

SHOULD PROSTITUTION BE DECRIMINALISED IN THE PACIFIC? THE PROS AND CONS

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INTRODUCTION

Prostitution, the “world’s oldest profession”, is simply defined as ‘offering sexual intercourse for pay’.¹ It is a “crime against public welfare” in many countries, including those of the Pacific Region.² However, in Australia and New Zealand, the “big brother” countries of the Pacific Islands Forum, prostitution has been decriminalised. This paper considers whether it is appropriate for the smaller Pacific countries to follow suit.

In most Pacific communities, where Christian principles and values are deeply etched into its cultures and traditions, prostitution not only is illegal but regarded as an act of “evil”. It is not a topic that is openly discussed within these communities because it is often seen as a matter lying outside the realms of decency and morality. It is often swept under the carpet. But that approach by Pacific people can be interpreted as a denial to accept the fact that prostitution does exist in most if not all Pacific communities and it is continuing to grow. In Papua New Guinea for example, ‘sex for money is a growing industry’.³ In Fiji recent reports indicate that prostitution has ‘become a “booming trade overnight”’.⁴ No doubt prostitution is also present in most other Pacific countries.⁵

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¹ Onlinedictionary.com, <http://www.onlinedictionary.com/index.aspx> (Accessed 17 April 2008)

² In some countries the act of prostitution is itself illegal (see for instance the *Anti-Prostitution Act 2001* [31 MIRC Ch 5] (Marshall Islands)). However, in many countries whilst the act of prostitution is not in itself a crime, activities surrounding prostitution, such as keeping a brothel, soliciting, or using the proceeds of prostitution is a crime. (See for instance ss 58K and 58L *Crimes Ordinance Act 1961* (Samoa); ss 160 – 163 *Crimes Act 1969* (Cook Islands); ss 166 – 168 *Penal Code* [Cap 17] (Fiji); s 101 *Penal Code* [Cap 135] (Vanuatu). By criminalising the activities surrounding prostitution, the act of prostitution is itself also effectively criminalised. Further, in the public mind, there is no clear distinction between the sex act that is central to prostitution and activities surrounding it, so even if the sex act of prostitution is itself not actually a crime, it is popularly considered to be one.

³ Pacific Magazine, ‘PNG School Children Reportedly Turn To Prostitution’ (18 March 2008) <http://www.pacificmagazine.net/news/2008/03/18/png-school-children-reportedly-turn-to-prostitution> (Accessed 17 April 2008).

⁴ Solomon Times Online, ‘Fiji’s Prostitution Problem’ (18 June 2008) <http://www.solomontimes.com/news.aspx?nwID=1956> (Accessed 10 August 2008).

⁵ A brief (by no means comprehensive) search on google finds reports of prostitution being present in Vanuatu (where the Vanuatu Daily Post reported on 4 March 2008 that ‘practices of prostitution are on the increase and the police can do nothing to stop it’ <http://www.dailypost.vu/index.php?news=2137&VivvoSessionId=4713dd448c586217d61a> (Accessed 10 August 2008)), Tonga (where Wikipedia reports that ‘there is said to be some prostitution in urban areas now, particularly in ares with frequent Western visitors’ http://en.wikipedia.org/wiki/Culture_of_Tonga (Accessed 10 August 2008)), Kiribati (where there is a strong link between foreign fishing vessels and prostitution and the term “korokorea” has been coined specifically for prostitutes who visit fishing vessels <http://www.greenpeace.org/international/news/fish-and-sex-trade131006> (Accessed 10 August 2008)); Solomon Islands (where an Asian organised prostitution ring is alleged to have been operating

The question then is: should we continue to turn a blind eye to prostitution and the problems it brings or is it time for us, as societies and communities, to address this issue?

DECRIMINALISATION – THE PROS

The problems that affiliated with prostitution are plain for all to see. With prostitution comes organised crimes⁶ such as drug dealing and human (usually women and children) trafficking, the spread of sexually transmitted infections (STIs) including as HIV/AIDS and ancillary crimes such as acts of violence and rape.

In New Zealand and Australia, decriminalising prostitution was seen as the appropriate step towards addressing these problems. One of the arguments in favor of decriminalising prostitution was that it provides those in the industry, (both prostitutes and their customers), a safer environment in which to operate. For instance sections 8 and 9 of the New Zealand's *Prostitution Reform Act 2003* provide safety requirements for operators of businesses of prostitution ("brothels"), prostitutes, and clients. Operators of businesses are under an obligation to 'promote safer sex practices' by taking 'all reasonable steps to give health information (whether oral or written) to sex workers and clients.'⁷ Prostitutes and clients are under obligations to take steps to avoid transmission of STIs, and not to make false statements about whether they are infected with any STIs.⁸ Regulation can also be used to require sex workers to regularly undergo STI tests. Decriminalisation and regulation therefore is thought to help reduce the spread of STIs. This should be of particular concern for Pacific countries, where there is an increasing trend of HIV/AIDS cases being reported.⁹ Prostitution does play a role in this.

<http://www.solomontimes.com/news.aspx?nwID=1650> (Accessed 10 August 2008)); and Samoa (where anecdotal evidence of prostitution in Apia has been posted onto a discussion board <http://www.activeboard.com/forum.spark?forumID=42976&p=3&topicID=9899609> (Accessed 10 August 2008)). Further searches would be likely to find more reports and reports from a greater range of countries.

⁶ Whilst organised crime may not seem to be a major issue in the Pacific, there are reports that organised crime rings which are involved in prostitution are operating in a number of countries including Solomon Islands (see Solomon Islands, n 5, above), Fiji (see n 4 above), the Commonwealth of the Northern Mariana Islands (see <http://www.pacificmagazine.net/issue/2005/10/01/prostitution-up-as-factories-close> (Accessed 10 August 2008)); and Papua New Guinea (Susan Windybank 'The Illegal Pacific Part 1: Organised crime' (2008) 24(1) *Policy* 32. This article also discusses organised crime in other Pacific countries.)

⁷ *Prostitution Reform Act 2003* (New Zealand) section 8.

⁸ *Prostitution Reform Act 2003* (New Zealand) section 9. Prostitutes will be empowered to say no to a customer who refuses to wear a condom. If the customer insisted on not wearing a condom at least prostitutes will have law to help them out. This was evident in a New Zealand case where a 48 year old man by the name of Daniel Morgan was convicted and fine \$400 for doing exactly that. This was a landmark case in New Zealand and it was regarded as positive fruition of the New Zealand *Prostitution Reform Act*. 'As a test case, it was a minimum fine but it shows that the Act is working,' Calum Bennachie of the New Zealand Prostitutes Collective told the media following the court's ruling. (Reuters, 'NZ man fined for removing condom during sex' (15 July 2005)

http://www.ezilon.com/information/article_6727.shtml (Accessed 17 April 2008).

⁹ 'From the Pacific region, HIV/AIDS cases reported to the World Health Organisation by 2000 numbered 40,000 and just over 5000 AIDS cases' Matelita Ragogo, 'Statistics Low but Trend Worrying For Islands' (2 September 2002) <http://www.usp.ac.fj/journ/docs/news/wansolnews/2002/unicef-02/wansol0309021.html> (Accessed 17 April 2008)

Another aspect of being provided with a safer environment is that prostitutes who are victims of ancillary crimes such as violence and rape may currently be discouraged from reporting because they are themselves engaging in criminal activity. By decriminalising prostitution one reason for not reporting such crimes will be removed. Brothels could also be subject to inspections, which will both increase the likelihood of compliance with safety requirements¹⁰ and reduce the likelihood of them being used as sites of human trafficking, child prostitution and other organised crime.¹¹ Criminalising forcing other people into prostitution also helps to safeguard against human trafficking.¹²

As Carol Leigh, a former sex worker once said:

Decriminalization is not at all a solution to every injustice that exists in the sex industry; it is a starting point. If prostitution were not an underground activity it would allow us to much more effectively address the serious problems of forced prostitution and juvenile prostitution and the other abuses which are part of an industry that operates completely in the shadows. ... [T]here are many who... want other options and they should be given alternatives and assistance. And then there are also those who organize for their rights and are not quitting at the moment and they should be afforded options, their rights, and self-determination as well. Whatever ills are attendant to prostitution, criminalization of prostitutes exacerbates the abuse.¹³

Take Papua New Guinea and Fiji for example where street walking prostitution is eminent. The argument is that legalising prostitution will allow prostitutes to move from the streets to safer premises, and brothel owners to be registered and be regulated. For example, a girl or boy under the age of 18, or whatever the legal age is in that jurisdiction, would not be allowed in the trade. This will provide protection for those young girls who are currently forced into the trade by pimps or brothel operators. Furthermore, legalising prostitution will require them to undergo tests for STIs, and will require them and their customers to use a condom at any time. This will not only protect them but also customers.

DECRIMINALISATION – THE CONS

On the contrary, it can be argued that legalising prostitution in the Pacific will do more harm than good. There are simply other ways of minimising most of the problems that affiliated with prostitution instead of legalising prostitution. Decriminalisation will be seen as a ploy or an incentive to encourage young people, especially those from poor and abusive backgrounds and school dropouts, to use prostitution as another option to make a

¹⁰ See, for example, *Prostitution Reform Act 2003* (New Zealand) section 24.

¹¹ See, for example, *Prostitution Reform Act 2003* (New Zealand) section 30. (And was noted in Vanuatu, legalising prostitution allows the government to tax it! (see Vanuatu, above n 5)).

¹² See, for example, *Prostitution Reform Act 2003* (New Zealand) section 16.

¹³ Prostitution ProCon.org, 'Top 10 Pros and Cons on Legalizing Prostitution Debate' www.prostitutionprocon.org (Accessed 17 April 2008).

living.¹⁴ But, rather than legitimising prostitution as an economic activity, developing alternative ways of earning money would be a better government strategy for addressing this cause of prostitution.

Controlling of the spread of STIs may be better controlled through education. So far there are awareness and education programmes conducted by bodies and organisations such as the World Health Organisation which target ways to prevent contracting STIs. These are much more appropriate, especially from the Pacific perspective, than legalising prostitution. Also, on the issue of safety, even if there are laws requiring sex workers to be tested on a regular basis, condoms to be used, and regular inspections of brothels, that won't guarantee that workers will have the tests, condoms will be used, or inspections will occur. In the Pacific, where resources are limited and there is already, sometimes, weak enforcement of law, there is no guarantee that any law regulating prostitution will actually be followed.

Furthermore, legalising prostitution will go against the very notion of Christianity which most Pacific communities revolve around. Families could be torn apart as married men or women with money can afford to pay for sexual pleasures even if not practiced safely. The stigma and disgrace the being a prostitute may lead to families and communities disowning those members who decide to walk the streets for "quick money".¹⁵ It could also lead to communities deciding to ban the families of those in the prostitution industry.

CONCLUSION

To conclude, prostitution is one of the issues or topics that most Pacific communities would prefer was either discussed in secrecy or not discussed at all. But in this day and age, that should not be the case, as prostitution is indeed a craft in the Pacific. With it comes numerous problems, but perhaps the main one that most Pacific communities should be conscious about is the fact that prostitution plays a major role in spreading STIs such as HIV/AIDS. One of the steps taken by countries like New Zealand and Australia in addressing the problems that are affiliated with prostitution is legalising it. That way, the trade is able to operate in a much safer environment. Workers are also protected by law in terms of exploitation by either customers or brothel operators. On the other hand, such a move may not be ideal for Pacific countries mainly because it goes against the normal practices of Pacific communities, especially the fact that such communities continue to have strong ties with Christian principles and values. Is decriminalising prostitution ideal for the Pacific? Time will tell. But one thing is certain, the issue is here and does need to be discussed.

¹⁴ Currently economic reasons are cited as a main cause of prostitution in all Pacific countries. See n 5 above.

¹⁵ For example, it has been reported in Tonga that '[s]ome young people turned to prostitution to earn money, but because of Tongan society's conservative nature, people known to engage in this activity were heavily looked down upon and may never rise from their situation. (Asian Development Bank, 'Priorities of the People: Hardship in Tonga, What causes hardship?' http://www.adb.org/Documents/Reports/Priorities_Poor/TON/ton0500.asp (Accessed 10 August 2008).)