

The Global Commission on HIV and the Law Recommends Removal of Laws Against Adult Sex Industries.

The report of the Global Commission on HIV and the Law, released today, (<http://hivlawcommission.org>) recommends the repeal laws that prohibit consenting adults from buying or selling sex, including those laws that have the effect of prohibiting commercial sex such as laws against “immoral” earnings, “living off the earnings” of prostitution and brothel-keeping. It calls for an end to police harassment and violence against sex workers and a prohibition of mandatory HIV and STI testing of sex workers. It also recommends withdrawal of the PEPFAR anti-prostitution pledge. This marks a significant advance for sex workers’ struggle for sex work to be decriminalised and recognised as an occupation.

For HIV to be reduced among sex workers and clients, law must reduce opportunities for HIV transmission. To do that requires more than getting condoms or services to people who are selling sex in dreadful circumstances. It means getting sex workers out of those dangerous workplaces and into safe ones. It is therefore particularly heartening that the report explicitly recommends that sex businesses are made legal, not just the sex worker. The Commission has recognised what all sex workers know - that laws against sex businesses mean they have to work in criminalised and therefore dangerous places. The spectre of the ‘pimp’ and understandable squeamishness on the part of policy makers to be seen to sanction ‘pimping’ functions as a powerful barrier to supporting sex workers calls for removal of all laws against adult sex work even among human rights NGOs and advocates (<http://paper-bird.net/2012/04/15/human-rights-watch-on-womens-sexuality-nice-women-dont-have-one-2/>) The reality is that sex workers in legal workplaces can challenge exploitation with the same tools that are available to other workers. This is fundamental to the notion that ‘sex work is work’ and it is embodied in the slogan ‘Only Rights Can Stop the Wrongs’

The Commission’s law reform recommendations apply to ‘willing sex workers’ and recommends that anti-human-trafficking laws be carefully targeted to punish those who use force, dishonesty or coercion to procure people into commercial sex, or who abuse migrant sex workers through debt, bondage, violence or by deprivation of liberty and not used against adults involved in consensual sex work. Creation of the category ‘willing sex worker’ as a subset of ‘sex worker’ should concern sex workers because it suggests that very significant numbers of sex workers are enslaved which is not borne out by experience or statistics. The risk is that programmes for health and human rights are seen as applicable only to a poorly defined subset of ‘willing’ sex workers while sex workers deemed to be “unwilling” (or reluctant?) qualify only for raids, rehabilitation and anti-trafficking programmes. As I said in 2010, we don’t talk about ‘willing brides’ because forced marriage exists or ‘consenting homosexuals’ because some men are raped. (<http://plri.wordpress.com/2010/09/28/willing-brides-and-consenting-homosexuals-why-we-must-unite-against-the-trafficking-paradigm/>)

The Commissioners have realised that the content of international human rights treaties are neither consistent or helpful on sex work. Their report rightly points to the need to review them, especially the Protocol to Prevent, Suppress and Punish Trafficking In Persons, Especially Women And Children (2000). I hear the Commissioners quickly saw that the best information came from communities and they are to be commended for recognising that and acting on it rather than just paying lip service to

it. For sex workers to have been listened to by this eminent group is important in itself and the recommendations will be a powerful advocacy tool for sex workers at both international and local levels.

Cheryl Overs

*Cheryl Overs is a Senior Research Fellow at the Michael Kirby Centre for Public Health and Human Rights in Australia and a member of the Technical Advisory Group of the Global Commission on HIV and the Law.*