

Sex Worker and Education Engaging with Trafficking in

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Pour nous de SWEAT, la clé de notre intervention réside dans notre travail pour renforcer les droits des femmes et nous nous efforçons de trouver un terrain d'entente avec d'autres groupes et organisations qui travaillent aux droits humains, surtout des mouvements de femmes afin de dénoncer les abus commis au nom de ces droits.

The Sex Worker Education and Advocacy Taskforce (SWEAT) is a not-for-profit organization that was initiated in 1994 to address issues around health and human rights within the sex work industry in South Africa. We are a service-rendering organization in South Africa that works with persons engaged in sex work and the sex work industry in the field of health and human rights. Our direct service work is limited to the Cape Town Metropole area and our advocacy and lobbying work around legal reform is on a local and national level. We are an organization that has developed national and international networking relationships and our work programs are informed through our direct work with sex workers in the Cape Metropole area as well as our networking with sex workers in projects initiated by other largely health-based organizations throughout South Africa. It is important to emphasize that we are a service rendering non-governmental organization (NGO). We are not a membership-based organization and do not represent workers or the industry.

There are increasing numbers of refugees entering South Africa and some, especially those without work permits, particularly women, are entering sex work in order to generate income.

Our services at present are outreach work in Cape Town and surrounds that involves going out to people where they are working to distribute male and female condoms and educational materials; engage in safer sex education; to provide advice and referrals around health and safety issues; and some limited counselling.

Our development work revolves around organizing and mobilizing workers to engage with their concerns and get involved around issues related to health and working conditions; running

workshops with groups of people around health and safety issues; and providing sensitivity training to service rendering organizations that persons in the industry would access or want to access.

We also advocate for the decriminalization of sex work in South Africa; lobby decision-makers on a national and local level to support legal reform; advocate for legal reform within the existing legal framework related to laws on a local and national level that impact negatively on health and human rights of persons involved in the sex work industry; and advocate within the industry for safer and fairer working conditions

Snapshot of the Current Legal Situation in South Africa

The current law that criminalizes all aspects of adult commercial sex work (*The Sexual Offences Act* of 1957) is an outdated piece of legislation that began as the *Immorality Act* 5 of 1927 that was promulgated to "prohibit carnal intercourse between Europeans and Natives and other acts in relation thereto." In 1957 the *Act* was amended to consolidate the laws related to brothels and unlawful carnal intercourse, as well as consolidating sexual offences previously contained in provincial laws and ordinances.

In 1988 the *Act* was further amended and Sect. 20 [1] [aA] was included which criminalized the person who repeatedly sold sex for reward. This was despite the ad hoc committee of the President's Council recognizing in their report at the time that criminal sanction had little if no impact on persons continuing to sell sex for reward.

In March 2002 there was a Constitutional Court challenge to sections of the Sexual Offences Act, namely the section that criminalizes the person selling sex for reward and the brothel keeping sections. This challenge was brought by a brothel owner, Ellen Jordan, after the brothel was raided and a worker, a driver/ receptionist and herself were arrested and charged under these sections. The judgment reaffirmed the constitutionality of the sections concerned by a narrow majority of six to five judges. This was a major setback with regards to legal reform initiatives and the confirmation by the Constitutional Court that all aspects of sex work should remain criminalized has had serious ramifications for those working in the industry. Whereas before we had a situation of defacto decriminalization we now have an upsurge of police activity

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and attempts to enforce the legislation.

We therefore currently have a legal situation whereby all aspects of sex work are subject to criminal sanction under the *Sexual Offences Act* except the buyer of services.

Municipal by-laws are currently utilised to arrest, fine and/or prosecute sex workers in South Africa. By-laws differ from municipality to municipality and across Provinces. There is a loitering by-law that makes specific reference to sex workers that is used extensively. The other most commonly used by-laws are loitering in general, public indecency and causing a disturbance.

The *Sexual Offences Act* as it stands is a very difficult law to prosecute under and requires intensive and intrusive police methods such as entrapment to secure a conviction.

The South African Law Commission brought out an issue paper at the end of August 2002 that explores those sections of the *Sexual Offences Act* that criminalize sex work and puts forward three legal models for consideration, namely criminalization, legalisation, and decriminalization. SWEAT made an extensive submission promoting decriminalization. This paper represents a first step by the legislature to address the current legislation affecting sex workers and we are confident that a shift in this legislation will eventually follow.

Present South African Context

With high unemployment rates and the resultant competition for jobs, it is inevitable that women are disproportionately represented amongst the unemployed as well as over-represented within the unskilled, under-employed, part-time and seasonal forms of labour. The inherent gender inequalities in society also act against educational levels and education opportunities for women. Labour legislation has yet to adequately reach vulnerable workers such as domestic and seasonal workers, and the majority of these workers are women.

Urbanization and Inter/Inner Migration to Seek Work

It is well documented that the flow of persons seeking employment continues and that the most vulnerable grouping here are women seeking work opportunities. The limited job opportunities are such that we expect a continuous flow of women into the sex industry in the

future. In addition we have high levels of migrant labour in this country that results in many workers, mainly men, working and living away from home for long periods. SWEAT has had contact with sex workers working in and near mining towns who earn a living from servicing these migrant workers.

South Africa is a large country with pockets of urbanization and uneven development of transport infrastructure. The rail system is not very well developed and trucking is a major transport industry. Again we have many drivers, majority male, travelling for long periods and utilizing the services of sex workers. Post-1994 has seen an opening up of borders and trade within Sub-Saharan Africa that has increased the demand for sex work services at border posts and across borders.

There are increasing numbers of refugees entering South Africa and for some, especially those without work permits, particularly women, are entering sex work in order to generate income. We have encountered groups working on the streets and they are particularly vulnerable regarding having to avoid double detection as it were, being arrested for sex work and for being without papers, making them even more inaccessible to health and other services and more vulnerable since they are not familiar with local dangers, customs or language.

SWEAT'S Current Work Around Trafficking

SWEAT is a small organization with seven staff, five of whom are engaged in direct service work. Our experiences and information is largely based on the Cape Town context, and we cannot claim to have a full picture of the sex work industry or an in-depth knowledge of trafficking in South Africa. Our services are directed to adults and our responses to the issues surrounding trafficking are therefore based on trafficking in adults.

We are not engaged in any

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direct pro-active interventions with regards to trafficking although we are certainly positioned to intervene should we be approached or encounter any person who is being forced against their will to work in the industry. In the two years that I have been working at SWEAT we have attempted to intervene around numerous cases of exploitative working conditions brought to us by workers but none of forced labour. We are cognisant of the difficulties and dangers involved for those who have been trafficked to access assistance and that our experiences do not reflect on the extent of persons who may be being trafficked into the sex work industry. We will be inputting to any development of legislation specific to trafficking and also strongly advocating for the rights and self-determination of the women being trafficked when it comes to interventions and policy determination.

Our work is focussed on health and human rights closely linked to issues of legal reform within South Africa. We gain access to the industry through our non-judgemental approach and have to mediate and negotiate with managers, owners, pimps and protectors to reach workers. Given the criminal nature of the work, we have to tread carefully in order to act in the interests of the workers. We make ourselves as accessible as possible and will attempt to assist any worker who engages us in concerns or issues that impact on their health and safety. In one case in 1999, with the assistance of the Women's Legal Centre, we were able to reach a settlement with a brothel owner preventing exploitative working conditions. In a more pro-active manner we also engaged with two escort agencies towards setting standards for the industry that was a collaborative exercise between SWEAT, management, and workers.

Even with our established credibility we are sometimes denied access to brothels and even when we are allowed in to distribute condoms we are not always able to access the workers for safer sex education or to connect on a level of advice and support if required. On the streets we also face difficulties particularly with gangsters that control a number of workers and act as gatekeepers.

Responses to Trafficking and Migration

Our opinion is that there is little credible research that has been done on trafficking in South Africa. At present there is no separate legislation that addresses trafficking in South Africa. The South African Law Commission is currently researching the issue of the need for such legislation and will be bringing out an issue paper later this year. Around issues of migration we have grave concerns around rising xenophobia in South Africa and the government's concerns to control and protect its borders. These policies are often at odds with the protection of human rights and undocumented migrant women and those trafficked are often perceived and treated as criminals.

SWEAT strongly supports the need for new definitions

of traffic in women and forced labour/slavery like practices. This definition and consequent legislation should be based upon the perspective and interests of women and must specify abusive brokerage practices on the one side, and working conditions in both public and private domains on the other (Wijers and Lap-Chew).

The central principles underlying such redefining according to Marjam Wijers and Lin Lap-Chew are:

- the rights of women to self determination;
- an exclusive focus on coercion in diverse forms;
- inclusion of all work and services rendered under forced labour/slavery like practices regardless of whether these services are recognized as work, whether they take place under a work or marriage contract, and whether they are considered legitimate or illegitimate in society.

What is crucial to any legislation is the guarantee of basic legal protection and possibilities of redress to victims of these practices.

Criminalization of the sex work industry works strongly against dealing with issues of trafficking in that:

- Prohibition creates conditions whereby the industry works underground and whereby criminal elements including traffickers can operate with leverage and with more ease than in a legitimate industry.
- Persons trafficked into the industry are less likely to be able to access assistance or service providers being able to access them under a criminalized situation.
- The converse can also occur whereby for example migrant workers will accept trafficking status to avoid further criminal and legal sanction.
- The illegal nature of sex work means that labour legislation cannot apply and owners and managers of brothels have no duty to set working standards nor comply with fair employment practices. Furthermore the State has no duty to inspect and monitor labour practices.
- The issues of unfair labour practices can be addressed pro-actively and involve all stakeholders in the industry should it be decriminalized

SWEAT experiences considerable difficulty in forwarding legal reform initiatives when the Government, the public and some non-governmental organizations continue to conflate issues of trafficking with sex work.

We are very wary of creating a voluntary/forced dichotomy (Doezema) in order to deal with issues of trafficking or to forward our advocacy work around legal reform. We have experienced the impact of sensationalized emotive calls from organizations actively intervening around trafficking that results in the focus on rescuing "passive victims" that were forced into sex work. The media hype that follows results in an immediate backlash

on the industry and seems to sanction the notion that issues related to human rights infringements and/or exploitative working conditions are only issues when someone has been "forced" or "duped" into this form of work. These actions endanger all workers and neither the traffickers, the exploitative brothel management or the abusive working conditions seem to be a priority for intervention within this rescue approach.

Although SWEAT supports the development of separate legislation to deal with trafficking we are wary about organizations focussing all their energies on legal reform initiatives that will be lengthy and, given our present resource capacity in relation to high crime rates and an under-resourced police and justice services, could bring out a piece of legislation that is difficult to implement and enforce. In the interim and parallel to this is the need for interventions that are as non-intrusive as possible towards providing unconditional assistance to women that are being forced into various forms of work or who are working under abusive and exploitative conditions. We need to engage women who have been affected by trafficking and/or abusive working conditions in developing interventions on a legislative and service rendering front. We also need public awareness and campaigns around exposing human rights infringements against women who are forced into diverse forms of labour.

Many groupings presently intervening around issues of trafficking will formulate interventions that target those they consider to have been forced into selling sex without any element of consideration regarding autonomy, agency, limited choices, their future plans, reasons why they moved, consequences of returning home, to mention but a few. Another great concern we have is the emotive and sensationalist language used to raise awareness around the issues of trafficking that largely only speaks to trafficking into sex work and promotes / provokes authorities to respond by raiding and or targeting workers. This targeting within a climate of criminalization results in all workers being placed at considerable risk and does little to assist those who have been trafficked.

In South Africa recently our national television broadcaster screened two under-cover investigative reporting programs dealing with what they termed trafficking. The under-cover aspect resulted in the women facing violence and abusive situations that could have been prevented and the secret filming exposed the identities of the women concerned and placed them at considerable risk. The end result of both programs was that the women were exposed, placed at risk and/or faced deportation and those responsible for trafficking them remained largely untouched.

Conclusion

In conclusion some central issues that we are discussing within SWEAT regarding inputting to the legislative process:

- Ensure that a definition of trafficking covers all forms of labour, particularly those forms of labour not officially recognized
- Separate coercive brokerage practices from abusive and exploitative working conditions.
- Define coercion in all its forms.
- Promote the scrapping of legislation that criminalizes sex work in South Africa.
- Recognize the complexities of trafficking situations and the agency of all adults involved.
- Involve people who have been trafficked and the stakeholders in the industries concerned towards developing interventions and addressing the crime of trafficking.
- Focus the criminalization on the traffickers, not the trafficked.
- Separate issues of migration of women from trafficking and observe international human rights obligations when dealing with both.

The key for us in any intervention is to strengthen the rights of the women involved. SWEAT continues to strive towards finding common ground with other human rights based groupings and organisations, particularly the women's movement, towards working together to address human rights abuses in an inclusive manner. We actively seek out similarities and potential for integration of issues and needs, towards ensuring that the coercion and exploitation of women's labour is not confused with sex work and that we mobilize around the issue of trafficking of women into diverse forms of labour.

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