

Human Rights are for Everyone:

*Why Sex Work should be decriminalised
in South Africa*



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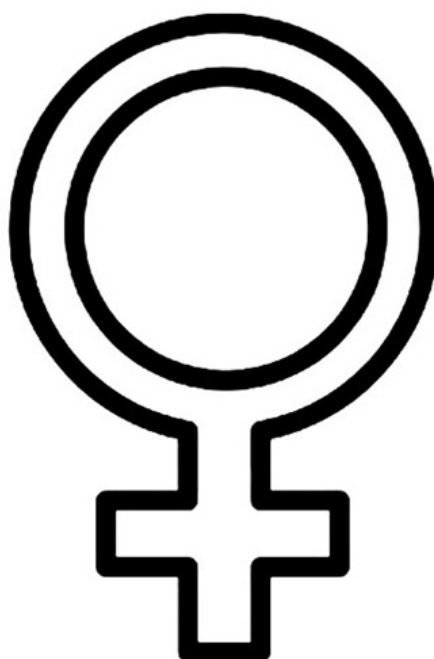
Introduction:

Sex work in South Africa is a sensitive issue and people often feel uncomfortable talking about it. This booklet will help you understand why sex work should be decriminalised and how you can help this happen.

Human rights and women's rights activists started campaigning to decriminalise sex work in South Africa 20 years ago. The public has become more aware of the issue now and some government officials are supporting decriminalisation for the 2010 FIFA Soccer World Cup period. This booklet will explain why it is important that sex work should be permanently decriminalised in South Africa.

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Sex Laws in South Africa

Did you know?

In the past South Africa had some strange laws on sex:

- Until 1985 it was illegal for a man and woman to have sex across the colour line.
- Until 1998 if a policeman suspected that a man had recently had anal sex the policeman was allowed to shoot him if he ran away.
- Until 1998 "a party" was defined as an occasion where more than two men were in the same place. If the three men were suspected of performing a gay sex act they could be arrested and imprisoned.
- Until 1993 there was no explicit law that made it a criminal offence for a husband to rape his wife.
- The current law that makes sex work illegal was written a long time ago, in 1957.

South Africa has changed in the last 10 years and the laws surrounding sex have become more understanding of different social settings and supportive of people's human rights. For example in 2006 same-sex marriages were legalised.



South African Law and Sex Work

In 2002 a High Court judge declared that sex work should be decriminalised. The Court said that the laws that criminalised sex work were discriminatory and should be declared unconstitutional. The Constitutional Court (using the interim Constitution) overturned the High Court's decision. The Constitutional Court said that Parliament should ultimately decide whether sex work should be decriminalised. The final version of South Africa's Constitution is different to the interim Constitution and it could be that if the same case was brought to the Constitutional Court now, the Court would come to a different decision.

Current Legal Processes

The South African Law Reform Commission has been tasked to investigate sex work and the law. The Commission provides Parliament with recommendations on how laws have to be changed and modernised after receiving input from the public.

In July 2002, the South African Law Reform Commission published an Issue Paper that described the issues that arise with sex work. The Commission said that there are three options that South African law could follow with sex work:

1. Continue *criminalising* all aspects of sex work as criminal offences and keep what we have at the moment,
2. *Decriminalise* sex work, which will take away all the laws that criminalise sex work, or
3. *Regulate* or *Legalise* sex work within certain areas and subject to certain conditions – this is called limited legalisation.

Since 2002 a number of people and organisations have written to the South African Law Reform Commission to give their input. The next step is for the Commission to write another paper – called a Discussion Paper - and then get more feedback from the public. Unfortunately the Commission has been very slow - more than six years have passed and the Commission has not released the Discussion Paper!

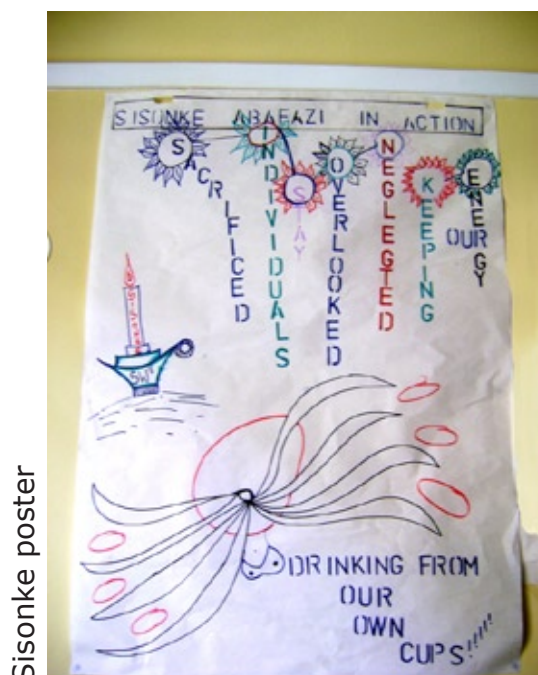
What is the difference between Legalisation and Decriminalisation of sex work?

The decriminalisation of sex work would get rid of all laws that criminalise sex work. This means that sex work would be recognised as work and enjoy the protection of labour laws and occupational health laws. Decriminalisation of sex work in South Africa is the best and safest option for sex workers. This is because the sex work industry would be regulated like any other industry.

Legalisation would mean that sex workers would have to work under very specific conditions. Local municipalities and Parliament would create these conditions. For example,

- Creating specific “Red Light Districts” where sex workers could work.
- Sex workers might have to register with authorities and carry cards identifying them as sex workers.
- Forcing sex workers to go for regular health checks.

The problem with legalisation is that the prescribed conditions can be used to abuse sex workers. For example: if a municipality puts the Red Light District in a horrible place, the sex workers will work outside this area to get clients. Working outside the area would be illegal and they may face personal danger without any protection from the law.



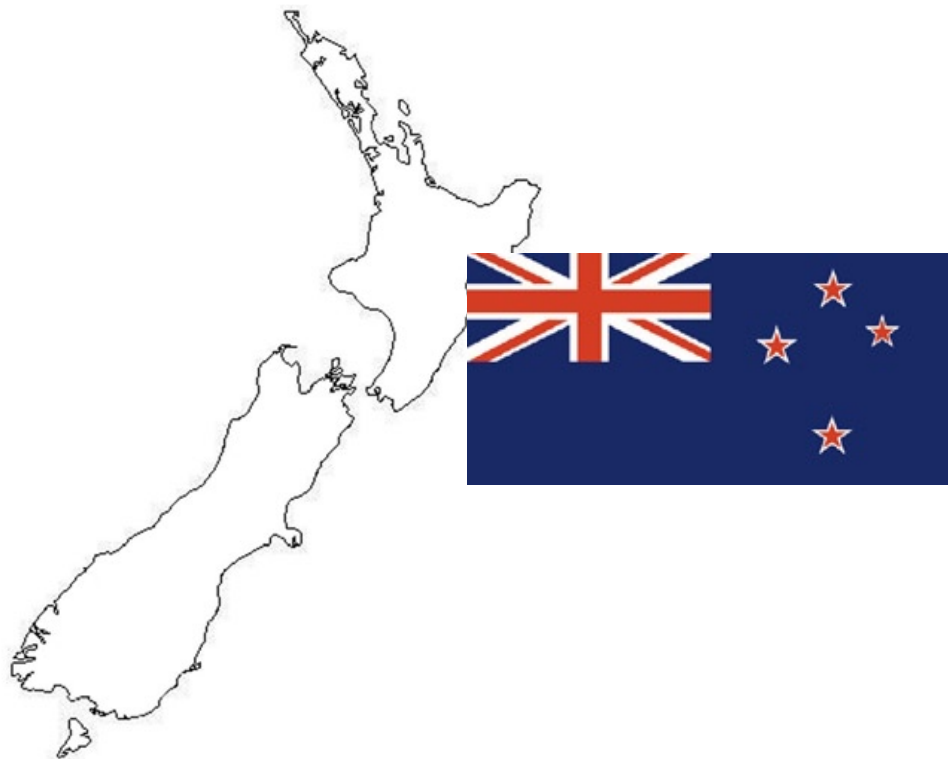
Sisonke poster

Case Study


New Zealand and the decriminalisation of sex work

New Zealand decriminalised sex work in 2003. Sex workers are allowed to trade more or less freely, at home, in brothels or on the street. This had a positive effect on the health and safety of sex workers. People were afraid that the number of sex workers would increase, but this did not happen. Instead there were positive effects:

- Sex workers felt they could refuse clients whom they did not like.
- Sex workers said there was less violence and started to report violence to the police.
- The employment conditions of sex workers improved.



Two main arguments for decriminalising sex work

Human Rights argument	Public Health argument
Criminalisation of sex work violates the human rights of sex workers	Criminalisation of sex work fuels the AIDS epidemic
<p>The Constitution gives:</p> <ul style="list-style-type: none"> ▪ Sex workers the same rights as everyone else, ▪ Everyone the right to choose who you have sex with, ▪ The right to choose when you have sex, ▪ The right to choose where you have sex, ▪ The right to choose if you want to have sex at all, ▪ The rights to dignity, ▪ The right to non-discrimination, ▪ Access to health care services, ▪ The rights to bodily and psychological integrity, ▪ Freedom of thought, belief and opinion, ▪ The right to choose their trade, occupation or profession freely. 	<p>Criminalisation affects people's health:</p> <ul style="list-style-type: none"> ▪ Sex workers are at risk of being infected with HIV. In some areas many sex workers are infected with HIV, ▪ Sex workers are affected by violence, from their clients and from the police. Their work can be dangerous, ▪ Sex workers are stigmatised, ▪ Sex workers sometimes find it difficult to earn money, ▪ Sex workers find it hard to access health, social, police, legal and financial services and support. 
If some people want to buy or sell sex, this is their choice and as long as no one gets hurt, the government has no reason to make that choice a criminal offence.	South Africa's national AIDS Plan - <i>the National Strategic Plan for HIV and AIDS</i> - recommends that sex work should be decriminalised.

What happens if we do nothing?

1. Sex workers will continue to suffer violence from clients, their partners and the police.
2. Sex workers will continue to work in unsafe and dangerous conditions.
3. The stigma around sex work will continue.
4. Sex workers will not have easy access to health, social, police, legal and financial services.
5. Sex workers will find it hard to protect themselves and their clients from HIV.
6. Sex workers will find it hard to get tested for HIV and get treatment for HIV.
7. Sex workers will find it difficult to find other jobs.

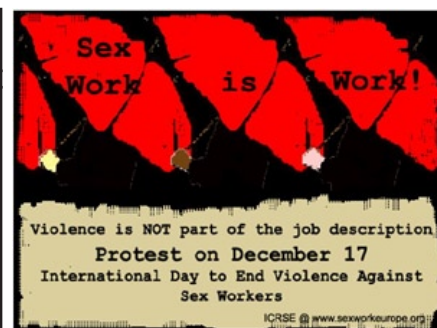
What can you do?

1. **Ask the South African Law Reform Commission to decriminalise sex work**
 - When the South African Law Reform Commission releases its paper it will be announced on The Sex Worker Advocacy and Education Taskforce (SWEAT) website. Go to the SWEAT website www.sweat.org.za. You can then send your comments to the Commission. You can also support the submissions of organisations that are working to decriminalise sex work.
2. **Support Sex Workers**
 - Put pressure on government departments, civil society and service-based organisations. Encourage them to improve the programmes that support the well-being and legal position of sex workers. These programmes should include a focus on sex worker clients and health services for men.

- Check the National Strategic Plan for HIV and AIDS (NSP). It will help guide you on the sex worker programmes that should be available. You can download it from the Department of Health website <http://www.doh.gov.za/docs/misc/stratplan-f.html> or see the inside back page of this booklet for specific sections of the NSP that relate to sex work.
 - Volunteer time and help to an organisation that supports sex workers or supports improving their position.
3. **Fund and support an organisation** that supports the decriminalisation of sex work and assists sex workers.
- Support Sisonke. An organisation for sex workers, run by sex workers.
 - See the back page of this booklet for more details of these organisations.
4. **Fight the stigma around sex work**
- There is a strong stigma around sex work – this needs to be challenged.
 - You can challenge people’s negative ideas about sex workers.
 - You can point out that decriminalising sex work is not the same as morally supporting sex work or people who buy or sell sex. We don’t always make a crime of everything we think is “immoral” e.g. lying.
 - When you hear someone talk about a *whore*, *slut*, *prostitute*, *makosha* or *isikhebereshe* or other common names for sex workers, challenge them directly.

Remember

In a country such as New Zealand where sex work has been decriminalised, there is more respect for the human rights of sex workers. Fighting sex work is a waste of time. We need to make sex work safer and empower sex workers with more choices!



HIV & AIDS National Strategic Plan for South Africa 2007-2011

Extracts from sections of the NSP that relate specifically to sex work

3.3 Populations at higher risk

(g) Sex workers

Sex work is not readily defined but includes a wide range of informal and formal activities that relate to the exchange of sex for material benefit. Key characteristics include frequent and repeated exchange of sex with multiple sexual partners usually for monetary gain. Sex workers are predominantly female. Sex workers are at high risk of HIV infection and are vulnerable as a product of higher partner turnover and a limited capacity to ensure safe sex during each and every sexual encounter. Very little is known about HIV prevalence amongst sex workers or their clients in South Africa, but both groups are linked to sexual networks that overlap with the broader epidemic.

Ensuring Equality and Non-discrimination against Marginalised Groups: The NSP is committed to challenging discrimination against groups of people who are marginalised, including people with disabilities, orphans, refugees, asylum seekers, foreign migrants, sex workers, men-who-have-sex-with-men, intravenous drug users, and older persons. All these groups have a right to equal access to interventions for HIV prevention, treatment and support.

The NSP recognises that several higher-risk groups, such as sex workers and drug users, face barriers to accessing HIV prevention and treatment services, because their activity is unlawful. The NSP therefore recommends:

- The decriminalisation of sex work.
 - The finalisation and implementation of the Prevention and Treatment for Substance Abuse Bill, and its incorporation of HIV harm reduction measures.
-

Intervention package: definitions

(viii) Prevention package for sex workers and their clients, includes:

Dedicated services including promotion of VCT; access to male and female condoms; STI symptom recognition; information on gender rights.

Goal 16: Ensure public knowledge and adherence to the legal and policy provisions

Objective 16.3 Ensure a supportive legal environment for the provision of HIV and AIDS services to marginalised groups

Intervention:

Develop and distribute information materials on rights to HIV prevention, treatment and support that responds to the special needs of:

- Sex workers
 - Children and adults with disabilities
 - Drug users
 - ...
-

Organisations that assist sex workers:

Sex Worker Education and Advocacy Taskforce (SWEAT) is a non-profit organisation that works with sex workers on health and human rights. It also lobbies and advocates for the decriminalisation of adult sex work in South Africa.

Tel: 021 448 7875
Fax: 021 448 5857
E-mail: info@sweat.org.za

Community House
41 Salt River Rd
Salt River
7915
Cape Town



Sisonke is an organisation run by sex workers for sex workers. Contact SWEAT and ask for a Sisonke representative in your area

Tel: 021 448 7875



Free Sexual and Reproductive Health Services:

Reproductive Health and HIV Research Unit
Women at Risk Project

First Floor Esselen Street Clinic
17 Esselen Street, Hillbrow
Johannesburg

Tel: (011) 725-7700 or 082 926 5764



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