

*The Gabriela Leite Act:
Creating Policies to Protect the Health of Sex Workers in Brazil*

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Abstract: In Brazil, prostitution and sex work have been decriminalized since 1830, but current laws, along with Brazil's Penal Code, restrict sex work in ways that often harm sex workers. Gabriela Leite, a university student turned sex worker, spent the last twenty years of her life advocating for change and better conditions for sex workers in Brazil. Leite ignited a movement, which sought to reform legislation surrounding sex work in Brazil. Together with Jean Wyllys, a Brazilian federal deputy representing Rio de Janeiro, the movement's work culminated in the Gabriela Leite Act. The bill aimed to make changes to the Brazilian Penal Code that would clearly differentiate between sex work and sexual exploitation and allow for the subsequent regulation of sex work. This case examines whether the proposed changes would actually improve the lives and health of sex workers and whether or not the sex worker movement should actually support the bill.

Introduction

On October 10, 2013 in Rio de Janeiro, Gabriela Leite lost her fight against cancer at the age of sixty-two. The next day, Brazilian periodicals featured obituaries commemorating her life and passionate work as an activist. Like most obituaries, these articles included mentions of the loved ones the deceased had left behind. Although Leite was a wife, mother, grandmother, and friend, these articles hardly mentioned her immediate relations. Instead, Brazilian news sources chose to write about a different group of people that Leite impacted during her life and would be deeply affected by her death: Brazil's sex worker population (O Globo 2013; Revista Viração 2013; Hailer 2014).¹

At the age of twenty-two, Gabriela Leite chose to drop out of her sociology degree program at the University of São Paulo, one of Brazil's most prestigious institutions of higher learning, and become a sex worker, or as she proudly dubbed herself, a *puta* (Revista Viração 2013; Hailer 2014). As her career progressed, Leite became an organizer and leader among sex workers. In 1987, Leite organized the first national meeting of sex workers in Brazil, and, over the next few years, she also founded *Beijo da Rua*, a newspaper for sex workers and their allies

¹ The term sex worker is used here to describe any person above the age of 18 who chooses of their own volition to exchange a sexual act for payment. In Brazil, sex work is legal and sex worker is recognized as an official occupation. The more common term, prostitute, is not used because it often describes those who sell sex who are too young to consent, and those who are victims of coercion or trafficking. Sex workers encompass only those who are of legally adult status and freely consent to the exchange of payment for sexual acts.

and began to work with the Brazilian Ministry of Health to combat the spreading HIV/AIDS epidemic (Um Beijo para Gabriela 2016a).

In 1992, while sex workers panicked about the growing HIV/AIDS epidemic in Brazil, Leite also founded Davida, the oldest of the thirty organizations that now constitute the Brazilian National Network of Prostitutes (Leite and Murray 2010, 59). The initial goals of the organization were to make the voices of sex workers heard, include sex workers in discussions about public policy, reduce sex workers' vulnerability to violence and disease, and fight the stigma associated with working in the sex industry. Under Leite's leadership, Davida emerged at the forefront of the sex worker rights movement, and the organization was instrumental in the movement's subsequent growth. Some of Davida's efforts even made international news, including Davida's clothing line, Daspu, short for *das putas*, or "of the whores." Daspu has hosted twenty-nine fashion shows in Rio de Janeiro since its creation in 2005, in which it has showcased collections of day- and nightwear designed through collaborations between sex workers and fashion designers (Daspu 2014). The clothing line gained national attention when *O Globo*, one of Brazil's most popular news sources, showed a photo of one of Daspu's models, who was a sex worker, opposite a picture of supermodel Gisele Bündchen. The model felt so empowered that she decided to disclose her HIV status, becoming the first sex worker in Brazil to publicly announce an HIV-positive status (Leite and Murray 2010, 64).

Aside from her work with Davida, Leite had made headlines when she ran for a seat in Brazil's National Congress in 2010, which filmmaker Laura Murray chronicled in the award-winning documentary, *Um Beijo para Gabriela*, or "A Kiss for Gabriella." While Leite ultimately did not win the race, the documentary stirred up international support and admiration for Leite and her cause (Um Beijo para Gabriela 2016a). After Leite's death in 2013, Leite's supporters, along with the broader sex worker population, questioned the future of the movement now that the founder of the Brazilian sex workers' rights movement was no longer there to lead it. Those who worried that the movement would lose steam needed to look no further than their television screens to relieve their fears. Jean Wyllys, a federal deputy of the Socialism and Liberty Party representing Rio de Janeiro in the National Congress of Brazil, proposed a bill in 2012 that aimed to carry on the fight for sex worker rights that Gabriela Leite started decades ago. After Leite's death, the bill, which proposed regulations for and the reform of sex work, was aptly dubbed *Projeto de Lei Gabriela Leite*, or The Gabriela Leite Act (Mader 2013). Sex workers felt that their concerns were finally being heard (Um Beijo para Gabriela 2016a). Yet questions remained as to whether this act would bring about positive change for sex workers and whether or not sex workers should actually support the proposal.

Sex Work in Brazil

The regulation of sex work in Brazil began shortly after its independence in the nineteenth century. While the 1830 Brazilian Penal Code excluded prostitution and the sale of sexual acts on its list of crimes, the 1890 version of the Penal Code listed pimping – defined as anyone who administered relations between a sex worker and a client – as an illegal activity (Sexuality Policy Watch 2013; Barshad 2014). This law applied to any third party aside from the sex worker and the solicitor and could even extend to someone like a sex worker's bodyguard or driver. Brazil's current Penal Code also lists maintaining a "house of prostitution" as a criminal activity, which it defines as anywhere where sexual exploitation occurs rather than anywhere where the sale of sexual acts occurs. This language not only criminalizes organized houses of prostitution but also equates prostitution with sexual exploitation (Wyllys 2012). Despite these

restrictions, the Brazilian Classification of Occupations included sex work on its list in 2002, thereby recognizing sex work as an official occupation in Brazil and allowing sex workers access to social security (Sexuality Policy Watch 2013; Ruvolo 2014). The policies regulating sex work in Brazil were thus often unclear or contradictory.

Furthermore, even though lawmakers designed these regulations to protect sex workers and prevent their exploitation, in practice the regulations put sex workers in dangerous situations. According to the co-chair of Sexuality Policy Watch, Sonia Corrêa, many Brazilian politicians see neither criminalizing nor regulating sex work as a way for the law to remain neutral towards the morally-charged issue of the legal sale of sex. However, sex workers claimed that this harmed them because of how ambiguously the laws could be interpreted and because of the ill-defined line between legal and illegal sex work (Sexuality Policy Watch 2013). This grey area of legality left sex workers vulnerable to various health risks, especially violence and disease.

As of 2013, Brazil's regulations surrounding sex work negatively affected the health of sex workers in both explicit and subtle ways. The most explicit way the laws impacted sex workers was by geographically limiting where sex workers could work. Since brothels, escort services, and other methods of organizing the sex industry were illegal according to the Brazilian Penal Code, legal sex work was often limited to the street. Street prostitution differs greatly from what is known as "indoor prostitution," or work in a brothel or through a call/escort service. Multiple studies show that sex workers who work on the street are more likely to experience violence, with some studies indicating that as much as thirty-seven percent of street-based sex workers had experienced sexual violence. These studies also demonstrated similarly high rates of robbery and assault of street-based sex workers (Weitzer 2007, 29). This physical vulnerability to violence also leads society to victimize sex workers. Street-based sex workers are often perceived as abuse victims, drug addicts, and runaways who sell sex as a matter of survival. This perception is reflected in the words of many scholars, journalists, and politicians. In articles and speeches, authors often do not differentiate between underage victims of sexual exploitation and adult sex workers. Illustrative of this is a 2010 article from the BBC, entitled "Brazil's Sex Tourism Boom," which describes the sexual abuse and exploitation of "underage prostitutes" without a single quote from any adult sex worker (Rogers 2010). The promotion of these stereotypes leads to viewing sex workers as victims and strips them of their own autonomy and voice (Weitzer 2007). When society looks at sex workers as victims instead of people making a conscious choice, it socially isolates sex workers and leads to further health consequences.

The subtle implications of Brazil's legislation and policies were much more expansive than the explicit effect of simply limiting where sex workers could work. The social marginalization that many sex workers experienced caused serious health consequences. The stigma and negative stereotypes that are associated with sex work, especially in a mostly Catholic country like Brazil, can be severe. In the past, the stigma itself has led to violence and physical harm enacted on a person simply because of their occupation, such as the case of a woman who was publicly assaulted in Rio de Janeiro because a group of young men suspected her to be a sex worker (Leite and Murray 2010). Sex workers also feared police violence, especially with the preparations for the 2014 FIFA World Cup in twelve cities across the country and the 2016 Olympic Games in Rio de Janeiro. For example, in the months leading up to the 2014 FIFA World Cup, two separate violent police raids occurred in Niterói, a small city just ten miles outside Rio de Janeiro, in an attempt to "clean up" the city. Both raids occurred in office buildings where sex workers legally rented offices, the first resulting in 11 sex workers being sent to Rio's maximum-security prison, and the second leading to 100 arrests of sex workers,

many of whom reported that the officers committed robbery, assault, and rape during the raid (Ruvolo 2014). Other studies on street sex workers in Rio de Janeiro found that this type of violence, as well as the fear of violence, is negatively correlated with sex workers' condom usage and ability to negotiate condom usage with clients, leaving sex workers who have been exposed to violence at a higher risk of contracting a sexually transmitted infection (STI) (Kerrigan et al. 2008)

Studies also cite social marginalization and fear of stigma as a primary reason for sex workers' hesitation to disclose their profession. This stigma is not only associated with higher rates of STIs and disease but also as part of the reason why sex workers hide their occupation from their friends, loved ones, and health care providers, which creates barriers to accessing the mental and physical support they need. Sex workers—especially those who work on the street—often lack community support systems. Studies in both Brazil and India have linked a lack of community with less consistent sexual health practices, such as a hesitancy to use condoms (Kerrigan et al. 2008).

Sex workers also claimed that discrimination from doctors and healthcare workers impeded their access to healthcare by making them feel scared and ashamed of their jobs and reluctant to disclose their profession. In a study conducted in the cities of São Paulo and Belo Horizonte in 2003, researchers found that when women did not disclose their profession to their doctors, they did not receive medical attention suited to the specific occupational health risks of being a sex worker. One sex worker in São Paulo said that even health care workers “treat[ed] us as diseases,” reflecting the common belief that sex workers are vectors of STIs (Chacham et al. 2007, 115). Sex workers who did not consult with medical professionals often practiced harmful self-treatments such as douching, the continuous use of hormonal contraceptives, using two condoms at once, and using unsafe lubricants like hair conditioner, baby oil, or vaginal cream. Cisgender female sex workers also often used unsafe methods to block menstruation so they could continue working. Many used cotton, sponges, and even mattress stuffing to keep from bleeding, which caused vaginal infection, pelvic inflammatory disease, and even resulted in hysterectomies in some cases (Chacham et al. 2007).

While discrimination against sex workers is still very common, the Brazilian government has advocated for workers and their health. Since the onset of the HIV/AIDS epidemic in the early 1980s, the Brazilian government has collaborated with sex workers to fight the spread of the disease. With the help of Gabriela Leite, the Brazilian Ministry of Health created a campaign called *Maria sem Vergonha*, or “Maria Without Shame,” which utilized the tag line “*Sem vergonha, garota. Você tem profissão.*” or “Without shame, girl. You have a profession” (Leite and Murray 2010, 65). The goal of the project was to increase knowledge about HIV/AIDS and decrease shame and stigma attached to sex work in order to improve and maintain the health of female sex workers and their clients. The Brazilian government showed support again, when in 2005, it rejected US\$40 million in HIV prevention funds that USAID had offered. Brazil rejected the USAID offer because it refused to adopt the anti-prostitution pledge the United States required to receive funds. While Leite, Davida, and the Brazilian Network of Prostitutes commended the Brazilian government on their actions, all three maintained that this was not enough to reduce the immense stigma and discrimination Brazilian sex workers still faced on a consistent basis.

The Gabriela Leite Act (Projeto de Lei Gabriela Leite)

Like sex workers, Federal Deputy Jean Wyllys was familiar with facing discrimination and stigma. As the second openly-gay representative in the Brazilian National Congress and the first openly-gay representative to actually support LGBTQ rights, Wyllys often faced discrimination because of his sexuality and his liberal views. His work in the Brazilian National Congress and his 2014 reelection campaign both focused on promoting equality and justice for all Brazilians, including sex workers. As part of his work, Wyllys sponsored the Gabriela Leite Act, aiming to improve the lives of sex workers and create a law that used clear language to differentiate between sex work and any form of sexual exploitation, including human trafficking and underage sexual exploitation.

What Jean Wyllys proposed in the Gabriela Leite Act is simple and straightforward. Brazilian laws and the Penal Code reflected two assumptions about sex work. First, the laws assumed that all intermediaries or people involved in the sale of sex, aside from the sex worker and buyer, were pimps exploiting sex workers. Second, they assumed that houses of prostitution, or brothels, were tools of coercion that take away sex workers' autonomy and led to sexual exploitation (Sexuality Policy Watch 2013). While the law viewed intermediaries, such as brothel owners, security guards, or managers of escort services, and houses of prostitution or brothels, as inherently coercive and exploitive, the proposed bill challenged those assumptions and instead looked at sex work as a conscious choice that should be protected.

Rather than outlawing brothels and intermediaries, the Gabriela Leite Act specifically outlawed sexual exploitation and trafficking. The bill clearly stated that sexual services must be provided by adults eighteen years of age or older with the mental capacity to make their own decisions. The bill also stated that this person must agree to provide the sexual service and that the service is non-transferable, effectively outlawing pimping and sexual exploitation without outlawing intermediaries. The bill went on to ban sexual exploitation, which it defined as including, but not limited to, taking all or more than fifty percent of a worker's wages earned through sexual services, not paying someone for sexual services, or using threats or violence to force someone to provide sexual services (Wyllys 2012). Unlike previous laws, the Gabriela Leite Act included provisions allowing sex workers to provide sexual services both "as an autonomous worker" or "collectively in a cooperative" (Wyllys 2012). The bill also promoted the removal of statutes about pimping and brothels from the Penal Code and replacement with articles outlawing ownership of a brothel where sexual exploitation occurs, participating in or profiting from sexual exploitation, and dislocating or facilitating the dislocation of someone for the purpose of sexual exploitation either within Brazil or internationally (Wyllys 2012).

Sex Work Policies in Other Countries

While many sex worker activists and lawmakers, including Wyllys and the Brazilian Network of Prostitutes, argued that Brazil's laws concerning sex work needed reform, the question remained if the Gabriela Leite Act was the right way to go about creating that change. The laws of Sweden, the Netherlands, and New Zealand provide insight into the answer to this question. In recent decades, all three countries altered their policies on sex work, with Sweden moving towards the criminalization of sex work, the Netherlands moving towards the regulation of sex work, and New Zealand moving towards the legalization of sex work (Goodyear and Weitzer 2011, 16). These three countries, while unique from Brazil culturally, geographically, and economically, present the possible outcomes of changing policies surrounding sex work.

In Sweden, the purchase and sale of sex were both legal until 1998 when the Swedish Parliament voted to criminalize the purchase of sex against the opposition of the police, LGBT rights groups, the sex education association, and other political groups. Feminist groups in Sweden and many members of parliament saw the criminalization of the purchase of sex as an important step in the fight against violence against women, even though as of 2011, no solicitors had been sentenced to jail time in Sweden. Many political scientists claim the law is more symbolic than effective and claim that the law actually further marginalizes sex workers by forcing them to continue their work in the streets or over the Internet instead of indoors (Goodyear and Weitzer 2011, 20-24).²

In the Netherlands, sex work has been legal for several decades but has operated under few regulations and loosely-enforced restrictions. While third parties and brothels were initially illegal, the laws were rarely enforced. In 2000, the Dutch Parliament lifted the ban on brothels, and the Dutch federal and municipal governments were tasked with the challenge of transforming what had been an illegal market into a mainstream-regulated market. Many critics argue that the Dutch government was not effective enough in making this transition, but some researchers have documented improvements to the sex work industry in the Netherlands. The rate of street sex work and the number of minors involved in the industry is very low and shows no signs of increasing. However, many brothels have closed and brothel owners complain that the regulations and controls their businesses are subjected to are too stringent. Researchers also say that the illegal sector of sex work and the rate of organized crime involved in the industry have increased as a result (Goodyear and Weitzer 2011, 16-19).

Indoor sex work is now legal in New Zealand as long as sex workers register with police, but solicitation was illegal until 2003, when the New Zealand Parliament voted to decriminalize the sale and purchase of sexual acts throughout the country. The New Zealand Health Department advocated to change the laws in order to help mitigate the transmission of HIV and worked to change the perception of sex workers as vectors of disease to public health advocates and partners. The Prostitution Reform Act of 2003 (PRA) required sex workers to use a barrier method and replaced the registration of sex workers with licensing brothels. Rates of sexual exploitation of minors and trafficking since 2003 have remained consistent with rates before the passage of the PRA. However, sex workers report feeling more empowered since the passage of the new law. Still, stigma, discrimination, inconsistent barrier usage, and distrust of police remain prominent issues in the sex work industry in New Zealand. Overall, the committee that created the PRA reports feels satisfied with the changes the law created (Goodyear and Weitzer 2011, 25-27).

With the results of legislation in Sweden, the Netherlands, and New Zealand in mind, would enacting Gabriela Leite Act be the best course of action for the Brazilian government to follow? How effective would it be at eliminating barriers to accessing health care, reducing

² The term “indoor sex work” refers to sex work that occurs off the street and indoors. This can refer to sex work occurring in a brothel, in a sex worker’s home, or even a sex worker who solicits clients in a bar or similar indoor venue and arranges for a meeting at a later date in another location. Despite this definition, some fluidity between indoor and street sex work exists. Some research suggests that sex workers who practice indoor sex work face very similar risks to their health and safety as street sex workers, like isolation, lack of support, and violence (Sex Workers Project at the Urban Justice Center 2005, 9). Other studies provide evidence that indoor sex workers may be shielded from violence and drug use and may also have more control over their environments, allowing them to better negotiate with clients and thus use safer sexual practices (Spice 2007; Canadian Public Health Association 2014, 3).

stigma, and combatting police violence? Was there another way to improve conditions for Brazil's sex workers? Furthermore, should the sex worker movement in Brazil support this legislation or advocate for a different approach?

Epilogue

As of March of 2016, the Gabriela Leite Act has not been voted on. It remains in the Brazilian Chamber of Deputies pending the creation of a special temporary commission that will analyze the bill (Cazarré 2016).

Despite the pending decision from the Chamber of Deputies, the Gabriela Leite Act has sparked much debate throughout Brazil since it was first proposed in 2012, especially among government officials and feminists. Many federal deputies are hesitant to support the bill due to the belief that the regulation of prostitution will incentivize pimping and increase instances of sexual abuse (Martins 2014). According to Deputy Pastor Eurico, who authored a report in opposition of the bill, sex work turns the human body into a commodity. Eurico goes on to argue that for a “person to be treated like merchandise is a condition incompatible with human dignity” (Câmara dos Deputados Brasileiro 2013).

Feminists and feminist organizations have also criticized the bill, especially in regards to the effects the bill would have on cisgender female sex workers. Many bloggers argued that the regulation the bill proposes is not specific or thorough enough to solve issues facing sex workers (de Magalhães Gomes 2013; Festival Marginal 2016). One blogger even criticized the choice to name the bill after Gabriela Leite, arguing that Gabriela Leite's decision to leave school to become a sex worker is much different from and not representative of the experience of most sex workers (de Magalhães Gomes 2013). Some Brazilian feminist scholars and leaders also have argued adamantly against the bill. Tânia Navarro Swain, a feminist and historian at the University of Brasília, has spoken up in opposition to the Gabriela Leite Act, arguing that sex work is a form of violence against women and that its legalization would be detrimental to women and reinforce patriarchal norms (Cazarré 2016).

Despite these criticisms, the Gabriela Leite Act has retained many supporters in the sex work community. Advocates for sex workers have emphasized that while the bill is not perfect, it highlights issues important to the sex work community and would allow sex workers to receive benefits enjoyed by many other Brazilians, such as retirement. Some supporters have expressed that they do not expect the Gabriela Leite Act to actually pass but are still grateful the bill has brought the debate to the forefront (Declercq 2016; Wyllys 2013).

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