

Considering decriminalization of sex work as a health issue in South Africa

The experience of SWEAT

Article produced as part of the KIC Project

Vivienne Lalu



For many years, organizations that promote the health and well-being of sex workers have advocated for the decriminalization of sex work, so that sex workers no longer have to fear arrest, fining or imprisonment and can better protect themselves against abuse, violence and other health threats. One of these organizations is SWEAT (Sex Worker Education and Advocacy Taskforce), a non-profit NGO based in Cape Town, South Africa. SWEAT works with sex workers on health and human rights issues. Currently, there are three work programmes focusing on outreach, advocacy and research respectively (see the Box). An added focus since 2002 has been on reaching sex workers nationally to engage them in issues related to health and legal reform.

Given the illegality of sex work in South Africa and in many other countries, initiatives targeting sex workers, especially around their health, are generally hampered. These obstacles relate to the circumstances within which sex work is conducted. The continued criminalization of sex workers has contributed to the stigma, isolation and violation of human rights of sex workers. Sex workers are often forced to work in isolated and remote areas. These working conditions not only make them vulnerable to violence and abuse, but also make it very difficult for intervention projects to locate them to do prevention work. Increased police harassment often leads to fining, forcing sex workers to get more clients to be able to pay off fines. More importantly, criminalization forces sex work underground, hampering sex workers' ability to organize themselves in any significant way to fight for their rights.

Condom use is seen as the most effective way of reducing HIV transmission. The illegal nature of sex work in South Africa however makes it extremely difficult for sex workers to negotiate condom use with their clients. In some instances insisting on condoms has resulted in increased levels of violence against sex workers. Police actions such as the confiscating of condoms as evidence of an

illegal activity further impacts on sex workers' ability to use condoms. The lack of unity and organization amongst sex workers ultimately means that some clients will resort to finding sex workers who do not insist on condom use. Therefore, it is clear that in the current climate of criminalization of sex work, possible HIV infection is just one of the many risks sex workers have to deal with.

The decriminalization campaign

The South African Law Reform Commission (SALRC) released an issues paper in August 2002 on the Sexual Offences Act as it relates to adult sex work. Although this paper did not put forward any recommendations for legislative change, it was a comprehensive and fair representation of the context of sex work in South Africa, and we were positive about the possibilities of legislative review. The SALRC paper set out the three legal models for addressing sex work, namely criminalization, decriminalization, and legalization.

SWEAT's submission to the SALRC supported decriminalization. We have been lobbying and advocating the decriminalization of sex work, including reform of the Sexual Offences Act of 1957 which

In the current climate of criminalization of sex work, possible HIV infection is just one of the many risks sex workers have to deal with

criminalizes sex work. SWEAT uses the term decriminalization to mean the removal of laws that make adult commercial sex work and aspects of the sex work industry a crime. Under a decriminalized system the laws making sex work a crime would be scrapped and the sex work industry would be regulated like any other industry. This regulation should be done with the active participation of the persons in the industry. This means that consenting adults within the sex industry will not be subject to criminal law. However, forcing adults into the business and the commercial sexual exploitation of

SWEAT's programmes

- *The training and support services programme* – This programme is focused on interventions that address the immediate health and safety needs of sex workers as well as targeting sex workers collectively with workshops around safer sex, general health and life skills. We have developed tailored safer sex educational materials for female, male and transgender sex workers and produce a newsletter every second month for distribution to sex workers. The outreach approach fosters good working relationships and allows for collaborative work to address legal and social issues. This direct contact informs our intervention strategies including our advocacy and lobbying work. National networking with sex work projects and supporting the development of a sex worker-led movement falls under this programme. Training to service providers with a focus on primary health care providers is included here.
- *The advocacy and lobbying programme* – This programme has developed significantly over the past years and has established SWEAT as a credible and knowledgeable organization that inputs to legislative reform processes on a national and local government level. We strive to make optimum use of the media in order to raise public awareness and influence public and political attitudes towards sex work. The programme works closely with sex workers locally in relation to legal rights' infringements and mobilizes sex workers to take their cases forward in a collective manner in order to impact on changes to the law.
- *The research programme* – This programme was initiated in 2003 to address the need for a credible and useful research base that would be in the interests of sex workers, improve the effectiveness of our interventions, and support our work around health and human rights.

children will remain crimes. Decriminalization allows for the industry to be regulated and offers access to protections that all workers enjoy.

Following the publication of the issues paper, we embarked on an intensive intervention to summarize the paper and alert sex workers and the sex work industry to this opportunity to engage with the legislation. Part of this process of advocating for law reform has been involving sex workers in making submissions to the South African Law Reform Commission. This campaign has resulted in two major conferences with women and men who work in the sex industry where questions of sex workers' rights were addressed. While the first conference (the National Meeting of Sex Workers in October 2002) produced a sex workers' charter of basic rights and generated nine independent submissions from sex workers' groups, the second, in 2003, saw the launch of a movement, Sisonke, aimed at mobilizing sex workers. Sisonke's mission is to unite sex workers to improve their living and working conditions and to fight for equal access to rights.

Health and human rights: the connection

Alongside the campaign for decriminalization SWEAT has continued to offer safer sex education to sex workers in the

Western Cape. The safer sex component of our work has included the distribution of male and female condoms, safer sex workshops with sex workers, distribution of pamphlets and other educational materials. Our approach is based on the belief that health issues and human rights are integrally linked. SWEAT's position is not to focus too narrowly on HIV, but to broadly consider the rights issues that sex workers confront. Many organizations working with sex workers are beginning to realize the futility of focusing solely on HIV prevention without considering the circumstances in which sex workers work. Targeted intervention amongst so-called high-risk groups seems an appropriate course of action because one of the major modes of transmission of the

Rather than investing large amounts of resources in criminalizing sex workers by policing and prosecuting them, the state will achieve more if it concentrated on the health needs of sex workers

virus is through sexual intercourse. However, the focus seems inadequate when considered in relation to the sense of powerlessness that most sex workers experience. Sex workers have very little control over their working conditions largely as a result of insufficient recognition of their presence by the state and by society in general.

Furthermore, HIV prevention work with high-risk groups is often aimed at preventing the spread of HIV amongst the general population and not necessarily on risks faced by sex workers. This is largely a consequence of viewing sex workers as vectors of disease and preventing them from infecting their clients. Increasingly, questions regarding clients' responsibility for practising safer sex and the protection of sex workers against infection have been raised. The majority of sex workers in South Africa, we might assume, are young women between the ages of twenty and thirty. As a result of their particular and marginalized status in society, they are often more vulnerable to acts of violence than is generally admitted to. Therefore, issues facing sex workers are inextricably related to the fight against violence against women, struggles for basic human rights and for decent working conditions, particularly for the poor who work in informal sectors.

SWEAT believes that decriminalizing adult sex work will enable change in focus for state interventions. Rather than investing large amounts of resources in criminalizing sex workers by policing and prosecuting them, the state will achieve more if it concentrated on the health needs of sex workers. This requires a commitment to decriminalization as a necessary step to securing their rights. Fortunately, a new discussion paper on adult prostitution expected from the South African Law Reform Commission in November 2007 will also be considering decriminalization as an option for law reform. In addition, the paper will discuss the options of retaining the present laws, further criminalizing prostitution and legalizing and regulating the trade. ■



Vivienne Lalu

Training Programme Coordinator, SWEAT (Sex Worker Education and Advocacy Taskforce)

Correspondence:

PO Box 373, Woodstock

7915 Cape Town, South Africa

Tel: +27 21 448 7875, Fax: +27 21 448 5857

E-mail: sweat@iafrica.com, Web: <http://www.sweat.org.za>

Resources

Sex work, health and human rights

Research for Sex Work

Research for Sex Work aims to provide a platform for the exchange of ideas, experiences, observations and research results with regards to sex work and HIV prevention in the broader framework of health and human rights. This annual publication published by the Network of Sex Work Projects is aimed at staff of sex workers (support) organizations, HIV prevention projects, local and international NGOs, universities, research institutes, etc.

PDF: <http://www.researchforsexwork.org>



Fostering enabling legal and policy environments for sex workers' health and human rights: A compendium

Open Society Institute, 2007

This working compendium contains key materials and resources which can be used to support efforts to protect the rights of people in sex work. The compendium is available online or on CD-ROM.

Access online:

http://www.soros.org/initiatives/health/focus/sharp/articles_publications/publications/compendium_20070319

Order CD-ROM: Rachel Thomas

Sexual Health and Rights Project, Open Society Institute
400 West 59 th Street, New York, NY 10019, USA

Tel: +1 212 548 0166, E-mail: rthomas@sorosny.org

Harm reduction, health and human rights, and sex work

Open Society Institute, SHARP Programme, 2006 (6 p.)

NGOs, agencies, and funders who work with sex workers have used different frameworks, such as harm reduction and human rights, to guide their work. This discussion paper provides a basis for discussion of the advantages and disadvantages of these approaches. The paper was commissioned by the Sexual Health and Rights Project (SHARP) of the Open Society Institute for an international meeting held in South Africa in June 2006 about the impact of laws, policies, and law enforcement practices on sex workers' health and human rights.

PDF: http://www.soros.org/initiatives/health/focus/sharp/articles_publications/articles/harmreduct_20060601



Sex work, HIV/AIDS, and human rights in Central and Eastern Europe and Central Asia

Central and Eastern European Harm Reduction Network, 2005 (120 p.)

This report provides an overview of issues faced by sex workers in Central and Eastern Europe and Central Asia. It also describes the political, economic, and social factors that influence policies and attitudes toward sex workers. The report focuses primarily on existing laws and policies and their consequences from the perspective of HIV prevention and treatment. It also offers recommendations designed to uphold sex workers' human rights and remove barriers that reduce their ability or willingness to obtain access to health care and other social services.

PDF: <http://www.ceehrn.org/index.php?ItemId=17257>

Violence against sex workers and HIV prevention

WHO Information Bulletin Series, Number 3 (6 p.)

PDF: <http://www.who.int/entity/gender/documents/sexworkers.pdf>