



SEX WORK AND THE LAW:

Four possible legal options

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DECRIMINALISE
SEX WORK IN
SOUTH AFRICA



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There are several different legal views on sex work. They vary from country to country^{1, 2}. This fact sheet discusses the four most common legal models and their effects.

1

FULL CRIMINALISATION

(e.g. South Africa, Russia, China and most of the United States)

What is it?

- The act of receiving money or goods in return for sex (by the sex worker) is banned.
- The act of providing the money or goods for sex (by the client) is banned.
- The act of working in other ways with sex workers or living off their pay (for example, owning a brothel) is banned.

What happens under full criminalisation?

- Sex workers fear arrest and suffer abuse from the police, including rape, violence and being made to pay bribes^{3, 4}.
- Sex workers must hide from the police and prefer not to report crimes out of fear, making them open to violence from clients and other people.
- Sex workers have little or no power and fear violence. This makes it hard for sex workers to demand condom use⁵. Sex workers may avoid carrying condoms because these can be taken by the police or used as “evidence” of law-breaking⁶.
- Sex workers are often badly treated by public services, including health services⁷.

Would criminalisation work in South Africa?

- Full criminalisation has been the law in South Africa since 1957, with clients being specifically criminalised since 2007. This has resulted in high levels of violence, a lack of access to basic services including health services and abuse of sex workers, including by police officers.

2

PARTIAL CRIMINALISATION

(e.g. Sweden, Norway, France)

What is it?

- Selling sex is not illegal in itself, but many linked activities are illegal.
- In some countries (e.g. Sweden, Norway, Canada), buying sex is criminalised. This is called the “Swedish model” or “Nordic model”.
- In some countries (e.g. the United Kingdom, France, India, Canada), promoting the sale of sex (“soliciting”) is criminalised.
- Most of these countries also criminalise activities linked to organising the sale of sex, including receiving money that another person has earned through sex work, managing sex workers and working in groups (“brothel-keeping”).

What happens under partial criminalisation?

- The ability of sex workers to act for themselves is not taken seriously, as they are regarded as victims who need to be rescued or as “immoral” women⁸.
- Criminalisation of soliciting leads to police abuse of at-risk outdoor workers⁹. If either sex workers or their clients are criminalised, they will try to hide from the police. This means working in out-of-the-way

areas and allowing clients to remain nameless, all of which make sex workers more at risk of attack. Time pressure when arranging sex means sex workers are less able to judge if a client is dangerous and limits their ability to agree to safer sex or keep themselves safe¹⁰.

- Sex workers are still abused by the police, making them unwilling to report crimes against them¹¹. Often clients are the only people who can report someone being trafficked or forced into sex work^{12, 13}. Criminalising clients would make them unwilling to report suspected abuse for fear of being arrested.
- Laws against “brothel-keeping” are used to target sex workers who work together, which is often done for reasons of safety. This increases the risk of violence^{14, 15, 16}. Sex workers can also suffer from other problems, e.g. eviction (being forced to leave a place they are staying) and deportation (being forced to leave a country)¹⁷.
- The criminalisation of managers means that many places of work are illegal, so sex workers cannot seek protection under labour laws.
- Discrimination against sex workers is increased. Sex workers are often refused services, including condoms¹⁸.
- All criminalisation increases discrimination against sex workers, which is the main cause of violence against them. Violence against sex workers has continued in countries that have followed the Swedish model^{19, 20, 21}.

Would partial criminalisation work in South Africa?

- It still means a refusal in law to accept sex work as legal work, which promotes violence. Sex workers would still be discriminated against and treated as either victims or sinful people.
- Sex work would remain hidden, reducing access to health care and other services. The client’s need to avoid the police would continue to put sex workers at risk of violence.
- It makes no sense to allow someone to sell a service and then make the actual providing of that service illegal, like buying that service, promoting it, or having a manager.
- Sex workers would still be at risk of abuse by police, clients and managers, and would not benefit from the protection of labour laws.

3

LEGISLATION

(e.g. Germany, Netherlands, Nevada in the United States, Mali, Senegal)

What is it?

- Sex work is regarded as a legal occupation but is subject to special laws.
- The state creates and oversees various controls over sex workers, which are greater than controls over people doing other work.
- Controls can include: working only in special areas; working only in licensed brothels; being registered with the government or the police; going for regular health tests.

What is the impact?

- There is more contact between sex workers, the police and other services, which has a positive effect on safety and sexual health for sex workers who are able to work legally²².
- Sex work is still not regarded as a “normal” job and so sex workers are still discriminated against. This may also limit access to health care²³.

- There are few safety benefits to being registered and sometimes there are enforced health checks, while there are also risks to privacy, freedom and independence. Sex workers generally do not trust the police, which means they are unlikely to get registered with them.
- Many sex workers find the registration process difficult or complicated and so work illegally. This is especially likely to happen with the most at-risk sex workers, including migrants without papers, the homeless and drug-users. They remain at increased risk of violence and police abuse²⁴.
- It is often difficult for sex workers to set up their own businesses, so brothel owners and other managers are able to abuse sex workers, e.g. by controlling their movements or taking too large an amount of their earnings in 'fees'²⁵.

- Laws protecting sex workers from special risks are put in place.
- Under-age sex work, forced labour and trafficking remain criminalised.

What happens under decriminalisation?

- There is less discrimination around sex work.
- Sex workers are able to get health services more easily and are more likely to report crimes to the police^{26, 29}.
- There is less sexual violence²⁸.
- There is a better balance of power so that sex workers are less at risk of abuse by brothel managers and are able to refuse services to clients^{26, 29}. Sex workers who work in brothels or for agencies are better able to demand their rights under labour law and to make sure they get work contracts³⁰.
- Costs to government of policing and control are less.
- Sex workers are able to organise openly and/or unionise to fight for their rights and ask for their needs within the community³¹.
- Brothel managers who hire under-age sex workers are successfully brought to court²⁶.

Would decriminalisation work in South Africa?

- Decriminalisation of sex work would be right for South Africa because its highest law, the Constitution, is based on human rights and equality.
- It is built on a public health model and facts that promote the least harm and non-violence.
- It allows for a good two-way relationship between sex workers and government (police).
- All this builds respect for the rights of sex workers, the great majority of whom are women.

4 DECRIMINALISATION

(e.g. New Zealand, New South Wales in Australia)

What is it?

- It is the only approach to sex work based on the human rights of sex workers and designed around plans and rules that sex workers themselves have asked for.
- Criminal charges for sex work are removed, as are most special laws.
- Brothels and single sex workers can operate as ordinary businesses.
- Working in groups is allowed and supported.
- Sex workers can work without random limitations.

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

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