

HUMAN RIGHTS of SEX WORKERS in WESTERN AUSTRALIA, September 2002
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FACTS OF THE SEX TRADE

1. The size of the industry is difficult to accurately know because many aspects of the business are illegal and most workers are discrete about their profession. Definitions vary. For example there is much dispute as to what constitutes pornography and therefore how does one estimate the size. Many who work in the sex industry do not make it a full-time occupation, or a full-time career. Agencies such as massage parlours, escort services change names, addresses, telephone numbers often to avoid police surveillance.
2. The number of people involved in sex work is also difficult to establish. Phoenix (2002) estimates 3000 female workers in WA with 2% being street workers. Numbers of male workers is unknown.
3. Who are sex workers? The majority in all forms of sex work, street soliciting, private work from home, brothel, escort, massage parlours (Victorian Government, 1985) are women with the mean age being between 27 and 37 (Australian Sex Worker Organisation, 2002).
4. Most sex workers came from 'comfortable' family backgrounds and not 'poor' backgrounds. Shaver (1995 in Canadian research) found that 90% of women and 72% of men had a job before turning to prostitution. In Australian research, women are shown to enter the sex industry for many reasons including as an alternative means of income to the sole parents' pension or other form of social security. Sex work is viewed as a viable means of income for tertiary students whose costs of living are much higher than Austudy recognizes. Women also work irregularly to pay off debts (Prostitution Collective, *Submission 164*).
5. Most women work for themselves and are not recruited by a pimp, are not involved in illegal substance abuse, are not responsible for spreading of STDs and HIV/AIDS into the community (Criminal Justice Committee, 1991; Perkins, 1994; Scarlet Alliance, 2000). Yet these false notions are held by both community members and the police and judiciary and used to punish sex workers.
6. Female sex workers are more likely to be charged, fined, arrested than are male workers.
7. Female street workers, are most marginalised, at greatest exposure to health risks, to client violence, and to police harassment (Scarlet Alliance, 2000).
8. Female sex workers practice safer sex than their male counterparts and safer sex than the general population and are aware of health promotional actions (Shaver, 1995; Perkins, 1994; Perkins, Prestage, Sharp, Lovejoy, 1994).

LEGAL REGIME

The legislation concerning sex work and sex workers varies between states (Pickles, 1992; Scarlet Alliance, 2000). States continue to criminalise most forms of prostitution.

- ✍ Criminalisation means that provisions are introduced in the Criminal Code to make it illegal to practice prostitution. Regulation or legalisation permits prostitution in certain forms, usually through zoning (confinement in certain areas), or licensing (licensing a limited number of prostitutes to work in certain areas of the city).
- ✍ Regulation views prostitution as a necessary evil, but not a social necessity. The aim is not eradication so much as it is control. This is the approach adopted in Australia (Davis & Shaffer, 1994). In WA, single operators work within a legal

loop-hole which protects them from police prosecution, but can still be harassed by local governmental authorities. All other workers are illegal.

- ✍ While there exist a variety of issues which differ resulting from criminalisation, a common experience is discrimination against the female sex worker. Workers are harassed by police, lack credibility in criminal justice system and in the courts.
- ✍ Decriminalisation is the complete removal of prostitution and prostitution-related offences from the Criminal Code, including those offences dealing with the exploitation or coercion of prostitutes. Sex work is viewed then as a private matter between consenting adults. Incidents of abuse will then be charged under the Criminal Code provisions already in place for such actions. This approach seeks to affirm the rightful place of sex workers in the community by erasing the legal distinction between them and the rest of society (Davis & Shaffer, 1994).
- ✍ WA State government's response will/ has been a mix of criminalisation and regulatory/legislation approaches.

DISCRIMINATION

A) Against the Individual Sex Worker

- ✍ Discrimination against women exists as a direct result from the criminalisation of sex work. Criminal sanctions ostensibly have been based on the need to control corruption. Criminal regulations have ensured state control over women so that these women are denied any control over their working conditions. Women engage in sex work for a number of different reasons. The laws to control these activities disempower women and do not deter women from working in the sex industry.
- ✍ Female sex workers are more often arrested and charged with offences than are the male clients. Police and judicial systems do not provide recourse for sex workers, yet police have power to use law to their own discretion so more female sex workers are charged and more men are not (Hancock, 1993).
- ✍ Sex Workers often experience discrimination because their profession is hidden and stigmatised. Workers are not able to freely speak about their work as they fear discrimination. In the ACT laws protect SWs from such discrimination, but this protection is lacking in WA.
- ✍ Heavy regulation of the sex industry may infringe sex workers rights to sexual privacy (Bonitt, 1995) as stated: **Sexual conduct involving only consenting adults acting in private is not to be subject, by or under any law of the Commonwealth, a State or a Territory, to any arbitrary interference with privacy under the meaning of Article 17 of the International Covenant on Civil and Political Rights .**
- ✍ Violent acts are often perpetrated on sex workers yet current laws governing the industry do not protect women workers (Bridgett & Robinson, 1999; Legislative Council, 1996). Sex Workers should be allowed **“to work freely with dignity, respect and without fear of violence and criminal imputations (Universal Declaration of Human Rights).**

Fundamental human rights of sex workers need to be acknowledged and protected. Sex work needs to be legitimised as an occupation like any other work and not defined as deviant/illegal behaviour. Criminalisation of sex workers means by default that they are denied their human rights to seek work. Sex workers are not covered by industrial awards, workers' compensation, superannuation and other benefits.

B) Discriminated by Institutions

- ✍ Sex workers are often denied credit by financial institution based on their work in the sex industry, in spite of the Anti-Discrimination Acts (Women's Legal Services)
- ✍ Sex workers are often refused health insurance and workers' compensation (Scarlet Alliance)

DECRIMINALISATION OF PROSTITUTION AND OTHER SEX WORK

1. European Parliament

Criminalisation of sex workers' employment activities highlights the contradictions in society which seeks to penalise acts by prostitutes while their clients have little fear of prosecution for their acts. In light of the continued existence of the sex profession, state authorities of the European Parliament (1986) have been asked, as *a resolution on violence against women*, to take steps to:

- ✍ Decriminalise the exercise of the profession;
- ✍ To guarantee sex workers the rights enjoyed by other citizens;
- ✍ To protect the independence, health and safety of those exercising this profession;
- ✍ To reinforce measures which may be taken against those responsible for duress or violence to sex workers, notably those forcing women to practise prostitution for their own gain;
- ✍ To support sex workers' self-help groups and to require police and judicial authorities to provide better protection for sex workers who wish to lodge complaints against pimps in order to reduce their fear of being threatened by them.

The European Parliament considers that states' policy should be within a framework of policy on emancipation and that when policy on sex workers is being considered the women concerned should be part of the deliberations.

2. Human Rights and Equal Opportunities of Sex Workers as Australian Citizens

In order for sex workers to work in security and dignity without suffering discrimination the following need to be recognized:

- ✍ Working within the sex trade is a legitimate means of making a living as an adult
- ✍ Sex workers have the same rights and responsibilities as all workers
- ✍ Sex work can be regulated like all other work using existing laws such as occupational health and safety codes, taxation laws and others
- ✍ Activities related to prostitution between adults should be decriminalised. All Criminal Code sections relating to sections relating to adult prostitution can be repealed. All state and local regulations which target sex workers to prevent the practice of their trade contravenes the international convention of rights to employment
- ✍ Guarantee sex workers all human rights and civil liberties including the freedom of speech, travel, immigration, work, marriage and motherhood, insurance, financial credit, housing
- ✍ **The Charter of the United Nations** reaffirms faith in the fundamental dignity and worth of the human person and in the equal rights of men and women
- ✍ Noting that **the Universal Declaration of Human Rights Resolution 217 A (III)** proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth, without distinction of any kind, including distinction based on sex,

- ✍ Noting that the **International Covenants on Human Rights Resolution 2200 A (xxl) annex** and other international human rights instruments prohibit discrimination on the basis of sex
- ✍ Recalling the **Convention on the Elimination of all Forms of Discrimination Against Women** in which State parties condemn discrimination against women in all its forms and agree to pursue by all appropriate means and without delay a policy of eliminating discrimination
- ✍ Reaffirming their determination to ensure the full and equal enjoyment by women of all human rights and fundamental freedoms and to take effective action to prevent violations of these rights and freedoms **the Optional Protocol to the Convention on the Elimination of Discrimination against Women CEDAW Article 5 (1979)** obliges states to take appropriate measures against prejudice and stereotypes based on gender

EXISTING HUMAN RIGHTS RELATED TO SEX WORK

These instruments include both human rights instruments adopted by the United Nations and International Labour Organization Conventions and Recommendations. ILO Conventions represent international labour standards but are only binding once a state ratifies the Convention. There is one single exception to this, Convention 87 on freedom of association, which all member states are required to respect. ILO Recommendations represent international standards but are not formally binding on states. The following is some initial interpretation of the instruments for use in the context of the sex industry.

✍ DISCRIMINATION

Sex workers face discrimination in almost every aspect of their lives.

Identifying female sex workers as a status (prostitute) rather than being employed in an activity can be considered an act of **direct sex discrimination**, thereby violating **International Covenant on Civil and Political Rights (ICCPR) Article 3 and International Convention on Economic, Social and Cultural Rights (ICESCR, Article 3) on the equality of the sexes**. This identification defines a woman's status primarily in terms of her sexual behaviour. Moreover the sexual behaviour in question, the acceptance of multiple partners, is widely considered to be a transgression in women, but is not always judged harshly in men.

CEDAW Article 5 (1979) obliges states to take appropriate measures against prejudice and stereotypes based on gender. The definition of sex workers' economic activity as a characteristic and the stigma which accompanies that characteristic reflects prejudice and stereotypes around female sexual roles. States need to take appropriate measures under this article to eliminate this prejudice.

Discrimination against sex workers can also be described in terms of **indirect sex discrimination** because the industry is predominantly female and so women are disproportionately affected. **ICCPR Article 3 and ICESCR Article 3** guarantee equal treatment of men and women. CEDAW Article 2 requires states parties to eliminate discrimination against women by taking "all appropriate measures including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women".

ICCPR Article 2.1 and ICESCR Article 2.2 require States Parties to ensure rights without discrimination in their jurisdiction.

Anti-prostitution laws significantly affect the welfare of the sex worker. Prohibitions on soliciting mean that a worker's safety is compromised. On the street she must be quick to conclude negotiations reducing her ability to assess a potential client and to avoid police. Workers off the street may be forced to work alone in premises unable to share them with other workers for security, if the two together could be viewed as operating a brothel. Prohibitions in this case violate the right to freedom of association (**Universal Declaration of Human Rights Article 20.1**) and to freedom of movement and choice of residence (**ICCPR Article 12.1 and CEDAW Article 15.4**). Legal restrictions can clearly constitute indirect sex discrimination, as the majority of sex workers are female and the majority of clients are male.

Discrimination by police and judicial authorities occurs as most often laws against sex workers or soliciting are used on arbitrary basis often as a means of intimidation or extortion. The denial of sex work as a legitimate source of income even where selling sex is not illegal, allows the arbitrary arrest of sex workers under laws prohibiting vagrancy in contravention of **ILO Recommendation 35** ©.

Sex Workers do not always feel able to seek protection of the law as victims of assault, fraud, extortion as they are regarded usually by police and other citizens as not being deserving of normal protection. Where police and judicial authorities are considering prosecuting an offence committed against a sex worker, they may drop the case on the grounds of unreliability of testimony of the sex worker. Police prejudice is especially marked in cases of sexual assault of sex workers. These exclusions violate The **UDHR Articles 6, 7, 8 and ICCPR Article 2.3 and 26 and CEDAW Article 15.1** on recognition and equality of protection by the law.

Employment discrimination, registration or legal or customary restrictions upon sex workers, registration of sex workers declaring and recording their membership of a stigmatised group constitutes violation of the principle of non-discrimination laid down in **UDHR Article 2, ICCPR Article 2 and ICESCR Article 2.2 and ICCPR Article 3, ICESCR Article 3** on the equal rights of the sexes, registration is often confined to women. Several sections of the **CEDAW Article 2** are violated especially requiring state parties to "refrain from engaging in any act or practice of discrimination against women and to ensure public authorities and institutions shall act in conformity with this obligation" and "to take all appropriate measures including legislation to abolish or modify existing laws, regulations customs and practices which constitute discrimination against women".

Employment discrimination on the basis of registration or other evidence against sex workers or former sex workers can be prohibited under **ILO C111 (Convention concerning Discrimination in Respect of Employment and Occupation)**.

The failure to recognize sex work as legitimate source of income means that even where sex workers are regulated and taxed they may not automatically be entitled to claim social security benefits. This exclusion violates the right of everyone and of women on a basis of equality with men to social security under **UDHR Articles 22 and 25, ICESCR Article 9 and CEDAW 11.1 (e)**.

RECOGNISING THE NEED TO CHANGE DISCRIMINATORY PRACTISES

- ✍ National, state and local governments can set aside funds for sex workers and sex workers' organisations to involve them in creating policies and recommendations to decriminalise sex work
- ✍ Committees in local settings can meet with equal representation from sex workers and their chosen advocates (lawyers, community groups, human rights activists) and from concerned community groups (residents, businesses, organizations).

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