



# SEX WORK AND HUMAN RIGHTS

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COALITION TO  
DECIMALISATION  
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 Watch<sup>1</sup>, Amnesty International<sup>2</sup> and the South African Commission for Gender Equality<sup>3</sup>. This fact sheet explains why the decriminalisation of sex work is the best way to protect the human rights of sex workers.

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## 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<sup>4, 5, 6</sup>. 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 months<sup>7</sup>. 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<sup>8, 9, 10</sup>.
- 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<sup>11, 12</sup>. 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<sup>13, 14</sup>. 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 dismissal<sup>15</sup>. 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<sup>16</sup> 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."



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- Under decriminalisation pf sex work, the buying and selling of sex becomes 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 treatment<sup>17</sup>. 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<sup>18, 19, 20</sup>.
- Decriminalisation would help challenge stigma discrimination against sex workers. This would make people less likely to feel right about "punishing" sex workers with violence<sup>21</sup>.
- Sex workers would be able to work more openly, in well-lit public streets, in legal brothels or in their own homes<sup>22</sup>. 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 clients<sup>23</sup>. Sex workers would be able to sue employers for unfair labour practices<sup>24</sup> 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

- Human Rights Watch (2014). "World Report 2014" Human Rights Watch, New York, p. 47.
- Amnesty International (2015). "Global movement votes to adopt policy to protect human rights of sex workers". Available: <https://www.amnesty.org/latest/news/2015/08/global-movement-votes-to-adopt-policy-to-protect-human-rights-of-sex-workers/>
- Commission for Gender Equality (2013). "Decriminalising sex work in South Africa". Available: [http://www.gov.za/sites/www.gov.za/files/Commission%20for%20gender%20equality%20on%20sex%20work\\_a.pdf](http://www.gov.za/sites/www.gov.za/files/Commission%20for%20gender%20equality%20on%20sex%20work_a.pdf)
- Potterat, J., et al. (2004). "Mortality in a long-term open cohort of prostitute women". *American Journal of Epidemiology*, 159(89): 778-785.
- Plumridge, L., & Abel, G. (2001). "A Segmented Sex Industry in New Zealand: Sexual and Personal Safety of Female Sex Workers". *Australian and New Zealand Journal of Public Health*, 25: 78-83.
- Thamm, M. (2015). "Life at the margins: Cape Town's sex workers leverage Women's Month to highlight violence", Daily Maverick, 05 August 2015.
- Reproductive Health & HIV Research Unit, Sociology of Work Unit of the University of the Witwatersrand & Vrije University Amsterdam (2002). "Women at Risk: A study of sex work in Hillbrow, Johannesburg".
- Richter, M. et al. (2012). "Female sex work and international sport events – no major changes in demand or supply of paid sex during the 2010 Soccer World Cup: a crosssectional study". *BMC Public Health*, 12: 763.
- Gould, C. & Fick, N. (2008). "Selling sex in Cape Town: Sex work and human trafficking in a South African city". Pretoria/Tshwane, Institute for Security Studies.
- Fick, N (2006). "Enforcing fear – Police abuse of sex workers when making arrests". *SA Crime Quarterly* 2006, 16: 27-33 and "Sex Workers Speak Out – Policing and the sex industry". *SA Crime Quarterly* 2006, 15 (March): 13-18.
- Scorgie, F. et al. (2012). "Socio-demographic characteristics and behavioral risk factors of female sex workers in sub-Saharan Africa: a systematic review". *AIDS & Behavior*, 16, 920-33.
- Manoek, S. (2012). "Stop Harassing Us! Tackle Real Crime": A Report On Human Rights Violations By Police Against Sex Workers In South Africa", Women's Legal Centre.
- Global Network of Sex Work Projects (NSWP) (2014). "Global Briefing Paper: Sex workers' access to HIV treatment around the world". Available: <http://www.nswp.org/sites/nswp.org/files/Global%20Briefing%20-%20Access%20to%20HIV%20Treatment%20-%20English.pdf>
- Gould, C. and Fick, N. (2008). "Selling sex in Cape Town: Sex work and human trafficking in a South African city". Pretoria/Tshwane, Institute for Security Studies.
- Available: <http://www.wlce.co.za/images/labour/Kylie%20judgment.pdf>
- World Health Organisation (2013). "Implementing comprehensive HIV/STI programmes with sex workers: practical approaches from collaborative interventions" WHO, Geneva.
- Scorgie, F. et al. (2012). "Socio-demographic characteristics and behavioral risk factors of female sex workers in sub-Saharan Africa: a systematic review". *AIDS and Behavior*, 16, 920-33.
- Mossman, E. & Mayhew, P. (2007). "Key Informant Interviews Review of the Prostitution Reform Act 2003", prepared for the New Zealand Ministry of Justice. Available: <http://www.justice.govt.nz/policy/commercial-property-and-regulatory/prostitution/prostitution-law-review-committee/publications/key-informant-interviews/documents/report.pdf>
- New Zealand Ministry of Justice (2008). "Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003". Available: <http://www.justice.govt.nz/policy/commercial-property-and-regulatory/prostitution/prostitution-lawreview-committee/publications/plrreport/documents/report.pdf>
- World Health Organization (2005). "Violence against Sex Workers and HIV Prevention". WHO, Geneva.
- Pauw, I. & Brener, L. (2003). "'You Are Just Whores: You Can't Be Raped': Barriers to safer sex practices among women street sex workers in Cape Town". *Culture, Health & Sexuality*, Nov-Dec 2003: 465-481.
- Global Network of Sex Work Projects (NSWP) (2010). "Only rights can stop the wrongs: The smart persons guide to HIV and sex work". Available: [http://www.nswp.org/sites/nswp.org/files/Smart%20Guide%20to%20HIV%20and%20Sex%20Work\\_0.pdf](http://www.nswp.org/sites/nswp.org/files/Smart%20Guide%20to%20HIV%20and%20Sex%20Work_0.pdf)
- Dudding, A. (2014). "Sex worker stands up to 'overbearing' boss". Stuff.co.nz. Available: <http://www.stuff.co.nz/national/64332562/sex-worker-stands-up-to-overbearing-boss>
- Abel, G., Fitzgerald, L., & Brunton, C., (2007). "The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers". Report to the Prostitution Review Committee, November, Department of Public Health and General Practice, University of Otago, Christchurch.