones would be illegal, as well as, for example, models that decriminalise the sex worker but criminalise the client.

Forcing sex workers into zones, away from the public eye, is as

negative as relocating industry to export processing zones (EPZs) in outlying areas. Workers' rights are set back as a result. Often, unions are not allowed into the EPZs to organise. De Villiers says that "international experience clearly shows that... zoning has not resulted in better conditions for sex workers and has exacerbated the marginalisation and vulnerability of those who operate outside the legal pockets of sex work - and most importantly - has worsened conditions for street sex workers."

New Zealand provides a good example of the decriminalisation of sex work. The Prostitution Reform Act was passed in 2003. The purpose of the Act is to decriminalise prostitution and to create a framework that, among others, "safeguards the human rights of sex workers and protects them from exploitation" and "promotes the welfare and occupational health and safety of sex workers".

Sex workers made important gains with this law. Indoor agency employers must provide all the necessary health and safety equipment. Clients have to practice safer sex, however the onus is on the sex worker to enforce this or face prosecution and a fine of up to R10 000. Although it is wrong to place the onus on the worker, the Department of Health has issued posters that all agencies must display. Workers say that as a result there has been a decrease in the number of requests for unsafe sex.

Another positive development is that workers can refuse clients and agencies cannot dismiss them for this. There are cases where indoor sex workers have taken employers

to the Employment Tribunal and sex workers organisations are awaiting rulings. New Zealand sex workers who are not independent contractors are covered by labour laws - the Employment Relations Act 2000 and the Minimum Wage Act 1983.

Police can no longer demand entry to a brothel without a warrant, the requirements for which are set down in the Act. This has reduced police harassment and violence towards sex workers. Employers may not make explicit or implied threats in order to coerce a worker into sex work. This includes threats to disclose information that may damage a worker's reputation, threats to deport a worker who may not have a visa, or threats to supply or withhold a drug.

In India, sex work is criminalised but unrecognised unions have formed. These unions give a sense of legitimacy to sex work and have mobilised large numbers of sex workers. In South Africa, sex workers face immense difficulties in collectively trying to improve their work conditions. South Africa is a heavily Christian, conservative society and the government's emphasis on 'moral regeneration' and 'family values' poses barriers and challenges to workers trying to fight for their rights.

Meanwhile Sweat is actively supporting decriminalisation of sex work and assisting the development of sex worker led activism in order to improve conditions of work. And trade unions need to give support to sex workers by organising this sector. This would act as an important pressure on the state to address decriminalisation. LB