



SEX WORK AND LABOUR

ASIJKI
COALITION TO
DECRIMINALISE
SEX WORK IN
SOUTH AFRICA



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Sex workers from all over the world have fought to use the term ‘sex work’ instead of ‘prostitution’ to show clearly that selling sex is a job and should be treated as one, rather than an abstract political or moral issue^{1,2}. In many ways selling sexual services is similar to other services like offering entertainment, massages or counselling. Looking at sex work this way means that we can see that many difficulties faced by sex workers are not unique to sex work.

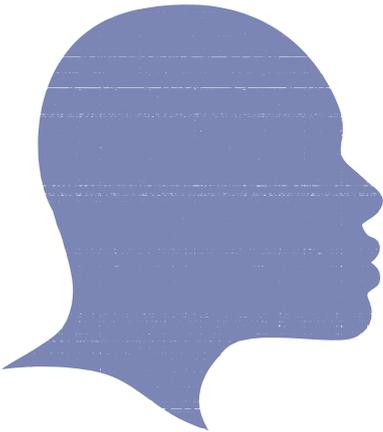
Challenges sex workers face are usually the result of risky, criminalised and abusive working conditions and where and how sex work takes place. These things can be solved by changes in the laws around sex work, better labour law and/or worker-led organising. This fact sheet looks at sex work in South Africa from this labour-centred view and explains why decriminalisation is really the best way to make sure labour rights are introduced.

1 THE BACKGROUND

- Many people do not have formal work in South Africa, partly due to lack of skills³. Sex work pays quite well and allows for flexible working times. It is also paid in cash and no formal training is needed⁴. It is a good choice for people who have many other demands on their time, like studying⁵, another job or caring for children or relatives.
- Recent research shows that there are probably about 150 000 sex workers in South Africa, most of which are women⁶. This is about a third (33%) of the number who work in mining⁷.
- Sex work is a good example of an “informal economy” job in several ways. It mainly employs women, there are few barriers to entry, little need for formal training and the work is small-scale⁸. The International Labour Organisation (ILO) has said that, even with the big part the informal economy plays in creating work in developing countries, there are big challenges making sure there are good working conditions and “decent work” within this sector⁹.
- South African law protects people in formal work very well, under Section 23 of the Constitution (“Everyone has the right to fair labour practices”), the Basic Conditions of Employment Act of 1997 and other laws.

2 CHALLENGES FOR SEX WORKERS IN SOUTH AFRICA IN MAKING A LIVING

- Sex workers in South Africa and around the world are challenged because their work is stigmatised and discriminated against, which means they are forced to work in dangerous conditions^{10,11,12}. This is the basic reason for violence done to sex workers. People often think they “deserve” violence and abuse.
- The criminalisation of sex work makes sex workers especially at risk of abuse by the police^{13,14}. To avoid being arrested or abused by police, they may work in out-of-the-way places where they are easily attacked^{15,16}. Because the police do not often want to charge crimes against sex workers, sex workers are easy victims for robbers, clients who are violent or refuse to pay, dishonest managers, abusive partners and even serial killers^{17,18,19,20}.
- In South Africa, stigma, discrimination, criminalisation and police abuse mean that sex workers find it very hard to get good health care, including condoms and HIV treatment. As a result, they are at quite a high risk of getting HIV and STIs. They are also more likely to get AIDS if they are HIV-positive^{21,22,23,24,25}. Disease risk does not automatically go along with sex work. Indeed, women who sell sex under better working conditions and with better services report high rates of condom use, as well as STI rates similar to those of the general population^{26,27}.
- Stigma, discrimination and criminalisation also mean that sex workers find it hard to get protection from labour, health and safety laws. They also cannot strongly unionise or be part of pay discussions and collective bargaining. Because they have little legal power, sex workers who work for employers like brothels and massage parlours are often treated very badly at work. This includes often having an unfairly large amount of their pay taken in “fees”, being made to work long hours, unfair dismissal and being made to see clients they dislike or who are abusive⁴. The Labour Appeal Court in the case of *Kylie vs CCMA* and others ruled that sex workers are protected by South African labour law, despite the present illegality of their work²⁸. However, due to the stigma and discrimination that go with being known as a sex worker, it is unlikely that many benefit from this right. This is a major reason why even erotic dancers, whose job is not illegal, also suffer abusive working conditions²⁹.



“There are probably about 150 000 sex workers in South Africa, most of which are women.”

- Under decriminalisation, the buying and selling of sex becomes legal. Employment of sex workers is also legal. Sex work would be controlled by general labour law. This means that sex workers can organise legally (form a union). It also means that employers (e.g. brothel managers) must obey health and safety labour laws.
- Force, trafficking and other abusive labour practices would be illegal. In South Africa, employers of sex workers would have to comply with general labour law, as well as specific occupational regulations (e.g. the providing of condoms and safer sex information).
- Research on the law decriminalising sex work in New Zealand has shown that it has reduced violence against sex workers and helped them secure labour rights^{30, 31, 32, 33}. The law supports small numbers of sex workers working together. It also says that sex workers employed in brothels can refuse clients for any reason and can insist on condom usage. These laws have been applied successfully. Comparing Australian states with different laws on sex work, it has been found that decriminalisation improves access to health services and other work-related health and safety standards compared to criminalised situations³⁴.
- Because decriminalisation has been shown to lessen violence and abuse and increase access to services, it is supported by major human rights organisations including Human Rights Watch³⁵, Amnesty International³⁶ and the South African Commission for Gender Equality³⁷, as well as health-focused organisations like UNAIDS³⁸, the World Health Organisation³⁹ and the Lancet Journal⁴⁰. There are also many organisations around the world that are led by sex workers or work with sex workers, and these almost all support decriminalisation⁴¹. Although the ILO does not have an official view on decriminalisation, it has said that more government recognition and regulation of the industry is needed to improve working conditions⁴² and that criminalisation reduces “opportunities to access sex workers with HIV services as they are driven into hiding”⁴³.
- Decriminalisation and less stigma and discrimination would make it easier for sex workers to organise openly (form a union). It would also allow sex workers to form pay agreements, demand the protection of labour law or otherwise fight for better labour rights and working conditions. However, we should accept that, because most sex workers in South Africa work independently⁴⁴, demands for better working conditions would often become demands for better services and less abuse from the state.

“Decriminalisation and less stigma and discrimination would make it easier for sex workers to organise openly (form a union).”

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

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