

Sex Workers and HIV Prevention in Fiji - after the Fiji Crimes Decree 2009



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For Naomi - kia kaha

The views expressed in this report are solely those of the authors and not those of UNAIDS.

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Most prohibitionist regimes only achieve their aim through the suppression of democratic and human rights. More often, they do little to reduce prostitution or its associated social ills, but breed corruption and seriously damage public health. (Harcourt et al 2005, 126)[†]

INTRODUCTION

On 1 February 2010, the Crimes Decree 2009 (Decree No. 44) of the Republic of Fiji Islands took effect. A report on sex work and HIV prevention in Fiji had very recently been released. UNAIDS Pacific funded the authors of that report to conduct follow-up research investigating any impacts of the new Decree on sex work and related HIV prevention activities. Thus, the original study was extended to encompass and take account of a changed legal environment. This report is the result.

Sex workers are among those who are most affected by HIV. The availability of appropriate and accessible services, information and resources are necessary conditions for HIV prevention. Nonetheless, prevention efforts will not be effective unless legal, political and social environments enable sex workers to protect themselves and their clients.

Effective HIV prevention among sex workers requires safe, non-stigmatising and appropriate service provision. Ultimately, however, prevention is reliant on the voluntary cooperation and support of sex workers to increase rates of condom use during paid sex and to access the prevention, testing, treatment and information services that are available. Furthermore, vulnerable groups are not necessarily helpless in the face of HIV risk, and the experience of gay communities in many countries has demonstrated that the community 'at risk' can spearhead the response if they have the right resources. The truly crucial community resource is the community's capacity to organise themselves.

The creation of empowering and enabling environments is key in the Pacific response to HIV and AIDS.¹ Appropriate law is a prerequisite for an enabling environment: 'Legal environments set the overall context for HIV responses of government and civil society and influence the social climate in which prevention, treatment, care and support programmes operate'.² Across the Asia-Pacific region, sex worker experiences evidence the ways that criminalisation of sex work drives sex workers into darker, harder-to-reach and more dangerous places, reducing access to and by prevention services, rendering sex workers vulnerable to sexual and physical abuses, and negating opportunities for protection or redress through the justice system – at the same time obscuring and effectively silencing the experiences of sex workers.³

In February 2010 a new Fiji Crimes Decree replaced the previous Penal Code of Fiji. The Decree was enacted to update Fijian law, redrafting its provisions so as to

be more appropriate to and capable of addressing contemporary national and international issues and able to encompass criminal opportunities provided by modern technology. The Decree included a section headed 'Prostitution offences' which revised the laws around sex work. In 1999, the Fiji Law Reform Commission had recommended that sex work be decriminalised and, instead, be subject to a system of regulation and licensing.⁴ But despite this earlier recommendation, the new Crimes Decree provided for a wider range of offences related to sex work, including the criminalisation of the client.

However, the effects of any law are determined by far more than simply the letter of the law. Extra-judicial interpretations and representations shape the outcomes of changes in the law and their effects in a society. What happens in people's everyday lives and practices is the most relevant measure of the impact of law when we are investigating HIV prevention.

Data collected in 2009 on the lives and concerns of sex workers, on conditions and practices of sex work and on HIV prevention opportunities and barriers, provided a backdrop against which the new data collected again in 2011 could be viewed. The analysis of the 2011 data, including sex worker reports of changes since February 2010 in their own experience, form the mainstay of this report's description of the effects of Fiji's newly drafted 'Prostitution offences' on sex workers and on HIV prevention opportunities.

Newspaper coverage of the status of sex work related offences under the new Decree that appeared over the months around February 2010, as well as the outcomes of prosecutions and court cases during the period between February 2010 and February 2011 were also considered. This provided context information against which to view the data from individuals.

In the process of describing the changes in conditions and practices of sex work and HIV prevention work since February 2010, this report also aims to give voice to Fijian sex workers who have been largely silenced, and to document events and experiences that have not been and will not be captured in court cases or in other official records.

The criminalisation of sex work

Laws criminalising people who sell or buy sex are intended to eradicate or deter sex work, and presumably also to reduce any social problems deemed to be

associated with it. Yet there is considerable evidence worldwide that criminalisation of sex workers and their clients is ineffective in eliminating sex work.⁶⁻⁸ Not only has criminalisation been an unsuccessful tool in preventing the buying and selling of sex, it also fails to prevent the negative aspects of sex work.⁹ Far from reducing negative elements, criminalisation of sex work has been found to be detrimental to HIV prevention among sex workers as it lessens access to health and other services.¹⁰⁻¹³ When sex work is criminalised, sex workers cannot fully protect themselves against abuse, violence and health threats such as HIV.^{6, 14-17} Criminalisation increases the risk of HIV and STI, reduces access to services, increases drug use, means a loss of family and friends, raises levels of work-related mortality, and leads to restrictions on travel, employment, housing and parenting.^{6, 18, 19} In addition, much sex work is driven by financial need and poverty, yet police and legal action resulting in fines, imprisonment or deportation contributes to the further impoverishment and indebtedness of sex workers and their families. Sex workers in Southern Africa²⁰ and in the Asia-Pacific region² have argued that criminalisation exacerbates the numerous forms of rights violations that sex workers in these countries experience, including increased vulnerability to physical and sexual abuse by police through harassment, arrest and detention. Under conditions where sex workers are cast as criminals, most do not report violence from clients or others to the authorities, and they have reduced access to the protection normally afforded by the justice system. Nor can sex workers claim labour rights where their work is not legally recognised.²¹ Furthermore, criminalisation forces sex work underground, hampering sex workers' ability to organise themselves in any significant way to fight for their rights.²²⁻²⁴

Sex work in Fiji

Commercial sex is a long-established industry in Fiji.²⁵ Past estimates have suggested that the number of sex workers per capita is similar to that in Thailand.²⁶ Studies of sex work in Fiji^{25, 27} cite economic factors as the key determinant of sex work. Plange²⁵ describes economic need occasioned by unemployment, divorce, desertion, inadequate government help, failure of husbands to pay maintenance, and the breakdown of the extended family as factors contributing to sex work. Research conducted in 2009 by McMillan and Worth²⁷ also documents lack of education, childhood and maternal poverty, low women's wages, family violence, and the marginalisation of transgender as drivers of sex work in Fiji.

Fiji has high unemployment, with new jobs providing employment for only a fraction of Fiji's school-leavers each year. Disempowerment in the job market is

compounded for women as there is no legislation providing for equal pay for work of equal value. The poor wages of garment workers have long been understood to necessitate some workers engaging in sex work on a part-time basis to supplement their low incomes. Harrington²⁸ claims that the inability of other informal-sector jobs to meet women's needs is reflected in the growing sex industry (see also Rokoduru²⁹).

In her 1994 paper³⁰ on sex work in Fiji, Sainath states that at that time sex workers were being fined by the authorities and chastised in the press. No organised solidarity group or union existed, and social barriers prohibited effective outreach programs, although some support groups were beginning to develop. Most sex workers worked individually, often with regular clients. She also contended that sex workers had a difficult time negotiating condom use, and very few used the free government STI clinics, or had regular medical check-ups. According to recent data, while advocacy groups and organisations have been struggling into existence, the overall situation has not changed significantly, and the many small gains made now appear to be at risk of slipping away again.

McMillan and Worth's data collected in 2009, before the Fiji Crimes Decree came into effect, found that sex workers' sharing of information and of condoms, along with the newly emerging sex workers' support groups and advocacy organisations, were highly effective HIV prevention resources in Fiji.²⁷ That same report showed that many clients were resistant to condom use, and that fear of brutality and harassment from police reduced the opportunity for sex worker negotiation with clients, including condom negotiation. Furthermore, concern about the risk of HIV infection was displaced by other more immediate concerns when sex workers faced brutality or harassment.

The 2009 data showed that reports of police corruption and harassment, along with violence and brutality from clients, were greater in Nadi where there were larger numbers of transient sex workers and no specific services targeted at sex workers, than there were in other centres where sex worker organisations had been established and sex worker populations were more stable. Most notably in Lautoka and Labasa, sex worker organisations had been engaging in building community and liaison with the police to improve understanding about HIV prevention. Unlike the other study sites, sex workers in Nadi were reluctant to carry more than one condom with them at any time. This was because carrying condoms would give police reason to harass them. Consequently, sex workers' ability to provide condoms to others was reduced.

The *Risky Business: Sex Work and HIV Prevention in Fiji* report concluded that as sex work was driven by economic need and marginalisation, police crackdowns would be ineffective in eradicating it, but would be detrimental to efforts to reduce HIV transmission risk behaviours.²⁷ That study was based on interviews with 40 female and transgender sex workers in Suva, Nadi, Lautoka and Labasa in 2009. The findings provide an assessment of the context of sex work prior to the commencement of the Crimes Decree. Findings highlighted:

- the need for more sexual health, HIV information and prevention, and social services targeted specifically to sex workers,
- the value of fostering cooperation among sex workers,
- the importance of sex worker involvement in condom distribution and HIV education,
- the important role played by sex worker advocacy organisations and support groups in the creation of an enabling environment for HIV prevention.

The report also documented a variety of ways in which policing attitudes and law enforcement styles affected HIV prevention efforts. Participants' stories indicated that over recent years advances had been made with respect to the attitude and behaviour of police as well as some health service providers. This had facilitated condom use and the access sex workers had to sexual health services. In contrast to this, in areas where police harassment of sex workers was greatest, sex workers were reluctant to carry enough condoms to share.

Activities aimed at reducing stigma and discrimination among police and health service providers and the surrounding community had been undertaken by sex worker groups and organisations. Where sex worker groups were fostered and supported, they worked with the police to improve understanding about HIV prevention and actively engaged in other activities in the wider community to reduce stigmatising attitudes and to counter negative beliefs about sex workers and transgender. Engagement in these projects was associated with less police and community brutality. Participants reported an improved understanding by the police of the need to carry condoms and better access to counselling and testing services as a result of the activities of their sex worker groups. Thus sex worker projects reduced negativity from the wider community, contributing to the generation of a more enabling social environment. In addition, sex workers also reported that belonging to an organisation bolstered their own beliefs in and experiences of self-efficacy and ability to gain some control over one's life, as well as reducing their sense of isolation.

Sex work and Part 13, Sections 230–233, of the Crimes Decree

Since the collection of data for the original *Risky Business* report, Fiji has repealed the Penal Code (1978 edition) and introduced the *Crimes Decree 2009* (Decree No. 44). The Crimes Decree was passed in 2009, and took effect on 1 February 2010. Part 13 of that Decree is headed 'Prostitution offences'. Offences relating to sex work are contained in sections 230–233.[‡] These sections are presented below. The sections most relevant to this research are Sections 230–231 of Part 13 of the Decree.

Person living on earnings of prostitution or persistently soliciting

230.— (1) A person commits a summary offence if he or she—

(a) knowingly lives wholly or in part on the earnings of prostitution; or

(b) in any public place persistently solicits or offers a person for immoral purposes.

Penalty — Imprisonment for 6 months.

230.— (2) Where a person is proved to live with or to be habitually in the company of a prostitute or is proved to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that he or she is aiding, abetting or compelling his or her prostitution with any other person (or generally), he or she shall unless the court is satisfied to the contrary, be deemed to be knowingly living on the earnings of prostitution.

Loitering or soliciting for the purposes of prostitution

231.— (1) A person commits a summary offence if he or she—

(a) loiters in a public place for the purpose of offering himself or herself for sex in return for a payment of any nature;

‡ The first sections of Part 13 are concerned with the detention of individuals and minors in a brothel or other place (section 225), selling and buying minors for immoral purposes (sections 226 and 227), and the powers of search (section 228) and authority of court for custody of young persons (section 229) with respect to the previous sections. These sections deal with illegal detention and with sexual abuse and exploitation of minors rather than with sex work. The age of a minor has been raised from under 16 to under 18 by the Decree.

While many of the participants in the 2010 *Risky Business* research had taken up sex work before the age of 18, none had been sold, coerced or forced to sell sex by their parents or by any other person, and none had been detained against their will to serve in a brothel.

(b) solicits for immoral purposes in any public place;

(c) seeks the services of a prostitute in a public place; or

(d) uses the services of a prostitute in a public place or

(e) makes arrangements with a prostitute or a person offering the services of a prostitute in order to use his or her services by any communication whatsoever or

(f) Solicits for an immoral purpose by any communication whatsoever.

Penalty— (i) in respect of a first offence – a fine of 5 penalty units;

(ii) in respect of a subsequent offence – imprisonment for 3 months or a fine of 10 penalty units, or both.

231. — (2) Any police officer may arrest without warrant any person he or she finds in any public place whom he reasonably suspects to be committing an offence under the provisions of this section.

231. — (3) for the purposes of this section, “public place” includes the doorways and entrances of premises abutting on any public way and any ground adjoining and open to any public place.

Suspicious premises

232. If it is made to appear to a magistrate by information on oath that there is reason to suspect that any house or any part of a house is used for purposes of prostitution, and that any person residing in or frequenting the house—

(a) is living wholly or in part on the earnings of the prostitute; or

(b) is exercising control, direction or influence over the movements of the prostitute—
the magistrate may issue a warrant authorising any police officer to enter and search the house and to arrest such person.

Brothels

233. A person commits a summary offence if he or she—

(a) keeps or manages, or acts or assists in the management, of a brothel; or

(b) being the tenant, lessee or occupier of any premises knowingly permits the premises or any part of the premises to be used as a brothel, or for the purposes of habitual prostitution; or

(c) being the lessor or landlord of any premises (or the agent of such lessor or landlord) lets the premises or any part of them with the knowledge that the premises are or is to be used as a brothel, or is wilfully a party to the continued use of such premises as a brothel

Penalty — Imprisonment for 5 years or a fine of 100 penalty units, or both.

Many of the ‘Prostitution offences’ above are a repackaging of what were previously also offences under the Penal Code. For instance, the provisions of Section 230: *Person living on earnings of prostitution or persistently soliciting*, had previously fallen into a category of ‘Offences against Morality’ under the Penal Code .

Some things have changed however. Under the Penal Code a ‘prostitute’ was definitively female and this is no longer the case. The relevant provisions are now gender neutral and can encompass male and transgender. The penalty for all first offences under Section 231 has increased tenfold from \$50 to \$500.⁵ The range of possible communication mediums used to arrange the services of a prostitute have been extended, and contact via mobile phone and the internet now also constitute soliciting. Most notably perhaps, clients have been criminalised, and can now be prosecuted if they seek and/or use the services of a sex worker or make any arrangements to do so.

The provisions, falling under the heading *‘loitering or soliciting for the purposes of prostitution’*, that allow for police to arrest without warrant any person in a public place who is ‘reasonably’ suspected to be committing an offence already existed in Section 168(4) of the Penal Code. However, these provisions were widely reported in the press at the time the Crimes Decree was introduced. That new attention created the impression that these powers were new.

On the other hand, while it has yet to be proved in court, expert legal counsel advises that the offence of ‘loitering’ under section 231 (1)(a) now has a higher evidential threshold.⁵ This assurance is made on the basis that, for the charge to be made out, there must now be *evidence* that a person was in a public place for the purpose of offering himself or herself for sex in return for payment.⁵

Media representation of sex work under the Decree

The changes to the law brought about by the new Crimes Decree were widely broadcast and discussed in the print news media. The 'Prostitution offences' were only a very small section of the Decree, but that section gained a substantial amount of coverage during February 2010, when the Decree came into force. News reports highlighted the provisions for arrest on suspicion and the increased penalties in particular, creating the belief that police powers had been augmented and that a hard line would be taken on sex work and sex workers.

On 3 November 2009, *The Fiji Times* reported that: 'The new decree proposes to penalise prostitutes and their clients'. The report then goes on to elaborate: '*The decree is harsher on prostitution*, penalising not only those who make a living through prostitution but also those involved in prostitution-related activities. Under the decree, those who solicit money through prostitution are liable for a jail term of six months while people caught hiring prostitutes can get jail terms of up to 12 years. In addition, anybody found operating a brothel, or services which procure prostitution is liable for prosecution with the penalties being harsher when the crime involves people under the age of 18. Also, anyone residing with a prostitute is also liable'.³²

On the eve the Decree was to come into force, *The Fiji Times* reported 'TOUGH new laws against prostitution are welcome in a country in which the sex trade has become more sophisticated over the years'.³³ In the following days there were reports of the 'new' police powers: 'Under the new Crimes Decree passed last week, police *now* have the powers to raid and arrest those they *suspect* of engaging in prostitution related activities'³⁴ and heavy penalties for clients were again highlighted: 'Under the new decree, people caught making a living off prostitution could face up to six months imprisonment and those caught hiring prostitutes face jail terms up to 12 years'.³⁵ The provisions of Section 231 for arrest on *suspicion* are reported in full again a few days later.³⁶ Again on 15 February, it was reiterated that: 'The Crimes Decree states that people who make a living off prostitution are liable for a jail term of six months, while people caught hiring prostitutes can get jail terms of up to 12 years...The decree also states that any person residing with a prostitute is also liable. Punishment in regards to prostitution ranges from 12 years to three months in jail and also includes fines'.³⁷

At the same time, the removal of a crime of sodomy and decriminalisation of homosexuality were other important changes brought about by the Crimes Decree and receiving attention. One February news report addressed

the potential license this decriminalisation might allow male sex workers, by citing a former high court judge's view of the provisions of the law on sex work: 'the public order act is the same for homosexuals and heterosexuals and the law clearly defines that anyone caught in indecent behaviour is liable for prosecution. Decriminalising of homosexuality also should not be seen as a leeway for male prostitutes, the Crimes Decree is harsher on prostitution than its predecessor'.³⁸

By the end of the month, a police spokesperson was also reported as saying: 'Under the new Crimes Decree, we are going down hard on prostitutes'.³⁹

THE STUDY

This research is an extension of the original *Risky Business Fiji* study. Changes to the laws around sex work were announced around the time that the initial study results were released. Consequently, a repeat of that original research on HIV prevention and sex work in Fiji was planned for some eighteen months after the law change to allow time for any initial knee-jerk reactions to have settled down and the nature of any impact on sex work and HIV prevention – or the lack of impact – to become apparent. The timing of the two sets of data collection, straddling the implementation of the Decree, provided a unique opportunity to go back to the same groups of sex workers with the same topics of discussion and with the same methodology, the only difference being the legal framework.

Approval for the 2011 data collection was granted by both the Human Research Ethics Committee of The University of New South Wales and by the National Health Research Ethics Committee of the Ministry of Health Fiji.

The second round of data collection, funded by UNAIDS Pacific, facilitates investigation into the effect of Part 13 of the Decree through the collection of data on: the experiences of sex workers and any changes in the conditions and practices of sex work in the period since February 2010; the impact on condom distribution, peer-based HIV education, support services and health services with regard to the Decree; any changes in major sites and venues¹ where sex workers congregate.

Additional information was gathered from daily newspaper reports in the months around February 2010, as well as from outcomes of court cases and prosecutions in the period between February 2010 and February 2011. While these data do not shed light on the practice of sex work nor on HIV prevention efforts, they do provide relevant background and contextual information against which to view interview data. Coverage of the Decree as it appeared in newspaper reports over the initial period of promulgation has been discussed in the Introduction above.

The report has some caveats. We do not claim that this is an analysis of 'prostitution law'; rather it is an analysis of the social effects of the actions around the law with

regard to sex work and HIV. We do not have definitive data on prosecutions and did not have permission to speak with the military – whose actions we had no idea, prior to the data gathered, would be so central to the findings of this report. The data primarily are the voices of sex workers and document their experiences since February 2010, as well as the views of NGOs working with sex workers. We believe that voices of marginalised groups such as sex workers are often unheard in policy and program reports and that our work is an attempt to rectify this.

1 Given the manner in which known sex work sites and venues have been targeted, the researchers consider that the presentation of this data would compromise the safety of participants and of sex workers in general

Arrest and prosecution data

Prosecutions of sex workers, under the Crimes Decree Part 13, between February 2010 and 2011, were also monitored. We could only ascertain three cases that have reached court. The small numbers involved do suggest that police activity against sex workers has not increased in the ways anticipated before the research began. Instead, the interview data presented below will evidence an unforeseen outcome: that the main changes to sex worker experiences of law enforcement since February 2010 are the result of military activity. This military activity does not leave any official and publicly available record. Thus the use of prosecution data to monitor changes since February 2010 to the enforcement of laws against sex work is extremely limited.

The first arrests of sex workers for violations of the new laws occurred in the town of Ba in the Western Province of Viti Levu, in mid-2010. Two transgender persons were arrested for loitering with intent to commit a crime (solicit for sex). The arrestees were known in the community as sex workers; however, they maintain that they were not soliciting but walking to a grog session (kava drinking) at a friend's house when they were apprehended. One year later, despite been summonsed to court a number of times, their cases had not yet been heard.

In July 2010 another sex worker was arrested in suburban Suva. The 29-year-old's case was heard in court a few weeks later and he pleaded guilty to loitering for the purposes of prostitution.

In sum, there have been few prosecutions of sex workers on charges laid in accordance with the provisions of the new Decree. The charges that are being contested have not been tried. However, while few charges have been laid by police, the data from our interviews indicates that when sex workers are being taken into custody for 'Prostitution offences' (the provisions of which allow for arrest without warrant of any person in a public place who is *reasonably* suspected to be committing an offence), it is often by the military. There is no paper trail. Punishment is meted out in a summary fashion, without due legal process, highlighting the limitations of evaluating a law by looking solely at the outcome of court cases.

As a result, monitoring the outcomes of court hearings will not capture the dominant response by agents of law enforcement since February 2010. For that reason, the bulk of this report focuses on the data from interviews with sex workers, including some of those who have been arrested, apprehended, or otherwise detained during the period since the Decree came into effect, and also data from consultations with sex worker organisations and their representatives.

Interviews

Between late March and early April 2011 researchers from the International HIV Research Group of the University of New South Wales and from the Pacific HIV and STI Research Centre of the Fiji School of Medicine (i.e. the same researchers who conducted the original *Risky Business Fiji* study) conducted a further 25 face-to-face in-depth interviews with sex workers in Suva, Labasa, Lautoka and Nadi.

Participant recruitment sites and strategies, and sex worker networks utilised were the same for both data collections; in many cases the same participants were interviewed. This ensured that the research did not sample a completely different group of sex workers or represent different types and places of sex work. However, in the course of the data collection and in response to the information being gathered, an effort was also made to recruit sex workers from within those same networks, who had been arrested by either the police or the military since February 2010. (Two of the participants who had been detained by the military had also been interviewed in 2009.) For this reason, we do not draw any conclusions from the increased numbers of participants who had experienced 'arrest' in this second sample. Once the reports of detentions began to emerge, the researchers judged that it was important to document these experiences. It was equally clear that these arrests and punishments would not appear in any court or justice system records.

The same semi-structured sex worker interview schedule was used as in the *Risky Business Fiji* 2009 data collection. This schedule covered an interviewee's history of sex work, the role of sex work in their life and the conditions under which trade occurs, including the personal risks and consequences of conducting sex work. Condom access and use, including negotiation of condoms with clients were discussed, as was the interviewee's access and use of sexual health and treatment services.

As in 2009, the format was topic-focused, with the schedule providing a general guide to issues under discussion rather than a list of questions. Participants were encouraged to recount actual events and memories. In this second data collection the discussion of change focused on the time period since the Crimes Decree came into effect in February 2010.

At the start of each interview participants were informed that the interview was a follow-up to the *Risky Business* 2009 report, that it was funded by UNAIDS, conducted by UNSW, and that it aimed to document any changes since that last data collection. As background

information, interviewees were informed specifically that: 'At the beginning of last year a new Crimes Decree came into effect. It has a section that deals with prostitution law'. They were then asked 'Have you heard about that?'. If they answered that they were aware of the Decree, they were asked what it meant to them. No other information about the Crimes Decree was provided to any sex worker interviewees before or during the interview. Some participants requested more information on any changes to the law and after the interview they were directed to look at Part 13 of the Decree.

Interview data analysis

Individual interview transcripts were read and summarised as cases. Dominant themes and issues were identified, and transcript data was then coded, compiled, aggregated and summarised. Individual transcripts were read closely and considered as whole stories. These readings afforded an overview of the interviews, both as individual narratives and collectively. The first coding of transcript data was topic driven, and further thematic code lists were generated, based on repeated and close readings. Coded data was aggregated into code files that were again generalised and summarised. The analysis aimed to identify range, pattern and consistencies and points of difference within these topical and thematic data groups.

This report is based on data coded under the topics of: conditions under which sex work occurs; risks and consequences of conducting sex work; condom access and use; condom negotiation with clients; and access to HIV prevention and sexual health services. Knowledge of the law appeared as a subsequent topic code. The major thematic code of interest to this report was that of change. Sub topics within that thematic strand were those of police response, military response, NGO response, client practice, and sex worker practice. A second and major theme emerging from the data was that of the human and legal rights of sex workers.

Other key informants

The service provider organisations identified by sex workers and canvassed in 2009 were again consulted in order to ascertain their organisational response to the Decree, along with any resultant changes to the way they deliver services or accommodate sex worker organisations.

Three sex worker organisations: a national sex worker network; a Suva-based female sex worker support group; and a Lautoka-based network of sex workers, were contacted and invited to represent the experiences

of their members, and to forward their experiences as organisations since February 2010.

Along with representatives of sex worker organisations, NGO staff and a program manager, other key informants included sexual health clinicians and members of the police force. These consultations provided information about interactions with, and services or programs provided to or for sex workers.

RESULTS

The resultant sex worker interview sample was made up of: 13 female and 12 transgender sex workers aged between 18 and 47 years. This included 5 sex workers who had been apprehended or detained by military in the period since February 2010.

Most of the sex workers we interviewed had experienced changes to their work and lives since the introduction of the Crimes Decree in February 2010. These changes ranged from reduced access to condoms and loss of NGO services and support, through to fear of torture.

In the course of the interviews most interviewees referred to the fact that buying sex had been newly criminalised, although they did not always know this was related to the Crimes Decree. Indeed, very few sex workers we interviewed had any detailed or accurate knowledge about the Crimes Decree or its implications for sex work. The views of those who expressed opinions about what the Decree meant for them largely concurred with newspaper representations. In other cases the sex workers' opinions were forged by harrowing personal experience of changed enforcement practices, or by knowledge of what had happened to others. For example, when she was asked what her understanding of the Crimes Decree was, Lynette replied:

It is when the military takes over and there is no government and there's no human rights.

In saying this, Lynette links the Decree with a state in which normal rules and rights are absent; a summation of her recent personal experience of treatment for offences of soliciting. While her statement does not show any understanding of what the Crimes Decree states, it describes the reality for Lynette and others like her who have experienced the military detentions of sex workers. These experiences will be described in the following sections.

It was evident that, like Lynette, most sex workers had very little knowledge of what the document called the Crimes Decree contained in relation to sex work. It is also the case that sex workers do not need to be aware of the workings of the justice system for it to affect them, their working conditions and their access to HIV prevention services and resources.

The police response

The original *Risky Business Fiji* report indicated that police crackdowns and street 'clean-ups' took place at intervals, and that these efforts tended to chase sex workers off the streets for a few nights before work resumed as usual. Sometimes sex workers who had been picked up off the streets were held in police cells overnight to be released in the morning without charge. In between times, police responses to sex workers were mixed, with some evidence of the actions of corrupt and abusive individuals, but with most police simply moving sex workers on and attempting to send them home. Police were clearly aware of the main areas where sex work occurred.

This most recent data show that at times there is clearly some good feeling between police and sex workers: evidence of value of past liaison work. Numerous sex workers said they understood that police were just 'doing their job too', and at least some members of the police force seemed to have adopted an approach of harm minimisation. However, one of the community-based sex worker organisations reported that:

There have been changes in the interactions between the women SWs and the police since February 2010. There is increased presence of police around the well-known areas that sex workers frequent especially at night and police are being more upfront and more aggressive when they approach sex workers in nightclubs, the street, and motels. This is more evident in Nadi than in Suva.

There have been few court cases arising from charges laid against sex workers since the Decree came into force. However, there has been some policing activity. Two transgender persons were arrested while walking down the road in Ba. These were the first charges laid under Section 231. One of the sex workers was wanted by police for another offence. The defendants deny that they were soliciting and claim that they were simply walking down the road, making their way to a kava session at a friend's house. While the defendants have been summonsed to court a number of times over the past year, their cases had still not been tried at the time of writing. As well, a Suva sex worker has pleaded guilty to charges of soliciting.

By February 2011, managers of seven massage parlours had been charged under the *Crimes Decree 2009* with conducting illegal activities from their premises. According to police sources, this was a planned operation aimed at closing down the parlours in Suva. No sex workers were charged during these shutdowns. As well, in February 2011, after police conducted raids on Suva nightclubs and apartments, nine Chinese nationals were arrested and deported for visa violations. No sex work charges were laid, although the police maintain the women involved were sex workers.

Members of the police spoken to in the course of this research have said that their policing of sex work has not been affected by the new Decree and that they are continuing to police sex work in the same way as they did previously. The only changes noted were the actions taken against the massage parlours. Consistent with these police claims, few of the sex workers we spoke with had been apprehended by the police since the introduction of the Crimes Decree. However, the sex workers did speak of a number of arrests occurring in Suva during an apparent crackdown soon after the Crimes Decree came into force:

The police arrested plenty girls in town, they take us to Central [Police Station], they write the name, address – everything – details, you're married or single. And when we say about the children about, when we say they're boys, police say the boy's gonna be a poofa in town. And the police say that if you have a girl your girl's gonna come and do this kind of thing. (*Carrie*)

During this time, the police kept the arrested workers in the cells for a period (often until the morning) in what appears to be both a pragmatic strategy to prevent them from conducting sex work – at least for that night – and a deterrent.

[The police] just come to give us a warning; they just come and say 'okay keep on moving – If we see you at 8 o'clock, we'll arrest you and you'll sleep at the cell'. Then we'll be released in the morning. (*Charlotte*)

While some police insulted and taunted those who they had arrested, there was no evidence of serious abuse. And the sex workers acknowledged that, after an initial flurry of activity in 2010, even this level of police harassment had recently begun to ease:

To me now I think the police are more... lenient with the sex-workers. But some do not understand some situations of the sex-workers, especially the

transgender ones. I think the police now have cooled down a bit, like I haven't heard of any new cases [of mistreatment] but before there were a lot. (*Samantha*)

Overall, reports of the police approach were largely consistent with earlier reports in the 2009 *Risky Business* research. Our data indicate that over the last 18 months sex workers continued to be moved on or chased away by the police in the same manner as before. It remained common for the police to warn known sex workers that what they were doing was against the law, and often also that it was immoral. Furthermore, carrying condoms continued to be grounds for police attention – with condoms treated as if they are evidence of an offence, or are themselves in some way offensive:

the cops always ask 'What is that? Are you doing prostitute? Why you carrying (condoms)?'.... They don't look at the bright side, eh. They always think negatively. (*Miranda*)

The military response

It was always the police before, but ever since the Decree the military have gotten to do the job as well. It's the military that have really, you know, like really, really made us feel that they were meaning business when they were saying that we are not allowed to be on the streets again. (*Maria*)

The government of Fiji is a military one, and the police are not the only agents of law enforcement. While the police response may not have changed markedly, sex workers reported a new military involvement and visibility on the streets since February 2010. The current government of Fiji, although interim, is stable and not in crisis, but sex workers report that they have not been subject to this sort of targeting by soldiers since the times of various coups. These claims are consistent with the data from 2009 in which sex workers referred to abuses at the hands of soldiers in 2000 and 2005.

The recent military involvement in policing of sex work appears to be mostly confined to Labasa and Lautoka. In Lautoka there has been a distinctive approach to the policing of sex work taken by the military, a style consistently characterised by round-up, parading and summary punishment of sex workers. Around Suva there have also been isolated incidents of sex workers being picked up by military personnel.

In Labasa the military have engaged in regular policing of the evening streets. This also started in 2010. While the military there ask sex workers to explain themselves

and tell them to go home, the sex workers we interviewed had no complaints about mistreatment. In Lautoka the military response has been far more punitive. In that town members of the armed forces use military vehicles to round up sex workers, taking them to the military barracks, detaining and abusing them overnight and making them submit to forced labour the next day. Many of the sex workers describe the army patrolling and picking up workers:

I was arrested by the army [some] days after the Decree and then we were taken to the army camp. We were caught on the street and we were taken in by the army on that evening. They had a four wheel drive. (*Magda*)

I wasn't talking to a client, I was just standing and yarning and catching up with a friend. They roll up and tell us to get in. They were so aggressive that we had no other choice but to get in. They kept saying 'you know this is not allowed, to do this and all this' – do what we were doing, just standing and yarning. (*Maria*)

I was picked up from there, from where the sex workers always stand. I was sitting down that afternoon when the soldiers stopped in front of me, and they pointed at me to get in the car. I said 'no' that I was waiting for my husband, my husband will knock off from work at 10.00 p.m. They said for me to get in, if not they will force me to get in, and I was picked up in that car with two other girls. We were taken in the car to the army barrack. (*Susan*)

Sex workers described being picked up from recognised sex work 'hotspots', and detained for up to 24 hours, although they were never formally charged with any offence. Once they were picked up, they were driven through the town on the backs of open vehicles, suggesting that a strategy of public outing and shaming sex workers is being employed. All the sex workers interviewed for this research and who had been picked up by the military, had been detained overnight at the barracks grounds. Many were not released until the following evening.

We were kept there that night till the morning and right into the afternoon, about 4 o'clock, One and a half days. From midnight. (*Magda*)

The military took us to the army camp. We were kept there for until the morning, until the next morning and we're sent home at about 10 o'clock. We weren't

charged, we were just kept under detention for many hours. (*Bree*)

The outdoor pen-like conditions sex workers were confined in after being taken to the barracks were also described:

When we reach the barracks then we sit out at the ground – I mean on the ground –surrounded by those, those steel crosses that they use for road blocks... We're trying to sleep, but we can't sleep because we're sitting on the ground. There were mosquitoes everywhere and dogs, those barrack dogs are just running everywhere, we're sitting, and at 4 in the morning we got called in – six hours later. (*Maria*)

We were all just taken up in a rush to this place with grass and soil where we have to go and be locked and we get locked out there till morning and it was really cold. (*Carrie*)

When you're at the camp, that's just you in the pig pen. You are treated inhuman. (*Lynette*)

Sex workers are detained overnight on the army base where they are all subjected to sleep deprivation, as well as to humiliation and other degradations. The sex workers we interviewed had experienced severe psychological abuses. One female worker describes what happened to her and a friend once they reached the barracks grounds:

Those steel crosses made a circle on the ground and we are made to sit in the circle and then they went off. After some time they came back. And when they came back they didn't stop the vehicle. Nobody got out, but they had their headlights on us. And then they tell us to stand up and to remove our clothes. So we are removing them, one by one. The headlights are on so we don't know who, or how many, is sitting in that car. But it was the same vehicle that picked us up. So we started stripping – right to the part where we are going to remove the last bit of clothing that we had. Then they told my other friend 'You have to stop! You're so ugly!'. It was so humiliating because she's a mum and she's quite bulky. And then they say 'Both stop! Put on your clothes again and sit there' and they drive off and laugh... (*Maria*)

Sex workers were sometimes sexually assaulted while on the base. Lynette described being 'stripped in public and fondled'. Maria and her friend had to fend off a soldier who tried to sexually molest them when they were left

alone with him. Other physical and mental abuses were recounted by a transgender sex worker:

We were told to say things, like they said we have to scream up and tell them that we are sex workers or the price of how we sell ourselves. During that night that reminds me that there was no more human rights, and the only things that I can remember thinking are that if this continues Fiji would be somewhere like Hotel Rwanda where most sex workers are first victims of this kind of military abuse. (*Carrie*)

This treatment amounts to torture. A number of experiences revolved around being made to bathe or being made to roll on muddy ground:

We were told to put all our things that was in our pocket and our bag outside, and we were put in the bath for ten minutes and our clothes were all wet. We were wearing our clothes, and we got cold but we were told to stand there in the bathroom and bathe... One of our friends was cold and wanted to stop having her bath, but then she was punched to bath. After ten minutes, we were taken to roll on the ground in our wet clothes. We lay on the ground and we have to count the stars in our wet clothes. (*Susan*)

They told us to take everything off, even our underwear and our bra. They burnt our wigs, bra and they told us to roll on the wet ground covered with damp soil. They punched us. They kicked us. They didn't charge us, they just tortured us. (*Magda*)

The bathing process seems to be designed to show the sex workers that they are dirty and need to be cleansed. Similarly, there were reports from Suva interviewees that two sex workers who had recently been apprehended by some military personnel had been forced to crawl in the mud and then to jump into the sea. They were reportedly told to 'Go in the sea, wash their pussy', whereupon empty bottles were thrown at them. Those events in Suva, however, did not take place on the army grounds.

Apart from sex workers reporting being punched and kicked by members of the military during detention at the base, other types of physical abuse included:

We have to wake up between every three to four hours and do squats like duck walk along the ground like say about ten metres to 15 metres... We were made to place a cone that's used for traffic on our head and then they put the wigs right on top and they tell us to leap one leg up to our knees and pull our ears and keep on saying 'I will never sell myself again'. (*Carrie*)

The soldiers tortured me. They said that I used to deal the girls [act as a pimp] that stand on the road, that I'm the dealer. I said 'no' that I'm not a dealer and that the girls can do whatever they want to do because they are the boss of themselves. They tortured me and they punched me at the camp, they punch me and slap me. They asked me if I'm the dealer and I kept on saying 'no' because I didn't know anything and they tortured me. (*Lynette*)

We were told to roll on the ground and then crawl, how the army always do while they train. We were scolded and kicked and they told us not to come to that place again, if we come back there, they will get the termite and put it in our pants. (*Gabrielle*)

After being detained for the night and enduring hours of physical and mental abuse, the sex workers were then subjected to forced labour. This included cleaning the soldiers' dormitories and barracks grounds. It also involved being taken into town and forced to clean drains and roads as stipulated by someone from the City Council in Lautoka.

We woke up early in the morning and we were told to go and clean up their room. After cleaning their room we were told to go and iron our clothes and to wear it again. After we changed our clothes we were then told to go and scrub their kitchen, which was really dirty. We went and cleaned their kitchen; we scrubbed the black stains that were there until it was clean. (*Susan*)

We were told to pick up the rubbish at their compound. We picked up the rubbish from there and we went to pick up the rubbish at the other barracks, which is on the opposite side of the road. After that, we were brought back to the barrack on top and we were taken in the car and we were told to go and pick up rubbish at Natokawaqa. We picked a lot of rubbish from the housing barrack and then we picked up the rubbish from another drain. (*Gabrielle*)

Driving women and transgenders through town on the open back of a military vehicle parades them to the public. As one interviewee pointed out, when people see women on the back of a military truck at night they know it can only mean one thing: the women are sex workers. The outing and shaming of sex workers is further achieved when the detained sex workers are put to work the next day, in full public view, still in their evening clothes, on various council street and drain cleaning projects.

Monday morning we were taken for this community work. We had to clean this drain for hours. We started at 8.30, and we were told just to behave like it was a community work – not to act suspiciously in front of the public and we were cleaning this long drain. (Carrie)

The detained workers were supervised by members of the military, but the work to be done was arranged with and designated by a person at the Council, who also took responsibility for providing lunch – if any was given:

After a while the big boss comes in and tells us 'wait we'll give you work to do today' so he calls up the Council and he asks the council which places do they want to clean up. So the council tells them the place, next thing we know we were being told to get in the vehicle. We were taken to the roundabout and we were told to pick rubbish from there right up to the hospital roundabout. So we started, started, started. There were two soldiers supervising us. We started, started. They were holding the sack and we were doing the cleaning. We had about 50 sacks that day and so they said 'look if you can fill up the 50 sacks then fill it up and we'll call it a day'. So we made it our business to fill up the 50 sacks around the road. [When] we had completed it, they told us that we could go home. (Maria)

All the sex worker experiences of process and conditions of detainment by military in Lautoka are similar and consistent, although these events occurred over a period of more than a year. This indicates that this is not the result of random actions on the part of individuals, but in keeping with a planned approach to the military policing of sex work in the Lautoka area. Furthermore, there is obvious complicity by at least some individuals at the Lautoka City Council in the forced labour of the detained sex workers, and the concomitant human rights abuses.

Well-known, high-profile and regular sex workers are those who are getting picked up by the military. According to Bree, the military 'assume' they are sex workers because they are hanging around 'hotspots' in Lautoka. Others point out that sex workers are known in the communities and villages that they live in, and that military personnel are part of those communities too:

We know each other because it's such a small place. In Lautoka three or four soldiers could be living around the neighbourhood – we know each other, they would grow up with you or you attend the same church. Them coming down to us to the street and trying to chase us off the street is quite new. (Maria)

The new dangers attached to being identified as a sex worker are reflected in the closure of one – highly successful and popular – program for sex workers run by an NGO. After the Crimes Decree came into force that particular service provider almost immediately ceased all targeted programs with sex workers, in part because they feared that the weekly meetings could provide:

an opportunity for police to come around and go 'we know that you guys are all sex workers, when we see you on the street we'll know that you're a sex worker so we'll pick you up' ... The police know they are sex workers and therefore see them in a corner dressed in drag and that's all they need to haul them off.

To sum up, although the female and transgender sex workers who had been detained by the military are older and street-hardened, a number of them were utterly traumatised by their experience of detention. Carrie stated, 'For the last 15 years I haven't come through an experience like what I've experienced on September [date deleted], 2010'. Lynette said that she had lost all belief that she had any rights or access to justice as she proclaimed:

From that night I know the law: They said that there were no more human rights, there were no law. (Lynette)

In Suva, there was less evidence of military activity focused on sex work, and the few isolated actions reported do not appear to be part of an organised program, nor do they implicate the army base itself in the same manner as do events in Lautoka. While a local community-based sex worker organisation said that its members 'have witnessed and have been told by other sex workers that the military take them to remote areas and leave them there, or take them to the sea and get them to swim out', none of their members have had interactions with military personnel themselves .

It is clear that the army is acting outside the law in detaining and abusing sex workers, and that the detention and punishment of the sex workers occurs without due process or regard for human rights. However, this military activity appears to be inspired by Section 231 of the Crimes Decree – and in particular the provision for arrest on suspicion. In each of the incidents the sex workers described, the detained sex workers were led to believe – on the basis of the soldiers' words and actions – that the law now allows for arrest on suspicion of intention to sell sex. This is a valid and understandable conclusion in the light of the recent tactic of picking up known sex workers who are present in

identified 'hotspots' regardless of their actual behaviour at the time.

Moreover, some soldiers did invoke the Crimes Decree and its terms in justification of their actions when they picked up sex workers. In Lautoka, where military personnel regularly engage in the enforcement of the 'Prostitution offences':

One of the soldiers, they said that the Crime Decree came into effect so, so you can't do this [stand on the street at night], it's not allowed. (*Magda*)

While the military invoke the law when they take sex workers into custody, they also threaten the sex workers with punishment way outside the terms of the law:

We were told that if we are going to be caught again, we will be taken to go and bath where the pigs always bath, at the pigsty. There are two punishments, if we are caught again we will be taken to the pigsty, after that if we're caught again we will be locked up in a container which contains the soldiers' shit, we will be locked inside, that is the third punishment. The fourth punishment, we will spend six years in jail and there won't be any court hearing. (*Susan*)

They didn't charge us, but they say if we will come there twice or three times they'll put us in prison. If not, they'll take us to this one church denomination eh. They'll take us to be part of that denomination. (*Betty*)

The detention and abuse of sex workers has certainly engendered fear in the community. Bree told us:

For me when this law came I didn't go to town for two months. I didn't go because I heard that some of my friends have been taken to the army camp and they put the cone on them. (*Bree*)

Changes in sex worker practice

Sex work is still driven by financial need in Fiji. A recent heightened fear of arrest, detention and physical abuse changes the way sex work is carried out. Sex workers worry about the army patrolling the streets and the effect it will have on their ability to feed their families. As Angie says: 'My perspective about this Crimes Decree is that for us when we stand there [on the street], we stand to look for our money for our bread and butter'. Along with

generating anxieties about income, the fear of arrest forces sex work to become more clandestine:

You have to be very cautious eh so that you are not seen and caught. So whatever you do, you do it in a way that no one sees it, that no one knows what you're doing. (*Bree*)

Doing sex work is now hidden and they don't take chances when they pick up clients... they are afraid of the place to meet their client and have contact by mobile phone. (*Catherine*)

Sex work becomes a more covert and isolated activity as opposed to the more public and collective endeavour that was characteristic of Fijian sex work in 2009. Now sex workers have less contact with one another. Bree said, 'It's mostly done now by phone contact ... it's now private, like it's hidden now'. As working from streets and bars becomes more perilous, sex workers move to new places. Even the motels are more difficult to work out of, and a number of sex workers have begun to work from home or in dark places:

The Crimes Decree is hard for us sex workers because sometimes we can't display ourselves nicely on the street. Like we are just frightened and we always hide, sometimes even when there's a lot of clients, when they go past we're hiding inside the bushes. (*Miranda*)

Samantha also talked about what she called the increase in 'undercover', by which she meant new, more secretive sex workers, who unlike the better networked and more experienced sex workers, 'are ashamed of using the condom ... Those are the type that don't use condom'.

A trend to more hidden and hard-to-reach sex workers is extremely problematic for HIV prevention as well as undermining other aspects of sex worker safety. The increasingly isolated nature of sex work makes sex workers less accessible to outreach, peer education and condom distribution services. There is also a diminishment of opportunity and motivation in the sex worker community for the sharing of resources and knowledge that was such a strong feature in the 2009 *Risky Business* research.

For the sex workers, financial pressures remain but the risks attached to sex work increase. Mary-Alice talks of some sex workers moving from sex work into burglary:

Before, when there was no Crime Decree the girls just move like this and like that and it's easy for them to hook a client. But now when this Crime Decree came, everything is difficult. That's why some of the girls nowadays do bling [burglary], they break in to houses and some do robbery. They do other things, which bring more problems than doing sex-work.

(*Mary-Alice*)

Disincentives to carrying condoms

While Part 13, Sections 230–231 of the Crimes Decree on 'Prostitution offences' does not mention carrying condoms as proof of soliciting, sex workers have reported that both the police and the army search the workers for condoms. As a consequence, many sex workers believe that condoms can be used as evidence of sex work. Certainly sex workers know from experience that carrying condoms provides a reason for agents of the law to harass them. Carrie says, 'Sometimes the police search our bag, if the condom is there the problem is there. The police say "What're you doing with the condoms?"'. A number of the sex workers raised the issue of a new reluctance to carry condoms to share around, because of the consequences of getting caught with them:

Before we used to carry heaps of condoms eh, you can carry four or five condoms with you. But now I've heard that a person is only allowed to take one condom. This has to, you know, broaden the risk. For a person to be caught with an extra condom [means] you are caught in the act. (*Bree*)

If we are seen carrying condoms we could be marked as prostitute. We have to be very smart with the law on why, on the grounds why are we carrying condoms. It's really hard for some of us who take out condoms, go and distribute condoms on the streets –and then being taken by the law and punished and be penalised for that. (*Magda*)

Changes in client practice

One of the major changes to the laws on sex work contained the 'Prostitution offences' section of the Crimes Decree, is the criminalisation of the client. In Fiji, this increased risk to clients has reduced sex workers' negotiating power – it has meant fewer regular clients, more competition amongst the sex workers for clients, and therefore also a lower fee and less income. Sex workers say that the approach taken by the military in Lautoka deters clients from using the services of any publicly identifiable and identified sex workers in particular. Some claim that clients now prefer younger

girls and new sex workers who are not so readily identifiable, in the belief that it will reduce their own risk of being apprehended as a client. Carrie claimed that clients 'are looking for Indian teenage girls especially'. Both clients and sex workers are seeking out new pick-up venues and arrangements.

Renee states that when sex workers are forced to abandon their usual working places because the police are chasing them away, 'we go home without money'. Desperation for cash reduces sex workers' negotiating power and empowers the client. As some explain:

Most of us are finding it really hard, so it's not like how it used to be with the agreement of price. It was always the girl giving her price. Now it's them, the client. (*Angie*)

I just go out in the day time and at night I relax, not like before. It's difficult, there's plenty of new girls and the clients are giving less money. (*Renee*)

Sex workers like Magda (an 18-year-old transgender) claim that the criminalisation of clients has caused, 'fluctuating clients, client problems, and decrease in the payment'. This includes a loss of regular clients due to fear of arrest. As Samantha says, 'the clients are scared too. And this has affected, I know, most of the sex-workers'. This is particularly true of those clients for whom being arrested would mean shame to themselves and their families:

They're a bit reluctant now because they are threatened by the thought of being caught by the military. Mostly the clients are either office holders or they know people, they are known, and they have families of their own and their families do not know that they come out to seek sex services. (*Mary-Alice*)

Sex workers contend that law enforcement personnel cannot identify the younger workers and those who are new to the trade, especially those who work from new sites, or are not yet widely recognised by the community as a sex worker, and therefore these sex workers are more attractive to clients. This situation increases competition between the older, more experienced sex workers and the younger or new ones. New and younger sex workers are also reluctant to be associated with more experienced and recognisable sex workers. This deters some sex workers from engaging in advocacy work. The evidence that military are targeting publicly identifiable sex workers in Lautoka deters young or new sex workers from associating with sex worker advocates, and

compels them to be more secretive about their identity as a sex worker.

The result is that the new sex workers do not get the benefit of the more experienced workers' knowledge about HIV prevention, access to resources, and other safety information. As Lynette states: 'There are plenty new girls coming on the street and we should teach them to use the condom because of the diseases that are coming nowadays'. Consequently:

some of the sex workers that are coming out now are not using the condoms. (*Mary-Alice*)

Less money – Less negotiation – Less condom use

There was a universal feeling that the price of sex work had dropped since February 2010, and that this was related specifically to the criminalisation of the client. Sex work in Fiji is driven by economic need, and the reductions in price and income have had an impact on the ability of workers to feed themselves and their children. Miranda stated, 'Before the Crimes Decree they used to pay good money but now they are paying less'. This is echoed by Maria:

When we go out we really need money, I mean as for me I'm a mum so my expenses are not, I mean when I go out to look for money it's not for me, I've got my kids to look after and stuff like that so my expenses are quite, you know it increases as well. Before [the Crimes Decree] we used to have really nice clients but what I'm saying is that the clients are getting lesser in numbers.

The criminalisation of the client has weakened the sex workers' ability to negotiate both price and safety before getting into a car with a potential client.

Before when we used to tell the clients our price they always say 'hey that's too much' but nowadays they say 'okay just get in'. They don't want to make it difficult for us because they know if they'll get caught they will also be arrested, so they don't wait for too long. They just come and we get in, then we have to talk again. (*Angie*)

Sex workers are also reluctant to enter into negotiations 'because the client could be under cover police'. According to sex workers in one of the community-based organisations, clients also have a new awareness of sex worker vulnerability to prosecution and are using it to their advantage if they don't want to pay, or to force sex. The organisation described an incident with one of their members:

[She] picked up this guy and they planned to go to a motel. He drove them past the motel and said that he was the police and that sex work was illegal and that he was going to do what he liked with the sex worker. The sex worker had to jump out of the car when it was slowing down.

The sex workers' reduced capacity to engage in negotiations with clients has implications not just for price and payment but also for condom use. Sex workers have less opportunity to convince or educate their clients about the value of condoms and are under more financial pressure to accede to demand for sex without condoms. There has also been an increase in troublesome or violent clients:

[The criminalisation of the client] has changed the way we negotiate prices because now we get fewer clients. If we're lucky to have a client tonight then we become so desperate to the point where whatever the price is offered we take it, as long as we get some money by the end of the night...Because there is not many clients coming in, we take what we can get. Now that they are decreasing in numbers we cannot really be bargaining with them too much. (*Maria*)

There's been a lot of changes. We have been also ill-treated by most of the clients cause if we wouldn't agree on the price that they are giving then they would just tell us 'get off' or you know, I can find another person. Now they will just say that they can take us over to the court and to the police and tell the police that we were trying to solicit sex to them on the exchange of cash. Some clients nowadays are very conniving and cunning because of the new Decree. (*Angie*)

Impact on NGO response

The list of 'Prostitution offences' contained in the Crimes Decree had an immediate effect on those NGOs involved in community-based HIV prevention among sex workers. Eighteen months on, this effect is shaping up to be a permanent one.

While there was little in the letter of the law that would definitely make those providing condoms and other resources to sex workers liable to charges of aiding or promoting prostitution, NGOs have adopted a position of complete risk aversion. The targeted services and programs previously provided look to have been lost permanently.

From the sex workers' point of view there have been two major changes: cessation of outreach services including condom distribution; and the closure of in-house services, drop-in centres and regular meetings. This was summed up by one program manager as the 'reorientation of services' away from sex worker specific and HIV prevention, to alternate income generation and work skills training. Consequently, there are now no regular outreach condom suppliers in the main towns in Fiji. The single NGO that had field workers regularly conducting outreach said that they ceased these activities because of the Decree and the policing of it. Specifically, the NGO pointed to police and military raids on the streets that they claimed were putting their condom distributors at risk of arrest or detainment.

Cessation of condom distribution

The end of the only regular targeted sex worker outreach and condom distribution program was the direct result of an NGO response to the enactment of the Decree, and their reading of the section on 'Prostitution offences'. Across Fiji a number of the workers in this study claimed that the supplies of condoms had dried up. Magda described a change from when 'condoms were in abundance' to now when she had to come into town during the day to pick them up because 'condoms were no longer distributed'. Others concurred:

Before [February 2010] it was easy for them to supply the condoms to those doing the distribution in the nightclubs and on the streets, but nowadays it's difficult and we have to go somewhere else to buy the condoms. (*Mary-Alice*)

Through this Decree it has made it hard to get your ration of condoms. It has changed the distribution of condoms. Like it affects the flow of condoms to us. (*Bree*)

[The NGO] used to give out condoms to us but right now there's no one coming out, no one coming out with the peer education information to give out condoms. (*Maria*)

Bree also felt that the NGOs had withdrawn from sex workers since the Decree, 'I think certain organisations ignored us when this decree happened. [They would be] Taking too big a risk, being with us'.

The lack of access to HIV prevention programs and activities targeted specifically at sex workers increases the vulnerability of new sex workers in particular. The effect of the loss of street distribution of condoms, in-house HIV and safety education services, and

outreach educators previously provided by the NGO can be expected to be compounded by the dearth of interaction with advocates and reduced opportunities for engagement with more experienced and condom-positive sex workers, described earlier.

While the sex worker organisations themselves have not ceased supplying condoms to their members, their resources for conducting regular outreach activities are limited. Even though they make condoms available for pick up in bulk, they express concern that possession of condoms in bulk may make their members vulnerable to the attention of agents of the law. Now they undertake this supply with caution:

When we have a supply we give the supply to our sex worker members and we tell them to be careful... We trust our sex workers to know what to do. We have had a lot of discussions on this.

Changes in NGO orientation

The Crimes Decree does not ban the distribution of condoms, nor are there any provisions which would specifically prohibit peer outreach or HIV programs. However, the major NGO provider of sex worker services has ceased its targeted sex worker programs and activities, and stopped holding meetings for a sex worker support group:

You know we have really had to change the whole program, which has gone from outreach and condom distribution and information giving on welfare and human rights and all that type of thing. Funding has been put over to income generation education. There's no outreach. (*NGO program manager*)

This was explained on the basis that the sex worker project was only one of a number of projects undertaken by that NGO. It was further elaborated that as the legal status of working with sex workers was uncertain, the NGO did not want to risk jeopardising other programs:

We've actually targeted sex workers, we've really focused on that but with the law getting in the way our staff have been put at risk, the organisation has been put at risk in terms of supporting illegal acts by giving them condoms – encouraging them to have sex in the eyes of some. A lot of our programs are done in conjunction with Government Departments. [This] one group was putting all the other services at risk. And our field officers were jumping into drains with the sex workers when the police vehicles drive past, because they don't want to be seen.

As a result, that NGO no longer provides HIV prevention education to a sex worker group nor does it conduct outreach services. Other sex worker specific social services have also been lost. In the past this program provided not only counselling, advice services and workshops for sex workers in a safe environment, but also supported trips to the STI testing services, social activities, wider community engagement with sex workers and police liaison work.

Sex workers also noted that the NGO had mainstreamed the services they offered since the Decree, that they had been reoriented towards job training and counselling, and that there was nothing now tailored for, or available exclusively to, sex workers. Maria describes this change:

There's this organisation that sort of looks after us, and before we used to have a weekly day where we get to meet up at the centre and on those weekly days we're given our condoms. But ever since the Decree, the organisation has also sort of changed the way they are, what shall I say – approaching us. Now it's more like when you come in then you get your names written down and you become a client for [general services] instead of just registering in as a sex worker.

Bree believed that the NGO felt constrained by the provisions of the Decree, saying: 'it stood still for once and couldn't move eh.' In the face of uncertainty, its response was to be risk averse. Sex workers have noticed the difference that the NGO reorientation of services *away* from education and HIV prevention has made to condom access on the streets at night:

For one month now no one has come to us. No one is giving out condoms, and the young ones don't even know about it. (*Mona*)

Mona goes on to identify who is the most affected:

We know how to look after ourselves because of the training that we already had. But the new ones, they don't know and they have nowhere to go, there is nowhere for them to go to find out or no one's gonna tell them.

Access to sexual health services

As a vulnerable population, it is critical that sex workers are engaged by and encouraged to use sexual health services. However, clinical services for sex workers are only offered by mainstream clinics. There are no targeted services for sex workers at Hub Centres and STI and sexual health clinics, nor are there currently any special efforts to encourage this important population to test. Service providers say that they are sure that sex workers do use their services, but they do not document any use, nor do they monitor levels of use (nor would sex workers feel safe if they did) so cannot be sure of any changes. HIV and STI testing, like many other HIV prevention efforts, rely absolutely on voluntary accessing of prevention and testing services. Gaining the confidence and trust of sex workers is a crucial task if these services are to be effective – and this task is made more difficult by provisions of the Decree which are perceived to be, and experienced as, more punitive.

Some workers stated that their ability to access services had been eroded since February 2010. Samantha said, 'Before the Crimes Decree I used to visit the clinics regularly. When it came effective, I've stopped'. Her statement is reinforced by the claims of a sex worker group who reported that their members:

do not use the government health centre because of the snide remarks and bad treatment from the staff. Most of the sex workers use private doctors for safety and confidentiality of identity.

Some sex workers have noticed more stigma when they access services:

When this Crime Decree came into effect, it's like sex workers did not want to go and have their check-up. It's like they made us known to those working in the clinic. When we come outside we hear them saying 'that one is a sex-worker' like that. (*Maria*)

Interviewees also described how the loss of supportive and trusted staff, as a result of the project closures, affected sex worker use of STI clinics:

There is no blood testing anymore. When [the NGO project officer] was there, nearly everyone was getting testing. But now it's embarrassing [to go to the clinic]. (*Mona*)

Sex worker community

The targeting and mistreatment of sex workers by army personnel in particular has created a dispersing effect within the sex worker community because of the fears of being identified. This dispersal not only makes service providers' access to sex workers more difficult, but it also decreases access of sex worker peers and advocates to their constituents.

HIV prevention activities are being adversely affected by the reduced cooperation between sex workers. Sex worker groups do still exist, but with little support and dwindling resources they struggle to organise. Formal registration is a hurdle for sex worker organisations. Consequently, the one organisation that seeks to be a nationally representative body operates under the umbrella of a larger, separate, organisation which severely limits its autonomy and self-determination. Furthermore, at least one other emerging sex worker organisation has decided not to engage in advocacy activities at this time, citing a new and heightened sense of vulnerability because of changes to the law, and the evidence of an altered legal environment that they see around them.

The sex worker community organisations have been more hampered in their advocacy work since the Decree. One group commented, 'When we go to meetings or do advocacy work, we are very careful on the words we use. Depending on who is the audience, we make sure that we use the words "sex work/sex worker" with caution'.

Sex workers themselves noted new limits on their ability to associate and speak freely:

I believe the Crimes Decree that came into effect has also affected the running of the network. When we want to have a meeting the police would come and they would want to know about the things we talked about during the meeting. They would want to know the reason for the workshop or the training we are doing. (*Mary-Alice*)

One group contended that while it was imperative under the new conditions that there are organisations to look after and support sex workers, the organisations themselves must always ensure that sex workers' identities are safeguarded: 'We put the safety of our SW members first above everything else'. This means that they are very careful when they conduct workshops that there are no words like 'sex work' on PowerPoint slides, notes or posters because they are 'worried that our workshops could be raided by the Police and the identity of our members known'.

When these grassroots community organisations are embattled and undermined, valuable and hard-earned community capital is lost. In the past, cooperation between sex workers has been a major resource for HIV prevention among sex workers in Fiji, facilitating the transfer of knowledge, fostering a culture of safe sex attitudes, providing information about access to resources, and enabling effective condom distribution. With no new input from outside the local sex work community to provide resources and information on their programs, the effort is totally reliant on the resources that local sex workers themselves are able to provide one another. This crucial resource is rapidly being eroded.

Sex workers fighting for their rights

It must be stated that sex workers are not simply victims of punitive law, bad enforcement practices, or military crackdowns. In the interviews they asserted their agency in a number of ways, such as finding new ways to carry out sex work, or by moving to less-known spots. Most of the sex workers interviewed had no intention of giving up sex work as it remained the most viable way of supporting themselves and their families. They were also staunch in their belief that the treatment of sex workers is unjust and that both the law and discriminatory or stigmatising practices are worth contesting:

Before our discussion ends I just want to say this to my friends, we fight on our rights. I want to tell my friends that if you have been arrested by the police fight for your rights don't give up, fight for it because if you'll give up they'll put you down. (*Charlotte*)

This Decree has made the [sex worker] network stronger in the way it's moving now. Now it's trying to look for options to better the life of sex workers in Fiji. (*Bree*)

I hope the next election will change everything in this country because I know most of us SW have contributed to the economy and I wish in future that some NGOs and other sex workers would fight for their rights and seek help from people out there in the community and that's all, thank you. (*Carrie*)

DISCUSSION

In summary, despite very few actual prosecutions of sex workers, there have been a number of detrimental effects on HIV prevention in Fiji since the enactment of the Crimes Decree. These include:

A heightened fear of brutality and harassment from law enforcement agents has reduced sex worker opportunity for negotiation with clients, including condom negotiation. Concern about the risk of HIV infection is displaced by other more immediate concerns.

Some of the tactics used by soldiers who are 'policing' sex work, such as the public exposure of sex workers' identities, has served to reduce the negotiating power of a sector of sex workers. It has also effected changes to the ways that sex work is conducted. Sex workers have begun to operate more covertly and secretly. New sex workers work from new sites, are more isolated and less accessible to peer, NGO and government HIV prevention service providers.

Data collected in 2009 showed that client resistance presented a consistent barrier to condom use for sex workers who were otherwise strongly motivated to use condoms. The criminalisation of clients has reduced the ability of sex workers to negotiate over the terms of the transaction and has created more pressure to accept clients' terms. Criminalisation of clients has also put more experienced and identifiable sex workers at a competitive disadvantage. Fear of losing a client is an incentive to comply with a client's wishes for sex without a condom.

A culture of cooperation and sharing is one of the greatest HIV prevention resources within the Fijian sex work community.²⁷ The targeting of 'hotspots', the detentions and the mistreatment of those who have been identified in the past as sex workers divides the sex worker community, reducing the opportunity and the motivation for cooperation. New and young sex workers operate from new sites and are not reached by the informal condom distribution networks that remain.

Sex worker support organisations and networks foster cooperation and often engage directly in HIV prevention activities, including raising community and police awareness. In the past, sex worker organisations have improved sex worker access to sexual health and testing services. NGO nervousness as a result of the policing of sex workers and uncertainty about the implications of the Decree have resulted in the closure of programs, withdrawal of support and services, and the cessation

of information and HIV prevention workshops for sex workers.

Sex worker sense of vulnerability has resulted in a reluctance to engage in advocacy. Most sex worker organisations are feeling more embattled, struggling with the demands of organisation and registration on their limited resources, and are reducing their activities. Targeting of recognisable sex workers has made new sex workers reluctant to associate with more experienced sex workers and advocates.

Most commonly sex workers in Fiji learn about condoms and HIV prevention from other sex workers. In 2009, other sex workers were also an important source of condoms. Sex worker community has been undermined. Carrying a large amount of condoms and providing outreach services in general are considered to be more risky and are no longer undertaken on any regular basis.

Access to sexual health services such as HIV and STI testing and treatment has been compromised. The few programs actively encouraging and facilitating access have ceased, and now only mainstream services are available. Publicity around more punitive laws, along with experiences of sex workers themselves, have elevated sex worker fear of authorities and any potential documentation of their identity as sex workers.

Furthermore, the human rights of sex workers are repeatedly being denied when they are detained and held overnight in military compounds, humiliated, physically and often sexually abused and put to work the next day – all without legal process. This important impact cannot be documented by any means other than the testimony of sex workers who have been subject to it. Many are understandably reluctant to speak out. These experiences convince sex workers that they do not have access to protections that should usually be afforded them by the justice system. The risk of such detentions are experienced as a more immediate and pressing risk than other safety concerns.

Thus both the criminalisation of clients and the practices of law enforcement can be seen to have been detrimental to HIV prevention among sex workers in Fiji. The new provisions for the inclusion of soliciting via mobile phone or internet as an offence have not deterred sex workers from adopting these methods. Indeed, reports indicate that some sex workers are relying more on these technologies as they perceive that physical visibility is

riskier for them. This may make the internet and texting more viable media for the dissemination of HIV prevention and safety information as well as for developing a sex worker community. However, mobile phones and internet can never distribute condoms. Furthermore, it would be dangerous to promote sex worker HIV prevention related activities through these media in any way that might leave the workers vulnerable to criminal investigation and charges.

It is evident from this data that information circulating about the laws that affect sex work, contained in the Crimes Decree, is sometimes inaccurate or misleading. Interview data do show that sex workers are aware that the client has now been criminalised. This fact aside, the data indicate that sex workers themselves do not have a clear picture of the 'Prostitution offences' contained in Part 13. It is not unusual for those outside the legal profession to have a very imprecise understanding of the nuances of any law – the ramifications of which are contested and determined through the court. In the case of the provisions of Part 13, such cases and arguments have not taken place. Sex workers, like the lay populace, might be expected to have garnered most of their information about the Crimes Decree from the news media and wider public discussions. Newspaper reports about the new laws on sex work identified new powers and harsher laws against sex work. In addition, both key informant advice and interview data show that some NGOs and one, previously very important, service provider are also wary of the implications of 'Prostitution offences' contained in the Decree. An approach of risk aversion has resulted in the closure of targeted HIV prevention, condom and support programs for sex workers.

Sex workers report that military policing of sex workers and known sex work 'hotspots' began after February 2010. Data from sex workers indicate that, over the past year, some sectors of the military either misunderstand or knowingly misrepresent their powers in relation to the policing and enforcing of new laws relating to sex work. Interviews with military personnel might help to confirm or offer alternate explanations of these actions; however, the researchers had no prior permission to interview soldiers.

Beliefs about the newly punitive nature of the law have not only discouraged sex workers from carrying enough condoms to share, but have resulted in the closure of HIV prevention and condom distribution programs by some NGO groups, as well as impeding the ability of other groups to engage in activities that would be consistent with the creation of an enabling environment necessary for HIV prevention to be effective. Therefore there is a need for the dissemination of accurate information through the sex work community and also among NGOs

and service providers. It is imperative that any such dissemination also acknowledge and take account of the realities of sex worker treatment by some authorities. It would be both unwarranted and dangerous to assume that sex workers' understanding of the letter of the law is all that is required for sex workers to gain access to the protection of the law in practice.

Inappropriate use of arrest and detention by military authorities, and to a lesser extent police harassment, does occur. This fuels the fears and anxieties of sex workers and their organisations about their relationship to the law, and drives some of the changes to their practice. Therefore it is also necessary to ensure that both the police and the military are fully conversant with the provisions of the Crimes Decree, and in particular the limitations of their powers as agents of law enforcement.

The police do not appear to have changed their approach in the manner which was initially feared. That there are so few charges going to court suggests that the threshold of evidence may well be higher. Despite this, the Decree still provides for arrests on the grounds of reasonable suspicion. This may account for sex workers' experiences of being held in the police cells overnight and released in the morning.

The involvement of sectors of the military in policing sex work is more worrying, and has resulted in grave breaches of human rights as well as having a negative impact on important HIV prevention activities. However, it is also clear that these abuses are not perpetrated by military personnel across the country but are largely restricted to the Lautoka area. Reports of abuses have also emerged from the Suva area, but they are more isolated, do not take place on an army base or barracks grounds, and thus appear likely to be attributable to individual actions. In Labasa, there were no reports of such abuses by the military, although military personnel do police the streets.

In addition, the vagaries of the ways that the provisions of the Decree are invoked and acted on, indicate that the military in different areas have developed their own approaches to enforcement. This leaves the situation open to corruption and to abusive behaviour by rogue individuals and/or sectors of the military. In the Lautoka area the complicity of the local council in the illegal detentions and forced labour of sex workers is also concerning.

Detentions, torture and other abuses of sex workers, including forced labour, constitute clear abuses of their human rights. Human rights also encompass access to necessary health services and rights to representation. These too have been increasingly eroded in the period since the 2009 data collection. It could be argued in

respect to sex worker rights to HIV prevention services and resources, that the new HIV Decree will, in theory, override all other law. However, it is practice rather than theory which has the impact on peoples' lives – as evidenced by the data gathered for this report.

Indeed, under close scrutiny, many of the 'Prostitution offences' detailed in the Crimes Decree may not constitute massive changes to the law in Fiji as it concerns sex work. However, the new criminalisation of clients, the reception and interpretation of the provisions of the Decree by NGO service providers and by sex worker organisations, and the response by some law enforcers in the military who have taken the laws as license to detain, torture, abuse and force the labour of people who they know to be sex workers, have most certainly had a dramatic impact, and a totally deleterious effect on HIV prevention.

A law that is variously or controversially interpreted may be proven through one or two good test cases, but this doesn't happen when cases never come to court. In such a situation, the powers endowed by the law are, in effect, as wide as agents of law enforcement choose to interpret them to be. As few charges have been laid against sex workers since February 2010 and even fewer have been through the court system, there has been little opportunity to test or prove the new laws regarding sex work. Sex worker fears about the ramifications of the Decree are based on wider community, media, NGO and military understandings and interpretations of the new laws, as well as the sex workers' own experiences.

Sex workers' loss of human rights and subjection to sexual and physical abuse is not a phenomenon limited to Fiji; indeed it has been documented across Asia and the Pacific in association with criminalisation.² However, as the data from this research shows, it is not simply the impact of the written law which is of concern, but that of the wider legal environment: the law enforcement practices of some military personnel; the lack of documentation and address of human rights violations; problems with access to legal aid, and problematic (extra-judicial and community) interpretations and understandings of the law.

Effective HIV prevention efforts and the human rights of sex workers are inextricably intertwined. While revision of the law is a necessary start, the law in isolation will not be sufficient to protect this or any other vulnerable population. Real protection requires a change in the hearts and minds of those who have power; both political power and power in the day-to-day operation of society – not just law-makers and the courts, but also law enforcers, collectively and individually, as well as all others whose decisions affect so profoundly the rights of sex workers.

'The criminal law is not a neutral or just form of HIV prevention. We believe that criminal law is socially organized and that it operates as a mandated course of action for politicians, the police, the judiciary, the courts, as well as associated media and public opinion.' (Worth, Patton, McGehee, 2005 p.15)⁴⁰

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