



SWEAT

SEX WORKERS EDUCATION & ADVOCACY TASK FORCE

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sex workers rights are human rights

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INTRODUCTION

1. SWEAT (Sex Workers Education & Advocacy Taskforce) has been advocating for and delivering services to South African Sex Workers. SWEAT began advocating for the decriminalisation of adult sex work formally since 2000. SWEAT works with sex workers and engages nationally on issues related to health and legal reform.
2. This submission seeks to highlight the human rights violations that sex workers in South Africa experience as a result of the criminalisation of their work. These violations implicate an array of socio-economic issues such as health care, fair labour practices, non-discrimination, human trafficking, gender-based violence, HIV, and vulnerability. Arguably, many of the violations can be addressed through the decriminalisation of sex work in South Africa. this submission will highlight the key socio-economic issues.

SEX WORK IN SOUTH AFRICA

3. Sex work can broadly be defined as the exchange of money for sexual services, specifically referring to adult consensual sex. It must be distinguished from human trafficking and commercial exploitation of children, which are human rights violations.
4. Sex work constitutes an important source of income in the informal sector and sex workers are often the financial providers for large extended families. High unemployment rates, limited education and low socio-economic status contributes to entry into sex work.
5. The Sexual Offences Act 23 of 1957 provides that it is a crime to have unlawful intercourse or to commit an act of 'indecent' with any person for reward. This pertains to any intercourse for reward with anyone other than your husband or wife. Simply put, it is a crime to sell sex in South Africa. In addition, the Criminal

Law (Sexual Offences and Related Matters) Amendment 32 of 2007 makes it an offence to engage with the services of a person who provides sex for reward.

6. South Africa has an estimated number of 153 000 sex workers of which an estimated 138 000 are female sex workers, constituting over 0.9% of the female population.¹

SEX WORK, DISCRIMINATION, STIGMA, AND EXCLUSION

7. Sex work and sex workers are highly stigmatised in society and often marginalised. There is particular discrimination against sex workers in access to health care services, access to legal aid, and access to security.
8. Health care workers refuse care to sex workers on the basis of their work; sex workers are unable to access justice (if victim of a crime) due to the nature of their work; and experience lack of protection and even violence from police.
9. The criminalisation of sex work somewhat legitimises the stigma attached to sex work and sex workers.

SEX WORK AND VIOLENCE AND GENDER-BASED VIOLENCE

10. Sex workers are subjected to violence, sexual assault, and rape by both clients and law enforcement. Sex workers are particularly vulnerable to violence due to the work setting, hours and stigma associated with sex work.
11. Because sex work is criminalised, sex workers do not have legal recourse to the human rights violations and abuses they experience.

¹ South African National Aids Council *Estimating the size of the sex worker population in South Africa*, 2013, page 4. Available at http://www.sanac.org.za/publications/cat_view/7-publications/9-reports, accessed on 31 March 2015

12. Sex workers are also especially vulnerable to forms of gender-based violence.² These stem, *inter alia*, from the social stigma against women who have sex with multiple partners. Sex workers are seen to be persons deserving of abuse.³
13. Sex workers are vulnerable to police violence. There are high numbers of reports from sex workers that they have been harassed, assaulted, robbed, unlawfully arrested or even raped by police.⁴ People, and police, have the belief that sex workers cannot be raped, and this makes sex workers vulnerable to rape and inhibits legal recourse.⁵
14. Additionally, some police officers treat condoms as evidence of being a sex worker.⁶ Thus condoms are often confiscated, placing sex workers at greater risk for HIV and other STIs.
15. The decriminalisation of sex work would allow and enable sex workers to report crimes to the police without fear of prejudice or violence. Additionally, they would have resource to justice in instances of abuse or discrimination.

² In 1993, the UN Declaration on the Elimination of Violence against Women offered the first official definition of the term "Gender-based Violence": "Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or in private life." Gender-based violence has become an umbrella term for any harm that is perpetrated against a person's will, and that results from power inequalities that are based on gender roles. Around the world, gender-based violence almost always has a greater negative impact on women and girls

³ Agustin, L. (2013) "The sex worker stigma: How the law perpetuates our hatred (and fear) of prostitutes" Salon. Available: http://www.salon.com/2013/08/17/the_whore_stigma_how_theLaw_perpetuates_our_hatred_and_fear_of_prostitutes_partner/

⁴ 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

⁵ Scorgie, F. et al (2012). "Socio-demographic characteristics and behavioural risk factors of female sex workers in sub-saharan Africa: a systematic review". *AIDS Behav*, 16, 920–33.

⁶ Open Society Foundations (2012) "Criminalizing Condoms: How Policing Practices Put Sex Workers and HIV Services at Risk in Kenya, Namibia, Russia, South Africa, the United States, and Zimbabwe". Available: <http://www.opensocietyfoundations.org/sites/default/files/criminalizing-condoms-20120717.pdf>

SEX WORK AND HIV

16. Prevalence of HIV and other STIs are higher among sex workers than other population groups in South Africa.
17. Despite the high burden of HIV that sex workers carry, access to HIV prevention and treatment are often denied to sex workers.
18. The view that sex workers contribute to the HIV burden or are risks to public health fails to recognise that *everyone* is responsible for safe sex.
19. Decriminalisation would enable sex workers to access health care services, including HIV prevention and treatment services.⁷ In this regard, decriminalisation is supported by, *inter alia*, UNAIDS, WHO, and the Global Commission on HIV and the Law.

THE RIGHT TO FREEDOM OF TRADE

20. The South African Constitution provides that every citizen has the right to choose their trade or occupation. Article 6(1) of the ICESCR recognises the right to work and earn a living by one's own choice of means.
21. Sex work is an activity between consenting adults – there is not anything inherently unlawful or harmful about it. It is a victimless crime. The only difference between sex work and sex otherwise between two consenting adults is the reward.

THE RIGHT TO ACCESS TO HEALTH CARE

22. Sex workers are often denied access to health care as a result of discrimination.

⁷ Sex Work and the Law. The case for decriminalization. World Aids Campaign, page 16.

23. This has not only personal implications, in that sex workers cannot access necessary services, especially relating to HIV prevention and treatment, but also perpetuates the stigmatisation of sex workers and leave them more vulnerable to the burden of diseases faced in South Africa.

HUMAN TRAFFICKING

24. Sex work must be distinguished from human trafficking, which is defined by the UN Palermo Protocol, as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, other the abuse of power or of a position or vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”.⁸

25. Human trafficking and sexual exploitation are human rights violations, whilst sex work is voluntary, consensual work. The trafficking narratives conflate sex work and reasons for entry into sex work with human trafficking and sexual exploitation. Sex work is often entered into as it is a more lucrative job than other available options and financial pressures can also contribute to entry.⁹ This is not, however, exclusive to sex work – the same could be said for other jobs.

26. The anti-trafficking rhetoric and the conflation of human trafficking and sex work often leads to generalised police interference on sex workers resulting in human rights abuses.¹⁰

⁸ General Assembly resolution 55/25 (15 November 2000), "Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime". Available: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>

⁹ Agustin, L.M., (2007). Sex at the margins. London, UK: Zed Books

¹⁰ NPR (2015) "The Hidden World Of Cambodia's Sex Workers: New Risks, New Hope". Available: <http://www.npr.org/sections/goatsandsoda/2015/06/06/412303138/the-hidden-world-of-cambodias-sex-workers-new-risks-new-hope>

27. The decriminalisation of sex work would allow for sex workers to organise against abusive practices.¹¹

RECOMMENDATIONS

28. In light of the above context, the following recommendations are made to address the rights violations and abuses suffered by sex workers:

- a. Laws criminalising sex work should be repealed to facilitate increased access to, and decreased discrimination in, health care and access to justice for sex workers;
- b. Laws criminalising sex work should be repealed to address the violence and particularly gender-based violence experienced by sex workers;
- c. Steps should be taken to prohibit police officers from harassing, assaulting or unlawfully arresting sex workers, ensuring the State makes it clear that such conduct is not State policy;
- d. Guidelines should be established for police engagement with sex workers;
- e. That human rights institutions investigate the State's failure to protect the human rights of sex workers and hold the State accountable for violations of constitutional and international law obligations;
- f. That the State meaningfully engage with sex workers on issues of:
 - i. Labour practices;
 - ii. Health care services;
 - iii. Access to justice;

¹¹ Durbar Mahila Samanwaya Committee, "Anti Trafficking" Available: http://durbar.org/html/anti_trafficking.aspx and Steen, R, Jana, S, Reza-Paul, S, and Richter, M. Trafficking, sex work, and HIV: efforts to resolve conflicts. *Lancet*. 2014; 385: 94–96

- iv. Police interaction; and
 - v. Trafficking;
- g. That the State facilitate public dialogue on the rights of sex workers to articulate the difference between sex work and human trafficking, to address the stigma, and to counteract discriminatory practices.