

Sex worker by trade: how far do human rights go?

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“The domestic workers managed to do it.” This is the slogan behind the sex workers’ campaign for an International Labour Organization (ILO) resolution establishing the right to self-employed sex work, with a view to it being included in the individual legislations of Latin American countries, given that, although sex work is not explicitly penalised in many countries of the region, it is criminalised in many ways, according to those working in the trade.

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“It is not your profession that makes you a good or a bad person, and the work you do does not give you dignity; the dignity comes from you. It is said to be indecent work, but we say, it’s not indecent...what is indecent are the conditions I have to work in. Indecent is the fact that the health workers who should provide me with humane and quality care discriminate against me. Indecent is the fact that I pay taxes so that the police can be paid their wages, and they repay me with beatings,” denounces Elena Reynaga, executive secretary of RedTraSex, a network set up 20 years ago that affiliates sex worker organisations in 14 Latin American countries.

A milestone was reached in this empowerment process working towards an ILO resolution on 18 March when they managed, after five years of failed attempts, to secure a thematic hearing at the Inter-American Commission on Human Rights (IACHR).

The demands presented included the recognition of sex work, that the relevant authorities in each state intervene to end the impunity surrounding crimes against sex workers, and measures to tackle the institutional violence they suffer.

The fight for the recognition of sex work is marked by pain, as illustrated by the facts and figures presented to the IACHR. Seven out of ten sex workers are victims of violence, and in nine out of ten cases, this violence was suffered at the hands of state actors. In the health sector, institutional violence manifests itself in the form of discrimination, practised by staff.

The IACHR classified the hearing as “historic” in a [press release](#), and “urged member states to design public policies and regulations that protect the human rights of sex workers, including measures to protect their lives, their integrity, their honour and their dignity, as well as to put an end to the stigmatisation and discrimination to which they are subjected”.

The trade that continues to divide

The arguments on both [sides of the debate](#) over the recognition of sex work are strongly influenced by public opinion. While those in favour argue that recognising sex work could assist in the prevention of HIV and the fight against human trafficking, those against believe it would be a step backwards in terms of gender equality and would do nothing to help end human trafficking. All, however, agree on one thing: sex workers must be given protection, in some way or another.

The regional director of UNAIDS for Latin America and the Caribbean, César Núñez, told *Equal Times* that there is considerable evidence that the criminalisation of sex work increases vulnerability to HIV and other sexually transmitted diseases. “Fear of being identified by the authorities and arrested makes sex workers stay away from HIV prevention, treatment and support services,” he points out.

For Núñez, to end the AIDS epidemic by 2030, progress needs to be made across the board in terms of civil, cultural, economic, political, social, sexual and reproductive rights.

According to UNAIDS, sex workers are 10 times more likely to contract HIV than the general population. In Latin America and the Caribbean, sex workers of all genders represented six per cent of new HIV cases in 2014.

For Larissa Arroyo, a lawyer specialising in human rights and gender, sex work should be eradicated, because it is based on gender stereotypes and the commodification and commercialisation of women within male chauvinistic societies. She nonetheless believes that where it exists, the state has a duty to protect sex workers through public policies, rights-based empowerment and the best rights and guarantees possible, including social security and labour rights.

Decriminalisation or regulation, how far does the recognition of rights go?

[Amnesty International's policy](#) on the state's obligation to respect, protect and fulfil the human rights of sex workers, drawn up in 2016, urges states to regulate sex work and whilst it “does not take a position on the exact form such regulation should take, or whether it is necessary for states to develop regulations specifically designed for sex work, which are separate from the general laws that broadly regulate other businesses or employment practices in a country”, it insists that “any regulatory system put in place must comply with international human rights standards”.

The document clarifies the distinction between decriminalising and regulating sex work. Decriminalisation seeks to ensure they have access to fair and safer working conditions and that their human rights are protected and respected. Whilst it does not establish specific forms of regulation, it does not exclude penalisation where human rights are violated.

The ILO has no position on the issue of legalisation. Horacio Guido, head of the Application of Standards Branch of the International Labour Standards Department, wrote in response to *Equal Times* that: “It is outside the purview of the ILO to take a position on whether countries should legalise prostitution. Where the ILO does take a clear stand is in maintaining that child prostitution is a serious human rights violation and an intolerable form of child labour (see Convention No. 182) and that trafficking in persons for the purposes of forced or compulsory labour, which may involve sexual exploitation, is the subject of growing international concern and requires urgent action for its effective elimination (see the Protocol of 2014 to Convention 29).”

As regards ILO [Recommendation 200, passed in 2010, concerning HIV and AIDS and the World of Work](#), the term “sex worker” and “sex work” were removed from the preparatory drafts on the basis that the text already included “all workers, working under all forms or arrangements, and at all workplaces” and “all sectors of economic activity, including the private and public sectors and the formal and informal economies”.

Alda Facio, chair of the UN Human Rights Council’s Working Group on Discrimination against Women in Law and in Practice, did not comment on the United Nations’ position in response to *Equal Times*’ query for this article.

Sex workers are currently faced with an upsurge in criminalisation due to the blurring of lines between self-employed sex work and trafficking. They argue that the problem is fed by the corruption surrounding their work and the antennas of those exploiting their clandestinity.

RedTraSex denounced that the implicit revenue from their work stretches far beyond the procurers and organised crime groups, with members of the lowest to the highest ranks of the police force also taking a cut of the profits. They explain, for example, that under the banner of fighting against trafficking, police officers raid and search sex workers and steal their personal effects and earnings - despite knowing that they are not working for trafficking rings, as the women these employ do not usually have access to such items. The network reports that public officials, politicians and other figures are involved in direct and indirect profiteering from the confusion between sex work and trafficking.

Whilst some remain silent and others denounce the situation, Reynaga is calling for reflection: who does clandestinity benefit? Who is benefitting from the prohibition of sex work?

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