



COMMERCIAL SEX WORKERS, HIV/AIDS & THE LAW

This fact sheet will attempt to answer some of the questions you might have about sex workers, HIV/AIDS and the law in the Pacific Islands.

What is commercial sex work?

“Commercial sex work” or “prostitution” describes the practice of offering sex (or other sex acts) in exchange for money or other material compensation.

Who engages in commercial sex work?

Both men and women engage in commercial sex work, although there are more female sex workers than there are male sex workers in the Pacific region.

There are also different types of sex workers including:

- High class “call girls”;
- Mid-level strip club/massage parlour sex workers;
- Street or park sex workers; and
- Male sex workers, heterosexual or homosexual.

Who uses the services of a sex worker?

Although there is no one type of person who uses the services of a sex worker, in the Pacific region, tourists, seafarers and locals are all groups which are likely to pay money for sex.

Why do people engage in sex work?

There are many reasons why people may engage in sex work including:

- High levels of poverty;
- Unemployment or inability to make ends meet;

- Drug addiction;
- The breakdown of family support structures; or
- An increase in family sexual abuse.

Is commercial sex work legal?

In many Pacific countries, “commercial sex work” or “prostitution” is illegal and persons who ask for money in exchange for sex can be charged with a criminal offence.

It is also illegal to “live off the avails” of prostitution meaning that it is illegal to act as a pimp or a madam in most countries. Brothel-keeping is also, by and large, illegal.

While it is illegal to ask for money for sex it is generally *not illegal* to offer money in exchange for sex. This means that while sex workers can be charged with a criminal offence their clients typically cannot.

What about homosexual acts?

In many Pacific countries it is also illegal to engage in a homosexual act with a person of the same sex (whether male or female). In some places, it is only a crime if two men to engage in homosexual acts (Cook Islands). In others, it is only a crime to engage in homosexual acts with persons under the age of 18 years. (Vanuatu).

Note however, that the Fiji High Court recently acquitted two men of gross indecent behaviour and unnatural acts between two males by concluding that the Penal Code provisions conflicted with the privacy and equality provisions of the Constitution. In accordance with international human rights principles, the Penal Code provisions were considered null and void. This means that the law is starting to change. For more information see *Nadan v.State*
http://www.vanuatu.usp.ac.fj/library/Paclaw/Fiji/Fiji_cases/NADAN.htm.

Are sex workers at risk of being infected/ infecting others with HIV/AIDS?

Yes. If they engage in unprotected sex, all sex workers are at risk of infecting others/becoming infected with HIV/AIDS.

Are certain sex workers at a greater risk than others?

Yes. Male sex workers, or anyone else who engages in anal sex, are at a greater risk of infection because there is a greater chance of HIV transmission through anal intercourse. Anal sex is especially risky because it can result in tiny tears or cuts in the rectum. Viruses can enter the body more easily through these breaks in the skin than through intact, healthy skin.

Female or male street sex workers are also more at risk than other groups because working on the street is more dangerous than working from a hotel or massage parlour. It is harder to assess whether a client is safe and/or to negotiate safe sex when working from the street.

Why are sex workers at a greater risk of becoming infected/infecting others with HIV/AIDS?

Sex workers are at a greater risk because:

- 1. They may be more likely to engage in 'high risk' behaviour (like having unprotected vaginal or anal sex) with more than one person.**

First, sex workers engage in sex for financial compensation. This means that they are more likely than the average person to have multiple sex partners. This alone increases one's vulnerability to HIV/AIDS and other STIs.

Second, since prostitution is mostly illegal in the Pacific, transactions must be negotiated quickly - especially for sex workers who work on the street - so that they are not caught out by the police. This means sex workers do not always have the time to negotiate safe sex. If there isn't time to negotiate safe sex, a sex worker may feel obliged to engage in unsafe sex to avoid losing the sale.

Alternatively, the sex worker may not have time to assess whether a client is 'safe'. This increases the sex worker's risk of being the victim of assault or rape which in turn increases the risk of becoming infected with HIV/AIDS. Fear of violence may also prevent a sex worker from disclosing his/her HIV+ status and/or may make it difficult for the sex worker to insist upon sex with a condom.

Finally, clients will sometimes pay more money if a sex worker agrees to participate in unsafe sex. Since many sex workers are in need of the money, this may be an offer that is too good to pass up.

- 2. They may be more likely to engage in 'high risk' behaviour with other groups that are vulnerable to HIV/AIDS infection**

Other groups like seafarers and migrant workers are vulnerable to HIV infection. For example, statistics show that seafarers in the Pacific have a high rate of STIs. This suggests a propensity for engaging in unprotected sex which means that these groups are also at a higher risk for contracting/transmitting HIV/AIDS. Seafarers are also one of the groups more likely to use the services of a commercial sex worker.

3. They may be more likely to engage in 'high risk' behaviour with tourists.

Tourists are one of the groups of people who are known to use the services of commercial sex workers. While HIV/AIDS prevalence remains low in most of the Pacific region, tourists travelling to the region may be carrying the HIV virus. This puts everyone they have sex with, including sex workers, at risk.

4. Sex work is heavily stigmatized work in most countries in the Pacific.

Many people believe that commercial sex work is wrong and that people who engage in commercial sex work are "immoral". Sex workers may be treated differently than other people and their human rights might not be respected. Sex workers may be isolated or ostracized from their communities. Such treatment can lead to low self-esteem, despair, anger, resentment and an increase in high risk behaviour. Sex workers may have more unsafe sex and/or may turn to drugs. This increases the risk of getting/transmitting HIV/AIDS.

5. They are less likely to seek medical treatment for HIV/AIDS and other sexually transmitted infections (STIs).

Since sex workers are often poor and/or do not want to draw attention to themselves for fear of being arrested or stigmatized, it is less likely that they will get tested for HIV/AIDS and/or seek treatment for HIV and other STIs. This means that there could be sex workers who do not know that they are HIV positive and at risk for infecting others with the disease.

What can be done to protect sex workers and prevent the transmission of HIV?

- Sex workers should have access to condoms so they can protect themselves from HIV/AIDS and other sexually transmitted infections;
- Sex workers should be able to access HIV/AIDS and other STI testing, counselling and treatment in a non-judgmental and compassionate setting;
- Sex workers and other vulnerable groups should be targeted for HIV/AIDS prevention education;
- Human rights for people who engage in commercial sex work should be recognized and human rights violations (including violence against sex workers) should be prosecuted;
- Human rights for all marginalized groups, including women, children and homosexual people should be recognized, promoted and respected;

- Governments should consider de-criminalizing the sex trade and in its place implementing a regulatory regime.

For more information contact:

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