

Background and Context

1. No law has ever existed in the Brazilian Penal Code to criminalize the exchange of sex for money. Several ambiguous articles (227-231), however, criminalize everything surrounding prostitution (i.e. third party involvement and “living off the avails”). Legal ambiguities have led to the arbitrary regulation of sex work via the discretionary power of police who enact strategies that reflect the shifting public discourse, cash flow of sex-related businesses, and willingness of parties to negotiate with local law enforcement.ⁱ

2. Since 2002, prostitution has been recognized as an official occupation within the Brazilian Ministry of Labour and Employment’s Classification of Occupations (CBO 5298-5). The inclusion of the profession has allowed a *profissional do sexo* (sex professional) to access social benefits through the Ministry of Social Security via the National Institute of Social Security (INSS).

3. Brazil has an active and strong organized movement of sex workers. The Brazilian Network of Prostitutes, founded in 1987, pioneered an approach to activism centered upon respect for the profession, fighting victimization in all of its forms, and the recognition of the central role that stigma plays in spreading HIV. In 2005, the movement received international attention for their denouncement, alongside the Brazilian National AIDS Program, of United States Agency for International Development’s “anti-prostitution pledge”, refusing to sign it and turning down US\$40 million for HIV prevention.ⁱⁱ

4. More recently, Brazil has been plagued by serious setbacks that threaten human rights and the country’s basic democratic principles. Brazil’s rights-based response to HIV has been eroding over the past few yearsⁱⁱⁱ, sex workers’ rights have been virtually absent from the federal government’s agenda since 2012^{iv} and there is a bill before Congress to remove “sex professionals” from the CBO.^v Furthermore, the rapid (re)development observed in the staging the 2014 FIFA World Cup and 2016 Summer Olympics increased land speculation, human rights violations and displaced those already most marginalized in urban “renewal” processes, including sex workers.^{vi}

5. The current climate is the result of an extreme political shift from a more progressive-aligned federal government to one that is now staunchly conservative. On August 31, 2016, the first female president of Brazil, Dilma Rousseff, was ousted as part of a “soft coup”^{vii} which cemented Michel Temer as president. His interim entrance into the presidency was marked with the appointment of only white men (including several religious leaders and many ensnarled in their own corruption scandals) to his cabinet, and the elimination of several ministries, including the Ministry of Women, Racial Equality, and Human Rights. Temer’s neoconservative agenda is evocative of yet another period of heightened authoritarianism, which has historically been accompanied by increased State violence against sex workers.

Legal Framework

6. Although the exchange of sex for money between consenting adults is legal in Brazil, the 1940 Brazilian Penal Code (Articles 227-231) criminalizes (i) the inducement of someone to satisfy the lasciviousness of someone else, (ii) the facilitation of prostitution or other form of sexual exploitation, (iii) “houses of prostitution” (referred to as “a sexual exploitation establishment”), (iv) the obtainment of third party profit, and (v) the movement/migration of people for the purpose of sexual exploitation.^{viii}

7. The term “sexual exploitation” is referenced in Article 228 (i.e., facilitation), 229 (i.e., maintain an establishment), and 231 (i.e., forced movement with violence, threat or fraud) of the Brazilian Penal Code, but neither sexual exploitation nor prostitution are explicitly defined. This is problematic, as these laws imply that “sexual exploitation” is synonymous with prostitution. The only place in Brazilian law where sexual exploitation is defined is in the 1990 Child and Adolescent Code (ECA), which defines it as “prostitution involving anyone under the age of 18, consensual or not”.^{ix}

8. Key to this framework is the discretionary power of local law enforcement, the interpretation of those in judiciary power, and the involvement of local authorities that repeatedly profit from the ambiguous legal nature of prostitution and “sexual exploitation” laws through the acceptance of an *arrego* (bribe). In such a context, police oversight of prostitution is aided, abetted and often contradicted by *milícias* (militias) comprised of rogue active and retired police that also (often) act in partnership with political authorities. These alliances however are subject to factional politics and violent (re)negotiation.

9. The discretionary power of local law enforcement is particularly harmful in a nation that is repeatedly investigated and condemned by international agencies such as Amnesty International, Human Rights Watch, the United Nations, and the Organization of American States. From 2005-2014, Amnesty International documented the death of 8,466 people killed by police in the State of Rio de Janeiro, with over 2000 people killed nationally per year.^x The tendency is for this violence to increase: Alexandre de Moraes, the Minister of the newly created Justice and Citizenship Ministry where all human rights initiatives were relocated recently stated that Brazil’s already massively militarized law enforcement agencies need “more guns” as opposed to “more research” into the social roots of police violence.^{xi}

State Sanctioned Violence Against Sex Workers

Violence

10. Sex workers are routinely subject to human rights violations by local authorities. State-sanctioned violations of human rights (such as the right to life, dignity, equality, equal protection and due process under the law) represent broader systemic failures. Two recent examples of such violations are summarized below.

11. In 2013, the police illegally laid siege to the Jardim Itatinga red light district in Campinas (SP) following the murder of a policeman by the local drug faction. During the occupation, people were forced to remain inside while police rummaged (warrantless) throughout the neighbourhood, beating and torturing those involved in sexual commerce, to obtain information related to the murder investigation.^{xii} In one violent incident, a sex worker activist alleged that the police (intentionally) broke the arm of a Colombian sex worker.^{xiii}

12. In April 2014, more than 200 sex workers demonstrated in the streets of Niterói, a city across the bay from Rio de Janeiro, to protest the illegal arrests of 11 colleagues; 2 accused of sexually exploiting one another and imprisoned in a Rio de Janeiro maximum-security prison.^{xiv} The women worked at the building popularly nicknamed the “Caixa” where approximately 400 women engaged in sex work. A little more than a month later and less than one month before the 2014 FIFA World Cup, a violent police operation against “sexual exploitation” evicted the women, arrested approximately 120 without warrants, denied many their right to an attorney, and forced testimonies. The Public Defender assigned to the case declared that the raid was “completely illegal” and “driven

by stigma” against sex work.^{xv} Furthermore, police acted in direct violation of the International Covenant on Civil and Political Rights (ICCPR), which Brazil signed in 1992 (particularly Part III: Article 9, 14, 26).^{xvi} Nevertheless, the illegality of the entire eviction, combined with the reported occurrence of rape, theft, extortion, and violence has never held police accountable; a silence that endorses the abuse of State power.

13. Transgendered sex workers arguably face the gravest human rights violations. Often forced to work in the street (few brothels allow entrance), they are more exposed violence that is socially sanctioned by endemic trans and homophobia.^{xvii} The extent of the violence and severe health risks faced by transwomen are clear in recent statistics. Transwomen (sex worker or otherwise) have a life expectancy of 35 (as opposed to 75 for cisgendered women) in Brazil.^{xviii} Furthermore, between 2008-2015, 802 transgendered people were murdered in Brazil, most often in the course of street-based sex work – the highest reported number in the world.^{xix}

Denied Access to Justice

14. Although Brazil agreed to various recommendations related to human rights defenders in the 2012 UPR, the sex worker from the “Caixa” who denounced police violence was denied entrance into the National Program to Protect Human Rights Defenders. Rio de Janeiro still does not have a state program and none of the state actors mobilized – from human rights to women’s rights programs – offered viable protection for her to denounce the police violence.^{xx} Instead, she was offered protection as a “victim of sexual exploitation” if she testified for the police (the same police her activism denounced) and against the private security that operated with alleged ties to the militia in the “Caixa” building. Despite a hearing at National Congress, and the mobilization of a variety of international entities (i.e., Amnesty International^{xxi} and the United Nations Special Rapporteur of Human Rights Defenders), protection was still denied. Additionally, it was made clear that the human rights defender programs had no experience in prostitution related cases. Her difficulties accessing justice/protection are emblematic of the difficulties a sex workers face when seeking equal protection under the law.

Denial of Labor Rights

15. As illustrated above, sex workers are (technically) allowed to work independently but more accurately (arbitrarily) denied basic labour/human rights. Brazilian law is thus used to control and contain prostitution rather than protect those involved in the profession from labour exploitation.

16. Measures and recommendations which increase the policing and criminalization of prostitution in Brazil will only violate sex worker rights, not protect them. Scientific research^{xxii} and the work of international agencies such as the World Health Organization^{xxiii} and International Labor Organization^{xxiv} have continued to demonstrate that the criminalization of sex work will further threaten basic human rights; not guarantee the repression of human trafficking or labour exploitation.

Conflation between sex trafficking, sexual exploitation, and prostitution

17. Those that endorse this report are against the sexual exploitation of children and the trafficking of persons. We think it is important to differentiate between these terms and what is referred to as “sex tourism”. The United Nations and the National Tourism Organization define sexual tourism as realized by “people who use the infrastructure of tourism to travel to foreign countries and involve

themselves in commercial sexual relationships with local residents,” this signifies that sexual tourism in Brazil is not illegal, even if it is popularly discussed as such.^{xxv}

18. The outcry against the supposed threat of “sex tourism” detracts the public’s attention from the real threats that children face and contributes to the repression of adult sex work. Of the 233 cases of “child prostitution” denounced to a 2004 Congressional committee investigating the sexual exploitation and sexual abuse of minors, only five involved tourists.^{xxvi} Furthermore, of the 10 cases cited as “exemplary” by the same committee, none involved foreigners – perpetrators were largely family members, friends, government officials, or religious leaders.^{xxvii} Similarly, data from Disque 100, Brazil’s hotline for denouncing human rights violations, reported 7,217 cases of child sexual exploitation in 2013, only 1.2% (84) involved tourists.^{xxviii} In 2016, two rings of child sexual exploitation were dismantled in the state of Rio de Janeiro – one run by city councilmen with military police^{xxix} and the other by a well-known military police coronel.^{xxx}

19. With regards to trafficking in persons, Article 231 of the Penal Code characterizes the migration of sex workers – even without any human rights violations – as “trafficking” while ignoring other forms of labor trafficking. Brazil’s former Ministry of Justice went through enormous efforts to show that labor trafficking is a bigger problem than trafficking for “prostitution” and/or “sexual exploitation”. The 2013 Report, for example, shows only “134 cases of international trafficking and 86 of internal trafficking for the purpose of sexual exploitation” reported by the police as opposed to 2089 non-sex workers rescued from slavery by the Ministry of Labor during that year.^{xxxi}

20. The ongoing panic over trafficking in persons has resulted in a wave of increased police surveillance of brothels, which generate abuses of sex workers. In mid-2015, for example, Federal Police followed an anonymous tip that women were being trafficked in a brothel in Boa Vista. Arriving on the scene, police found 16 Venezuelan women working as prostitutes, but no sign of trafficking whatsoever.^{xxxii} Immediately flipping the valence from “victim” to “criminal”, the police then charged these women with illegally working in Brazil, revoked their visas and summarily deported them.

21. Prior to the 2014 World Cup and 2016 Summer Olympics Games, Rio de Janeiro experienced a wave of anti-prostitution policing activities not dissimilar from other host cities^{xxxiii}. In 2012, for example, police raided dozens of sex venues across Rio’s tourism-oriented south zone.^{xxxiv} In the process, those involved in sexual commerce were filmed, photographed and subjected to bribery. In 2014, there was the illegal police raid in Niterói discussed above and on opening day of the World Cup, the main bar frequented by sex workers at Copacabana beach was closed by police because “there were indications that it was involved in the sexual exploitation of children”.^{xxxv} No arrests were ever made and no formal charges were ever filed.^{xxxvi} The closure of the bar ironically made it more difficult to police/monitor the (sexual, labour or otherwise) exploitation of children.^{xxxvii} These activities mirrored the punitive processes undertaken in other host cities, in which those involved in sex work reported a heightened amount of police harassment without arrest, decreased availability of clientele, and increased difficulty in meeting clientele – despite the effort to strengthen collaboration with local law enforcement.^{xxxviii}

Recommendations

22. Fully decriminalize sex work and related activities

- Repeal legislation that has prohibited adults from safely engaging in consensual sex work
- Regulate sex work within the existent employment and labor legislation in Brazil
- Enact legislation to prevent police/State repression of those involved in sexual commerce

23. Stop the conflation of prostitution, trafficking and sexual exploitation in law and policy

- Ensure that anti-trafficking laws are not used to violate the human rights of migrants and persons involved in any form of labour, sex-related or otherwise
- Ensure that laws against the sexual exploitation of minors are not used to violate the human rights of any person, adult or child

24. Strengthen accountability of law enforcement, and develop mechanisms to recognize and act against police violence faced by sex workers

- Guard against arbitrary arrest and detention of sex workers, and investigate complaints of harassment, extortion and abuse by law enforcement
- Maintain confidentiality and respect privacy of sex workers approaching law enforcement and judiciary for redress in cases of sexual assault, exploitation and violence
- Include sex worker rights organizations in the educating/training of police personnel, public prosecutors, and the judiciary; particularly with respect to issues related to their specific occupation
- Create safe and participatory mechanisms (e.g., through the introduction of a police liaison) for sex worker leaders to monitor and accompany large-scale police operations in areas of prostitution to ensure sex worker rights are protected
- Strengthen human rights defender programs to better advocate for and protect sex worker activists who denounce state violence

25. Strengthen sex workers' access to justice

- Ensure delivery of legal services and/or referrals to existing legal services to ensure that sex workers have support to seek denounce violence and seek redress including the appeal to higher courts
- Invest in the development and wide dissemination of materials detailing sex worker rights, mechanisms available for denouncing human rights violations and pathways to access to justice
- Guarantee the protection and privacy of sex workers who denounce violence in their work environments, and beyond

26. Ensure the empowerment, active participation and leadership of sex work networks, organizations, and collectives in decisions that directly impact their rights as both workers and citizens

- Ensure participation of sex worker organizations in drafting/amending laws, policies and programs relevant to them and their implementation, in particular, government plans combating violence and discrimination.

— Strengthen polices aimed at fighting discrimination against trans and cisgender women and populations affected by racism, sexism, lesbophobia, homophobia, transphobia, physical disability and other forms of intolerance and discrimination.

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