

## **Eight Working Papers/Case Studies Examining the Intersections of Sex Work Law, Policy, Rights and Health**

In June 2006 the Open Society Institute convened an international gathering in Johannesburg, South Africa about the impact of laws, policies, and law enforcement practices on sex workers' health and human rights. Eight case studies were prepared as a tool to assist participants in understanding the legal regulation of sex work in a variety of settings. The studies allowed participants to compare and contrast different frameworks and build advocacy strategies that heeded lessons learned from law reform actions to date. Each study was developed collaboratively involving input from a number of local and international advocates and represents a snapshot of some key issues in each local environment rather than a definitive statement of all trends and issues. Information about the experiences of male, female and trans-people is included and input was sought to describe the experience of a diversity of sex workers such as street sex workers, indoor sex workers, migrants and people who engage in more informal kinds of sex work. The case studies describe the criminal laws surrounding sex work because they may be an important determinant of sex workers' experience. However, other types of law and regulation can have an equal or greater impact, both positive and negative. Information about the effects of public health regulations, zoning laws, immigration laws and social welfare laws has therefore been incorporated to provide participants with materials needed to evaluate different policy environments.

Studies summarize the health and rights impact of different legislative and policy frameworks in:

- ❖ India
- ❖ Australia
- ❖ South Africa
- ❖ Thailand
- ❖ Canada
- ❖ Netherlands
- ❖ Brazil
- ❖ Senegal

Cross cutting themes that emerge are:

1. The environments that work best for sex workers offer the most choice in work situations and minimize the effect of municipal and health regulation to allow sex workers to be safe on their own terms. Ideally, these environments include support for sex workers' organizations as well a societal commitment to justice for sex workers.
2. Several cases document abuse and violence committed against sex workers [Canada, India, Brazil]. Sex workers subjected to violence often cannot access, or are denied, legal remedies and protection.
3. Defining commercial sex as "work like other forms of labor" can allow sex workers to draw on social security systems and other forms of benefits [Brazil]. Redefining prostitution as work requires linking with other social movements, against corruption for example, and understanding how struggles for workers' rights occurs in local contexts including informal labor sectors

4. Systems that empower the police to enforce public health measures or legislatively mandate condom use undermine HIV prevention initiatives [Australia, Thailand]
5. Systems that allow unfettered local or municipal control of sex work via code requirements undermine sex workers' independence and may create a two tiered system [Netherlands, Australia]
6. Licensing and registration of individual sex workers forces those who cannot fulfill licensing requirements because of gender, age, history of substance use, or health status into situations of illegality [Australia, Senegal]. Licensing systems that require sex workers to provide health certificates and include mandatory HIV/STI testing violate their privacy and undermine health promotion efforts
7. Policing and other forms of control will undermine the health and rights of groups considered "outsiders" (street workers, drug users, racial and ethnic minorities, people of non-heteronormative sexuality and gender) [India, Canada, South Africa, Brazil]. This can occur even when the particular form of sex work is not illegal in any way [Australia]. Anti-discrimination efforts and organizing from the affected communities for rights can ameliorate this [Australia, India, Brazil]
8. The cases illustrate the different ways in which sex workers travel within their countries and cross borders. Migrant sex workers are criminalized or marginalized by multiple means such as laws against trafficking [Australia, Canada, Thailand, Netherlands], by immigration restrictions [Netherlands] and by labor codes [Thailand]
9. Visa systems that allow migrant sex workers to travel under broader work categories, such as "entertainer visas" or "dancer's visas," have been helpful to migrant workers. Even where it is technically legal for sex workers to apply for a visa to enter to engage in sex work, such as Australia, this option is difficult to exercise because of discrimination.
10. Measures to address trafficking in persons have often undermined relatively good systems of sex work policy [Australia] and complicated law reform processes in other countries [South Africa, India]
11. Public health and policy research often serves purposes that do not practically assist sex workers and their organizations. Research may jeopardize sex workers' safety and rights or bolster negative stereotypes of sex workers [South Africa]
12. The framing of sex work issues within health has been both useful and dangerous for sex workers. Many good organizations working with sex workers and actions for change have been supported by health funds, especially HIV funds [Thailand, Brazil, Australia]. However, the most repressive forms of regulation have also been justified on public health grounds [Queensland, Australia]
13. In many countries policy makers assume that all sex workers are women [India, Thailand, Senegal]. Males and transgendered people are also affected by laws and policy, but their presence as sex workers is frequently obscured or denied because of prejudice and discrimination
14. All systems of law and policy, even relatively good situations, are to some degree exclusionary. The key to good policy and law reform is to include a diversity of perspectives and evaluate different options to find the best local solution from a range of options.

## INDIA<sup>1</sup>

### **Background: The context of commercial sex in India**

India is known for incubating several innovative organizing initiatives among sex workers. These include the DMSC, located in Calcutta, and SANGRAM/VAMP, located in western Maharashtra, in the district of Sangli, and North Karnataka. These initiatives have included self-governing boards of sex workers that promote universal condom use as well as collectives of sex workers that address health and policy issues. These efforts have had a positive impact on the ways in which sex work is regulated by local police. Recently, the US “prostitution pledge” policy has been used to undermine NGOs working with sex workers from a rights based perspective.

Sexual commerce takes place in urban and rural areas, in every economic stratum, and in every community. However, there are some observations one may make about the majority of sex workers in India. Many are from rural areas, where they and/or their families worked as landless agricultural workers. Most of these communities are *dalit*<sup>2</sup> (the lower castes’ “lowest caste”), and consist of people who do not have access to education, literacy, adequate health care, and, in many cases, do not have access to adequate food and water. Although sexual services are sold or traded by women, men, and transgendered people, the juridical debate on sex work in India has been primarily informed by an understanding of women as sex workers, and men as clients for sexual services. The most iconic, visible aspect of sex industries in India is to be found in urban red light areas, such as Kamathipura in Bombay, Sonagachi in Calcutta, and G.B. Road in New Delhi. Urban sex work also includes street-based solicitation of clients, as well as intermittent sexual commerce that is practiced alongside other income-generating strategies, such as manual day-wage labor. In cities that do not have a red light area, including cities in the Southern states of Kerala and Tamil Nadu, sex workers solicit clients from the street, or work in rented flats and solicit clients through intermediaries.

### **Legislation and Policy**

The overarching law governing sex work in India is the Immoral Trafficking Prevention Act (ITPA). This act was passed into law in 1956, as one of the obligations of the Indian state following its ratification of the 1949 UN anti-trafficking convention. ITPA does not criminalize the exchange of sexual services for money *per se*. Rather, it criminalizes all economic activity around sex work including living off of the earnings of a sex worker and soliciting clients for sex. The anti-solicitation clause of ITPA affords the police the power to arrest anyone who “seems to be soliciting clients for the purposes of prostitution.”

Police also use anti-vagrancy laws against sex workers, as well as sets of laws called “Police Acts,” which empower the police to regulate the uses of public spaces, including footpaths and commuter railway stations. Laws that regulate the city, particularly the city’s slum areas, have a serious impact on sex workers. Bombay, for example, labels slum dwellers as “encroachers” and intermittently bulldozes slums without notice. Red light areas are potentially subject to these kinds of clearances, and may suffer the same problems of access to water and city amenities that other slums face. Section 377, the “anti-sodomy” law, has also been used against transgender and male sex workers, and against health outreach workers who may, or may not, be sex workers themselves.

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<sup>1</sup> Prepared by Svati P. Shah, Assistant Professor/Faculty Fellow, New York University with additional input from Meena Seshu, Secretary General, SANGRAM.

<sup>2</sup> ‘*Dalit*’ refers to people who belong to the lowest caste in the Hindu hierarchy, and is a derogatory name taken up by members of this grouping. *Dalits* have been historically marginalized, oppressed economically, socially, and politically.

## **Key issues: Challenges to Section 377, ITPA Reform and Anti-trafficking Measures**

**1. Outreach workers who have attempted to distribute condoms have been arrested under the Section 377 for allegedly “promoting prostitution” by advocating for and facilitating condom use.** This tactic is being contested as part of a legal challenge to Section 377, which is due to be heard in the Delhi High Court. This challenge claims that Section 377 and its implementation contravene several articles of the Indian Constitution, including Articles 14-15 (Right to protection against discrimination), Article 19 (Right to Freedom of Speech and Expression) and Article 21 (Right to Life and Liberty, includes the right to privacy).

**2. ITPA is currently undergoing a reform process that will likely remove the anti-solicitation clause.** The proposed amendment would strengthen the linkage between prostitution and trafficking, criminalize the act of prostitution, and penalize purchasers of sexual services (i.e. clients).<sup>3</sup> **The proposed law reform would change India’s legislative approach to be more like the “Swedish Model.”** Advocates in India have noted that the proposed amendment to the ITPA would harm sex workers and undermine health initiatives forcing both sex workers and clients underground.

**3. In 2003 India was placed on the “Tier 2 Watch list” of the U.S. State Department’s Global Trafficking in Person’s Report.** Concerns about trafficking have long been linked to the question of migration to urban red light areas in India. Official responses to trafficking have not advanced sex workers rights and can undermine the rights of migrant women in general. Policy has been framed by larger concerns about labor migrations from Bangladesh and Nepal

into India. Anti-trafficking measures have usually taken the form of closing or further regulating borders, especially for single women wishing to cross. **International pressure likely influenced current reform of the ITPA and the development of anti-sex worker legislation.**

**4. In 2005, the state of Maharashtra decided to ban beer bars where “bar girls” dance for tips.** Although there are many artistic and cultural forms in India which involve women dancing publicly, sometimes for money, another rationale applied by proponents of the ban was that bar girls dancing for men in beer bars is against “Indian culture.” This attempt to ban dancing was seen as the state’s attempt to cut off bar girls’ livelihood, and led to a powerful mobilization by the bar girls’ labor union. The union reached out to local women’s organizations to buttress support. The issue has sparked a new round of conversations and debate in the Indian women’s movement about sex work. The law banning beer bars that employ bar girls was successfully challenged in the Maharashtra State Court. Following an appeal by the State of Maharashtra to the high court’s decision, this case will be heard in the Indian Supreme Court, as well.

**What is the “Swedish Model”?** In 1999 Sweden passed legislation that penalizes “[t]he person who, for payment, obtains a casual sexual relationship... with fines or imprisonment for a maximum of 6 months.” Swedish legislators believed that prostitution would be reduced if men could be deterred from purchasing sexual services. An evaluation of Sweden’s legal experiment concluded that it did not greatly reduce the number of women engaging in street sex work. Figures from Stockholm show that the total number of women on the street has remained stable from 1999-2003. Significantly, the report found that during this period street sex workers became more fearful of violence, were pressured to reduce prices and were pressured to engage in unprotected sex.

Source: Report from the Working Group on the Legal Regulation of Sexual Services, Norwegian Ministry of Justice and the Police, 2004. *Purchasing sexual services in Sweden and the Netherlands: Legal Regulation and Experiences.*

<sup>3</sup> The provisions in question are in Sections 5A, 5B and 5C of the amendment bill (tabled in December 2005). For commentary see: <http://www.swop-usa.org/news/solidarity.php>

## AUSTRALIA<sup>4</sup>

### ***Background: The context of commercial sex in Australia***

Australia is a large country almost the size of the United States with a relatively small population of 20 million people. Even though systems of public support have been eroded in the last decade, Australians can access free health care maintaining a high standard of health overall.<sup>5</sup> The country has been very successful in preventing the spread of HIV via community lead programs that have included sex workers. Australian sex workers are highly politically organized. Australian labor in general has been highly organized and unionized. Each State has at least one sex worker organization and the national organization of sex workers, Scarlet Alliance, is a strong voice on sex worker issues. This politicization explains why people engaging in commercial sex describe themselves as either “sex workers” or “workers”—the term prostitute is considered less relevant and somewhat demeaning. Sex work occurs in brothels, massage parlors, escort agencies, private homes and in public space (i.e. street based). People working out of their homes or seeing clients independently of an agency are called “private workers.” Customers are usually males described as “clients” or “punters.” Business owners are simply called “owners” or “operators” and terms such as “pimp” are considered outmoded.

Historically, sex work was perceived as a woman’s issue and women’s groups were strong allies in pressing for law reform in states such as New South Wales (NSW) in 1970s. The presence of male and transgendered sex workers is now fairly widely acknowledged. However, concerns about trafficking have whipped up public anxiety about “Asian women” forced into “sex slavery.” As a result conservative feminists and their allies are attempting to reframe sex work as a site of degradation for women, especially for immigrant women from parts of SE Asia who enter Australia to work. Australia’s current Federal government is highly conservative on many issues adding support to this anti-immigrant trend.

### ***Legislation and Policy***

Australia’s open-minded approach to sex work is well known internationally. A closer look at law and policy reveals a much more complicated picture. Prostitution is not regulated by national law. Rather each of Australia’s 6 states and 2 territories has a distinct approach including:

*Criminalization:* South Australia and Western Australia prohibit most forms of prostitution via laws against solicitation, loitering for prostitution, “living off the earnings” and against “receiving” money in a brothel. Police must prove that a location is a brothel by collecting evidence such as condoms and client statements. In Western Australia police have been unable to enforce sex industry related laws because of difficulties gathering evidence, resulting in a form of “tolerance” of prostitution since the 1950’s. In South Australia escort agencies have long been able to evade prostitution laws since sex workers travel to hotels or private homes. Recently South Australian police stopped enforcing certain sex industry related laws. Street based sex workers however are still targeted in both states. Aboriginal sex workers are more likely to work in the street sex industry than other ethnic groups and are over-represented in the arrest statistics.

*Legalization with regulation:* Victoria, Queensland, the Northern Territory and the Australian Capital Territory (ACT) all have forms of legal sex work that are highly regulated. In Queensland only two forms of sex work are legal: “private work” is allowed if a person works either entirely alone without support staff of any kind or in a licensed brothel. A health certificate is required in order to work and must be kept on file by brothels. A 2003 amendment to the Prostitution Act

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<sup>4</sup> Prepared by Penelope Saunders with additional input from Scarlet Alliance, Australia.

<sup>5</sup> Socially marginalized groups, such as Aboriginal people, fare extremely poorly in comparison.

1999 requires all sex workers and clients to use prophylactics during sex, including oral sex. The law in the NT operates similarly for private workers—they must work alone—but they are further restricted because brothels are prohibited. Escort agencies must be licensed and all escorts must have a certificate. A person who has been convicted of a “violent or drug-related crime” is ineligible to receive a certificate. Brothels in Victoria must be licensed and registered, an extremely expensive process because municipalities further restrict where brothels may operate. It is illegal to purchase or provide sexual services in an unlicensed brothel or escort agency. In the ACT, Victoria and the NT private sex workers must register and these records are either collected by the police (NT), shared with the police (ACT), or available to the police under specified circumstances (Victoria).

*Decriminalization:* NSW has decriminalized most forms of sex work. It is the only state to allow street sex work which is entirely legal if soliciting is not within view of a dwelling, school, church or hospital. Brothels are no longer under the jurisdiction of the police. Their legal status may be controlled by local councils through planning policies and the Development Approval process under the *Planning and Assessment Act*. Private workers may also be subject to this approval process. Sex work in the ACT was said to be “decriminalized” in 1992 but regulations restrict brothels to “light commercial zones,” street work is not permitted and private workers register.

### **Key Issues: Regulation, decriminalization and policing, and immigration**

**1. In practice, the most restrictive regulation has undermined sex workers health and safety.** In Queensland, for example, private workers have been targeted for sexual assault and robbery because it is widely known that they are forced to work alone. The imposition of a highly regulated system of brothel work also creates two sectors, one legal and the other illegal. Sex workers who cannot provide health certificates, are undocumented or have, in the case of NT, been convicted for drug related crimes are relegated to the illegal tier. Here they face heightened policing and are marginalized from support services. Most Australian States have laws against “knowingly infecting” or “reckless behavior” in regards to HIV and some states mandate condom use in the sex industry. Some sex workers in the ACT have found laws on compulsory condom use to be helpful because they supported their insistence on condom use. More recent debates in Queensland highlight the problems of imposing safe sex by law.

**Policing condom use in Queensland:** A common “public health strategy” involves police posing as clients and pressuring sex workers to offer oral sex without a condom. Recently one entrapped sex worker plead not guilty. He won his case—the court ruled that he had only spoken about the issue—effectively ending this policing strategy. The Police Minister then introduced legislation to *criminalize even the discussion of oral sex without a condom between a sex worker and a client causing outrage amongst sex workers and public health advocates.*

**2. The legal environments that work best for sex workers in Australia offer the most choice in work environments, such as in NSW, and minimize the effect of municipal and health regulation to allow sex workers to be safe on their own terms.** However, even in the best legal environments some sex workers continue to be harassed. In 2001 a ‘Move On’ directive was included in NSW’s Summary Offences Act. While this law was originally intended to combat street level drug trade, some police in Sydney started using this law to intimidate, threaten and falsely arrest street workers in a legally permitted zone.<sup>6</sup> Sex workers reported that their fear of arrest, detention, and harassment led them to engage in risky, unsafe behavior. Workers began carrying fewer condoms, hiding their safe sex and injecting equipment in surrounding areas and jumping into cars straight away instead of talking to the client first through the window. **Support from sex worker organizations and public awareness**

<sup>6</sup> Wotton, Rachel, 2004. “The Relationship between Street-Based Sex Workers and the Police in the effectiveness of HIV Prevention Strategies.” *Research for Sex Work*, Vol. 8: 11-13.

**campaigns have been necessary to stop crackdowns on street sex workers and change perceptions.**

**3. An extremely important policy issue for sex workers in Australia is the issue of migrant sex work.** It is theoretically possible for an immigrant sex worker to obtain a visa to come to Australia to work in the legal sectors of the industry.<sup>7</sup> However, because this would involve sex workers disclosing their intention in their country of residence and having a permanent record of their intention to travel for sex work, this option has never been exercised by a migrant worker. Concerns about trafficking have allowed the Australian Federal Police and immigration authorities to justify raids on many different kinds of sex business (brothels, massage parlors and escort agencies) in jurisdictions across Australia. Undocumented immigrant sex workers, along with from time to time, documented immigrants and second generation women (i.e. adult children of immigrants) are detained in efforts to “help victims of trafficking.” Immigration raids exacerbate existing problems caused by the complicated legal frameworks listed above, further alienating immigrant sex workers from services they need. Women’s rights are violated when they are held in detention for weeks at a time without legal representation and then summarily deported if they refuse to “testify against their traffickers.” The new justification for police intervention is changing the relationship between law enforcement and well functioning legal sections of the industry.<sup>8</sup>

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<sup>7</sup> Sex workers are not excluded from applying for a visa, but sex work itself is not regarded as “skilled migration” by the Australian Government.

<sup>8</sup> This has been reported in the brothel sector in the ACT where the police have not had an interventionist role for a decade. In some States law reform was motivated by a desire to separate sex work businesses from police intervention, to reduce corruption. In NSW and QLD in particular police pay offs and bribes were wide spread.

## SOUTH AFRICA<sup>9</sup>

### ***Background: the context of commercial sex in South Africa***

The regime of apartheid in South Africa ended in 1990 but its effects are felt to this day in terms of gender and racial inequality. For example, many black women in South Africa have low levels of formal education and experience high levels of unemployment. Sex work can provide more income than other work options, such as domestic labor, available to these women.

Consequently many sex workers in South Africa are black women who engage in sexual commerce in order to provide for themselves and their families. Men and transpeople are also present as sex workers. A demographic survey carried out by a Capetown based NGO, Sex Worker Education and Advocacy Taskforce (SWEAT) found that approximately 6% of sex workers interviewed were male and 1% transgendered.<sup>10</sup> Sex work occurs in extremely diverse environments including private homes, brothels, hotels, bars and clubs including *shebeens* (informal/illegal drinking locations), the streets, clustered around mining settlements,<sup>11</sup> along national roads, truck stops, border posts, via the telephone, the internet or from advertisements in daily newspapers. Indoor sex workers are protected to some degree from violence that can occur in public space. Intensive drug use is more associated with street working sex workers (i.e. in Hillbrow areas of Johannesburg and inner city of Durban).

In the post-apartheid period South Africa adopted a progressive Constitution and a Bill of Rights protecting many social groups, including lesbians and gays, from discrimination.<sup>12</sup> However, the Sexual Offences Act continues to criminalize sex work. Local advocates have argued that this is out of step with South Africa's new approach to rights. In 2002 the constitutionality of the sections of the Act criminalizing sex work and brothel keeping was challenged by Ellen Jordan, a brothel owner. High Court judges found the section of the Sexual Offences Act criminalizing sex workers to be unconstitutional in March 2002. This judgment was overturned in the Constitutional Court by a narrow margin. The Constitutional Court requested that the South African Law Reform Commission review the legislation. This process is ongoing.

### ***Legislation and Policy***

Sex work is criminalized in South Africa. National legislation, the Sexual Offences Act of 1957, formerly the Immorality Act, penalizes the keeping of brothels, procurement of women for prostitution, soliciting by prostitutes, and living off the earnings of prostitutes. In 1988 additional legislation, Section 20 [1] [Aa], criminalized engaging in sexual intercourse or performing indecent acts for reward. Section 20 [1] [Aa] has always been interpreted as criminalizing sex workers rather than clients. Clients could possibly be penalized under the Riotous Assemblies Act, as conspirators or accomplices, but this has never actually occurred.<sup>13</sup> In practice it is very difficult to successfully prosecute under the Sexual Offences Act, so authorities have resorted to municipal bylaws to police prostitution. Most bylaws focus on public space.<sup>14</sup> Some municipalities have bylaws specifically against loitering for the purposes of prostitution allowing

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<sup>9</sup> Prepared by Penelope Saunders with additional input from Jayne Arnott, SWEAT, South Africa.

<sup>10</sup> The survey was conducted with 200 sex workers in the Cape Metropole in 2005. Information accessed May 1, 2006 from: <http://www.sweat.org.za/>

<sup>11</sup> 300,000 miners work in South Africa's gold and platinum mining sectors. These men usually live in large single sex dormitories near the mines and settlements of women cluster nearby to provide them with sexual and other services (Campbell, Catherine, 2000. "Selling sex in the time of AIDS: the psycho-social context of condom use by sex workers on a Southern African mine." *Social Science & Medicine* 50: 479-494.

<sup>12</sup> Clause 9(3) of the South African Bill of Rights states: "The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth."

<sup>13</sup> SWEAT, *Submission on Trafficking in Persons*, Issue Paper 25, No. 31: p 8. Report accessed May 1, 2006 from: <http://www.sweat.org.za/>

<sup>14</sup> Including minor offences like loitering, littering, causing public disturbance or public indecency.



the police to detain street sex workers. However, despite laws against sex work for a number of years during the post-apartheid period sex work was, for the most part, tolerated. Policing, when it occurred, was directed at street-based sex work primarily in response to community complaints. This period of tolerance was destabilized by the defeat of the Constitutional challenge that created considerable negative publicity about sex work. Local governments used the judgment to justify an increase in policing and pass repressive local legislation.<sup>15</sup>

**Key Issues: Corruption, Labor Rights, Health, Organizing, Research Ethics, Trafficking**

**1. Police raid brothels or arrest street sex workers even when they know that the workers will likely be released.** Sex workers are often held for 48 hours and released without seeing a magistrate. **The purpose of the arrest is often extortion.**

**2. Sex workers, even those in indoor venues, have no recourse to labor rights and very limited recourse to any protection under law.** Indoor workers experience poor conditions, report being fined large amounts for being late, and some fear not getting paid by owners.

**3. Criminality hampers health promotion efforts.** Sex workers are isolated increasing vulnerability to abuse and many are cut off from health interventions. Isolation, social stigma and lack of support make it difficult for some sex workers to negotiate safe sex--requests for condom use have lead to violence against sex workers. Police use condoms as evidence of prostitution and some sex workers, even though they may be highly aware of the risk of HIV infection, are reluctant to carry condoms for fear of arrest.

**4. A priority issue for sex workers in South Africa is support for the emerging National Sisonke Sex Worker Movement of South Africa.** Regional representatives accountable to local communities have established themselves but longer-term investment is needed for this movement to reach the capacity of challenging the repressive law and policy environment.

**5. Sex worker organizations are also concerned that all research (medical, social science, ethnographic) addressing health questions be ethical and human rights based.** Some research on sex workers in South Africa has pursued very narrow medical aims and/or has played into stereotypes about sex workers' experience.

**6. In May 2006, the South African Law Reform Commission released a Discussion Paper and proposed legislation on 'Combating of Trafficking in Persons.'** **The Discussion Paper focuses on prostitution and cites arguments from conservative US based abolitionist movements that equate all sex work with exploitation and trafficking.** This perspective on sex work may undermine the steps taken by South African organizations to promote sex workers' health and rights. The debate on trafficking has emerged at a critical time because rights based work with sex workers is not yet widely understood outside of key organizations. The current trafficking discourse in South Africa that erroneously presents sex work as "a form of trafficking" could, therefore, influence those organizations that have not yet had the opportunity to hear other perspectives on sex work issues. SWEAT has recognized this need to publicize counter arguments and is developing relevant research that will inform policy and legislation in relation to trafficking debates.

I am a sex worker for twenty years. I have experienced a lot from the police. First they used to pick us up in trucks. They used some of the girls. **They ask us for money or they would leave us in the cell.** They would release the girls they have used or who give them money.

Comments made by a sex worker during the seminar on *Adult Commercial Sex Work: Decriminalisation or Regulation*, National Conference May 4 and 5, 2000  
<http://www.wlce.co.za/advocacy/>

<sup>15</sup> Fick, N, 2005. *Coping with Stigma, Discrimination and Violence*. SWEAT, South Africa.

## THAILAND<sup>16</sup>

### ***Background: the context of sex work in Thailand***

Although prostitution is a criminal offense in Thailand, sex work occurs throughout the country. Many media depictions of global trends in prostitution focus on “red light zones” in Thai cities, such as Bangkok, where a wide variety of different forms of sexual entertainment is made available for tourists. Even though sex work of different kinds is tolerated, prostitution is viewed as immoral and damaging to the nation's image. This ambivalent attitude results in discrimination and oppression of women in sex work. The presence of men and transgender sex workers is largely invisible in any discussion around prostitution in Thailand.

Most sex workers in Thailand work in venues referred to in law and policy as “entertainment places.” Workers are employed to supply massages, serve alcoholic beverages, sing karaoke, or perform. Sexual services are usually provided off-site. A smaller number of people work independently from streets, cinemas or discos. Sex workers themselves prefer to be referred to as “entertainment workers” or use the English term “sex worker.” Sex workers refer to their clients as “clients, guests or customers.” Employers are referred to as “employers” or sometimes “owners” meaning “owner of the work place.” Pimps are called *meng dah*, a type of male beetle that lives on the back of the female, eating whatever food she forages for him. In the last decade the role has changed and *meng dah* are considered “errand boys” employed by sex workers. Most people working as sex workers are Thai or hill tribe people from Thailand. A minority comes from Burma, Laos, Cambodia and China and are undocumented migrants.

### ***Legislation and Policy***

The first law criminalizing prostitution in Thailand was passed in 1960. This law was amended in 1996 and prostitution remains criminalized under the *Prevention and Suppression of Prostitution Act* 1996. This national law makes it a criminal offense to solicit or advertise prostitution, cause public nuisance or associate with others for the purpose of prostitution, recruit or arrange the prostitution of others. Sex workers convicted of prostitution can be sentenced to 10 days gaol or a maximum fine of 1000 Thai Baht.<sup>17</sup> Customers of adult sex workers are not penalized. If the person involved in prostitution is under 18 years, heavy penalties can be imposed on clients and others involved. The minor is often detained in a social welfare facility for “rehabilitation” consisting of “improving morals” and compulsory vocational skills training.

In addition to the prostitution law, the *Entertainment Place Act* 1966 also affects sex workers. This Act came into being when Pattaya and Bangkok became popular “rest and recreation” destinations for the US and Australian military fighting in the Vietnam War. The Act requires that all Entertainment Places be registered, including registration of all staff, with the police. Workers have their history recorded on a “charge sheet” at the police station, are fingerprinted and officially registered as a *nang bam luer*.<sup>18</sup> Only about one third of entertainment places in Thailand are registered. Entertainment workers are not considered workers under Thai Labor Protection Act 1998 nor are they included in the National Social Security Act 1997 preventing them from accessing social support such as disability payments. Entertainment work is not included in the list of occupations that can be undertaken by foreign migrant workers according to cabinet resolutions on the Foreign Labor Act 1978.

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<sup>16</sup> Prepared by Liz Hilton of the Empower Foundation, Thailand.

<sup>17</sup> This is approximately one quarter of the minimum monthly wage.

<sup>18</sup> This is a highly offensive term translating as sex slave or concubine.

**Key Issues: Corruption and condoms; Lack of Labor Protection; 100% Condom Use Programs and the Police; Inclusion of sex workers perspectives in HIV/AIDS Prevention**

**1. In Thailand it is not unusual to pay/bribe the police and sex workers must calculate police bribes into their normal business expenses.** Very few people are actually gaoled for prostitution. Usually they are “arrested” and held at a police station until a fine or bribe is paid. Police frequently use entrapment operations where they pose as customers, arresting the women and presenting the condoms they used as part of the evidence package. **Over the last five years police have increasingly used the presence of condoms in premises to threaten owners with charges of running a place of prostitution.** This has led to entertainment places being unwilling to stock condoms for their staff and customers, increasing the risk of unsafe sex.

**2. The lack of labor protection means the employer is free to decide the hours of work, rates of pay, duties, availability of sick leave, and “fines” imposed for lateness.** Each venue has its own set of “bar rules” and these rules have a great impact on the life of the workers. **The “bar rules,” combined with sex workers’ exclusion from the social safety net, have a direct effect on work conditions.** “Bar rules” determine if sex workers can afford to take care of their own health or if they can afford to refuse a customer. Many prevailing “bar rules” are illegal under the Thai Labor Protection Act 1998. Much health-based work in Thailand has focused on the prevention of HIV transmission by sex workers. However, the focus on sex workers as “vectors for HIV transmission” has obscured the fact that the key health issues for sex workers in Thailand stem from their position outside Thai labor laws and the Social Security Act.

Migrant sex workers experience the worst working conditions. Invariably migrant sex workers will work longer hours, be paid the least and have the most restrictions placed on them by employers. The undocumented status of migrant sex workers allows authorities to extort money from both employers and workers for immigration offences.

**3. Programs focusing on sex workers as vectors and mandating sex worker behavior, like the 100% Condom Use Policy (CUP), have reinforced stigma and empowered the authorities to control sex workers.** In the early 1990's law enforcement were included in efforts to prevent HIV by policing locations not complying with the 100% CUP. Public health staff was obliged to inform police of non-compliant premises and police were empowered to close them down. Systems of corruption described above have been augmented by new police entrapment operations that allow the extortion of extra bribes from owners deemed not to be enforcing condom use. Immigration officers also intervened, waiting at the government STI clinic in Chiang Mai to arrest undocumented migrant workers as they were bought to the clinic by order of the 100% CUP. Brothel owners would then have to “buy” women out and this cost was passed back to the women. Public health officials had no power over the police or immigration. Most of these activities have ended as the 100% CUP has been scaled back in Thailand, but the program model may have similar implications in other countries where it is being established. In Thailand even the benefits the 100% CUP bought for sex workers have dwindled—free condom distribution has stopped and government STI clinics have closed.

**4. The HIV epidemic has had one positive note. When the Thai government and other stakeholders realized they could not effectively confront the HIV epidemic without involving sex workers this provided a space for Thai sex workers to have a voice in society.** For the first time sex workers were included in government and non-government discussions and funding for sex worker groups in Thailand was made available.

## CANADA<sup>19</sup>

### ***Background: the context of commercial sex in Canada***

Advocates estimate that 80% of sex work takes place indoors, yet much media attention and policy debate has focused on street-based sex work. Research indicates that most sex workers are not associated with bosses or pimps; many sex workers are independent or self-employed. Sex workers are very heterogeneous in Canada. Some sex workers have established successful political organizations with an important public voice and others are heavily affected by poverty and marginalization. Some overlap between sex work and drug use occurs. Discrimination against and socio-economic marginalization of Aboriginal people in Canada has resulted in conditions that place Aboriginal sex workers, especially women, in situations of risk. Transgendered sex workers, particularly those working on the street, are frequent targets of violence and abuse. Sex workers often face social disdain and are alienated from the protective services of police when their safety is threatened or they have been the victims of crime. Much remains undocumented about the situation of sex workers in Canada, especially the situation of indoor workers and migrant workers.

### ***Legislation and policy***

The Criminal Code of Canada contributes to the risk of violence and other human rights abuses faced by sex workers (most specifically section 210-213 CC, inclusive). While selling sex for money or other things of value is not illegal *per se*, virtually all aspects of sex work are criminalized under the Criminal Code:

- (Section 210 CC) It is illegal to operate or be found in a “**bawdy house**,” defined as any venue regularly used for prostitution. This includes a residence, a parking lot or vehicle. Sex workers cannot rent an apartment for their work or work in their own homes. If a landlord believes that sex work will occur or has occurred in a residence that he or she owns, the landlord can evict the person(s) in question to avoid criminal charges. The effect of this provision is to keep many sex workers on the street, where they have less control over their working conditions, including condom use, facing heightened risk of violence.
- (Section 212 CC, otherwise known as the ‘pimping’ law) It is illegal for sex workers to work with one another, to refer clients to one another, or to work for an agency since this is considered “**procuring**” under the Criminal Code. Anyone who regularly spends time with a sex worker, who is supported by a sex worker, or who makes money from the work of a sex worker, including a family member or roommate, can face criminal charges for “**living on the avails of prostitution**.” These provisions were designed to keep people from being coerced into prostitution or being exploited in their work. In reality, they limit the ability of people in sex work to determine their working conditions and to form and maintain family and other relationships.
- (Section 213 CC) “**Communicating**” in a public place for the purposes of prostitution, which means talking with or even making gestures to a prospective client in a public place, is illegal. Over 90% over charges against sex workers occur under this offence. A “public place” can mean the street, parks, bars, even inside cars, and it is practically impossible for a sex worker to work legally anywhere in public. The communicating law, formerly known as the solicitation law, applies to both sex workers and clients.

Violation of these sections can result in prison sentences, fines or both. State authorities also rely on licensing and other regulatory legislation to control sex work and sex workers.

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<sup>19</sup> Prepared by Joanne Csete, Executive Director, and Glen Betteridge, Senior Policy Analyst, of the Canadian HIV/AIDS Legal Network with additional input from Jenn Clamen, Mobilisation Coordinator, Stella, Canada.

## **Key issues: Violence Against Street Workers; Crackdowns, Visa Program Suspended and Law Reform**

The combined effect of these provisions and their enforcement by police is deeply harmful to people who sell sex.

**1. Street-based sex workers, in attempts to avoid the wrath of law enforcement, are forced to work in darker, more remote areas, such as industrial areas or parks.** There is less traffic in these places, fewer pay phones, fewer places such as bars or cafes – in short, fewer people to turn to for help if they face aggression or violence. Over 65 sex workers in the Downtown East Side area of Vancouver, and 84 from the city of Edmonton were killed from 1998 to 2005. Many of these sex workers worked on the street and had been reported missing; **police investigations of these reports were slow or non-existent.** Negative police attitudes towards sex workers mean that they are reluctant to rely on the police for help or protection.

**2. Sex workers are subjected to police crackdowns because they are defined as “undesirable” elements and are then further stigmatized by criminal records.** For example, in Canada’s second-largest city, sex workers were arrested four times more frequently in 2005 than in 2004 as the city sought to “clean the streets” to appease residents of rapidly gentrifying neighborhoods and businesses concerned about tourism. Some sex workers face the double criminalization of their work and their drug use making them a prime target for police crackdowns. Once they have been arrested, sex workers are hampered by criminal records that prevent them from migrating and entering other workforces, if desired.

**3. Criminalization undermines sex workers own strategies for safety and health.** Sex workers go to great length to avoid police and arrest. With the fear of police appearing at any time, they have less time to check out clients, negotiate price, sex acts and condom use. Condoms are also often used as evidence against sex workers and for this reason it is dangerous for sex workers to carry more than a few condoms on them at any given moment.

**4. Avenues for immigrant sex workers, such as dancers, to enter Canada have been reviewed because of international pressure to address “trafficking.”** In 2005, for example, John Miller, head of the US Trafficking in Persons’ Office, told Canadians that the visa program that allowed exotic dancers come to Canada every year was “being abused” by traffickers to force women from Eastern Europe into prostitution.<sup>20</sup> In reaction to public pressure to discourage exotic dancing and migration of women into Canada the visa program was temporarily suspended.

**5. In 2002 House of Commons formed a Subcommittee on Solicitation Laws of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness and began investigating the impact of the Criminal Code provisions on sex workers.** This process stalled due to a Federal Election in 2005 and the Committee Report and its recommendations were not released at that time. The initiative was a response to murders of sex workers in Vancouver and the acknowledgement that the criminalization of sex work and sex workers contributes heavily to the level of violence sex workers experience. The subcommittee heard from a variety of academics, activists, feminists, and sex workers across Canada. In 2006 the subcommittee was reconstituted.

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<sup>20</sup> Godfrey, Tom, “Slavery a Canuck problem: U.S.” *Toronto Sun*, June 9, 2005. Accessed June 11, 2006 from <http://cnews.canoe.ca/CNEWS/Canada/2005/06/09/1078918-sun.html>

## NETHERLANDS<sup>21</sup>

### ***Background: the context of commercial sex***

The Netherlands is often used as example to illustrate how tolerant social policies, such as decriminalization of the sex industry and drug use, operate. Prostitution *per se* has never been criminalized in the Netherlands, but the involvement of third parties benefiting from sex work was prohibited. In the 1970s, the Netherlands began to reform laws prohibiting the prostitute-brothel keeper/third party relationship and to impose more severe penalties for trafficking, defined as any use of deceit, coercion or force by a third party in relation to recruitment or working conditions. This process of reform was guided by *gedoogbeleid* (policy of tolerance) that operates similarly to harm reduction. This perspective acknowledges that drug use and prostitution are unlikely to be stopped by repressive laws. In practice *gedoogbeleid* meant that, as long as no coercion or disturbance of the public order was involved, brothels were tolerated. In itself this was not a bad system, but sex workers could not enjoy labor rights mandated for other Dutch workers. In the 1970s and 1980s Netherlands introduced numerous social service programs for sex workers, focusing primarily on women in sex work.<sup>22</sup> Sex worker rights organizations, such as the Red Thread, were closely linked to women's rights movements and allied with organizations of supportive non-sex working women, such as the Pink Thread.

Sex work has several distinct versions including "windows" (street level storefront rooms rented by solo sex workers who attract clientele by appearing in the window), *tippelzones* (literally "zones of walking" established in urban areas for street work), sex clubs (brothels) and escort. Prostitution also occurs on the street in urban areas and in private homes. *Tippelzones* were originally conceived as public health and safety measures for drug using sex workers and their clients. The zones include spaces for clients to park their cars or bicycles, garbage disposal bins for used condoms, needle exchange and other social services via a *huiskamer* or drop-in center for the workers. A survey of 20,000 sex workers conducted in 1999, found that two-thirds of sex workers in the Netherlands were migrants: 32% from Latin America, around 28% from Central and Eastern Europe, 26% from Africa and 5% from Asia.<sup>23</sup>

### ***Legislation and Policy***

In 2000 the Netherlands reformed its legal code to remove the laws prohibiting brothels and brothel keeping. Even though forms of sex work had been tolerated for many years, this reform officially removed adult, consensual prostitution activity from the criminal code. Prison sentences of up to six years were mandated for individuals found guilty of forcing others to engage in prostitution, employing the services of a minor, or bringing others across national borders to engage in prostitution even without force or coercion.<sup>24</sup> Indoor sex work establishments became subject to licensing codes developed and enforced by local municipalities. Municipal bylaws (not the criminal code itself) stipulated that businesses discovered to be employing or renting space to sex workers who were not legal residents of the European Union and/or lacking the proper documents would have their business licenses revoked. In 2005 article 250a of the Dutch Penal Code, that had limited trafficking to situations of exploitation in prostitution, was amended to include other forms of labor abuse within the purview of human trafficking.

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<sup>21</sup> Prepared by Penelope Saunders with input from Elizabeth Bernstein from her forthcoming book cited below and from an interview with Marjan Wijers. Marieke van Doorninck and Petra Timmermans provided comments.

<sup>22</sup> Bernstein, Elizabeth, 1997. *Temporarily Yours: Sexual Commerce in Post-Industrial Culture*, forthcoming, University of Chicago Press.

<sup>23</sup> Th. van der Helm and L. van Mens, 1999. *Mobility in prostitution in The Netherlands 1998-1999*. An inventory done under the auspices of EUROPAP-TAMPEP 1998-1999, Municipal Health Service Amsterdam.

<sup>24</sup> An older trafficking law stayed in place with harsher penalties. Officially any recruitment across borders is punishable, but in practice this is only enforced when coercion etc is used. Bernstein, op. cit.

## Key Issues

The 2000 law reform illustrates how a move from a situation of tolerance to rigid social control can undermine the health and safety of sex workers. Before the law reform migrant sex workers, including trans-women, could work fairly freely in many parts of the sex industry even if they did not have documentation. The Migrant Workers Act already officially prohibited employment of migrant sex workers in the Netherlands but this was rarely enforced. The introduction of rigid policies towards undocumented sex workers was not only the result of the legalization of the sex industry, but also due to the much stricter alien laws passed in the late 1990s.

**1. Law reform did not remove restrictions against migrants in the sex industry from the Migrant Workers Act. This, combined with stricter controls as a result of the law reform, meant that thousands of undocumented migrant workers were no longer able to work in any legal sectors of the industry.** They turned to street based work or the *tippelzones*.

*Tippelzones* became overcrowded. For example, Utrecht's *tippelzone* had space for 40 workers but suddenly 100 to 150 women began working there resulting in a public backlash against the supposed "criminality" connected to the presence of undocumented migrant women. In response to public outcry, several *tippelzones* have been closed. Undocumented sex workers have gone underground to avoid police detection, some of them moving within the Netherlands to avoid police detection in any one city. This distances them from health services and has made them more dependent on other parties for places to stay and work. Advocates have noted that prostitution law reform provided the state with an excuse to find and deport undocumented immigrants: "10 years ago everyone knew that there were undocumented workers in the industry but the priority was to keep the relationship of trust with sex workers, in case of violence or other need, than to enforce the immigration law. This has changed."<sup>25</sup>

**2. People who can work legally in the sex industry often do not do so because of the overly onerous requirements placed on small sex work businesses and on individual workers.**

One sex worker can work privately out of her house but if two join together the operation constitutes a brothel that is subject to state control. Most cities do not have a positive attitude to brothels and only the larger scale or pre-existing brothels tend to get licenses. This restricts options for sex workers, empowers large-scale commercial enterprises, and leaves little space for innovation in the sector or for individuals to start small-scale brothels. **The law reform offered the opportunity to introduce labor laws in the sex industry that could be of benefit to sex workers but the system's implementation has not prioritized this.** Local and national authorities focus on control and regulation of the industry and not on the improvement of working conditions and labor relations per se.

The last straw was when I wanted to move upstairs to a bigger flat so that I could have more space. When I applied for the permit to run my business there, they asked if it was more than 7 meters. I said that it was 7'10. They told me, in that case, that I would need fire stairs, which would cost me 20,000 guilders [approximately 11,000 U.S. dollars].

Marie, an escort and former madam, Amsterdam interviewed by Elizabeth Bernstein, *Temporarily Yours: Sexual Commerce in Post-Industrial Culture*, forthcoming, University of Chicago Press, 2007.

**3. Laws to prevent trafficking in the Netherlands are not ideal but they have been altered to reflect the broader definition of trafficking preferred by most human rights advocates.**

This means that trafficking is no longer limited to sex work but can occur in any labor sector. People found to have been trafficked are eligible for a temporary residence permit during criminal proceedings and may continue working in sex work should they choose to do so. This is in sharp contrast to the United States, for example, where advocates for trafficked persons strongly advise them against continuing in sex work fearing their arrest.

<sup>25</sup> Personal communication with Marjan Wijers, May 1, 2006.

## BRAZIL<sup>26</sup>

### ***Background: The context of commercial sex***

Brazil's progressive approach to HIV/AIDS garnered global attention when, in April 2005, the country refused \$40 million in US grants because of a Bush administration requirement that HIV/AIDS organizations pledge to oppose sex work. Pedro Chequer, the director of Brazil's AIDS program described the "prostitution pledge" as "interference that harms the Brazilian policy regarding diversity, ethical principles and human rights."<sup>27</sup> Prostitutes, who had felt scapegoated by Brazilian public health responses at the beginning of the HIV/AIDS pandemic, have been key partners with government HIV prevention efforts since 1989.<sup>28</sup> Prostitutes are highly organized with approximately 27 groups affiliated to a national organization, the National Network of Sex Professionals. In Latin America the term sex worker is widely used, but two years ago the Brazilian prostitutes' rights movement elected to embrace the term prostitute instead of sex professional or sex worker. The strategy is to destigmatize and reclaim the word prostitute. Brazilian prostitutes often travel for work. Some men, women and trans-women travel outside of the country to Europe and other destinations in Latin America to work in more lucrative locations. A study involving 178 people in Belo Horizonte found that most women interviewed (86%) were internal migrants and 43% had worked as prostitutes in more than one city in the last three years.<sup>29</sup>

### ***Legislation and Policy***

Law in Brazil is centrally organized at the national level and references to prostitution can be in the Brazilian Penal Code. Prostitution itself and soliciting are not illegal under the Penal Code. However, many activities associated with sex work such as "procuring and trafficking" of women are prohibited, as is benefiting from the proceeds of prostitution and maintaining premises where prostitution occurs. In 2005 the section of the Penal Code that prohibits trafficking for sexual exploitation (Article 231) was amended to extend to both international and internal trafficking involving transportation within Brazil. The involvement of minors in the sex industry is prohibited under the 1990 *Estatuto da Crianca e do Adolescente* based on the Convention on the Rights of the Child.<sup>30</sup>

### ***Key Issues***

**1. The legal situation for sex workers is extremely ambiguous and how they are treated very much depends on whether or not local police choose to enforce the laws.** In larger cities "short stay" hotels offer rooms by the hour that are rented by prostitutes and their clients. These locations are known to be places of prostitution and in some places, such as Rio de Janeiro, city regulation requires that management supply each couple with condoms on arrival.<sup>31</sup> Yet places of prostitution such as short stay hotels and brothels are prohibited under the Penal Code and police are sometimes paid off so that they will not enforce the law. Many hotel locations that survive by paying the police may still be subject to crackdowns motivated by

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<sup>26</sup> Prepared by Penelope Saunders with additional input from Alessandra Chacham.

<sup>27</sup> Phillips, Micheal and Moffett, Matt, "Brazil Refuses U.S. AIDS Funds." *Wall Street Journal*, May 2, 2005.

<sup>28</sup> Hinchberger, Bill, "Brazilian sex workers don't mourn, they organize." *Brazilmax*, October 19, 2005. Accessed June 1, 2006 at [http://www.brazilmax.com/news4.cfm/tborigem/fe\\_society/id/23](http://www.brazilmax.com/news4.cfm/tborigem/fe_society/id/23)

<sup>29</sup> Chacham, A and Maia, M, 2002. "A profile of mobile sex workers in Belo Horizonte, Brazil." *Research for Sex Work*, no. 5.

<sup>30</sup> Bindman, K, 1997. *Redefining Prostitution as Sex Work on the International Agenda*, Antislavery International with Jo Doezema. A person who is convicted of prostituting a minor less than 14 years can be sentenced with 2 to 5 years prison. Currently, debate is occurring about increasing the sentence.

<sup>31</sup> Bindman, op.cit.



local policy drives. For example, campaigns against the commercial sexual exploitation of children have provoked police raids. Some prostitutes have reported that the police are not truly investigating locations where minors might be found, but targeting premises for the purpose of extortion.<sup>32</sup> Other groups of sex workers may also be subject to policing and extortion, once again depending on local conditions. Street prostitutes may be harassed for violations of local ordinances by the police. Transgendered and male sex workers are particularly subject to harassment and arrest and can experience police violence while in custody.<sup>33</sup>

**2. The laws against maintaining premises for prostitution in effect criminalize the workplace and prevent prostitutes from enjoying labor standards recognized for other workers in Brazil.** Prostitute rights advocate Gabriela Leite of Davida notes: "She [the prostitute] is forced to work in miserable conditions and can't do anything about it. She can't make legal complaints about mistreatment, simply because her employer and the police have more power. It's a vicious circle that we want to break."<sup>34</sup>

**3. In 2002 the term "sex professional" was added as a labor category in the National Labor Registry.**<sup>35</sup> This means that prostitutes can access the national system of social security (INSS) under a broadly defined category of "sex professional." Other categories, such as "autonomous worker," were used by sex workers wishing to access the social security system before the introduction of the new category. It is not clear how many people have declared themselves as "sex professionals" in order to access the INSS system, but advocates note that **the official recognition of prostitution as labor has helped reduce discrimination and stigma.** Advocates also argue reform of the Penal Code would further facilitate the idea that prostitution is work like any other form of labor.

**4. Much international attention has focused on the issue of "child prostitution" in Brazil especially among street children living in large urban areas.** It is illegal in Brazil for a minor to have sexual relations with an adult and the involvement of minors in the sex industry is prohibited. However, teenagers and youth are involved in sex work in Brazil. In Rio, for example, *miches* or male hustlers aged between 11 and 23 years engage in sex for money with other men.<sup>36</sup> **Some health workers have found the laws an obstacle to providing care: they fear charges of promoting illegal relations if they supply teenagers with condoms.**<sup>37</sup>

**Enforcing prostitution law is up to police discretion:** In one urban center in Brazil, twenty "short stay hotels" cluster together in the historic red light zone. Women rent rooms for a day or evening and take clients to their rooms for sex transactions. Women report that police do not interfere with their business unless a serious crime has been committed. The women theorize that police officials may own the short stay hotels. Sex workers have fairly good relations with the police and will call on them for assistance when clients refuse to pay or when other needs arise.

Personal communication with  
Alessandra Chacham, Grupo Musa,  
June 12, 2006

<sup>32</sup> Bindman, op.cit.

<sup>33</sup> Amnesty International has documented instances of ill-treatment of transgendered sex workers in Brazil. For example, in 1997 Civil Police in Maceio detained three trans-women allegedly because the women failed to pay them a "fee." At the police station the women were brutally beaten and humiliated. The women did not file a formal complaint about the incident because they feared reprisals. Accessed June 1 at [http://www.ai-lgbt.org/ai\\_report\\_torture.htm](http://www.ai-lgbt.org/ai_report_torture.htm)

<sup>34</sup> Gabriela Leite quoted in Jeffrey, Paul, "Brazilian prostitutes lobby for respect." *National Catholic Reporter*, 11/14/1997.

<sup>35</sup> Information about the category can be accessed at the Ministerio do Trabalho e Imprego website: <http://www.mteco.gov.br/busca/descricao.asp?codigo=5198>

<sup>36</sup> Longo, Paulo, 1994. "The Meeting of the Miches." *The New Internationalist*, Issue 252. Accessed June 1 at <http://www.newint.org/issue252/miches.htm>

<sup>37</sup> Bindman, op. cit.

## Senegal<sup>38</sup>

### **Background: the context of commercial sex**

Senegal is a small (population 11 million), relatively stable, country in West Africa. French is the official language. It is one of Africa's poorest countries (UNDP Human Development Index 2005 157 out of 177), with a low literacy rate. Religious leaders play an important role in setting the tone for a relatively conservative and gender-regulated society (Senegal is 93-95% Muslim, the remainder predominantly Christian). Advocates note that in the last decade the form of religious leadership and intervention into public life has changed, newly stressing conservative gender roles. However, civil society is vocal and active, especially around media, women's rights and human rights. While the NGO sector is vibrant, cross-connections are not fully developed. Women's rights groups acknowledge that they had not included violence against women in sex work in their on-going VAW campaigns, and HIV/AIDS service groups are only beginning to make contacts with groups working on protection of the rights of marginalized populations, including people in sex work and men who have sex with men.<sup>39</sup>

### **Legislation and policy**

Senegal is recognized in Africa as the first, and to date one of the few countries in the region, to have a framework for regulated prostitution. The system was established in the 1960's: the permissive regulatory framework operates alongside a system penalizing offenses against public morals and private sexual offenses. **Criminal law thus punishes any sex worker who is not registered as well as those facilitating registered and unregistered sex work.** Articles 318 to 325 of the Penal Code address the morals offenses and sexual crimes: among other things, these articles criminalize sexual commerce occurring outside the regulatory framework and prohibit a range of activities around otherwise legal sexual commerce. These include "living off the earnings of a prostitute," and "contributing to the financing of an establishment of prostitution." Article 318, which criminalizes acts of public indecency, *outrage public a la pudeur*, is often used to stop, harass and regulate all kinds of women in public settings (bars, discotheques, hotels, etc).

**The regulation of prostitution operates through STI/health-based administrative statutes and codes**, established through law # 66-21 of February 1966 and applied through a series of ministerial decrees and instructions (# 69-616 May 1969; No 73 of 28 August 1969). Women over 21 who are Senegalese nationals and non-national women<sup>40</sup> may participate in the system of regulated prostitution by registering. Officially the system works through voluntary self-registration. Women are interviewed by health clinic social workers about their reasons for turning to prostitution and are given a sexual health/medical check-up. Registered sex workers receive a *carte sanitaire* (green booklet with photograph) with a unique identification number from a National database. ID numbers are provided to local government health clinics and dossiers with identifying information are provided to local police units. Fifteen government clinics, primarily in urban areas, officially list prevention information, HIV testing, free condoms, and STI treatment as part of their treatment and care.<sup>41</sup> In order to remain "legal" registered sex workers must receive bi-monthly medical check-ups at government clinics and are suspended from work if infected with an STI until treated completed. Registered workers are not suspended for testing HIV positive. There is no requirement for workers at the government clinics to report

<sup>38</sup> Prepared by Alice Miller, Assistant Professor of Clinical Population and Family Health and Legal and Health Advisor, SHARP/OSI, with additional input from Aissatou (Aida) Lo.

<sup>39</sup> Alice Miller, notes from focus group session in Senegal May 2006. Much material in this analysis was drawn from a report prepared by Aissatou Lo for OSI SHARP/NPHP, Western Africa Needs Assessment for Sexual Health and Rights, 2/2006

<sup>40</sup> The data on migrant sex workers is slim: popular accounts describe most registered sex workers as Senegalese and Nigerian, with a fluctuating population of Ghanaians and other West Africans.

<sup>41</sup> Some other health care is said to be provided such as dental care for children.

the results of HIV tests to any other agency or national database. Anti-retrovirals (ARVs) are provided through NGO-run HIV/AIDS clinics and are offered free to the all who test positive. These NGO clinics do not limit their work to sex workers and services are open to everyone providing sex workers a degree of anonymity.

### **Key Issues**

Senegal's regulatory approach has been praised in public health circles for reducing the spread of STI's/HIV.<sup>42</sup> Yet those working within the system report that it is not working as planned.

- 1. A growing number of people find the system unworkable, do not register and sex work clandestinely.** There are several reasons for this. Female sex workers report that the clinics are of poor quality, describe the bi-monthly testing regime as onerous and find the clinic staff abusive. Thus many women either do not register or fail to return after suspension (misdemeanor offense). Male sex workers are simply ineligible to register.
- 2. HIV prevalence, while low in comparison to other countries in Africa, is steadily increasing amongst women and among marginalized groups.** 10% to 30% of sex workers and approximately 20% among men who have sex with men are positive.<sup>43</sup>
- 3. The country-wide system of government clinics intended to provide services for registered sex workers are in disrepair.** The services are less than acceptable quality and workers go elsewhere to receive HIV medication. Moreover, the HIV/AIDS treatment provided free through clinics receiving funding untied to prostitution regulation is less stigmatized and considered of better quality.
- 4. Both registered and unregistered sex workers complain of abuse by the police who are entitled by the law to constantly monitor women.** Sex workers accuse police of corruption including extortion and bribery, rape, assault, extended and arbitrary detention to extract fines. These concerns have not been addressed in the public health literature, although at least one public health NGO, Enda Sante, seeks to address abuse of power by police in community accountability settings.
- 5. Registered and clandestine sex workers are denied public benefits and day to day necessities because of stigma underscored by punitive laws.** Sex workers report that landlords refuse to rent spaces to them or charge exorbitant prices with the punitive law as leverage. Registered sex workers are officially entitled to health care for their children in government clinics, fathers often refuse to acknowledge children rendering them ineligible for these benefits and school registration.
- 6. Openings for rights based discussions exist.** Senegal revised its Constitution in 2001 to include guarantees of equality and respect for the dignity of all persons. Plans exist to introduce a bill protecting PLWHA in Senegal against discrimination along with a newly drafted law on sexual and reproductive health. Public discussion around sex work policy concerns have to date not included the voices of people in sex work and dominated by health professionals. Some NGOs, as well as semi-independent "government NGOs," have begun to address organizing concerns with sex workers. Enda Sante has been working with a fluid population of unregistered sex workers, attempting to meet their health needs and ascertain other rights concerns. AWA (Association of women affected by AIDS) works primarily with registered sex workers, often via ties with government clinics, and to date has empowered social workers to speak about sex workers rather than fostering independent action.

**Police surveillance of sex workers:** Registered sex workers by law must produce their cards on demand to police patrols. If women cannot produce a card they face extortion. Under the soliciting or *racolage* law many women can be arrested. Detention in a police station—if one fails to pay a bribe—on a Friday evening can mean remaining in jail till Monday.

<sup>42</sup> See Homaifar, N, and, Wasik, S, 2005. "Interviews with Senegalese Commercial Sex Trade Workers and Implications for Social Programming." *Health Care for Women International* 26: p118-133. See also, C. Laurent, C, Seck, L, Coumba, N, and Kana, T, 2003. "Prevalence of HIV and other sexually transmitted infections and risk behaviours among unregistered sex workers in Dakar, Senegal." *AIDS* vol. 17:1811-1816.

<sup>43</sup> The national HIV prevalence rate in Senegal is 1.4%. HIV rates amongst women attending antenatal clinics (ANC) are increasing. For instance, In Dakar, HIV prevalence in ANC rose from 0.5% in 1998 to 0.8% in 2001 to 1.1% in 2002. <http://www.unaids.org/en/geographical+area/by+country/senegal.asp>

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