



SEX WORK AND HUMAN RIGHTS

ASIJKI
COALITION TO
DECRIMINALISE
SEX WORK IN
SOUTH AFRICA



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The South African Constitution and international agreements such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) recognise universal human rights for every human being protected by law.

In many countries around the world, including South Africa, sex workers currently suffer major human rights abuses. This is why the decriminalisation of sex work is backed by major human rights organisations including Human Rights Watch¹, Amnesty International² and the South African Commission for Gender Equality³. This fact sheet explains why the decriminalisation of sex work is the best way to protect the human rights of sex workers.

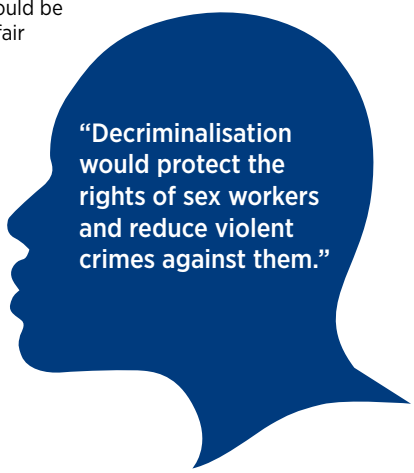
1 HOW ARE SEX WORKERS' RIGHTS ABUSED IN SOUTH AFRICA?

- Sex workers, especially those who work on the street, are at far higher risk of violence and even murder than other people^{4, 5, 6}. Sex workers are also at high risk for sexual violence and sexual abuse. One survey showed that a third of sex workers in Hillbrow had been made to have sex against their will in the previous six months⁷. Sex workers are especially at risk of violence from police officers. Many South African sex workers report that they have been harassed, robbed, assaulted or raped by police. Some members of the police also arrest them unlawfully and demand bribes^{8, 9, 10}.
- These violent acts all breach Section 12 of the Constitution, which says that: "(1) Everyone has the right to freedom and security of the person, which includes the right – (a) not to be deprived of freedom arbitrarily or without just cause; (b) not to be detained without trial; (c) to be free from all forms of violence from either public or private sources; (d) not to be tortured in any way; and (e) not to be treated or punished in a cruel, inhuman or degrading way. (2) Everyone has the right to bodily and psychological integrity, which includes the right – (a) to make decisions concerning reproduction; (b) to security in and control over their body."
- Demands for bribes and the seizure of earnings also breach Section 25(1) of the Constitution, which says that: "No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property."
- Many police officers wrongly believe that it is "impossible" for a sex worker to be raped. This is why they seldom open a case even if a sex worker makes a complaint^{11, 12}. This takes away the right of access to justice, as set out in Section 34 of the Constitution.
- Sex workers in South Africa are often badly treated by health workers, which can make it difficult to get access to screening and treatment for HIV and other health conditions^{13, 14}. This breaches Section 27 of the Constitution, which says that: "Everyone has the right to have access to ... health care services, including reproductive health care."
- Sex workers who work for brothels and massage parlours are often treated very badly at work. These include having an unfairly large amount of their pay taken in 'fees', being made to work long hours and unfair dismissal¹⁵. These actions breach Section 23(1) of the Constitution, which says that: "Everyone has the right to fair labour practices." The judgement of the Labour Appeal Court in the case of *Kylie vs CCMA and others*¹⁶ showed that sex workers have the right to go to the Commission for Conciliation, Mediation and Arbitration (CCMA) if they feel unfairly dismissed, despite their work being illegal. However, due to the fear of arrest, it is unlikely that many sex workers can make the most of this right.
- The criminalisation of consenting sex work probably breaches Article 6 of ICESCR, which says that: "The States party to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right."



"Due to the fear of arrest, it is unlikely that many sex workers are able presently to take advantage of their right to fair labour practices."

- Under decriminalisation of sex work, the buying and selling of sex would be legal. Employment of sex workers is also legal. Sex work would be controlled by general labour law, allowing sex workers to organise legally. It also means that employers (e.g. brothel managers) must obey health and safety labour laws.
- Under decriminalisation, sex workers would access non-judgemental health services more easily, including condoms and HIV treatment¹⁷. This would protect their right to health care.
- Sex workers would be able to report violent crimes committed against them, without fear of arrest or having complaints ignored. Police officers would not be able to use the threat of arrest to force sex workers to have sex or pay bribes. Thus the risk of sexual and other forms of violence would be less, protecting sex workers' right to personal security^{18, 19, 20}.
- Decriminalisation would help challenge stigma discrimination against sex workers. This would make people less likely to feel right about "punishing" sex workers with violence²¹.
- Sex workers would be able to work more openly, in well-lit public streets, in legal brothels or in their own homes²². This would also make them less at risk of violence. It would also give them more power to agree on condom use and other services they offer to clients.
- Under health and safety labour law, there would be more control of employers of sex workers. They would have to supply condoms and other safer sex materials. They would also not be able to force sex workers to have sex without condoms with clients²³. Sex workers would be able to sue employers for unfair labour practices²⁴ in private.
- Sex workers would be allowed to advertise more easily and work by themselves or in groups. This would reduce their need for managers and allow them to have more control over their own safety and security.



“Decriminalisation would protect the rights of sex workers and reduce violent crimes against them.”

This Briefing was written by Dr Dean Peters and plain-language edited by Giles Griffin

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