

Recommendations

For the Redefinition of the Legal Framework of Sex Work in Portugal

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Contextualization

“Prostitution is a multifaceted social practice consisting of economic, cultural and personal factors that hinder the construction of a homogeneous, strict and static explanatory model on that same social practice” (Sousa & Oliveira, 2008, p.1). The complexity of this phenomenon demands reading models that can overcome the Prohibitionist vs. Abolitionist paradigms that Portugal came to know throughout history.¹ These approaches failed their main goal – abolish prostitution the prostitution abolishment – but they had a great impact on sex workers’ lives (hereinafter called SW) and in the creation of a stigma that perpetuates the discrimination against sex workers.²

In 1983, the law criminalizing prostitutes was revoked and procuring was constituted as a crime. Since then, prostitution lies in a “legal gap” that doesn’t grant any rights to those who engage in this activity, leading to the exclusion of SW (Oliveira, 2004b). Even without any specific legislation to prohibit it, sex work is frequently rejected by society (Banach & Metznerah, 2000).

More than an international tendency, the adoption of the term sex work when referring to prostitution reflects our position regarding this activity, which we consider to be a kind of work. This designation incorporates a series of activities that go beyond the limits of street prostitution, but are related to the goal of obtaining profit through the “provision” of a service aimed at the sexual satisfaction of the person who acquires it (Oliveira 2004). We believe that the mutual consented exchange of a sexual service for material compensation between two adults (Weitzer, 2000; Vanwesenbeeck, 2001; Oliveira, 2004) can fit into the ambit of a professional category to which we’ll give the name of sex worker. This category includes a series of workers who operate in several contexts (streets, private apartments, massage parlors, hotels, brothels, phone sex agencies, pornographic industry, etc.).

The outreach work developed by Agência Piaget para o Desenvolvimento (APDES) (especially in the last 4 years) with SW who work in indoor settings³ provided a privileged knowledge on the main difficulties that these people face every day and we’ve noticed that many of those difficulties are related to this activity’s legal framework in Portugal. This is also the conviction of the National

¹ Please check Appendix 1 for more information on the Law and Legislative History of Prostitution in Portugal

² Please check Appendix 2 for more information on the Impact of Stigma on Sex Workers’ Life

³ It is estimated that over 80% of sex work activities are carried out in boarding houses, strip clubs, massage parlors and apartments (Oliveira, 2004; Weitzer, 2005).

Network on Sex Work⁴, established in 2011 in order to dignify the living conditions and the defense of sex workers' civil rights. The National Network on Sex Work is constituted by representatives of SW, researchers and the majority of the Portuguese organizations that work with SW. This network has been gathering consensus on the importance of presenting suggestions to improve the public policies that directly affect these individuals. As members of society directly in contact with SW, it is our duty to inform the Government about the negative consequences that the current legal and political framework has in sex workers' lives and to present an alternative way, in order to fulfill the fundamental rights of this population.

The recommendations stated here focus on what is commonly named prostitution, despite having repercussions on all the other categories, since they are a clear fighting strategy against the stigma that affects this population and places it in a situation of increased vulnerability.

Alongside Brito (2008), we believe that the discussion of this theme must be moderated by the existence of the right of free exercise of the profession and social equality, not by the so called average morality or the beliefs and dogmas of certain groups (Brito 2008, p.15).

This document was developed according to the narratives of SW, the experience and knowledge of outreach workers who work with these individuals, the analysis of documents developed by important International Organizations and studies carried out by researchers with a vast experience in this matter.

In the appendices, we included a set of documents that we consider to be very illustrative, regarding the main themes discussed.

⁴ Members: Acompanha,CRL (Peniche); Associação Existências (Coimbra); Associação Novo Olhar (Leiria); APDES (Porto); Associação Positivo (Lisbon); GAT (Lisbon); Liga Portuguesa Contra a Sida (Lisbon); Obra Social das Irmãs Oblatas do Santíssimo Redentor (Lisbon); Médicos do Mundo (Lisbon); Panteras Rosa (Lisbon); UMAR (Lisbon); Alexandra Oliveira; Filipa Alvim; Jo Bernardo; Mariana Garcia; Néilson Ramalho; Rita Alcaire e Tiago Ferreira.

National and International Commitment

The Constitution of the Portuguese Republic “enshrines the fundamental rights that pertain to citizens, the essential principles that govern the Portuguese State and the major political guidelines (...)”, “All the other laws must respect the Constitution - if they don't, they are unconstitutional and thus invalid.” (website of the Portuguese Government). Therefore, it is important to recall the “country’s supreme law” (idem) when proposing a legislative revision. We would like to draw your attention to Article 9 (Fundamental tasks of the State), Article 25 (Right to personal integrity), Article 26 (Other personal rights), Article 27 (Right to freedom and security), Article 58 (Right to work) and Article 59 (Worker’s rights), due to their importance for the recommendations we present⁵.

The first article of the Universal Declaration of Human Rights (December 1948) states that “all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” On the 6th Article this declaration assumes that “everyone has the right to recognition everywhere as a person before the law” and that “everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.” (Article 13)

Many illustrious Jurists deal with the theme of dignity, articulating it with the rights and duties of the human being:

“(...) in accordance with the Constitution of the Portuguese Republic and the Universal Declaration of Human Rights, fundamental and non-renounceable rights and duties are associated with the basic dignity of the human being, granting it a concrete expression.”
(Carneiro cit in Silva, 2004, p.14)

“A law that ignores or forgets the social reality dies “of old age” or impracticality... There are principles, values and legitimate interests that the State should provide. But there is also the duty of being attentive to the social reality that keeps mutating due to the collective life itself. In the international and national legal system, the questions regarding citizenship must be a capital subject and population mobility, an historic reality that is extraordinarily fast nowadays, cannot stop to raise new questions and follow new ways and perspectives.” (Pinto cit in Silva, 2004)

⁵ Please check Appendix 3 to consult the articles mentioned.

Recommendations

a. Founding Principles

- Any proposed amendment to the legal framework currently established must be based on scientific evidences and the analysis of objective consequences of the different legal frameworks of comparative law.
- Those covered by the legislative proposition, in this case the SW, must be closely involved in the project, and the discussion should avoid an excessive heteronomy; ethical listening and the respect for other's subjectivity should be emphasized (Mayorga, 2011).⁶
- The legal formulation should address the voluntary sex work carried out by adults and it should be based on the principle of respect for human dignity, pragmatic and distant from the average morality and current prejudices (Platvoet, 2007).
- Ambiguous policies that concentrate several phenomena on a single one, namely sex work, human trafficking or any other form of sexual exploitation, should be avoided (Platvoet, 2007). The criminalization of sex work in order to prevent human trafficking or child prostitution is counterproductive, because it leads the phenomena to clandestineness, thus making difficult to identify situations of sexual exploitation.
- The discussion of this theme must be moderated by the existence of the right of free exercise of the profession and social equality, not by the so called average morality or the beliefs and dogmas of certain groups (Brito, 2008).⁷ Social morality should be neutralized and should not possess penal dignity, *per se* (Mota Pinto, 1999).
- The law must guarantee the personal fulfillment of citizens, as well as their dignity and the right to make decisions regarding their profession (Olivar 2007). The protection of the individual's autonomy presupposes the right of self-determination. In other words, the right to decide and determine his/her fate autonomously, as long as the individual doesn't interfere with others, but also the duty of self-responsibility (Mota Pinto, 1999).

⁶ Please check Appendix 4 for more information on the results of the inquiry process carried out with sex workers on this theme

⁷ Please check Appendix 5 for more information on the myths that contaminate the perception and actions regarding this phenomenon

- It is important to privilege an equalitarian character that takes into account the triple discrimination (ethnic/class, gender and work) that can be associated with this sector and the consequent aggravation of the vulnerability factors and occupational labor mobility (Baptista, 2011).
- The creation of a legislative proposal regarding sex work should be associated with a public discursiveness, bringing sex work closer to other non-stigmatized activities (Banach & Metzenrah, 2000).
- The new social, legal and economic policies must guarantee that SW are protected, respected and have the opportunity to be granted the fundamental human rights, required by law for other citizens (Shavi, 2005).

b. Concrete Proposals

1. Maintain the non-criminalization of Sex Work;
2. Change the Article 169 (Procuring) of the Portuguese Penal Code, in order to allow the formation of SW collectives and maintain the criminalization of sexual exploitation/forced sexual labor;
3. Maintain, on a systematic basis, the condemnation of all forms of sexual exploitation;
4. Create a legal framework for sex work:
 - without discriminatory practices (e.g. designation of specific areas for this activity; compulsory testing of Sexually Transmitted Infections; compulsory registration of SW);
5. Create the occupational category of sex worker;
6. Create a Monitoring Committee of the Law Reform, composed of representatives of the involved working class and members of society in contact with this population;
7. Carry out national advocacy campaigns that oppose the existence of discriminatory practices against sex workers, as well as health and citizenship education campaigns oriented to SW themselves;
8. Promote the access to education and professional training of SW

c. Basis of the Proposals

The majority of the laws that regulate sex work reflect the lack of knowledge of this reality, as well as the current stereotypes that perceive SW as individuals who are deviant, criminal, sick or have a need for protection (Banach & Metzenrah, 2000). SW are never seen as citizens fully capable of making conscious decisions. We will now support each of the proposals presented by referring to some important documents on this matter, published by nationally and internationally acclaimed research centers, European Organizations and activist groups for the defense of SW' rights, etc.

1. Maintain the non-criminalization of sex workers or sex workers' clients

History shows how the criminalization wasn't effective for the eradication of prostitution, not protecting the people involved or the communities in which it occurs (Shaver, 2005). There are several works on the negative impact of the different legislative measures that criminalize sex work. In Appendix 6 we present a table that summarizes the implications of each legislative measure and in Appendix 7, we present the analysis of the legal framework in some countries that, sometimes, for the worst reasons, have stand out in this matter.

In short, we consider that criminalization or non-regulation:

- Leads the phenomenon underground, thus making difficult the scrutiny of situations of violence, as well as the existence of other phenomena related to sex work, like human trafficking for sexual exploitation purposes or child prostitution (Banach & Metzenrah, 2000; Shaver, 2005; Weitzer, 2007; OSF, 2012);
- Promotes stigmatization and stereotypes amongst the general public, forcing the SW to live a double life in order to minimize the effects of that same stigma. (Banach & Metzenrah, 2000; Shaver, 2005);
- Restricts safety, access to health services and other facilities/mechanisms designated to protect every citizen. This situation gets aggravated in the case of migrant SW, who who have no residence permit to live in Portugal and fear any type of contact with the conventional support systems. (Banach & Metzenrah, 2000; Shaver, 2005);

- Promotes the impunity of those who commit crimes against SW, who are perceived as easy targets for violence (assault, rape, coercion to high-risk sexual practices, etc.) since they are discouraged to accuse the offenders (Weitzer, 2007);
- Denies SW's universal access to work benefits (right to work, right to maternity pay, sick leave, holidays, payment of overtime work, unemployment pay, retirement...);
- Promotes poor health and safety working conditions and hinders the adoption of preventive measures like the consistent use of condoms;
- Promotes the parallel market, decreasing the contributions to the State by the SW. The opposing measure, to recognize sex work as a profession, ensures positive economic effects for the country, as well as for the individual whose contributions can result in a larger social protection;
- Restricts life options and the opportunity for occupational labor mobility. Restrictive laws deny the freedom of choice of employment and promote the continuity of parallel markets (Banach & Metzenrah, 2000).

The moral argumentation on the base of prostitution criminalization must be eliminated, due to the clear conditions of abuse and suffering of the sex workers (Platvoet, 2007).

The Open Society Foundations (OSF, 2012), which main priority is the protection and promotion of the quality of life of marginalized individuals, has been studying different policies on sex work. In 2012, OSF published a document in which they present 10 reasons why the decriminalization of sex work is the best model for the promotion of health and human rights of SW, their families and communities. To each of the reasons we present below, the OSF has also presented empirical evidences. According to the OSF, decriminalization: 1) reflects the respect for human rights and personal dignity; 2) reduces police abuse and violence; 3) increases sex workers' access to justice; 4) promotes safer working conditions; 5) increases the access to health services; 6) reduces SW risk of HIV; 7) challenges stigma and discrimination and the consequences of having a criminal record; 8) does not result in an increase of the population of SW; 9) facilitates an effective response to human trafficking and 10) challenges the State control over body and sexuality.

2. Change the Article 169 (Procuring) of the Portuguese Penal Code, in order to allow the formation of SW collectives and maintain the criminalization of sexual exploitation/forced labor

The Portuguese PC considers and punishes many of the crimes that may be associated with the exercise of sex work, but do not define it. The Article 169 (that criminalizes Procuring) is formulated in a way that considers illegal any place in which sex trade occurs. It also prevents the establishment of employment contracts and the formation of sex workers collectives. We believe that this article is an obstacle to the rights exercise of this population. Hence, we recommend its amendment. We condemn any form of sexual exploitation, but we defend that this can be dealt with according to some articles already present in the PC, like Article 159 – Slavery – which criminalizes any form of labor exploitation and punishes them with a criminal sanction higher than the ones foreseen to Procuring crimes.

The website of the *Permanent Observatory on Production, Trade and Proliferation of Light Weapons* presents the nature and dimension of the crimes committed in Portugal. It is important to point out that on the 3rd semester of 2010, 19% of the total of crimes committed were crimes against persons and only 3% (of this 19%) are related to Procuring. The criminal sanctions to this type of crimes are rare, due to the lack of formal complaints and probative difficulties. If the SW is influenced by a pimp, it can be very difficult for them to carry out a criminal prosecution or even present a complaint. In addition, it is not acceptable to control the income of sex workers, nor with whom they spend it (Banach & Metzenrah, 2000; Shaver, 2005).

It is important to predict that on an ideal context of decriminalization, some situations currently typified as procuring can be legally accepted. We are not mentioning any type of forced sexual labor, but the possibility of the existence of a third party in sex industry trades. The owners of boarding houses/apartments where SW take their costumers and the owners/managers of brothels are examples of those who can be legally accepted.

The decriminalization of procuring is related to the acknowledgment of sex work as a profession, in the effort to promote the labor rights of SW (Open Society Foundations, 2012). In practice, the decriminalization implies the revocation of all administrative, criminal and penal sanctions over sex work, including the laws for costumers and owners of places dedicated to sex trade (OSF, 2012).

3. Maintain, on a systematic basis, the condemnation of all forms of sexual exploitation

The focus of the proposed legislative amendment concerns voluntary sex work exercised by adults and holders of all their legal rights. Human trafficking, prostitution of minors or any other form of

sexual exploitation should invariably be considered as forms of violence; therefore, they must be dealt with according to criminal matters (Shavi, 2005; Platvoet, 2007; OSF, 2012) as already established in the Portuguese Penal Code. As example, we mention the Articles 159 (Slavery) and 160 (Human trafficking) of Chapter IV – crimes against Personal Liberty and the articles 163 (Sexual Coercion), 164 (Rape/Assault), 165 (Sexual abuse of persons incapable of resistance), 166 (Sexual abuse of admitted persons), 167 (Sexual fraud), 171 (Child sexual abuse), 172 (Sexual abuse of dependent minors), 173 (Child procuring), 173 (Sexual intercourse with teenagers), 174 (Resort to child prostitution), 175 (Child procuring), 176 (Child pornography) of Chapter V – crimes against liberty and sexual self-determination. These articles cover the majority of crimes usually associated with sex work and, in some cases, defend criminal sanctions higher than those designated for the exercise of Procuring.

In the situations listed above, it is important to avoid the institutional re-victimization, by offering victims integrated responses and support services adjusted to their needs.

Alongside other countries like Holland and Germany, we believe that the legal regulation of places designed for sex work will be an important measure in order to fight human trafficking, child prostitution and other forms of sexual exploitation, since these types of abuse are more easily detectable in a regulated sector than on a clandestine sector (Dutch Ministry for Foreign Affairs, 2012).

4. Create a legal framework for sex work

- a. without discriminatory practices (e.g. designation of specific areas for this activity; compulsory testing for Sexually Transmitted Diseases; compulsory registration of SW);

Labor laws guarantee a more effective protection against exploitation, coercion or violence (Dutch Ministry for Foreign Affairs, 2012). Sex workers should be granted the same labor laws like any other worker: right to proper working, health and safety conditions, right to maternity pay, sick leave, holidays, payment of overtime work, unemployment pay, retirement and all the other labor and social rights granted to the common citizen.

During the process of sex work regulation, it is important to take into account the different dimensions of this work, in order to not limit the market and the diversity of interests of the SW:

schedule flexibility, greater personal control over the choice of clients and income, types of services, etc.

The proposals for the regulation of other activities usually aim to ensure the development of specific competences and to approach the parallel markets to the regular market. In the case of sex work, the main goal cannot be the one of social control. The police or other entities should control sex work the same way they control other commercial activities (Banach & Metzenrah, 2000).

In some of the countries that regulate sex work, we can see that there is a tendency to resort to measures that ultimately aim to “soothe the fears” of the communities and perpetuate stereotypes regarding SW. Regarding the myth of “white slave traffic”, Alvim and Bordonaro (2012, pp. 28-29) introduce the concept of Moral Panics by Young and Cohen, which shows “the spiral effect produced by the media, public opinion, interest groups and authorities”. The “white women traffic” motivated unreasonable reactions regarding a situation perceived as threatening and promoter of insecurity, reinforcing stereotypes and creating control laws and measures discriminatory towards SW, women population mobility and migrants in general. In this sense, it is necessary to avoid the adoption of measures whose impact can affect the dignity and human rights of SW.

The following specific regulations adopted for sex work are considered to be discriminatory practices (Banach & Metzenrah, 2000; Shavi, 2005)

- Designation of specific areas for this activity

The creation of “tolerance zones”, usually distant from urban centers and restricted to industrial areas it is not acceptable, since it restricts the sex industry to less secure areas, with precarious conditions (Banach & Metzenrah, 2000; Shavi, 2005). The laws of local planning for sex work should not be different from those concerning other business activities. We also consider that it is important to debureaucratize the licensing process of these locations, in order to discourage the emergence of a parallel market without any type of guarantees for its workers (Banach & Metzenrah, 2000).

Local partnerships that seek a collaborative approach can create opportunities to find acceptable solutions. Local municipalities should be encouraged and have some kind of support in the creation of partnerships that engage SW, inhabitants, traders, providers of health care and important entities

(Banach & Metzenrah, 2000). Local initiatives need to be supported by the Government's strong leadership and clear guidance, which can be supported by civil society bodies with experience in these matters.

- Compulsory testing for Sexually Transmitted Infections (STI)

The general laws of public health are sufficient to cover the sex work activity (Banach & Metzenrah, 2000). The easy access to STI tests is perceived as a good health practice and should be extended to all the sexually active individuals, not exclusively to SW.

It so happens that, many times, the compulsory testing doesn't take into consideration the "window period" of many STI, thus creating a false feeling of security and restricting the SW power to negotiate safe sexual practices with the costumers who frequently pressure them into unprotected sexual intercourse. Therefore, the focus on public health cannot ignore the clients as potential risk factors to SW and should support the promotion of lower risk sexual practices in the sex industry, instead of promoting the myth that the SW are the main vectors of sexual transmitted infections (Banach & Metzenrah, 2000).⁸

- Compulsory registration of SW

The compulsory registration of SW is perceived as a control mechanism that reduces autonomy, right to privacy (Shavi, 2005; Tampep, 2009) and liberty of mobility. This registration doesn't present any type of information regarding the voluntary or forced nature of the sex work. We should regulate sex work, not sex workers.

It is vital to ensure that sex work will be subject to the same health and safety rules from other similar activities (Shaver, 2005). There are authors who believe that the laws that regulate other sectors are enough to regulate the different areas of sex work (Banach & Metzenrah, 2000). As an example, the rules applicable to sexual trade businesses can follow those already existing to regulate health and security conditions in hotel, motels, spas, etc... The same can be expected regarding nightclubs that sell beverages (brothels, strip clubs), since they can obtain licenses already predicted for any space of nightlife entertainment. It should equally be taken into consideration the possibility of SW becoming entrepreneurs, without the rules applied to larger businesses, in those cases where only 1 to 3 people work in an apartment. It is recommended that all the rules should be easy to

⁸ Please check Appendix 5.

follow, so as not to set aside from the regular market those who don't have financial capacity to open a larger business.

5. Create the occupational category of sex worker

Modern law represents a way to express the recognition of universal characteristics of individuals. This acknowledgment can be especially declared in the ambit of work, in which the denial or exclusion of rights can be considered as forms of disrespect (La Blétière, 2008).

The definition of a professional profile that includes a succinct description of the general working, training, experience, personal competences and resources conditions, reinforces the reciprocity present in employment relations and contributes to the “strengthening of the professional identity of this category, aiming at the full exercise of citizenship, reduction of stigma and discrimination and the improvement of society’s quality of life” (Gershon, 2006, p. 11). By acknowledging the importance of this matter, the Brazilian Ministry of Labor and Employment recognizes (since 2002) prostitution as a professional activity, integrated in the Brazilian Classification of Occupations (BCO)⁹ (Brito, 2008).

This professional category must be sufficiently comprehensive in order to include the different workers who obtain profit or material compensation through the exchange of services aimed at the sexual satisfaction of those who acquire it (e.g. escorts, phone sex operators, strippers, pornographic films actor/actresses, etc.). In addition to the creation of this category, courses in vocational training, health education and awareness raising campaigns for the rights and duties of sex workers, should be promoted. The Peer Education strategy has been assuming an increasing importance at an international level in these types of actions.

It is also important to create conditions for the formation of SW collectives, for the defense of their interests and rights and due to the important role of self-organization for the empowerment of this population (Shavi, 2005). This could be supported by civil society organizations that have experience in supporting the development of collectives.

⁹ Please check Appendix 7 - Brazil

6. Create a Monitoring Committee of the Law Reform

The Government should promote measures that value an independent, impartial and methodologically correct research that includes the opinions of the involved individuals – the sex workers (Jordan, 2012) and the organizations that develop outreach work alongside this population (Banach & Metzenrah, 2000).

The mission of this committee is to ensure the efficiency and quality in the execution of the law reform. According to Shavi (2005), this committee must guarantee that 1) decriminalization doesn't result in the creation of new punitive policies through sanctions and fines; 2) the registration of individuals and STI testing don't become compulsory, beyond what is already expected from every other worker; 3) small groups of independent workers can work without being subject to specific regulations; 4) larger business establishments will be perceived as companies similar to other sectors and 5) there will be no designated compulsory areas for the exercise of the SW on the streets.

The role of civil society in the access, knowledge and support of marginalized populations has earned the unanimous recognition at a national and international level (CNSIDA, 2011). Regarding the sex work, we'd like to highlight the self-organization of a small group of civil society organizations, researchers and sex workers in 2011, named National Network on Sex Work. This network seeks to reinforce partnership work in favor of a better health care provision to sex workers, as well as to contribute to the dignifying of their life conditions and the protection of their civil rights, namely access to health care, rights as workers, rights as migrants, larger participation in the decision processes that affect them, etc. (RTS, 2011). Agência Piaget para o Desenvolvimento (APDES) is one of the founding members of this network and we believe that it has a very distinct curriculum in the scope of sex work, thus making legitimate its participation in this Committee. For example, APDES has been developing (since 2008) an outreach work alongside the SW through the project *Porto G*, co-funded by the Directorate-General of Health (DGS) and also participates in the European Network *Indoors*, co-funded by the Daphne III Project by the European Commission; APDES is a founding member of the Observatory for Human Rights (2008), the National Network on Sex Work (2011) and collaborates with the Observatory on Trafficking in Human Beings since 2010. Besides this, APDES works alongside a group of doctorate level researchers capable of scientifically guide the monitoring process and the analysis of the impact of the legislative process.

7. Carry out national advocacy campaigns that oppose the existence of discriminatory practices against sex workers, as well as health and citizenship education campaigns oriented towards SW themselves

The reformulation of the legislation will not improve the health and security conditions of the communities by itself (Fraser Committee 1985; Shaver 1985; Benoit & Miller 2001 *cit in* Shaver 2005). “It’s not easy (...) to break with prejudices and representations culturally (and arbitrarily) created and present in the unconscious schemes of perception and symbolic classification of the world, which subjectively organize and form the objective relations of dominance (Gershon, 2006, p.10).

The non-discrimination advocacy and awareness processes in the communities can be carried out through Human Rights Education events in civil society spaces like schools, universities, etc. and through the press (Alvim, 2006). In addition, training and advocacy sessions for the entities/organizations and groups dedicated to the care and protection of SW (Community health centers, hospitals, police, National Immigrant Support Centers, etc.) should be organized.

Consequently, the legal reformulation should be complemented with national education campaigns that oppose to the existence of discriminatory practices against sex workers, reflect on the social problems related to the stigmatization of this activity and raise awareness so that society can treat SW with respect (Shaver, 2005). Health and citizenship promotion events for SW should also be carried out.

8. Promote the access to education and professional training of SW

The increase of competences, knowledge and vocational qualifications is one of the recommended strategies to promote the economic growth and to protect the workers who are under precarious employment situations.

Due to the large percentage of men, women and transsexuals who allegedly resort to sex work since they can’t find any other way of obtaining the necessary income to subsist, it is important to provide specific tools that allow occupational labor mobility.

Impact of the presented proposals on sex workers' health

The concept of health has been reflecting a bio-psychosocial perspective throughout time, being defined as “a state of complete physical, social and mental state well-being” (WHO, 1948). There are multiple factors that have an impact on people’s health, especially the adoption of certain public policies instead of others. We believe that the recognition of sex work as a professional activity could hinder some of the conditions that have been placing this population in a situation of greater vulnerability in terms of health.

The prevalence of HIV in Portugal (number of individuals that deal with the infection every day) is one of the highest at a European level (UNAIDS, 2010). Recent data from the national research PREVIH (2011)¹⁰ show that sex workers are, nowadays, a vulnerable population to HIV, with a concentrated epidemic over 5%. Of the total participants in this research (n=921), 7.2% stated to be seropositive: 6.6% are women, 4.8% are men and 15.4% are transsexuals. In addition, 10% of the participants stated that they’re unaware of their serological status. According to the participants’ statements, the most likely way for HIV to be transmitted is sexual.

The contextual characteristics related to sex work, the pressure exercised by the client to have unprotected sexual intercourse and, sometimes, the limited capacity to negotiate the use of condoms, in addition to a greater vulnerability in situations of violence, represent risk factors for HIV infection in this population (UNAIDS, 2007).

The reduced access to the National Health System (NHS) also contributes to the increasing vulnerability in terms of health condition. Even when these individuals resort to the NHS, they find difficult to reveal their activity, thus remaining many years without any type of HIV or other STI diagnosis, as well as deprived of a medical care that focuses on the specificities of this activity. This particular situation occurs because of the stigma associated with this activity. The fact of not “being able” to openly talk about their activity is related (although not being the single factor) with the lack of recognition of this profession. The stigma that still exists regarding sex workers clearly contributes to a minor access to health care systems, as well as to other structures that guarantee the full exercise of citizenship (Overs, 2002). The professional regulation of this activity would not end stigmatization, but would certainly contribute to its decrease.

¹⁰ Research: HIV/AIDS infection in groups of men who have sexual intercourse with other men and sex workers: incidence, determiners, preventive interventions and access to health care services.

Sex workers accounts still describe other factors related to the dynamics of the typical informal market of the current organization of sex work. The absence of regulation of the businesses establishments allows their managers to set the rules of those same establishments and the characteristics of the services. Therefore:

1. Hygiene and health conditions in those establishments may or may not follow the legally defined rules that protect workers' health;
2. The use of condoms (or its absence) in all sexual practices is at the establishment's manager discretion;
3. The impossibility to establish employment contracts prevents these workers from: 1) benefit of a recovery period (sick leave) in the event of a disease or other health problems; 2) benefit of a maternity leave for breastfeeding and exclusive care of their child. It also prevents the possibility of annual leaves, disability retirement and other rights like the control of the number of working hours per week, mandatory lunch break, etc. Lastly, these individuals can't benefit of a retirement pension.

Data from the outreach teams that work with SW reveal that a large percentage of SW are migrants who come from countries outside the Schengen Area and are currently living in Portugal without a residence permit. In addition to the obstacles that the Portuguese SW already face, they can face many others that can potentiate exclusion, discrimination and deteriorate their health condition. The contact with a different culture, the racism in the community where they're inserted, the lack of knowledge regarding common information (transportation network, support resources, essential rights), the alienation from informal and formal support networks and the illegal status of their citizenship, force migrant SW to marginalization and deny their essential rights. The fear of being deported is a real obstacle to the process of pursuing a claim against acts of violence, but it's also a real obstacle to the access to health services. According to Dias and Gonçalves (2007), there are several barriers in the access to health services by migrants, namely legislative, structural, organizational, economic and linguistic ones. Despite the universal right to health care, in practical terms, the restrictions imposed to migrants (especially those who are not in a regular situation) can affect the access to these services. Moreover, the authors mention that "the unstable and precarious work situation of immigrants, the difficulty to obtain social protection and the costs associated with health care, can be obstacles to the access to health care services by the migrant

population.” Researches show that, on one hand, the migrants who are regularized as citizens are more frequently enrolled in health care centers – and consequently have access to doctors’ appointments; on the other hand, migrants who aren’t regularized as citizens present a smaller access ratio and seek emergency services only when in emergency situations (Dias & Gonçalves, 2007). The researchers also mention that this situation can lead migrants to seek access to health care services at an advanced stage of a disease, which will ultimately lead to aggravated situations and higher costs. Regarding HIV and other STI, these individuals seek NHS services at advanced stages of the infection, which could be treated earlier with lower costs for people and the State itself. According to SP (Statistics Portugal) data, Portugal is one of the European countries where HIV is diagnosed at later stages and has a higher number of AIDS related deaths (Eurostat, 2006). This situation is vexatious for the individual’s health condition, for the general population health condition and even for the “well-being” of State economy. According to a research carried out by Dias, Severo and Barros (2008), with a sample of 1513 migrants, 20% declared they’ve never resorted to NHS services. Regarding information about the dynamics of HIV infection in migrants that come to Portugal, 2006 data show that of the total HIV cases, around 50% were present in migrants (ECDC, 2009).

Regarding migrant sex workers, it would be important to exist the possibility to regulate their situation in Portugal, through employment contracts, in order to guarantee fundamental rights that have consequences on this population’s health, as well as on the health of the community they’re in.

For all the reasons presented above, we believe that the recognition of sex work as a profession, alongside the attribution of labor rights and social protection, as well as hygiene and safety at work conditions, will represent significant improvements in the populations’ health conditions.

Conclusion

Scientific literature shows that the laws designated to regulate prostitution have a long and complex history (Hubbard, Matthews & Scoular, 2008). For centuries we have witnessed several attempts to abolish this phenomenon, by imposing criminal sanctions to the different participating parties, but none was effective in the process of eliminating sex work (NSWP, 2010). Many of the problems associated with sex work are intrinsically related to the status of illegality and social condemnation that lead SW to marginality (Weitzer, 2007; OSF, 2012). In addition to the negative impact on sex workers' lives, measures that lead this phenomenon to marginality promote parallel economy, many times referred as a corrosive factor of a certain country's economic growth.

In general, the international literature believes that the most effective model in terms of protection of human rights of sex workers is the decriminalization model, associated with the regulation of the professional activity. In other words, it would be preferable if the State didn't have any type of authority (by itself or associated with other structures) to regulate the individuals who can or cannot exercise the profession and if the access to this same profession was exclusively regulated by job authorities, without the existence of the compulsory registration, specific conditions required to be registered as a SW or any compulsory medical examination.

The recognition of sex work as a legitimate professional activity that is taxed, has certain benefits and allows those who work in the sex industry to be covered with legal protection rights, to have access to mechanisms of social support and to easily have access to jobs in other areas, has proven to be quite advantageous. Therefore, this recognition facilitates the legislative reform that focus on human rights, occupational health and working conditions (Banach & Metzenrah, 2000).

Despite the concern shown by people from the countries where this model was implemented, decriminalization didn't result in an increase in the number of SW, nor in the number of victims of human trafficking for sexual exploitation purposes or child prostitution. It is very important that legal provisions - that should be as harsh as possible, according to the law models of each country - destined to tackle some of the already discussed questions, exist in this type of model. However, it is important to make a distinction between voluntary sex work, exchange of a sexual service for material compensation or other services that are consensually carried out by two adults and sexual exploitation.

We've noticed that many of the arguments against the recognition of sex work as a profession are based on moral principles, not on empirical evidence.¹¹ Since Portugal is a Secular State, any discourse related to this theme cannot be influenced by religious dogmas. In "a secular State based on participatory democracy, there cannot be any justification for the perpetuation of clandestineness, since it can lead to the complete social exclusion of a certain group, thus contradicting the constitutional order" (Brito, 2008, p.11).

Portugal should be aware of the negative consequences resultant of negative legislative options by other countries regarding the violation of fundamental human rights, by seeking alternatives that make the Portuguese proposal an international reference in the near future.

¹¹ Please check Appendix 5 for more information on the myths that contaminate the perception and actions regarding this phenomenon.

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Appendices

Appendix 1: Law and Legislative History of Prostitution in Portugal

The legal and legislative framework regarding prostitution in Portugal has undergone many amendments through time. This activity hasn't always been subject to laws or regulations and it was allowed in certain periods of history. Before its current negative character, prostitution has been associated with religious sacrifices and those who worked as prostitutes were considered to be holy. "This activity wasn't stigmatized (...) its main purpose was not the profit, but it was a form of religious sacrifice considered to be the essence of some religions (Oliveira, 2004a).

Between the 12th and 14th century, some prohibitionist laws regarding prostitutes started to emerge in Portugal, which led to **regulamentarism** in the 19th century. During this period, a series of different legal initiatives appeared, in a context characterized by the conflict between moral and illegitimate sexual needs. "There's legislation, but the law isn't enforced; there's a persecution, but a mild one; people condemn it, but enjoy it" (Oliveira, 2004a). Along with the implementation of **regulamentarism**, "several measures to which prostitutes were submitted, such as the compulsory registration and periodic inspections, the existence of an individual registration document of all the inspections and the indication of the penalties for non-compliance with the rules" (Oliveira, 2004a) were established.

According to Silva (2007) the (apparently) logical basis of the regulation of prostitution was based on the metaphors of contagion, corruption and contamination of "health" through "sickness", according to an ideological notion of social groups and dominant institutions that claimed to be the defenders of sanity: moral, social and hygienic. "In fact, the women's role was crucial for the bourgeois triumph – their fidelity ensured the patriarchal domination and also the family's union, also fulfilled by the rejection of a female sexuality. But in order to fulfill the male sexual "needs" without any kind of attack against the "purity of the home guardian angels", the regulated sex business would be promoted" (Roberts, 1996 *cit in* Silva, 2007).

This system continued until 1963, when **Prohibitionism** was implemented, with a decree-law that prohibited "the exercise of prostitution, closing all the business establishments and referring measures against procuring. From this date forward, prostitution and procuring are crimes punished by law" (Silva, 2007). However, **Prohibitionist** practices not only did not end prostitution, but made its working conditions worse, leading women to clandestineness" (Oliveira, 2004b). Prohibitionism didn't end prostitution in Portugal, but the working conditions got worse (women started to work illegally in the streets, exposed to situations of violence, humiliation and police abuse). Prostitutes

who worked in the streets were the ones being chased by the police, since those who worked in the “high class brothels” frequented by the upper class, would get out unpunished. In 1966, there was a huge sex scandal involving prostitutes, daughters of prostitutes, people in the high society and politicians of the *Estado Novo* regime, who frequented houses where sexual services were sold (Flores & Cabrita, 1998). This scandal became known as “Ballet Rose”. Of all the people involved, only 2 prostitutes were held defendant and all the politicians were acquitted (Oliveira, 2004).

In spite of the emergence of a new political and ideological panorama after the revolution of April 1974 – characterized by the respect for individual freedom and a widespread “open-mindedness”, in particular to the questions related to sexuality - only in 1982 occurred a legislative amendment regarding prostitution (Decree-Law nº400/82), which decriminalized prostitutes but kept Procuring criminalized.

We often consider that, in the current legal framework, Prostitution is in an legislative gap because it isn't legal, but is also not criminalized. Eventually, this legal framework “contributes to the exclusion of prostitutes, turning their work into an inexistent activity, leaving workers without any rights or claiming power “(Oliveira, 2004b).

According to Medeiros (2000, *cit in* Oliveira, 2004b, p.4) “this absence of power is reflected in the absence of exercise of citizenship rights, to which the notion that a prostitute is a helpless victim contributes. To perceive people who work in prostitution this way, contributes to their loss of citizenship rights, as well as to the loss of participation/access to decisions, goods and services rights. By considering them inoperative individuals, it is possible to justify their marginality and making it acceptable towards society.”

Recently, this theme was once again discussed. For example, in 2005 a debate on prostitution and woman trafficking in Portugal was held; in this debate, the possibility to legalize prostitution as measure to stop human trafficking was discussed (*Diário de Notícias*, 2005; available in: http://www.dn.pt/inicio/interior.aspx?content_id=631075).

In December 2011, the National Network on Sex Work invited representatives of several Parliamentary Groups of the Assembly of the Republic to participate in the commemoration event of December 17 – International Day to end Violence Against Sex Workers. During this event, the deputies presented a challenge to this network: to submit concrete proposals for a legislative

reform. After 6 months, in June 2012, the European Network INDOORS (where Portugal is represented by APDES) released the video *Equal Rights*, which appealed for the need to recognize the same labor rights to SW. This campaign motivated APDES's presence (in September 27 2012) in the Hearing before the Subcommittee on Equality – Committee on the Constitutional Affairs, Rights, Freedoms and Guarantees – presided by the Deputy Elza Pais, where the importance of civil society organizations in contact with SW to submit recommendations was reinforced. At the beginning of October, the National Network on Sex Work launched a new campaign on the denied rights of SW, turning this theme into a public discussion by the significant coverage it has received from the media.

We believe that it is urgent to revise this works' legal framework in the Portuguese legislative system and we also believe that society is receptive to this need.

Appendix 2: The Impact of Stigma in Sex Workers' Life

To be “stigmatized” is to have a social identity or to be part of a social category that raises doubts about its plain humanity: to be stigmatized is to be devalued, broken or defective to others' eyes (Crocker, Major, e Steele, 1998; Goffman, 1963; Jones et al., 1984 *cit in* Crocker e Quinn, 2000).

Goffman (1963, *cit in* Lazarus *et al.*, 2012) defined stigma as “a highly discrediting attribute, being the stigmatized individual a bearer of an “unwanted difference” and a “degraded identity”.

According to Cocker and Quinn (2000), stigmatized individuals are frequent targets of negative stereotypes and cause emotional reactions, such as pity, anger, anxiety or displeasure, but the main characteristic of social stigma is the discrediting and dehumanization by others.

The stigma is a set of labels that can have a deep impact on the lives of those they're applied to (Hallgrimsdottir et al., 2008 *cit in* Lazarus, et al., 2012). These labels associate the stigmatized individuals with undesirable character features that lead them to experience the loss of status and discrimination. (Link and Phelan, 2001 *cit in* Lazarus et al., 2012).

The social reaction to sex workers was (and still is) one of rejection and exclusion. Based on the correct sexual behavior norms for women, sex workers are seen as immoral, deviant and transgressors, thus being a target of stigmatization. The base of this stigma is the moral conception of sexual activity that defines certain acts (such as prostitution) as being bad (Nahra, 2005 *cit in* Oliveira, 2012).

This moral still promotes the notion of sex “as something dangerous, especially when it occurs outside the norms. In other words, outside the heterosexual sexual intercourse, carried out indoors, by sexual partners united by matrimony and oriented to a biological reproduction. All the activities outside this notion are considered to be “bad sex”, namely when it involves sadomasochism and fetishism practices, as well as money” (Rubin, 1992 *cit in* Ribeiro e Sá, 2004).

“The exclusion and stigmatization of people who prostitute are old and a result of the imposition of segregating laws and other obligations, like having to use certain garments or live in separate districts (Oliveira, 2004b, p.2). Society, Church and State have always imposed certain rules to prostitutes in a more or less lenient way, neither prohibiting or regulating” (Oliveira, 2004b, p.2)

Law has an essential role in the production and continuity of the stigma related to this population. Ribeiro and Sá (2004, p.14) present as an example the Promotion and Protection of Children at Risk law, mentioning that it “promotes the arbitrary character of the interpretation and application of protection measures for children who, due to fact that their mothers are prostitutes, are instinctively considered to be children at risk, subject to the obsessive effect of this legislative framework. (...)The professional activity of sex worker - contrary to what happens with other professions, even those considered to be humble, miserable and precarious – is perceived as an absolute principle that defines and regulates a woman’s social life, depriving her of the basic citizenship rights”.

According to Nahra (2005) the stigmatization presents three main problems: a high level of freedom restriction, a high level of susceptibility to physical and physiological violence and a low level of well-being (Oliveira, 2004b). Vanwesenbeeck (2001) also mentions that the stigma associated with sex work is one of the main causes of the uneasiness felt by SW. There’s an increasing set of evidences that indicates that stigma itself can negatively contribute to health, especially in the ambit of psychosocial health and well-being elements (Stuber et al., 2008 *cit in* Wong et al., 2010).

The damage resulting from stigmatization is magnified when the prejudices related to SW are internalized by them; in other words, when the stigmatized individual creates an image of him/her based on the stereotypes attributed by society, accepts his/her condition and comprehends the attitude of disapproval by others. “People who prostitute internalize the image of someone who behaves illegitimately, since this is the way society has labeled them; this way, when this label is internalized, it becomes part of them. Prostitutes acknowledge that their activity is socially devalued, making clear their difficulty to enjoy or admit they enjoy being prostitutes” (Oliveira, 2012).

The internalization of stigma and prejudice is related to the alienation from social support networks and decrease of self-esteem (Link et al., 1989 *cit in* Wong et al., 2010), the increasing feeling of self-depreciation, the weakening of perception of domain (Wright e Fife, 2000 *cit in* Wong, 2010) and to symptoms of depression (Link *et al.*, *cit in* Wong, 2010).

SW experience situations of discrimination and rejection that, when combined with the illegal nature of sex work, can lead them to try to hide their practices (Benoit et al., 2005 *cit in* Lazarus et al., 2012). The effort to hide this activity increases the vulnerability of SW to stress, depression and

others illnesses, putting them at risk of abuse by those who are more powerful, namely the authorities (Benoit et al., 2005 *cit in* Lazarus et al., 2012). An increasing number of studies worldwide have been showing that stigma can work as a barrier for SW regarding their access to health services (Cohan *et al.*, 2006; Kurt set al., 2005; Scambler and Paoli, 2008 *cit in* Lazarus *et al.*, 2012).

The stigma displayed by some health care professionals can increase the stigma already felt by SW. It has been proven that even when the access to health care services is significant, the fact that SW don't reveal their activity can be a negative contribute to their health condition (Jeal and Salisbury, 2004 *cit in* Lazarus *et al.*, 2012), since health care professionals continue to be unaware of their needs (Kurtz et al., 2005 *cit in* Lazarus et al., 2012). The reasons that can lead SW to not reveal their activity are: the fear of being placed under arrest or being chased (Rekart, 2005 *cit in* Lazarus et al., 2012), negative past experiences, public exposure and fear of disapproval/shame (Cohan *et al.*, 2006 *cit in* Lazarus et al., 2012).

The access to appropriate health care services was identified by UNAIDS (2002, 2009 *cit in* Lazarus et al., 2012) as one of the main pillars to prevent HIV contagion in the sex work area and as a vital element for the implementation of strategies of harm reduction (Rekart, 2005 *cit in* Lazarus et al., 2012).

Appendix 3: Excerpts from the Constitution of the Portuguese Republic

Article 9 (Fundamental tasks of the State)

The fundamental tasks of the state shall be:

- a) To guarantee national independence and create the political, economic, social and cultural conditions that promote it;
- b) To guarantee fundamental rights and freedoms and respect for the principles of a democratic state based on the rule of law;
- c) To defend political democracy and safeguard and encourage citizens' democratic participation in the resolution of national problems;
- d) To promote the people's well-being and quality of life and real equality between the Portuguese, as well as the effective implementation of economic, social, cultural and environmental rights by means of the transformation and modernization of economic and social structures;
- e) To protect and enhance the Portuguese peoples' cultural heritage, defend nature and the environment, preserve natural resources and ensure proper town and country planning;
- f) To ensure education and permanent personal enhancement, and safeguard the use and promote the international dissemination of the Portuguese language;
- g) To promote the harmonious development of the whole of Portuguese territory, with particular regard to the ultra-peripheral nature of the Azores and Madeira archipelagos;
- h) To promote equality between men and women.

Article 13 (Principle of equality)

- 1. Every citizen shall possess the same social dignity and shall be equal before the law.
- 2. No one shall be privileged, favored, prejudiced, deprived of any right or exempted from any duty on the basis of ancestry, sex, race, language, place of origin, religion, political or ideological beliefs, education, economic situation, social circumstances or sexual orientation.

Article 25 (Right to personal integrity)

- 1. Every person's moral and physical integrity shall be inviolable.
- 2. No one shall be subjected to torture or to cruel, degrading or inhuman treatment or punishment.

Article 26
(Other personal rights)

1. Everyone shall possess the right to a personal identity, to the development of their personality, to civil capacity, to citizenship, to a good name and reputation, to their likeness, to speak out, to protect the privacy of their personal and family life, and to legal protection against any form of discrimination.
2. The law shall lay down effective guarantees against the procurement and misuse of information concerning persons and families and its use contrary to human dignity.
3. The law shall guarantee the personal dignity and genetic identity of the human person, particularly in the creation, development and use of technologies and in scientific experimentation.
4. Deprivation of citizenship and restrictions on civil capacity may only occur in such cases and under such terms as may be provided for by law, and shall not be based on political motives.

Article 27
(Right to freedom and security)

1. Everyone shall possess the right to freedom and security.
2. No one may be wholly or partially deprived of their freedom, except as a consequence of a judicial sentence imposed for the practice of an act that is punishable by law with a prison term or the imposition by a court of a security measure.
3. The following cases of deprivation of freedom for such time and under such conditions as the law may determine shall be exceptions to this principle:
 - a) Detention in *flagrante delicto*;
 - b) Detention or remand in custody where there is strong evidence of the commission of a serious crime punishable by imprisonment for a maximum term of more than three years;
 - c) The imposition of imprisonment, detention or any other coercive measure subject to judicial control, on a person who improperly entered or is improperly present in Portuguese territory, or who is currently the object of extradition or deportation proceedings;
 - d) The imposition of disciplinary imprisonment on military personnel. Such imprisonment shall be subject to appeal to the competent court;
 - e) The subjection of a minor to measures intended to protect, assist or educate him in a suitable establishment, when ordered by the competent court of law;
 - f) Detention under a court order for disobeying a court ruling or to ensure appearance before a competent judicial authority;

g) Detentions of suspects for identification purposes, in such cases and for such time as may be strictly necessary;

h) Committal of a person suffering from a psychic anomaly to an appropriate therapeutic establishment, when ordered or confirmed by a competent judicial authority.

4. Every person who is deprived of his freedom shall immediately be informed in an understandable manner of the reasons for his arrest, imprisonment or detention and of his rights.

5. Deprivation of freedom contrary to the provisions of this Constitution and the law shall place the state under a duty to compensate the aggrieved person in accordance with the law.

Article 58 (Right to work)

1. Everyone shall possess the right to work.

2. In order to ensure the right to work, the state shall be charged with promoting:

a) The implementation of full-employment policies;

b) Equal opportunities in the choice of profession or type of work, and the conditions needed to avoid the gender-based preclusion or limitation of access to any position, work or professional category;

c) Cultural and technical training and vocational development for workers.

Article 59 (Workers' rights)

1. Regardless of age, sex, race, citizenship, place of origin, religion and political and ideological convictions, every worker shall possess the right:

a) To the remuneration of his work in accordance with its volume, nature and quality, with respect for the principle of equal pay for equal work and in such a way as to guarantee a proper living;

b) That work be organized in keeping with social dignity and in such a way as to provide personal fulfillment and to make it possible to reconcile professional and family life;

c) To work in conditions that are hygienic, safe and healthy;

d) To rest and leisure time, a maximum limit on the working day, a weekly rest period and periodic paid holidays;

e) To material assistance when he involuntarily finds himself unemployed;

f) To assistance and fair reparation when he is the victim of a work-related accident or occupational illness.

2. The state shall be charged with ensuring the working, remuneratory and rest-related conditions to which workers are entitled, particularly by:

a) Setting and updating a national minimum wage which, among other factors, shall have particular regard to workers' needs, increases in the cost of living, the level to which the sectors of production have developed, the requirements imposed by economic and financial stability, and the accumulation of capital for development purposes;

b) Setting national limits on working hours;

c) Ensuring special work-related protection for women during pregnancy and following childbirth, as well as for minors, the disabled and those whose occupations are particularly strenuous or take place in unhealthy, toxic or dangerous conditions;

d) In cooperation with social organizations, ensuring the systematic development of a network of rest and holiday centers;

e) Protecting emigrant workers' working conditions and guaranteeing their social benefits;

f) Protecting student workers' working conditions.

3. Salaries shall enjoy special guarantees, as laid down by law.

Appendix 4: Results of the inquiry process carried out with sex workers on this theme

In order to get to know the opinion of SW in this matter, the members of the National Network on Sex Work (outreach workers, peer educators, etc.) carried out an inquiry in this community through several questionnaires. It is important to understand that the results presented here were gathered in a brief period of time. This process is still going and all the teams involved are working together in order to get to know SW' opinions. However, we were able to see that there's a certain tendency in the answers given that seems relevant to our discussion.

The National Network on Sex Work used this instrument in 126 people. Regarding the characteristics of the inquired individuals: 84 were women, 38 were men and 4 were transsexual, with ages ranging from 19 to 62. The majority was Brazilian (77) and the others were Portuguese (38), Russian (3), Colombian (1), Venezuelan (1), Angolan (1), Cape-Verdean (1) and Polish (1). 100 SW carried out their activity in private apartments, 10 in the street, 9 in brothels and 7 in other contexts (hotels, motels, guest houses, etc.).

When asked about the rights they would like to have, the majority (64) mentioned that they would like to have the same rights as any other worker, specifically: the right to have an unemployment pay (26), sick leave (22), paid vacations (15), retirement (12), access to health care services (10), tax their income (8), assume their activity without any type of prejudice (6), be respected (5), among others.

117 of the inquired mentioned that they've already worked in other areas besides sex work, being the most common: catering, domestic work, beauty salons, sales, old-age welfare care services, dancing, etc. When questioned if they preferred self-employment or to work as an employed person, only 16 mentioned that they'd prefer to work as an employed person.

The majority (107) assumed that if sex work was recognized as a profession, they would be safer. Only one said the opposite, since sex work would always be dangerous, even if there was some control. They mention they'd be safer because they would have more financial stability (fixed income), they'd be protected against situations of working exploitation and violence perpetrated by clients and society in general; they'd have more access to justice and healthcare services and be respected by society, in order to feel dignified.

The main concerns/needs felt on a daily basis are: the price of the ads, which is very high in comparison to their income, but are vital to work (57), insecurity at work (49), the fact of not having a fixed income (21), exploitation practices by their managers (12), the risk to develop a sexually transmitted infection (10), difficulty to find a place to work and the decreasing number of clients (8), fear of the police, their abuses and the fear to present charges regarding situations of violence, since they can be deported if they do so (6), competition (5), drinking alcoholic beverages at the working place (4), decriminalization and marginalization (2), among others.

When questioned about the possibility of being part of a SW association, the majority answered yes (84). The others answered no or didn't answer. They were hoping a sex workers' association could: give voice to SW and fight for their rights; fight for the SW right to be respected and be treated with dignity; offer support in the healthcare/prevention, law and migrant regularization areas; promote the fulfillment of hygiene and safety rules; provide guidance for a better income management and support the SW at an emotional level, in order to promote their self-esteem.

120 of the inquired mentioned they would like to see the recognition of sex work as a profession and 83 state that they'd assume their activity. The majority of those who said that they wouldn't assume, justify their option with society's prejudice towards this activity and being afraid of their families' reaction; some said that if another name was attributed to this activity, they would probably assume their activity.

Appendix 5: Myths that contaminate the perception and actions regarding this phenomenon – Reasons against the recognition of sex work as a profession

Myth can be defined as “a false and simplistic representation accepted by all members of a group” (Infopedia).

When assimilated by a large group, myths can turn into homogenization and “naturalization” dogmas of a certain reality/perspective. Regarding sex work, there are several myths present in the Portuguese society’s imaginary that contribute to the marginalization of a phenomenon that is perceived as transgressor, violent, deviant, an “evil that should be eradicated”, etc. This notion has direct implications in SW lives and, eventually, in all societies that insist to deny the basic rights to a group of human beings, only because of the reigning morality.

The existence of some myths has been supporting the adoption and continuity of laws that put SW in a vulnerable situation. We will now see the main arguments used against the decriminalization of sex work and we’ll try to prove that they are indeed myths and common beliefs, without any objective or scientific reason.

**Will the recognition of sex work as a profession increase
the trafficking of human beings for sexual exploitation purposes?**

Sex work is still associated, in a strict, simplistic and universal way, with slavery and human trafficking (HT) (Hubbard *et al.*, 2008; OSF, 2008). This misconception occurs at several levels: representation by the media, public opinion, laws, policies and intervention programs (OSF, 2008). In order to de-construct this myth, it is important to distinguish these phenomena that are frequently comprised into one.

Like several authors (e.g. Vanwesenbeeck, 2001; Overs, 2002; Oliveira, 2004; OSF, 2008, OSF, 2012), we consider sex work as the mutual consented exchange of a sexual service for material compensation between two adults. Sex workers are perceived subjects of rights, capable of making their own decisions and control their own lives (Sousa & Oliveira, 2008).

In 2000, the UN Protocol to “Prevent, Suppress and Punish Trafficking in Persons” defines “Trafficking in Persons” as “recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation” (OTSH, 2012). This crime affects men, women and children who are subject to slavery conditions in different areas, being the sex work market the main target of awareness raising campaigns. In comparison, other types of exploitation are less mentioned, namely forced or slave labor, forced marriage and domestic servitude, organ removal, exploitation of children for vagrancy purposes and sex trade in war contexts. In Portugal, however, despite the fact that the majority of situations flagged are related to trafficking for sexual exploitation purposes, trafficking for labor exploitation purposes is the most common one, according to the police forces (OTSH, 2012).

It is important to carry out a critical analysis of the reasons that support this myth:

1. Is there a larger incidence of HT in countries that regulate sex work?

We often mistake the larger knowledge of a phenomenon for the increase of that same phenomenon. Situations that are associated with HT can occur more often in these countries, since sex work ceases to be illegal and the monitoring process by the authorities gets broader, thus allowing the close examination of situations of violence and sexual exploitation. To remove the phenomenon from marginality has this effect, which is incorrectly used to justify repressive measures. The monitoring power by the authorities increase, leading to an increase of knowledge of those involved in this marker, including the victims of HT.

For example – and by making an analogy with a recurring phenomenon in Portugal – it is common to find references to the increase of domestic violence since it became a public-order crime. We cannot reach these conclusions. What really increased – as a result of awareness raising campaigns – was the citizens’ awareness of the domestic violence phenomenon, resulting in the increase of complaints and the number of known cases.

It is not by mere chance that one of the motifs behind the legislative reform in Germany¹² (with the regulation of sex work since January 2002), has been the fight against human trafficking. It is curious to notice that even in Portugal, the regulation of sex work appeared to be a viable option against HT,

¹² Please check Appendix 7 for more information on the situation in Germany and Holland.

as this article from *Diário de Notícias* from December 7, 2005 shows:
http://www.dn.pt/inicio/interior.aspx?content_id=631075

Many of those who defend the criminalization of sex work find their support in the debate on trafficking of human beings as a way to codify a moral opposition to all forms of sex work, reducing the diversity of women's realities and options (Busza, 2004). The general consent is vital and should be taken into account in the process of giving voice to the migration processes and strategies of survival; this means that we should accept that not all SW want to be rescued, but all of them want to be safe (Sousa Santos *et al.*, 2009).

The criminalization of sex work as a way to fight HT, has failed worldwide.¹³ Criminal organizations work better in territories where sex work is criminalized and is illegal, thus withdrawing power to the victims who fear any type of contact with the authorities.

The fight against all forms of Human Trafficking must be supported and reinforced; however, it is important to take into consideration the complexity of this phenomenon and deal with it not as a homogeneous and unilateral reality. It shouldn't be the only source of concern, because in spite of being a form of intense oppression, it is not the only one. By analyzing the number of victims of human trafficking for sexual exploitation detected and placed in shelter houses in Portugal, Alvim and Togni mention that "in the ambit of an institutional ethnography, there are few organizations that can find cases of trafficking victims. It is sort of a secondary problem, in comparison to the Portuguese women and immigrants "bigger" problems" (2010, p.6).

On the other hand, it seems vital to us that the law or any other policy to combat trafficking of women for sexual exploitation purposes should have the clear goal of being a transforming action aimed at the strengthening of the individual and collective consciousness of these women, by fighting against all forms of oppression aimed to subordinate them, but not perceiving them as passive victims or submitting them to stigmatization and exclusion processes (Sousa Santos *et al.*, 2009). An effective way to help women who are victims of human trafficking involves the combat against our own prejudices and stereotypes. It presupposes the definition of a policy of assistance that doesn't have any control over these women" (*idem*).

2. The majority of sex workers are migrant women

Migratory movements related to sex work have a long history and can be forced or voluntary, independent or dependent of agents (Overs, 2002). Since the 1970's, there has been a significant

¹³ Please check Appendix 7 for more information on the situation in Sweden.

increase of women who migrate alone and in search of new job perspectives. Still in the 1970's, we've witnessed the prominent increase of the so called "sex industry" (sex-shops, massage parlors, sex lines, brothels and strip clubs) that involves several companies, hotels, newspapers, internet websites and many others (Tampep, 2009). Therefore, the demand of a growing market starts to exist. The trans-nationality in the sex work field is a global reality that can be understood if we take into account the global economic restructuring. The feminization of poverty has been conditioning the feminization of migrations (idem).

The fact that there is a big percentage of migrant female SW has been used as a reason to overlap the phenomena of human trafficking, sex work and support to illegal immigration (Busza, 2004). It is said that women with low income wouldn't have the opportunity to travel if they weren't in a trafficking network. This can be true in some cases, but not in all of them.

In this ambit, it is important to recall the case "*Mães de Bragança*", whose media focus, filled with stereotypes (Demonization vs. Victimization) and moralism reinforced the social idea in which the trafficking questions appears to be related to undocumented immigration and immigration support (Alvim & Togni, 2010). This case was faced and dealt with in a simplistic way, by denying and minimizing the importance of certain factors like the feminization of migrations in Portugal and their self-determination, thus fortifying and legitimating the discrimination of migrant populations.

We cannot reduce all the migration projects to trafficking situations. There are individuals who intentionally migrate to work as sex workers in other countries, facing this migration project as a viable possibility to aid their family and economic situation (Holgado Fernández, 2006; Weitzer, 2007). The status of "illegal migrant" places these workers in a vulnerable situation, more than the work they carry out (Banach & Metzenrath, 2000; Overs, 2002) and the Governments should focus on contradicting this situation. We recall that the access to an employment contract is one of the possible ways to regulate the migrant citizens in national territory. If we regulate this activity, by submitting it to the same labor laws from any other activity and by creating decent and fair conditions, it would be possible to provide a residence permit to those who voluntarily chose to migrate and those who saw in sex work a viable possibility to improve their living conditions. Like the Dutch Ministry for Foreign Affairs said, when inquired about the implications of Dutch policies in HT, we also believe that "the labor laws offer the most effective protection against exploitation, violence and coercion" (2012, p.6)."

It is estimated that, every year, human trafficking affects more than 4 million people in the world (OTSH, 2012). It is urgent to assess if the laws adopted by the different States are effective against this form of violation of fundamental rights. The implementation of measures that lead some sectors - namely sex work - into marginality, can difficult the detection of these situations, instead of avoiding them. According to Murray (1998, *cit in* Weitzer, 2007) “it is the prohibition of prostitution and restrictions on travel which attract organized crime and create the possibilities for large profits, as well as creating the prostitute’s need for protection and assistance”.

We consider that HT deserves all the attention from the Government, which should unite its efforts to fight this serious violation of human rights. What we are advocating is that the regulation of sex work can be an ally in this process, by retrieving the phenomenon from marginality and by reconnecting the authorities with the establishments dedicated to sex trade. The regulation of sex work could also have an impact on the reduction of the stigma associated with this activity and both SW and clients could be trained to identify victims of human trafficking for sexual exploitation purposes.

**Will the recognition of sex work as
a profession increase child prostitution?**

The arguments used to refute the increase of HT with the decriminalization of sex work are also valid for child prostitution. It is only natural that, when legal conditions that facilitate the access to the rules of the system and uncover the phenomenon are created, the detection of a larger number of situations in which minors are being sexually exploited is made easier. This is, *per se*, a reason to support the regulation of this activity.

If sex work is regulated, the sex work market can become more visible and the role of the police changes from oppressor to protector (NSWP, 2010). This way, SW can become important allies of the police forces and social services to identify minors who need assistance (NSWP, 2010).

All forms of involvement of minors (individuals under the age of 18) in the sex work market violate the UN conventions and the international human being rights (UNAIDS, 2012) and should be criminalized; and this deserves our attention, in order to create mechanisms that can identify these specific crimes.

**Will the recognition of sex work as a profession
increase the incidence of sexually transmitted infections (STI)?**

The association between sex work and the spreading of STI is not recent and it has motivated several actions carried out by the society regarding this phenomenon, not only at a legislative level (with the imposition of discriminatory practices like compulsory testing and registration), but also at the level of prevention programs specifically created for this population. All these measures are for the sake of the public health, but they transmit subliminal messages that promote moral panic within the communities (Alvim & Bordonaro, 2012), making them unaware of this reality and leading them to reach simplistic conclusions. These measures, essentially centered in SW, reveal a deep lack of knowledge on this reality and marginalize an important part of the population that presents basic needs of information: the clients. In several countries, the SW clients represent the most important source of contagion of new HIV infections (UNAIDS, 2009) and the sexual partners of SW should also be a central focus in the development of prevention/intervention programs.

Ignoring the clients in intervention programs that aim to promote safer sexual practices does nothing but to free them of all responsibility, regarding their risk behaviors (Overs, 2002) and perpetuates the idea that SW are the only ones responsible for HIV spreading (Logros, 2005).

There's a tendency to highlight the risk of being infected with a STI taken by the clients and their families, when they (voluntarily) search for SW services, but the risks SW are (involuntarily) exposed to, are not discussed: being robbed, persecuted, beaten, threatened, humiliated and sexually assaulted. The relation between HIV and violence is well documented (NSWP, 2010). Many situations of violence to which SW are exposed to are aggravated in contexts in which sex work isn't recognized as a profession. In countries in which sex work is criminalized (like Sweden) it is common to use condoms as courtroom evidence to prove the existence of paid sexual intercourse. Many clients and even some SW appear to be reluctant to carry condoms with them, so these cannot be used against them in court.

In fact, SW are one of the groups that deserve particular attention in terms of HIV vulnerability. In Portugal, the base study of PREVIH/GAT reveals a rate of new diagnosis and HIV prevalence amongst sex workers that is superior to the general population with a concentrated epidemic over 5%.

It is important to observe that there are several factors that compete to increase this vulnerability: 1) the stigma/discrimination that difficult SW access to healthcare services (UNAIDS, 2012); 2) measures that use preventive resources (condoms) as a proof of an unresolved crime (Jordan, 2012); 3) the occurrence of sexual assaults and other forms of violence that SW don't inform on, due to the fear of contacting police forces (NSWP, 2010). According to some workers, the criminalization of sex work is, *per se*, the factor that causes a larger impact on the HIV vulnerability of these workers (NSWP, 2010).

“Ensuring that sex workers and their clients have meaningful access to essential services demands concerted action to overcome structural factors that limit access. Stigma and discrimination must be effectively addresses; violence and abuse of sex workers must be reduced; and legal barriers to participation should be revised. Achieving the changes in social and legal conditions that limit the access to those services will take time, but it is critical to implement needed legal and policy reforms now to pursue these actions with urgency and high-level support” (UNAIDS, 2012, p.10).

The intervention programs designed to prevent the HIV/AIDS transmission in the sex work field should propose legislative reforms to regulate this area, since they have a larger knowledge of the direct impact the repressive measures have in SW HIV/AIDS vulnerability (NSWP, 2010).

“(…)In countries without laws to protect sex workers, drug users, and men who have sex with men, only a fraction of the population has access to prevention. Conversely, in countries with legal protection and the protection of human rights for these people, many more have access to services. As a result, there are fewer infections, less demand for antiretroviral treatment, and fewer deaths. Not only is it unethical not to protect these groups: it makes no sense from a public health perspective. It hurts us all” (Ban Ki-moon, Secretary General of the UN, in UNAIDS, 2012, p.2).

Empirical evidences suggest that if sex work is regulated, the following effects on HIV and public health will occur (NSWP, 2010):

1. The sex work market will get broader, which will facilitate the transmission of preventive information and the distribution of condoms. Sexual intercourses will stop to occur in forbidden and dangerous places and SW will have the power to refuse and inform on abusive clients, as well as clients who refuse to use condoms;

2. SW will be able to defend and demand their rights. The safety and occupational health patterns will also be applied to sex work, thus protecting SW from situations of violence;
3. Health care professionals who discriminate SW will be held responsible;
4. SW will have the right to self-organization, share information and discuss fundamental rights.

Will the recognition of sex work as a profession
legitimate a form of violence against women?

The radical Feminist theories have been accompanying the debate around the regulation of prostitution as a profession. According to some lines of thought “to define the selling of sexual services as “work” is a contradiction to the basis of Feminism and a way to legitimate and naturalize the patriarchal paradigms of oppression. The prostitutes’ freedom of choice is questioned, since the relation between men and women is asymmetrical and characterized by dominance and oppression (Lipstizyc, 2003 *cit in* Sousa & Oliveira, 2008, p.2). According to this perspective, prostitutes are perceived as victims dominated by a sexist society and also as psychologically unstable women that need help (NSWP, 2010).

But the Feminist thought is not homogeneous and there is a countermovement (Liberal Feminism) that denies the “victimization of women and the tendency to portray their lives and work as something less valuable and subordinated to the male sexual interests” (Kempadoo, 2005 *cit in* Sousa & Oliveira, p.2). This author perceives sex workers as “active, self-determined and differently positioned subjects, not only capable of negotiating and agreeing, but also capable of consciously oppose and transform power relations” (Kempadoo, 2005 *cit in* Sousa & Oliveira, p.2). According to this perspective, sex work is not a form of violence against women *per se*. The conditions in which it happens are the ones that place women in a situation that violates their fundamental rights (Sousa & Oliveira, p.2). Laws that criminalize sex work favor stigmatization, as well as the conditions in which exploitation and other forms of violence occur (Banach e Metzenrath, 2000; NSWP, 2010), including institutional violence.

In contexts where sex work is somehow criminalized, SW are perceived as easy targets for aggressors. It is useful to recall the case of Gary Leon Ridgway, guilty of the murder of 49 women in the USA; during his trial he stated that he chose street prostitutes “because I thought I could kill as

many as I wanted to without getting caught” (NSWP, 2010, p.26). This statement clearly reflects the impunity for those who commit crimes against SW.

The recognition of sex work as a profession (through a valid regulation) can be a strategy to reduce violence against SW (NSWP, 2010).

**Doesn't the regulation of prostitution
improve the conditions of choice of women?**

This notion is based on the principle that no one freely chooses sex work, because it is, in its essence, a form of violence and oppression (Weitzer, 2007). The studies that support this idea use as witnesses a small sample of SW, mainly composed of women who are in support centers for victims (Weitzer, 2007).

“The voluntary provision of sexual services by adults can be seen as a strategy of socio-economic integration” (Sousa & Oliveira, 2008). There are many women who chose to be sex workers, since it is a way to earn more money than any other work and it has flexible schedules (NSWP, 2010). According to a study carried out in “night clubs” in S. Carlos, Brazil (Sousa & Oliveira, 2008), there are several reasons that influence this option that aren't always related to economic factors. “For many women, prostitution can be a way to resist to the assimilation of representations over the female and male role; can be a strategy to obtain financial independence, to get a divorce or to leave their parents' house” (Sousa & Oliveira, 2008, p.4). In addition to the data from the inquiry carried out by teams that work closely with this population¹⁴, the majority of the individuals involved in this study see sex work as a profession, like many others (domestic worker, store clerk, beautician, etc.) they have been involved before.

It is commonly known that there is a large percentage of SW who would rather dedicate to other activity. There are SW who certainly say that they are in this situation for a matter of survival, since they can't find any other viable option. The question we should ask is: in what terms will the regulation of sex work make the living conditions of these individuals worse? We believe that the regulation will allow a larger professional mobility (like we say in these recommendations) if the

¹⁴ Please check Appendix 4

Government dedicates itself to promote the education and professional training of these workers. Efforts to create alternatives for those who want to stop being SW should not be set aside.

We do believe that criminalization delimits the choice and quality of life of SW:

“contribute to the economic and social marginalization of sex workers and their families. Effectively seen by society as criminals even if they don’t have a formal criminal record, sex workers may be unable to own or inherit property; register the births of their children; gain access to education, justice, health care or banking services; get a loan or purchase a house. This legal discrimination can lead to further social exclusion, as well as poverty, harassment and exploitation. Plainly, moreover, this marginalization is a barrier to access to health care and adds the risk that sex workers will be treated disrespectfully even if they have access to health services” (Appendix 1, 2011, p.5).

Will the recognition of sex work as a profession expand the phenomenon?

Some studies that were carried out in New Zealand – the only country that, until this day, has totally discriminated sex work – revealed that this notion is unfounded and that the number of sex workers didn’t increase since the legislative reform (NSWP, 2010). On the other hand, studies carried out in countries that adopted the prohibitionist model (like Sweden) say that there’s not empirical evidence that supports the decreasing number of SW after the law of client criminalization came into effect¹⁵ (Jordan, 2012):

“There is very little evidence to suggest that any criminal laws related to sex work stop demand for sex or reduce the number of sex workers. Rather, all of them create an environment of fear and marginalization for sex workers, who often have to work in remote and unsafe locations to avoid arrest of themselves or their clients. These laws can undermine sex worker’s ability to work together to identify potentially violent clients and their capacity to demand condom use of clients. The approach of criminalizing the client has been shown to backfire on sex workers. In Sweden, sex workers who were unable to work indoors were left on the street with the most dangerous clients and little choice but to

¹⁵ Please check Appendix 7

accept them. Where sex work is criminalized, sex workers are very vulnerable to abuse and extortion by police, in detention facilities and elsewhere” (UNAIDS, 2011, Anexo1:4)

Will the recognition of sex work as a profession increase stigma?

Some individuals believe that the regulation of sex work will increase the stigma associated with SW. This assertion can be true, if the regulation results in practices that we consider to be discriminatory, like compulsory testing and registration of SW, actions that violate the privacy right of these professionals.

As mentioned before, the criminalization of sex work and the non-recognition of this activity as a profession are the reasons that maintain and promote the stigma associated with these individuals, based only in their professional option. This fact encourages the discrimination of those who choose to carry out these practices, by conceptualizing them as outlaws, immoral individuals, criminals, deviants and a danger to Public Health (Banach & Metzenrath, 2000). In order to avoid this stigma, many SW live a double life (work vs. private life), use artistic names and isolate themselves.

Decriminalization favors the de-construction of myths and stereotypes associated with sex work and sex workers; it also promotes the improvement of their quality of life (Banach & Metzenrah, 2000)

Will the recognition of sex work as a profession increase exploitation by the procurers?

One of the myths in society concerning sex work that is related to the vision of sex work itself is that all prostitutes are exploited or work to support a pimp. Some abolitionist arguments consider that the regulation of sex work will only favor procurer, since they'll be perceived as entrepreneurs and honest employers and not as perpetrators of violence against women. Laws were created to prevent and punish the exploitation of prostitutes by others, namely, the Portuguese law that criminalizes procuring. Despite being well-intentioned, the formulation of the law is too strict and universal and it doesn't foresee cases in which the SW have family/children that are dependent of their income, denying the SW possibility to live a life of economic sharing with their partner (like the other couples in general); this law doesn't foresee that the SW can autonomously and freely decide to pay for a

provision of protection services, to guarantee their safety. In this sense, this law shouldn't be so universal and static and it should be redefined to act only in cases of coercion and exploitation.

If sex work is considered to be a profession, will people be conditioned to accept it in an employment center if they're unemployed?

Some journals reported the case of unemployed young women who were forced/advised to accept jobs in the sex work area, in countries where prostitution was regulated (e.g. Germany and Holland).¹⁶ These sensationalist articles weren't true.

In an informative brochure about the Dutch policies on prostitution, the Dutch Ministry for Foreign Affairs (2012) clarified that "no one should be forced to accept a job in the sex industry and the employment centers don't offer those jobs" (p.6).

Just like in Portugal, there's a law in Germany – the Law of Conscientious Objection¹⁷ - that would never allow this situation to happen, since it would consider conscientious objectors those who, for philosophical, ethic, moral or religious reasons are convinced that it is legitimate to disobey a certain order that is considered to harm a person's life or dignity.

It is not necessary to regulate sex work, because it is not a crime in Portugal and SW can pay Social Security contributions if they want to (official receipts – "Other Services")

This proposal – to deal with sex work in the ambit of Labor Code – doesn't only foresee the payment of taxes as social security contributions; its goals are also to highlight and dignify the individuals that chose to work in this area, to de-construct prejudices and to fight against discrimination, by considering it to be a "decent profession". In this sense, we intend to expand SW social, labor and citizenship rights, as well as their recognition.

¹⁶ For example, the news article "Germany Forcing Unemployed Women into Legalized Prostitution", available in <http://www.lifesitenews.com/news/archive//ldn/2005/jan/05013106>

¹⁷ Law number 7/92, May 12

Appendix 6: Implications of the several legislative measures in sex work

The following list¹⁸ presents an analysis to the different types of laws that can be applied in several jurisdictions and the implications for the SW who work within this legal framework.

Law	Implications
Living off the earnings of prostitution	<ul style="list-style-type: none"> • Restricts how a sex worker can spend their money. A sex worker cannot choose to support their partner, adult children or any other adult without exposing that person to criminal prosecution.
Procuring (includes recruiting threat, coercion or with drugs)	<ul style="list-style-type: none"> • Stereotypes the sex industry as requiring specific legislation to prevent procurement. • Criminal laws exist in every jurisdiction to deal with procurement in all industries.
Soliciting	<ul style="list-style-type: none"> • Assumes that soliciting is always overt and offensive, when many men like being approached for sex and sex workers know how and who to approach. The same is generally true for clients. • Specific laws directed at the sex industry are not necessary and merely reinforce stereotypes about sex workers, primarily street workers. • Public nuisance laws exist in every jurisdiction to deal with offensive public behavior.
Compulsory testing of sex workers for sexually	<ul style="list-style-type: none"> • Stigmatizes sex workers as diseased and irresponsible. • Isolates sex workers, rather than clients or the general

¹⁸ Principles for Model Sex Industry Legislation (Banach & Metzenrath, 2000)

transmitted infections	<p>community, as responsible for STI transmission.</p> <ul style="list-style-type: none"> • STI tests do not provide proof of sexual health due to window periods for various infections. Further, tests are not always 100% accurate. • Encourages clients to request services without prophylactics as they assume sex workers are clean.
Restricting brothels and private workers to industrial areas	<ul style="list-style-type: none"> • Industrial areas are inappropriate for night time activity as they are badly lit, isolated and present security risks for sex workers. • Restriction to industrial areas is not economically viable for private workers. • By definition private work takes place in residential areas and is discrete and devoid of nuisance problems such as noise and parking. • Sex work is not an industrial activity but is a commercial services industry.
Registration of individual sex workers	<ul style="list-style-type: none"> • Registration stigmatizes sex workers. • It is unnecessary to register sex workers. • Privacy concerns arise for sex workers such as who has access to information, how is it protected and maintained, what types of information is required and for how long is it kept.
Licensing and probity checks	<ul style="list-style-type: none"> • Excludes many sex workers from ownership of sex industry businesses as they may be excluded from applying for licenses due to past sex industry related charges. • The expense of applying for licenses for sex industry businesses is usually prohibitive and individuals and small operations are unable to afford application/licensing fees.
Regulations - planning permits, licensing, permits, land use approval, landlord	<ul style="list-style-type: none"> • The administrative and legislative requirements to comply with a myriad of regulations are complex and costly. • Regulatory mechanisms may apply to small operators or

<p>approval etc.</p>	<p>private workers who are unable to comply with detailed approval processes.</p> <ul style="list-style-type: none"> • Strict regulatory requirements encourage the creation of a legal and illegal industry operating alongside each other.
<p>Local Council jurisdiction over location of sex businesses</p>	<ul style="list-style-type: none"> • Planning locations may be highly restrictive and selectively directed at sex workers and sex industry businesses. For example, private single workers may be forced to comply with land use provisions. • Many councils use local powers to deny sex workers and businesses location permits arbitrarily. • Sex workers and businesses must undertake expense legal action to overturn unlawful council decision to refuse to grant a license. • Local councils may use powers as a revenue raising measure. • Many businesses refuse to comply with complex and expenses processes and continue to operate illegally.
<p>Brothel keeping (Permitting premises to be used for the purposes of prostitution)</p>	<ul style="list-style-type: none"> • Denies workers the relative economic and physical security of legal brothel work. • Prevents workers from forming collectives to pool their resources to meet costs of premises, reception staff, security, etc.

Appendix 7: Analysis of internationally adopted legislative measures – Paradigmatic examples

In order to understand a certain law, it is necessary to know the social and cultural context in which it emerges (Kulick, 2003). It is vital to understand the contexts of certain laws before transferring them to other countries (Jordan, 2012). We will present a brief abstract of the current sex work legislation situation in some countries, namely Sweden, Holland, Germany, Brazil and New Zealand. The motive behind each legislative proposal is always the same: to protect the citizens, even if their formulations don't always guarantee their protection; ultimately, they can lead to situations of serious violations of SW rights, as we'll try to demonstrate.

- **Sweden**

In May 29, 1998 the Swedish Parliament approved the law that criminalizes the purchase or the attempt to purchase a “temporary sexual relationship” (NSWP, 2010). This law appeared in a very specific cultural context, after a group of center/left wing feminists and politicians convinced the legislators that they should “spread the idea” that society doesn't accept prostitution (Kulick, 2003).

Context:

Many examples described in literature help to understand that Sweden has strict laws regarding sex and sexuality (Kulick, 2003). It is one of the only countries in Europe where a seropositive individual can be sent to jail without any trial, if the physician proves that his/her partner isn't aware of their serological status. It is also one of the few countries in Europe (if not the only one) where the anonymity of the seropositive individual is not guaranteed (*idem*). In the first years of the HIV/AIDS epidemics, which mainly affected homosexuals, Sweden's strategy was to close Gay Saunas.

Similarly to what happened in 1979 (regarding the law against child abuse), in the case of the law that criminalizes the purchase of sexual services, the Swedish politicians assumed that one of their roles is to protect and legislate certain moral attitudes that will be adopted by the people. This way of government dominated the Swedish politics in the last 20 centuries. It is interesting to see that many of the questions in which Sweden has gained some notoriety in the European Union (EU) – children rights, prostitution/human trafficking and environmental issues – are focused on individuals who are considered to be (by the Swedish politicians) incapable of speaking for themselves.

Since prostitution wasn't considered to be a social problem until then, some believe that the approval of the law that criminalizes the purchase of sexual services is closely related to Sweden

becoming a member of the EU and the imminent threat (extensively mentioned in the media) of the arrival of Eastern-European prostitutes.

Kulick (2003) believes that the adoption of this and other measures is essentially related to the role that Swedish wish to carry out in the EU. If the EU was conceptualized as a political body, then Sweden's intention was to be the "conscience" of that body and to present itself as a superior moral authority regarding what is an appropriate sexual behavior (Jordan, 2012). Through the relation with well defined moral questions and by assuming a position towards them, Sweden aims to be perceived as an example, a kind of "moral lighthouse" that other countries will follow (Kulick, 2003). Sweden even questions how other EU countries haven't adopted the law that criminalizes the purchase of sexual services yet. "It is unacceptable and tragic to see that, while the Swedish are busy defining their role in the EU, the laws they approve and the attitudes they promote are deeply affecting individuals who sell sexual services" (Kulick, 2003, p.211).

The laws that regulate activities related to sex work will probably violate the Swedish labor laws, by denying SW access to the same labor rights than other workers (Jordan, 2012). This author still considers that Swedish laws are anti-constitutional and contrary to the European Convention on Human Rights.

Impact of the Law

The law that criminalizes the purchase or attempt to purchase a "temporary sexual relationship" came into effect in January 1, 1999, despite the fact that some important organizations were against it. This law is part of a set of laws called *Kvinnofridcom*, officially translated as "Violence against human", but meaning "Peace and serenity for women" (Kulick, 2003). The main goal of this law is "to stop violence against women, prostitution and sexual harassment at workplace" (Kulick, 2003, p. 202). The formulation of the law presents some inconsistencies that difficult its interpretation and application (Kulick, 2003). During the law's first year of existence, 91 criminal reports were filled in the entire country, and only 6 defendants were considered guilty.

The Government was hoping that the fear of being arrested and the increase of public stigma would play a determinant role in the change of sexual behavior; that women who sold sexual services in Sweden would find another job and that the human trafficking for sexual exploitation purposes would stop, as well as the presence of migrant prostitutes (Jordan, 2012). Ann Jordan launched a critical analysis of the results present in a report on the impact of this law, issued by the Swedish

Government. This report dedicated less than two pages to the analysis of the negative consequences of this law, claiming that there wasn't any empirical evidence to support them. Many researchers disagreed. The author shows how the law (after 13 years of existence) has failed to fulfill its goal, as we'll see.

Impact of the Law in SW lives

It is important to highlight that the impact this law would have in SW lives was never an object of concern to the groups that would support this law, like the Social Democratic League of Women (Kulick, 2003). When faced with the possibility that this law would lead sex work to marginality, by making SW more vulnerable to exploitation, those who supported this measure used two arguments: 1) the goal is to "make a statement" or "to send the message" that "society" doesn't accept prostitution; 2) prostitution was already marginalized before this law, so it wouldn't affect prostitutes lives (Kulick, 2003).

According to police reports, the new law affected (apparently, only at the beginning) the number of street SW. Some researchers highlight the increase of Internet ads and the increasing number of "brothels" since the law came into effect (Kulick, 2003). According to prostitutes' testimonies, women who weren't able to pay for Internet ads and used drugs were being seriously affected and in some cases, they committed suicide.

Increase of the risk of violence

This law forced women to work in isolated areas, far from the "eyes of the police" and so, potentially more dangerous. Some people believe that this law had a direct impact on the quality of the clients that resorted to sexual services in the streets, considering that the ones who defied the law show some characteristics that place SW in situations of danger, while the harmless and quiet clients prefer the Internet and services provided in private places, far from the authorities' control (Norwegian Ministry, 2004 & Östergren, 2004 *cit in* Jordan, 2012). Social service outreach workers and SW claim that besides the decreasing quality of clients, the time SW have to negotiate with the client (assess the state the client is in, the use of condoms, the price, etc.) has also diminished, resulting in more situations of violence. A report funded by the National Police showed that women are now forced to accept more clients (due to the lower prices), in addition to more unstable and

dangerous clients, since their options are narrowed down (Kulick, 2003). The decreasing number of costumers also has a direct influence in the increasing competition between SW and the conflicts amongst them.

The law had a catastrophic effect in migrant SW lives. If the SW are not Swedish or don't have a legal residence permit, they're immediately deported. Many clients weren't allowed to go to court, since the SW they had been found with had already been deported (Jordan, 2012). The migrant individuals who don't have a permit to stay in the country are seen as easy targets of violence, since it is commonly known that the fear of being deported leads them to avoid contact with the authorities and to present charges in cases of violence (Jordan, 2012). The same situation occurs with the trafficking victims, who fear any type of contact with the police forces. This situation unequivocally increases the migrant individuals' vulnerability to different forms of abuse (Jordan, 2012).

Fewer clients testify in cases of human trafficking and other forms of abuse/exploitation

It is easy to understand why men who could eventually stand trial for buying sexual services, feel uncomfortable to testify in trials related to acts of violence against SW, since that could be considered as evidence (Jordan, 2012). The police informed that nowadays it is more difficult to find and sentence "pimps" and dealers, because costumers (potential key-informants) are afraid to cooperate with the police and testify, since they could be seen as criminals (Nordand & Rosenberg, 2001, *cit in* Kullicyk, 2003).

Increase of the stigma against sex workers

The SW consider that the criminalization of the client reinforced and increased the social stigma about prostitution (Skarhed, 2010 & Östergren, 2011 *cit in* Jordan, 2012). The Government and its supporters resort to the confrontation between images of "innocent, sexually pure" women and "bad, socially deviant women who don't deserve society's protection". The goal behind the use of these images is to increase the stigma against SW and their clients, increase the public pressure and force them to be like the majority. "The Government openly encourages the increase of the stigma" (Jordan, 2012, p.12) by stating that this increase can be seen as something positive, since the law's goal is to fight against prostitution (*idem*). The focus of this law is the increase of social stigma over clients and SW and no Government should be involved in campaigns that promote the discrimination of a certain group (Jordan, 2012). The Swedish Penal Code (presumably) guarantees equality and freedom regarding all forms of discrimination.

Increasing police harassment

The police forces oblige SW to attend court sessions and testify against the clients. When SW are found with their clients, the police confiscate everything that can be used to prove the existence of a crime, including condoms (Kulick, 2000; Kulick, 2003, Danna, 2007, Dodillet & Östergren, 2011 *cit in* Jordan, 2012). The Government should investigate the police practices and assure that this law doesn't lead to abuse by the police forces. When the police use condoms as an evidence to incriminate the clients, the health of SW, clients and people in general is at stake; the clients refuse to use condoms and the places where sex trade activities occur choose not to provide this "evidence" that would incriminate their clients and affect the business (Jordan, 2012).

Negative health consequences

The more restricted to secrecy the SW are, the harder becomes their access to health care services and less information about dangerous clients, risk behaviors or other questions related to health can be shared. The access to condoms and preventive information is vital to promote the health of SW, clients and people in general (Jordan, 2012).

Stigma and discrimination can have a negative effect on any person's life. Anand Grover, Special Rapporteur of the UN, expressed his concern at the negative impact that the criminalization of the client has in SW health, by considering that "the criminalization of a private sexual behavior between two adults, prevents SW access to services, therapies and treatments", resulting in worst results in the health area, since they fear legal consequences, abuses or trials (UN Special Rapporteur, 2010 *cit in* Jordan, 2012).

In spite of the notorious negative impact on SW lives and working conditions and the ridiculously low number of sentences related to law violations, the feminist groups and some politicians still defend criminalization, claiming that the negative impact that this law has in people's life is surpassed by the message it sends (Kulick, 2003). The message is clear and it can be summarized in the statement of the Minister for Gender Equality at that time, Ulrika Messing: "Prostitution is not part of our country".

There's no study that can assess the effect of this law in SW life and well-being.

**Analysis of the report issued by the Swedish Government to assess the impact of the law
that criminalizes the purchase of sexual services (Jordan, 2012)**

In 2010, the Swedish Government announced the success of this law in compliance with the proposed goals. Researcher Ann Jordan demonstrates that this positive impact is not supported by empirical evidences, not even in the report itself.

The Government believes that prostitution is harmful for individuals and society and that all the efforts to abolish it are needed. The report doesn't differentiate voluntary and forced prostitution; it is supported by the idea that all SW are passive victims, without any type of control over their actions/options, and that all clients are probably aggressors. Consequently, all SW (victims) need to be protected, even if they don't want the Government's intervention.

SW weren't consulted when the legislative reform came into effect, so the true needs of these individuals, as well as the perception they had on the measures that were about to be implemented, were never known (Jordan, 2012). Many countries adopt legislative measures without consulting those who will be influenced by them, which is harmful for the democratic process, since the voice of the populations capable of speaking for themselves is withdrawn. The author believes that the majority of laws applied to prostitution does nothing but withdraw the power to SW and prevent them of assuring their safety.

The Swedish Government doesn't make a distinction between individuals who are victims of human trafficking for sexual exploitation purposes and migrants who voluntarily work in prostitution (Clausen, 2007 *cit in* Jordan, 2012). This confusion/fusion between the phenomena (voluntary prostitution vs. forced prostitution vs. HT vs. migrant prostitution) prevents the comprehension of the statements issued in this report and it makes them dubious.

There is also another incongruity in this law: to purchase sex is forbidden, but to sell it is legal. However, the legal framework prevents people, who have the legal right to work, to have the same labor (and other) rights of other workers. SW have to pay taxes over their income, but the Tax Office doesn't accept sex work a source of income (Dodillet and Östergren, 2011 *cit in* Jordan, 2012). The Government forces SW to break the law: they either fail to pay the taxes, thus losing their right to have the usufruct of social protection or they are forced to register their activity in another category.

They don't have access to labor protection and the law doesn't allow them to work in a safe environment.

Incongruities in the results presented:

In order to announce the success of this legislative reform, the Government would have to present empirical evidence that support that the law has reduced: 1) the number of clients who resort to paid sexual services; 2) the number of SW; 3) the number of victims of human trafficking for sexual exploitation purposes. Besides these quantifiable goals, the law should make sure that society considers prostitution as a form of violence over women and an undesirable phenomenon.

A close analysis to the report issued by the Swedish Government in 2010 shows that the statements of success didn't have any empirical evidence. However, the Swedish Government still declares that the law "had the desired effect and is an important instrument in the prevention/combating against prostitution" (Skarhed, 2010 *cit in* Jordan, 2012, p. 5).

These statements were immediately criticized by Swedish investigators and when the report became available in English, other researchers criticized it.

According to Jordan (2012) one of the better formulated criticisms was issued by Dodillet and Östergren, two Swedish experts who accompanied the implementation of the law and noticed that:

"The problem with these [the Government's] claims is that if they are carefully investigated they do not appear to be supported by the available facts or research. As soon as the official evaluation was published, it was also criticized from several directions. The criticism has primarily been focused on the evaluation's lack of scientific rigor: it did not have an objective starting point, since the terms of reference given were that the purchase of sex must continue to be illegal; there was not a satisfying definition of prostitution; it did not take into account ideology, method, sources and possible confounding factors; there were inconsistencies, contradictions, haphazard referencing, irrelevant or flawed comparisons and conclusions were made without factual backup and were at times of a speculative character" (Dodillet and Östergren 2011, *cit in* Jordan, 2012).

1) There is no evidence to show that this law has reduced the number of clients (NSWP, 2010; Jordan, 2012)

This law had a deeper impact on the clients who resorted to street SW. It is not possible to talk about a reduction when there isn't reliable data before the implementation of this law. It is also

impossible to confirm if the clients who previously resorted to street SW started to resort to SW who work in private contexts or in the Internet.

The report presents the possibility that some men behave differently, since many of those who were inquired said they stopped to purchase sexual services. If the law was effective in the increase of the stigma associated with the purchase of sexual services, it is only natural that they state they don't engage in "bad sex" activities. Despite the fact that the fear of being arrested and the public exposure are strong obstacles, they're not enough to cause a behavioral change. In fact, researches (even those carried out by the Government) reveal the inefficiency of the legislative measure in the clients who allegedly purchase sexual services in foreign countries, more than in Sweden.

2) There is no evidence to show that this law has reduced the number of SW (NSWP, 2010; Jordan, 2012)

In 1998, it was estimated that there were 1850-2500 SW in the entire country and only 730 of them worked on the streets. The Government has no way to assess if there has been a real reduction in the total number of SW and in 2007 it was stated that the Government didn't have the resources to provide an unequivocal response. The most they can do is to say that street prostitution presents a slow reduction since the law came into effect, but "it is not possible to establish casual relations between the legislation and the changes in prostitution" (National Swedish Council, 2007 *cit in* Jordan, 2012).

The Government states that 50% of street SW have abandoned sex work. Once again, a close analysis to this report doesn't provide data that support this statement. It is true that street prostitution suffered a 50% reduction from 1998 to 2010, but the Government assumes that this reduction is real and that those who worked in the streets didn't start to work in other places, less accessible to Government's control. The report itself says that the Government is incapable of defining how many of those 50% started to perform other type of sex work services (Skarhed, 2010 *cit in* Jordan, 2012). The researcher Elizabeth Bernstein (2007 *cit in* Jordan, 2012) mentions that some Swedish workers assured her that the prostitution phenomenon moved underground and SW used other forms of contacting with clients, namely through mobile phone or Internet. It is impossible to guarantee that the transfer of this phenomenon is a direct consequence of the law's implementation, since it is a tendency that can be seen in other countries where the law doesn't exist.

Due to the total lack of knowledge and data on sex work that occurs in private spaces and on the Internet, the Government doesn't have any legitimacy to state that prostitution has suffered a reduction of 50%.

Finally, the report states that the nature of SW is now different, mainly composed of migrants (Skarhed, 2010 *cit in* Jordan, 2010); this suggests that this law is not an obstacle to the arrival of migrants who come to work as prostitutes in Sweden. There's a possibility that the workers who carry out this activity in Sweden without residence permits, are now working in an environment that leads them exposed to any form of abuse and exploitation by others.

3) There is no evidence to show that this law has reduced the number of human trafficking victims

The definition of trafficking in Sweden is consistent with the vision that all migrant SW are victims. This definition increases, on a larger scale, the number of human trafficking victims since they considered that the 400-600 foreign women who work as prostitutes were all victims of human trafficking.

The report itself assumes that it "does not have a reliable knowledge regarding the occurrence of human trafficking for sexual exploitation purposes in Sweden" (Skarhed, 2010 *cit in* Jordan, 2010, p.8).

The number of sentences is still low. In 2009, the police declared that the new legislation failed to promote a better knowledge on human trafficking.

4) The public opinion didn't change a lot

A public opinion research carried out in 2008 showed that there haven't been many changes since 1999. The women's support to this measure remained invariable (around 80%), but in the men's case, it diminished a little (from 70% to 60%). In 1998, 78% of the women inquired claimed that SW should also be criminalized and that the narrative of "passive victim" didn't contaminate the "bad opinion" they had of these professionals. It is interesting to verify that a large percentage of women don't perceive prostitution as a form of violence against women. But as a problem of people who behave badly and should be punished. Contrary to the Government's predictions, the public opinion didn't change a lot.

Conclusions and recommendations presented by Ann Jordan (2012):

Instead of highlighting the success of the legislative reform in the ambit of prostitution, the Swedish Government should have adopted an approach focused on human rights and supported by empirical evidences:

1 - Cease the non-supported claims of success and stop to promote a law that didn't present any results, not even in the Swedish context;

2 - Revoke the law;

3 - Focus on HT and child prostitution, including integrated services of victim support;

4 - Work with homeless youngsters in order to develop programs adapted to their needs;

5 - Work alongside adult SW to develop a strategy free of moral judgments and based on empirical evidences, in order to provide services and support services SW find necessary to facilitate the process of leaving the prostitution activity;

6 - Accept the fact that some women (and also men and transsexuals) will decide to continue to work as prostitutes, so the State has the duty to ensure that these individuals have access to the same labor rights and social protection, much like the other workers;

7- Adopt an approach that values independent, unbiased and methodologically correct studies that include the voices of the individuals implicated, like SW and youngsters;

8 - Fund an independent, non-affiliated and methodologically correct study to collect information useful to document and assess the true impact that the laws that regulate prostitution have in SW, youngsters, migrants and human trafficking victims lives;

9 - Lawyers from countries with regulations similar to the one from Canada should consider instituting legal proceedings against the Government

- **Germany**

In Germany, according to the decree “Prostitution Act” [PA] (2002), prostitution is considered to be an activity and not a profession. The PA is a national law that focuses on the civil, labor and social aspects of the relation between sex workers and clients/sex workers and employers (Tampep, 2009). Until this year, there wasn’t a specific legislation for prostitution, but the activities related to it were considered to be immoral and antisocial and those who worked as prostitutes had no rights.

The German Federal Government highlights this legislative reform as a contribution to combat human trafficking and considers a priority to protect the victims and the minors involved in prostitution. It also highlights the importance of helping people leave prostitution (Kavemann, Rabe & Fischer 2007).

The analysis of the impact of this legislative reform in Germany will be based on a research carried out by an independent institute (Sozialwissenschaftliches Frauenforschungsinstitut der Kontaktstelle praxisorientierte Forschung) funded by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (Kavemann, Rabe & Fischer, 2007). For the authors of this research, the working conditions, many times hazardous for SW, are an important matter for the discussion of this reform. We will highlight the most relevant results.

This study begins by presenting the situation of prostitution in Germany, before the “Prostitution Act”. Although it is not considered to be a crime, prostitution was perceived as something immoral and had countless restrictions: 1) the contracts between prostitutes and clients were considered null; 2) the organization of prostitution by others was considered a crime; 3) acting like an intermediary between the prostitute and the client was considered a crime; 4) prostitutes couldn’t advertise their services and the authors of the ads (as well as the publishers) could be fined; 5) prostitution was banned in certain areas; 6) the activities related to prostitution didn’t have a legal status; 7) activities related to prostitution were subject to constant police inspections; 8) prostitutes were subject to compulsory testing.

At the beginning of the 1980’s the first groups of activists who demanded “equality of rights” started to emerge. Gradually, the way prostitution was seen started to change and these changes led to the need of reformulation of the legal framework of this activity. After several attempts, the

“Prostitution Act” came into effect in January 2002. The legislators evoked the following political goals when the “Prostitution Act” came into effect:

1. Improve the legal status of people who work as prostitutes;
2. Improve the social status of people who work as prostitutes and fight against the discrimination they’re subject to;
3. Improve the working conditions of prostitutes;
4. Fight against the organized crime, by exposing crimes related to prostitution;
5. Facilitate the occupational labor mobility of those who work as prostitutes.

The “Prostitution Act” regulated the following aspects:

1. The relation between clients and prostitutes is no longer considered “immoral” by law, thus becoming legally accepted;

The SW has the right to demand the payment of the services provided. However, the employers and the clients don’t have the right to demand a certain service to the person who provides it; if the agreed service doesn’t occur, the person who provides it must return the money;

2. The relation between SW and the owners of brothels are no longer considered “immoral” by law, thus becoming legally accepted;
3. Only the SW are allowed to demand the payment of a certain service and, if necessary, they can take legal action;
4. It is possible to establish an employment contract between sex workers and the owners of business establishments dedicated to sex trade;

In order to establish employment contracts, some changes to the Penal Code had to be made, namely the Article 180 a, which criminalized procuring;

5. The advertisement of sexual services ceases to be a crime, as long as it remains “discreet”.

The migrant individuals who work as prostitutes and don’t have a residence permit are not covered by this decree and it is not possible to obtain a residence permit in order to be a sex worker in Germany.

People who work as self-employed prostitutes must be registered in the Tax Office as “sex worker”, “model”, “hostess” or “escort”, in order to have access to a taxpayer identification number (Tampep, 2009). The obligations prescribed in the Social Security Code, such as the payment of health insurance and allowance should be taken into account.

The implementation of this decree has found some obstacles, thus revealing a need of adjustment. The authors of the study highlight that the lack of interest by the politicians, the absence of a well-defined strategy, the low level of regulation of the decree, the lack of information (among others) have been hampering the implementation of this decree. Some parameters need to be improved, namely the geographic restrictions that usually comprise the city centers. Despite the lack of efficiency of these restrictions to contain this phenomenon in these areas, the authors consider that these decrees have a negative impact on the SW working conditions. They still believe that the tolerance zones in the cities’ outskirts (without any type of infrastructures) put SW at greater risk of violence.

Czajka (2004 *cit in* Mossman, 2007) reveals that some human rights continue to be violated. For example, the health insurance companies are reluctant to accept SW as clients; SW continue to be non-eligible for the same rights/duties than other workers.

Larger awareness campaigns are needed, so SW can get to know their rights in order to better exercise them.

There are no standardized guidelines on the way this decree should be implemented, thus leading to different interpretations and implementation processes by the various Federal States of Germany.

The assessment of the impact of this decree - carried out by this institute – focused exclusively on the situations in which sex work was performed voluntarily, considering that the phenomena related to sex work (e.g. child prostitution, human trafficking) should be analyzed according to other legislation, namely criminal law and immigrant legislation.

In general, we can consider that this reform had the following effects (Tampep, 2009):

1. Revoked the “immoral” aspect of sex work, by creating possibilities of self-employment and establishment of employment contracts. It provided the access to social security privileges foreseen to other workers: unemployment pay, allowances and health insurance;
2. Declared that the exchange of sexual services for material compensation is valid. It transformed the verbal agreement between SW and clients into a legally valid contract. SW have the possibility to conclude an employment contract with the owners of business establishments

dedicated to sex trade and have the right to earn a salary. The owners can only determine the place and working hours, not the practices or prices, at risk of being accused of procuring;

3. The business establishments dedicated to sex trade are only allowed in commercial or industrial areas and self-employed SW can only work in residential areas.
4. It decriminalized the promotion of sex work, thus allowing the promotion of appropriate working conditions.

The “Prostitution Act” represents the beginning of the process focused on the recognition of sex work as a regulated activity. This decree doesn’t regulate the working conditions, but it creates a framework that encourages the improvement of SW’s life/working conditions (Kavemann, Rabe & Fischer 2007).

- **Holand**

Prostitution, as long as voluntary, was never illegal in Holland (Dutch Ministry for Foreign Affairs, 2012). On October 1, 2000, the law that prohibited the existence of brothels since 1912 was revoked, thus making possible to establish employment contracts with SW. Simultaneously, the penalties for the crimes of child abuse and human trafficking for sexual exploitation purposes were aggravated (Kavemann, Rabe & Fischer 2007). The Dutch Government considered that a specific legislation to regulate sex work wasn’t necessary, but it focused on the effort to regulate brothels that began to be subject to countless rules in order to have an operating license (Kavemann, Rabe & Fischer 2007).

Holland was one of the first countries in the world to recognize sex work as a legitimate activity and to provide SW the same rights and duties than other workers (Dutch Ministry for Foreign Affairs, 2012).

The Dutch Ministry of Justice presented 6 goals that should be achieved with this legislative reform (Kavemann, Rabe & Fischer 2007):

1. Greater possibility to monitor and regulate legal prostitution;
2. Restrict illegal prostitution by increasing the efforts to fight against exploitation and forced prostitution;

3. Protect minors against sexual exploitation;
4. To safeguard and guarantee the rights of those who work as prostitutes;
5. Distinguish prostitution and the activities associated with it;
6. To end the prostitution of illegal migrants or individuals without a residence permit.

The legalization of business establishments dedicated to sex trade facilitated the broader exercise of control and supervision by the Government (Tampep, 2009) by contradicting the abuses (Dutch Ministry for Foreign Affairs, 2012). The Dutch Ministry for Foreign Affairs (2012) claimed that the regulation of business establishments dedicated to sex trade would be an important measure to stop human trafficking. The labor laws offer an effective protection against exploitation, coercion or violence. It is assumed that the reinforcement of the SW position is the best way to fight against violence; in addition, the abuses can be more easily detected in a regulated sector than an illegal one (Dutch Ministry for Foreign Affairs, 2012).

The municipalities were granted a larger power to determine the operational rules of brothels within their area of jurisdiction (Kavemann, Rabe & Fischer 2007); they issue operating licenses for brothels, define the hygiene and safety criteria, the places' dimensions, the services provided and their location. The local authorities can prevent certain forms of sex work (e.g. window soliciting, street sex work, etc.).

However, there is a series of policies that all municipalities must follow: brothels are unauthorized to operate near schools or churches and cannot disturb residential areas; managers can't have a criminal record; migrant SW without a residence permit cannot be employed, just like minors. All municipalities should guarantee the existence of services that control if the brothels operate within the legal limits (Kavemann, Rabe & Fischer 2007).

The law had the following effects:

1. The number of brothels was cut in half as a result of the licensing procedures (Kavemann, Rabe & Fischer, 2007);
2. Street prostitution is almost impossible due to the countless restrictions. Several SW were forced to change their status of self-employed worker to employed worker and move to the outskirts, thus becoming exposed to dangerous situations (Kavemann, Rabe & Fischer, 2007);

3. The supply and demand for sexual services seems to have suffer a decline, but it is not clear whether if this is related to the legislation (Daalder, 2007 *cit in* Mossman, 2007);
4. The existence of restrictive regulations applied to brothels, under penalty of being closed, seems to have contributed to the improvement of SW working conditions (Kavemann, Rabe & Fischer, 2007; LAC, 2002 *cit in* Mossman, 2007);
5. The monitoring of these locations allowed the identification of people involved in forced prostitution (Kavemann, Rabe & Fischer, 2007). The number of situations didn't decrease, but moved to less controlled areas (Bindel & Kelly, 2004 *cit in* Mossman, 2007);
6. SW are more protected and can't be forced to consume alcoholic beverages, to engage in unprotected sexual practices or practices they don't wish to perform;
7. SW are much more accepted by society, but this doesn't have a relevant effect in SW social position (Bindel & Kelly, 2004 *cit in* Mossman, 2007); Banks continue to refuse loans to SW who want to open a business (LAC, 2002 *cit in* Mossman, 2007);
8. Since brothels can't employ illegal migrants, the law didn't have an impact on the increase of migrant SW in the sex industry (Alexander, 2004 *cit in* Mossman, 2007). Some authors mention that the illegal migrants conditions were aggravated (Kavemann, Rabe & Fischer, 2007; LAC, 2002 *cit in* Mossman, 2007).

The Dutch Ministry for Foreign Affairs (2012) considers that the existence of new laws and policies is not enough to rehabilitate a sector that has been operating illegally for almost a century. There are still many misconceptions and lack of knowledge regarding SW rights (Bindel & Kelly, 2004 *cit in* Mossman, 2007). Information campaigns that inform SW and brothel owners about their rights and duties are needed (Dutch Ministry for Foreign Affairs, 2012).

A new legislative proposal that foresees the compulsory registration of all SW (ID, Taxpayer Identification Number, Social Security Number), as well as the homogenization of the licensing rules for all the business establishments dedicated to sex trade all over the territory, is currently being discussed. All forms of sex work that don't comply with these rules will be considered illegal and there will be penalties for the clients who resort to non-registered SW and visit unlicensed establishments (Tampep, 2009). If the law is adopted, it will be possible to consider SW guilty, for the first time in Holland's history.

Some groups of activists and members of the civil society have expressed their disagreement regarding this new proposal, because they consider it unconstitutional in the sense that it violates

the right for privacy, present in the Dutch Constitution. They also believe that this law will have a harmful effect and instead of promoting a better monitoring of the phenomenon, will restrict it to criminality and separate SW from the teams that provide support and preventive materials.

- **Brazil**

As in Portugal, there's not a specific regulation for sex work in the Brazilian Penal Code (PC). "Prostitution itself is not a crime in Brazil. The exchange of sexual services for money or other type of payment is fully legal in the country. However, it is a crime to run establishments where prostitutes can provide sexual services – article 229 of the PC (Vianna, 2012). The activities related to sex work are considered a crime, but sex work isn't.

The 5th chapter of the VI section of the PC is dedicated to "Crime against customs" and it is composed of 4 articles – 227 to 230 – that set the penalties applied to activities related to prostitution, highlighting the defense of "public sexual morality" (Rodrigues, 2004, p.153).

In article 227 "the main question is prompting, in order to persuade someone to satisfy others' lust"; the article 228 deals with the favoring of prostitution, "defining as a crime the prompting, favoring or persuasion of someone to work as a prostitute and the effort to impede someone to leave the activity"; in article 229, brothels are criminalized, but the sex workers who work in private locations are not included in this crime; article 230 criminalizes those who "take advantage of others' prostitution, by directly participating in their profits or being entirely or partly supported by those who work as prostitutes".

The article 231 of the Brazilian PC deals with the trafficking of women for sexual exploitation purposes.

"This set of articles reveals that, even though prostitution is not considered a crime, the current validity of the aforementioned Code and consequently the criminalization of a diverse set of activities that are intrinsic to its functioning, turns the criminal justice system into an institution permanently focused on determining the existence or inexistence of offenses that can be punished" (Rodrigues, 2004, p.158).

The changes in the Brazilian society were not accompanied by a reform of the PC, in force since 1942. However, there have been several attempts to change the PC. The organized movement of SW is being very important to bring this question back to the political agenda.

In 2003, the Deputy Fernando Gabeira – supported by the Brazilian Prostitutes Network – presented a proposal for the reformulation of the criminal legislation of prostitution – Government Bill number 98 – that “focuses on the enforceability of payment for sexual services and suppresses the articles 228, 229 and 231 of the Penal Code” (Government Bill n. 98).

This project is still at the proceedings stage at the Chamber of Deputies, having been subject to several veto and appeals. Brazil still adopts an abolitionist approach that perceives SW has a victim who works under the coercion of others.

“The continuity of this approach meets the propositions aimed at the protection of the citizenship and human rights of those who work as prostitutes, being a result of the tendency present in the majority of Brazilian society: to discuss such questions within the range of morality (Rodrigues, 2004, 151)”.

It is interesting to see that the Brazilian Ministry of Labor recognizes prostitution as a professional activity (considered by many authors an act of courage), present in the Brazilian Classification of Occupations (BCO). “According to the BCO, a SW is a person who’s carries out sexual programs in private locations, streets and mines; who serves and escorts male and female costumers with different sexual orientation; who manages individual and family budgets; who promotes the creation of associations of members of this professional category; who attends educational training sessions related to sexuality; who promotes the services provided and works according to rules and procedures that minimize the vulnerabilities related to this profession” (Brito, 2008, p.5).

BCO chart regarding the profession “Sex Worker”

Code	Titles
5198	Sex workers
Titles	
5198-05 – SEX WORKER – Female Escort, Male Escort, Harlot, <i>Messalina</i> , Gigolo, Working Girl, Prostitute, Sex worker.	
Brief description	
Carry out sexual programs; serve and escort male and female clients; attend educational training sessions related to sexuality. The activities are carried out according to rules and procedures that minimize the vulnerabilities related to this profession.	
Training and experience	
In order to be a sex worker, the individuals must participate in safe sex training sessions; the access to this profession is forbidden to people under 18; the average level of education is between the 4 th and 7 th year of elementary school.	
General conditions of exercise	
Self-employed, working in different places with irregular schedules. During the exercise of some activities, they can be exposed to weather conditions and social discrimination. There’s still the risk of STD contagion, abuse, street violence and death.	

International Code CIUO88	
5149 - <i>Otros trabajadores de servicios personales a particulares. No clasificados bajo otros epígrafes</i>	
	ACTIVITIES
A - PROGRAMS	A.1 – Schedule the program A.2 – Dress up A.3 – Wait for possible clients A.4 – Seduce the client A.5 – Approach the client
B – MINIMIZE THE VULNERABILITIES	B.1 – Negotiate the use of condoms with the client B.2 – Wear condoms B.3 – Use water-based lubricant B.4 – Participate in safe sex training sessions B.5 – Identify sexually transmitted diseases (STD) B.6 – Monitor health condition B.7 – Denounce situations of physical violence B.8 – Denounce discrimination B.9 – Fight against stigma B.10 – Manage personal budget
C – SERVING CLIENTS	C.1 – Prepare the working kit (condoms, accessories, make-up) C.2 – Manage working schedule C.3 – Negotiate the service C.4 – Negotiate the price C.5 – Fulfill sexual fantasies C.6 – Sexual intercourse

	<p>C.7 - Striptease</p> <p>C.8 – Helping the client to relax</p> <p>C.9 – Take the client in</p> <p>C.10 – Dialogue with the client</p>
D – ESCORT CLIENTS	<p>D.1 – Escort clients during trips</p> <p>D.2 – Escort clients during recreational activities</p> <p>D.3 – Have dinner with the client</p> <p>D.4 – Spend the night with the client</p> <p>D.5 – Escort clients to parties</p>
E – PROMOTE THE CREATION OF ORGANIZATIONS	<p>E.1 - Promote the professional valorization of the profession</p> <p>E.2 – Participate in self-organization sessions</p> <p>E.3 – Be part of organized movements</p> <p>E.4 – Fight against the exploitation of minors and youngsters</p> <p>E.5 – Distribute condoms</p> <p>E.6 – Spread information</p> <p>E.7 – Participate in educational training sessions on sexuality</p>
Z – DEMONSTRATE PERSONAL COMPETENCES	<p>Z.1 – Demonstrate the capacity to persuade</p> <p>Z.2 – Demonstrate the capacity to communicate</p> <p>Z.3 – Demonstrate the capacity to fulfill sexual fantasies</p> <p>Z.4 – Be patient</p> <p>Z.5 – Plan ahead</p> <p>Z.6 – Show solidarity towards colleagues</p> <p>Z.7 – Demonstrate the capacity to listen</p> <p>Z.8 – Demonstrate the capacity to engage in recreational activities</p> <p>Z.9 – Demonstrate sensuality</p> <p>Z.10 – Recognize the client’s potential</p> <p>Z.11 – Take care of personal hygiene</p> <p>Z.12 - Maintain professional secrecy</p>

Working resources	<p>Wardrobe</p> <p>Condoms</p> <p>Business cards</p> <p>ID</p> <p>Water based gel</p> <p>Toilet paper</p> <p>Wet tissues</p> <p>Accessories</p> <p>Make-up</p> <p>Ethyl alcohol</p> <p>Mobile phone</p> <p>Personal organizer</p>
Participants:	
Experts	

Cassandra Fontoura, Flavio Lenz Cesar (Journalist from *Beijo Da Rua*), Gabriela Silva Leite, Imperialina Piedade Da Silva, Jane Lucia Da Silva Reis Eloy, Janete Oliveira Da Silva, Maria De Fátima Medeiros Costa, Maria De Lourdes Barreto, Marilene De Jesus Silva, Rozeli Da Silva, Valkiria Pereira Costa

Organizations

Associação Das Mulheres Profissionais Do Sexo Da Bahia (Asproba)

Davida - Prostituição, Direitos Civis, Saúde (Rio De Janeiro)

Grupo De Apoio À Prevenção Da Aids (Gapa-mg)

Grupo De Mulheres Prostitutas Do Estado Do Pará (Gempac)

Igualdade - Associação De Travestis E Transexuais Do Rio Grande Do Sul

Núcleo De Estudos Da Prostituição De Porto Alegre

Organization responsible

Economic Research Institute Foundation - FIPE – University of São Paulo

- **New Zealand**

The main goals for the implementation of the law regarding sex work – Prostitution Reform Act 2003 (PRA) – in New Zealand were: to decriminalize prostitution, safeguard the SW human rights, promote occupational well-being, health and safety of SW, contribute to public health and fight against SW exploitation and the involvement of minors in prostitution (New Zealand Government, 2008, p.3). According to the law, soliciting sexual services, living of the earnings of SW or running a brothel is not considered a crime.

The Government bill to reform New Zealand’s legislation regarding prostitution was elaborated by the New Zealand Prostitutes Collective, some feminist organizations, volunteers, members of the civil society and several political parties that strongly supported this reform.

The legislative amendment was a transition from a moralistic approach to an approach focused on health and human rights (New Zealand Government, 2008, p.3).

After 5 years of PRA implementation, a report on the implementation of the law was developed by the Prostitution Law Review Committee (PLRC). This group is composed by a nun, SW, owners of brothels, a general practitioner, a scholar, a counselor, a criminologist, a public health official, social workers, NGO representatives and a retired police officer. These individuals were nominated by the Ministries for Justice, Health, Police Affairs, Trade, Local Government and Women Affairs (in partnership with the Ministry of Youth Development) and by the NZPC, due to their expertise.

Sex work is a legitimate profession, within the framework of the Ministry of Business, Innovation and Employment; it has health and safety benefits, much like any other profession. SW have the same labor rights than other employers and can’t be forced to carry out practices against their will (Moss & Mayhew, 2007 *cit in* NSWP, 2010). These workers have the opportunity to present charges in case of professional harassment, unequal work, violence, non-payment of a service, etc., by bringing these matters before the State (NSWP, 2010). SW can resort to the Labor Inspectorate and the services of labor mediation and are subject to Social Security and work compensations.

The promulgation of the PRA reinforced the SW situation, by removing the “brand” of criminality associated with their work. Part of that empowerment consists in the fact that SW can assume the control of their working relations (New Zealand Government, 2008, p. 17).

The PRA also established a certification for brothel owners – “*brothel operator*”. Each owner of a business establishment dedicated to sex trade should have a valid license that is annually renewed; the license requires that the individual must be over 18, a legal citizen or a permanent inhabitant of New Zealand or Australia and doesn’t have a criminal record.

The brothels that have no more than 4 workers are considered “small owner-operated brothels” and in this case, each worker controls her/his income without the need of a certificate.

The applications for certification are presented in the “Registrar of the District Court”, since no other specific organization for certification was created. The process is simple and the form is similar to other licensing forms. Non-invasive information is required: name, address, photo and criminal record. The law prohibits any person who was involved in organized crime, sexual crimes, assaults and drug use to run a brothel.

The owners of brothels are required to adopt and promote safer sexual practices. SW and clients should adopt safe sex practices. The non-compliance with any of these legal obligations can result in a penalty.

The client has the responsibility to ensure that the SW is an adult. The PRA allows the intervention of health inspectors in brothels at any time, in order to check if the health and safety requirements are being followed, but they should do it only with the workers’ consent and a search warrant to search the place (small owner-operated brothel).

Migrant SW can be granted support and benefits from the State and have access to visas. However, immigration destined to sex work is still illegal. The PRA recognizes that some communities can still be sensitive when exposed to sex industry, so it provides a mechanism to deal with these issues (p.135). It allows local authorities to create statuses that regulate the sex industry in a certain area (for example, the signaling and location of the brothel).

We will now present the conclusions regarding the impact of the PRA in some specific areas – present in the PLRC report on the implementation of the PRA (New Zealand Government, 2008).

Estimate of the number of sex workers in New Zealand

The motivation for this reform was neither to decrease nor increase the number of people involved in sex work, but to ensure SW have the same protection and conditions than other workers in New Zealand. Due to the relatively static number of SW before and after the PRA, the PLRC considers that decriminalization didn't become a significant factor in people's decision to enter the sex industry.

The reasons indicating that the decriminalization increased the number of people in the sex industry are based on the false notion that decriminalization could increase the number of people involved in prostitution. The PLRC is convinced that these assumptions are unfounded.

One of the consequences of decriminalization is the clearer way to operate of an industry that has been functioning underground throughout history. SW and the owners of brothels can now speak more openly about their occupation. In addition, street sex workers are now more visible, since soliciting is no longer illegal. The larger visibility of the sex industry is not a synonym of growth. Besides this, the PLRC considers that the increasing visibility is a desirable consequence of the decriminalization for those who are at risk, namely the street workers and the minors.

PRA and Human Rights

The PLRC concludes that the PRA had an important impact on the protection of SW rights, namely: the right of minors to not be involved in sex work, the right of adults to not be forced to engage in sexual practices, the right to refuse a certain client or sexual practice; and the right to not be subject to exploitation and degrading practices (New Zealand Government, 2008, p. 14). The PRA promoted the empowerment of SW by removing the illegal status of their work.

Nevertheless, there are still some SW who are forced to provide sexual services against their will. This situation is clearly a violation of the PRA and human rights, and SW should be informed of the legal possibilities and resources to face all kinds of violence. Some brothel owners still have some doubts regarding this matter.

Health, Safety and Well-being

Regarding health, safety and well-being of SW, there has been an increase in the use of condoms that may not be necessarily related to the legal prohibition of unsafe sexual services provision. Many SW indicate that they've always practiced safe sex and some studies show a very low incidence of HIV/AIDS amongst SW.

The PLRC elements were pleased to see that the testimonies of increasing confidence, well-being and feeling of self-validation amongst SW are a direct result of the PRA promulgation. This confidence will have a positive impact on many areas, such as the improvement of working conditions and the capacity to guarantee that safer sex practices will remain a standard in the industry.

The low level of complaints received by health inspectors can indicate that there's a high level of compliance with the law regarding the practice of safe sex and the general requirements of the "*Occupational Safety and Health*", mainly because the research shows that there's a bigger conscience regarding the sex industry questions since decriminalization. However, a more complete picture of the compliance with the safe sex rules and occupational safety of the PRA can only be established through the development of a good relation with the sex industry, in order to guarantee the cooperation regarding the inspections and monitoring of occupational health and safety complaints.

The majority of SW inquired in the ambit of this evaluation felt that the PRA could do little about the violence; but now they believe that SW have the tendency to report incidents of violence to the Police, in spite of the less common desire to carry on with the process in court.

The elements of the PLRC consider that the stigmatization is still associated with the sex industry and that it will take some time until it disappears. They also recognize that the decriminalization of the industry by itself cannot change ingrained attitudes.

The PLRC elements also encourage SW to denounce the crimes against them and the police to assume the leadership in the continuity of a culture in which charges presented by SW are dealt with like any other complaint.

Avoid or Leave sex work

The fact that the financial aspect is an important reason to enter the sex work industry shows that the best way to prevent a person from beginning to work as a SW or to help those who want to leave this work, is to guarantee that there are other alternatives to earn some money. In other words, education and professional training should be available to all.

For some SW, working in this industry also fulfills a social need, since they acquire a sense of community.

The promulgation of the PRA clearly removes some of the potential barriers to leave the sex industry, namely by removing the possibility of SW being fined for working in this area.

The PLRC recognizes that the decision to become a SW and continue to work in this activity is legitimate. Those who do not wish to leave should be respected. Although there is a common notion that SW enter or continue in this activity only by desperation or lack of choice, the majority doesn't feel this way and can be offended by any kind of assistance to leave this job.

"It is offensive to talk about exiting – it's a right to be able to be a sex worker. We don't need rescuing" (NZPC, CJRC, 2007 *cit in.* New Zealand government, 2008).

Certification system for brothel owners

The current system ensures (within certain standards) the adequacy of those who wish to become brothel owners. The Parliament introduced this system to ensure that only those who meet certain requirements should be in a position of power over SW. The certification system is somehow fulfilling this purpose.

However, there isn't any execution process to verify if the owners obtain or maintain the latest certification. There's also no established regime to ensure that the owners promote the occupational well-being, health and safety of the managed SW.

The majority of PLRC members consider that the current certification system has some credit, but the arrangements need to be largely applied in order to fulfill the PRA purpose.

The involvement of minors in prostitution

The PLRC elements don't believe that the implementation of the PRA has increased the involvement of minors in prostitutions; they do believe that it lead to the increasing awareness about this problem, considering it a positive consequence. They also believe that the support provided to youngsters – so they can have access to benefits, housing and other supports – must be based on their needs and not in the fact of them being involved (or at risk of being involved) in prostitution.

The PLRC elements believe that the police should maintain an active role in the prevention of minors' involvement in prostitution and that the withdrawal of the legislation is not effective to prevent the involvement of minors in the sex industry. A collaborative approach between the police, the Ministry of Social Development, the Ministry of Youth Development and the most important NGOs is needed.

Street SW

The Prohibition and the criminalizing regime before the PRA didn't prevent the occurrence of street soliciting and street prostitution wasn't constructively controlled, due to its illegal status.

During the law reform, the expressed desire was to encourage SW to work in private places through the decriminalization of brothels, but after the decriminalization, there was little mobility from one sector to the other. There are several reasons that justify working in the street. The PLRC elements acknowledge that this is an option for some SW, even when there are alternative places available.

The notion that there was an increase in the number of SW since the promulgation of the PRA can be a result of the fact that SW are now working in more visible areas.

The decriminalization meant that SW and their clients no longer needed to carry out their activities in a clandestine way, thus allowing a larger negotiation period.

The relation with the police has improved since the implementation of the PRA and SW started to provide useful information regarding street activities, while the police started to supply information on potential offenders that may be hazardous to SW (PLRC, 2006 *cit in* New Zealand Government, 2008).

Territorial authorities' response

The PRA grants territorial authorities the power to regulate two aspects of the sex industry: the advertisement of sexual services and the location of brothels. The PLRC elements believe that it is important that many authorities didn't feel the need to provide a response to the promulgation of PRA and that those who actually did it were just trying to be cautious.

The PLRC elements show some concern regarding some authorities trying to force "*small owner-operated brothels*" to run the same way as larger brothels. A "*small owner-operated brothel*"

operates from home, so it is very difficult to find it in commercial or industrial areas. In addition, their location in commercial and industrial areas means that they're in poorly lit and inhabited areas. This can lead to a greater risk of violence and theft, since they don't have the same conditions of a larger brothel. According to the PLRC, a "small owner-operated brothel" should be regulated as any other business from home, through rules foreseen by the district planning.

Working conditions

The PLRC acknowledges that the illegal status of the sex industry before 2003 promoted the development of labor exploitation conditions.

Despite the decriminalization, the social stigma associated with the involvement in the sex industry continues and SW were still exploited in some brothels. The sex industry didn't have the same level of social legitimacy that other industries had.

Evidences show that sex industry is now adapting to a new status and some brothel owners have changed their working practices in order to comply with the legal obligations. However, this behavior doesn't seem to be adopted by all.

Apparently, there's a general notion amongst SW and brothel owners that SW rights are increasing, despite the absence of clear knowledge about those rights and their exercise. This can lead to the current exploitation practices.

The decriminalization empowered SW and part of this empowerment is related to the ability to control their working relations.

Common prejudices

The PLRC considers that many notions and beliefs regarding sex work are supported by stereotypes and lack of information. The PLRC highlights that the conclusions related to sex industry as a whole may not be used with individual sex workers.

In spite of the common notion that all SW were forced to work for somebody, the information received by the PLRC suggests that coercion is not generalized. The PLRC also recognizes that sex work is an activity that some individuals chose and are happy to do.

The association between prostitution and crime is common. A police report prior to the decriminalization showed connections between organized crime and sex industry, but it was unable to quantify the extension of this activity due to its secret nature. The PLRC considers that this

connection is tenuous. No evidences that prove a specific connection between crime and prostitution were found.

Despite the common notion that SW engaged in this activity to support an addiction (drugs or alcohol), data from the PLRC shows that only a minor number of SW does it for that reason.

The PLRC elements also believe that the media debate on the law reform has a strong influence in public opinion and by analyzing newspaper articles, were able to see how media coverage can be inconsistent. They also think that the majority of the information regarding questions such as the number of SW and minors involved in prostitution are exaggerated.

Invisibility of the clients

The main goal of the PRA is the promotion of health and well-being rights of SW. By recognizing the soliciting aspect of prostitution, the current legislation represents an attempt to apply some restrictions to clients, like the obligation to adopt safer sex practices and increase the penalty for those who involve minors in prostitution. The efforts to criminalize clients (present, for example, in the Swedish legislation) don't seem to stop the demand for sex and the unintentional consequences can increase the vulnerability of SW who provide sexual services. The PRA reflects a more pragmatic notion, by recognizing that (something perceived as bad by some) it is possible that the practice of prostitution will continue, due to the continuous level of demand. If the demand for paid sex persists, then other ways to reduce the SW vulnerability and increase the perception that they are human beings with rights that need to be ensured, need to exist.

Human trafficking for sexual exploitation purposes

The PLRC considers that in New Zealand there isn't a connection between the implementation of the PRA and the increase in human trafficking. The PLRC elements are aware that some people who work in sex industry do it without violating their immigration status. They don't support this illegal activity; however they appear to be concerned with the fact that these SW are not protected by the PRA and are vulnerable to exploitation. During the implementation of the PRA, the sex industry didn't increase and many of the "social evils" foreseen by those who didn't agree with the decriminalization weren't verified. In a general way, the PRA has been fulfilling its goal and the PLRC is confident that the majority of people involved in the sex industry are much more protected than before.