

# Urgent need to decriminalise sex work

Sex workers are the target of jokes and serious abuse and exploitation. **Patricia Nyman-Appolis** and **Liesl Orr** explain why unions need to take sex work seriously and how these workers need to have their dignity and human rights returned to them.

**T**here is a need for the labour movement in South Africa to advocate for the decriminalisation of sex work and for it to play a role in supporting the organising of sex workers. Events make this an ideal moment for far-reaching changes to the adult sex work industry. To play a role labour needs to challenge prejudices in society and within its own ranks, including amongst its leadership.

Although we mainly talk of the majority of women sex workers we acknowledge that men, gays and lesbians also engage in sex work.

We argue for the decriminalisation of adult sex work only. Adults forced into sex work and commercial exploitation of children are criminal offences. The decriminalisation of adult sex work will regulate the industry so that the authorities can prosecute the perpetrators of the above offences more effectively.

## BACKGROUND

The issue of sex work has been debated in the last few years and recently events have brought the issue more into focus.

The South African Law Reform Commission is currently considering options for legal reform around sex work and has received submissions from organisations. This

provides an opportunity for input and debate on the matter.

There have been statements from government around the possibility of decriminalising sex work. In fact, the Gauteng provincial government advocated decriminalisation in the late 1990s.

With the upcoming 2010 Soccer World Cup, government and other organisations have focused on the expected proliferation in sex work. The discussions have centred on how to regulate this and ensure that workers are protected. There is also concern about ensuring that the authorities can clamp down on trafficking of women and children.

The Cosatu (Congress of South African Trade Unions) Gender Conference in 2009 focused on the matter and identified it as a key issue to take up, in addition to giving input to the law reform process. It discussed the options and decided to call for the decriminalisation of sex work.

Saccawu (South African Commercial Catering & Allied Workers Union) has been looking at ways of organising and supporting sex workers for a number of years. It is playing a leading role in the federation including highlighting issues facing sex workers and lobbying for decriminalisation. It has also committed to organising sex workers.

Saccawu has a relationship with Sweat (Sex Workers Education and Advocacy Taskforce) which does education and advocacy work with sex workers. The union has also been involved in international conferences and research around organising these workers.

The September 2009 Cosatu Congress discussed a resolution in support of decriminalisation. The resolution came out of the Cosatu Gender Conference and Popcru (Police and Prisons Civil Rights Union).

It is significant that the police union took this stand given that its members are in direct contact with sex workers in their policing role. The union recognises that there is significant abuse which often goes undetected because conditions of criminalisation drive sex work underground. Popcru is committed to rooting out such abuse within its ranks and the criminal justice system in general.

The response by some affiliates was disappointing and reflected strong patriarchal attitudes and prejudices, rather than dealing with the burning challenges facing sex workers as workers.

The affiliates arguing in favour of decriminalisation put forward a motivation based on the need to respond to the challenges of policing, health and safety,



TRADE UNION PROTECTIONS FOR SEX WORKERS  
 PROTECCION SINDICAL PARA TRABAJADORES SEXUALES  
 PROTEÇÃO SINDICAL PARA PROFISSIONAIS DO SEXO

JANUARY / ENERO / JANEIRO 30, 2009  
 KP 10, UFPA Professional, Shift 2 (12h - 15h)

JANUARY / ENERO / JANEIRO 31, 2009  
 KP 03, UFPA Professional, whole day



NTUI

Sponsored by / Patrocinado por / Patrocinado por  
 KARNATAKA SEX WORKERS UNION  
 & NEW TRADE UNION INITIATIVE (INDIA)

KOSWU



HIV/AIDS, the World Cup and labour rights.

Popcru reflected on the reality of policing sex work in the criminalised context. It emphasised the need rather to use state resources for genuine crimes, as well as that criminalisation does not stop sex work. It also raised concerns about the way the criminalised environment contributes towards abuse and harassment of sex workers by the police.

Satawu (South African Transport & Allied Workers Union), Saccawu and Samwu (South African Municipal Workers Union) also supported decriminalisation based on their engagement with the issues through their sectors.

There were two main responses to the resolution, both of which contributed to the postponement of the discussion. The first was a cautious approach which called for deeper preparation and reflection before taking a stand. The second was a conservative reaction which used moralistic and fear-based arguments, rather than engaging

with the issues of discrimination, abuse and exploitation of sex workers.

Samwu appealed to Congress not to miss the opportunity to make a meaningful contribution given that events may overtake the federation. However, the debate was postponed as Congress could not reach agreement.

We hope that Cosatu as the leading labour federation will carry forward the discussion and lend its support to sex workers' struggles.

#### WHY TAKE UP SEX WORKER ISSUES?

The progressive labour movement, particularly Cosatu, has a history of taking action to advance the human rights and dignity of workers and vulnerable groups. So Cosatu should take up the plight of sex workers and build solidarity amongst the oppressed and exploited.

On principle, our focus should be on respecting, protecting and realising the human rights of marginalised vulnerable workers subjected to human rights abuses. Sex workers are human beings and

should be treated with dignity, and enjoy full human rights. Women sex workers should also be granted particular rights extended to women under legislation.

The way sex workers are treated is not in accordance with the Constitution, which is committed to advancing human rights and social justice for all. The status accorded to sex workers and the social stigma that they face excludes them from protection that should be available to them as citizens, women and workers.

The marginalisation of sex workers is made worse because they do not adhere to the behaviour or roles associated with women as defined by society. Views on women sex workers are shaped by the sexist ways in which society sees women in general. There are different standards for women and men, particularly with regard to sexuality.

The social stigma attached to sex workers is deeply entrenched, as demonstrated by the large number of derogatory terms used to describe sex workers in various languages.

Contrastingly, the clients of sex workers are not blamed. Gender activists should defend sex workers from prejudice because these are the same standards used to judge and oppress all women. Often women who defy prescribed gender roles are labelled in the same derogatory way.

#### LEGAL OPTIONS

South African law views sex work as a criminal offence. International policy debates have identified three legal models to manage the sex work industry, namely criminalisation, legalisation and decriminalisation.

Criminalisation means that selling sex and associated activities are crimes. According to Sweat 'this model is often advanced as a means to eradicate the entire sex work industry'. However, it fails because it

does not stop sex work. It only succeeds in labelling sex workers as criminals, who are then made vulnerable to human rights abuses. It also makes it more difficult to regulate or control the sector.

Legalisation means that the state enacts laws to control sex work. This means that sex work is legal, but only under certain conditions. These may include zones or red-light districts, registration, and compulsory health checks. The disadvantage of this model is that where sex workers cannot comply they become illegal and face prosecution.

Decriminalisation refers to the removal of laws that make adult commercial sex work a crime. Sweat argues that such laws should be scrapped and the industry should be regulated like other industries in order to offer protection as with other workers. The regulation should take place with the participation of workers in the industry.

#### REASONS FOR DECRIMINALISATION

Because of the criminalisation of sex work, workers cannot make use of existing legal processes, for example, when they are subjected to violence in their work.

In addition, sex workers' human rights are violated through police harassment, unlawful arrest, detention and even rape in police custody. They are more vulnerable to abuse and violence, but also cannot access protection for these violations. Whilst seeking protection they may even encounter further abuse. Decriminalisation would give these workers access to protection and legal recourse.

Sex work is at the intersection of capitalism and patriarchy. While women and men become sex workers for various reasons, economic need is often a primary factor. In the context of poverty, unemployment, the inferior status of

women and discriminatory cultural practices, sex work may become a survival choice for some women.

One of the advantages of decriminalisation is that women who want to leave the industry can do so more easily without the barriers of illegality and the associated stigma. Government could put 'exit systems' in place including training and other support for those leaving the industry.

A further motivation is that decriminalisation gives sex workers access to health care. Sex workers are often held responsible for the spread of HIV/AIDS, but this is not true. Biologically women sex workers are more vulnerable to HIV than their clients and their vulnerability is worsened by their low socio economic status and patriarchal practices.

Sex workers are often not able to insist on safe sex. This inability is an indication of the lack of women's autonomy and bodily integrity in relationships in general. There is a demand for condom-free sex which pays higher rates and which is an incentive for women who are desperate. The use of violence to force unprotected sex also happens and contributes to increased infection rates.

Sex workers also find it difficult to access public health services to prevent HIV/AIDS and STIs (sexually transmitted infections). They feel judged and discriminated against because of the stigma associated with sex work.

The vulnerability of sex workers to HIV/AIDS is recognized in the HIV/AIDS National Strategic Plan which understands that illegality contributes to the pandemic and so it also calls for the decriminalisation of sex work.

Sex workers who have been victims of sexual crimes, including assault and rape, face greater obstacles than other victims. The

police often refuse to investigate violence against women whom they know as sex workers. The stigma associated with sex work prevents many women from laying complaints. They want to remain unidentified and this prevents them from exercising their rights.

Sex workers are routinely arrested or harassed in a degrading manner. Sex worker testimonies show the damage to their self esteem and dignity. They are already looked down upon for being sex workers and then arrests and harassment further stigmatises them. This means that if they leave sex work their chances of obtaining work are reduced.

Sex workers, particularly in the indoor industry which includes escort agencies and brothels, are denied labour rights including the freedom of association. Labour laws do not regard sex workers as employees, independent contractors or as self employed.

Their illegal status means that workers are forced to link up with organised crime for access to work premises and protection against violence, especially as the police do not protect them. Decriminalising sex work would mean that workers would become, as Sweat puts it, 'less reliant on services provided by persons involved in organised crime.'

#### ORGANISING SEX WORKERS

It is important that all workers are organised as this is the only way to ensure that their rights are enforced and that they can change their conditions and ultimately the society. As long as sex workers are criminalised they cannot organise to change their conditions and fight exploitation.

In terms of the organisation of sex workers there is no single solution but the experiences of other organisations and unions can help with this issue.

Unions and organisations that attempt to organise sex workers have used three approaches. This includes supporting workers to establish their own movements or organisations; organising sex workers into unions; and forming alliances with existing organisations and offering solidarity.

Sweat was established in the early 1990s to work with sex workers around health and human rights. It also lobbies and advocates for the decriminalisation of sex work.

Sweat facilitated the formation of Sisonke, a sex workers' movement run by sex workers. It has brought the problems of these workers into the public arena, and has importantly facilitated the discussion on sex work which would otherwise remain on the margins.

Sweat has brought landmark legal cases which challenged the lack of sex worker rights. It recently supported a case of a sex worker, Kylie, who was dismissed by a massage parlour for refusing to perform oral sex and for choosing her clients. Sadly, under the criminalised system her contract of employment was not recognised by the court.

#### EXAMPLES FROM ELSEWHERE

Around the world there are sex workers, organisations and movements that have been set up either by workers or by service organisations. Following are some examples.

In India, the Karnataka Sexworkers Union of Bangalore has a huge following and is active in advocating for workers' rights. It is also pushing for closer ties and organisation of sex workers into the mainstream union movement.

In West Bengal, in the red light district of Kolkata under the banner of the Durbar Mahila Samanaya Committee, sex workers have put forward demands to political parties.



*The 2009 Cosatu Congress discussed a resolution on decriminalising sex work but the response of some unions was disappointing.*

Their main demand has been for labour rights to apply to their profession.

Similar sex worker movements have been established in Cambodia, Trinidad and Tobago, Eire and Argentina.

There are also a few cases of sex workers' organisations reaching out to mainstream unions. These sex workers show that it is possible to organise within the mainstream labour movement and improve conditions.

The GMB (a general workers union) in Britain, which mainly organises lap dancing clubs, has organised three workplaces and negotiated recognition agreements. The International Sex Workers, set up by sex workers, joined the GMB in 2002.

In Germany, Verdi the public sector union, which organises sex workers, set up a works council in one brothel. In the Netherlands, the Red Thread sex workers rights' group is part of the FNV union federation, which is also organising and representing sex workers.

Sex workers' organisations reach out to unions believing that they are entitled to labour rights, including the right to organise,

bargain and be free from discrimination and forced labour.

The global labour movement, including ITUC (International Trade Union Confederation) and global unions IUF and UNI have also started campaigns to raise awareness and push for the organisation of sex workers.

#### CONCLUSION

These few examples demonstrate the potential for sex workers to organise. For unions to organise such workers there must be a conducive environment, including the elimination of prejudice and patriarchal attitudes.

The responsibility facing the labour movement, and Cosatu in particular, is urgently to take a stand on the decriminalisation of sex work. This will go some way towards challenging stigma and intolerance. It will also create the conditions for the legitimate organising of sex workers as part of their broader struggle for human dignity. LB

*Patricia Nyman-Appolis is the gender co-ordinator at Saccawu and Liesl Orr is senior researcher, Organisational Renewal at Naledi.*