



Discussions about sexuality and sex work remain controversial and divisive in Southern Africa. Some groups, including Namibia's Themba Interactive Theatre Group (above), tackle difficult topics by employing theatre and interactive performances. Photo by Maritje van Dyk

## SEX WORK

### Introduction

This policy brief is part of a Gender Links series on complex and controversial issues that intersect with its work. Discussions around sex work tend to ignite fierce and polarising debates - in Southern Africa and most other parts of the world. Often referred to as the world's oldest profession, sex work is also one of the world's most contentious issues.

The topic of sex work intersects with so many other important discussions about women's rights and gender, including access to resources, LGBT rights, migration, health care, legal issues and income inequality. In addition, in a region with the world's highest prevalence of HIV and AIDS, it is important to understand how the virus is seen in relation to the sex industry.

Debates about sex work in Southern Africa tend to focus on the question of legalisation. Women's rights advocates increasingly call for the decriminalisation of sex work in order to protect women from the many dangers of the illegal trade, including the sexual and physical abuse perpetrated by pimps and those working in law enforcement.<sup>1</sup> This policy brief will examine some of the issues linked to sex work in a regional and international context and as it pertains to the Southern African Development Community Protocol on Gender and Development.

### QUICK FACTS

- Activist Carol Leigh coined the term sex worker in 1980.
- The 2012 Global Commission on HIV and the Law called for nations to do away with "punitive" laws against sex work.
- In recent years many countries have moved toward legalising sex work, including Senegal, the Netherlands, Canada and New Zealand.
- 86% of Zimbabwean sex workers are HIV positive according to a 2010 study.
- Eight SADC countries have laws explicitly criminalising sex work.
- Criminalisation of sex work has been found to put sex workers at greater risk of contracting HIV and AIDS.
- 59% of stories on sex and sexuality in the 2010 Gender Links Gender and Media Progress Study accessed only men as sources.

### Key terms and definitions

**Prostitution** is the act or practice of engaging in sex acts for hire. Prostitution is often viewed as a deviant profession that is either discouraged or illegal.

A **sex worker** is a person who works in the sex industry - someone who commercially trades in sex. Although the term is sometimes viewed as a synonym or euphemism for prostitution, the term is also used generally to describe those working in the sex industry. It can apply to strippers, pornography actors and prostitutes.

<sup>1</sup> [http://www.opensocietyfoundations.org/sites/default/files/rightsnotrescue\\_20090706.pdf](http://www.opensocietyfoundations.org/sites/default/files/rightsnotrescue_20090706.pdf)

**Decriminalisation** refers to the removal of criminal laws relating to the operation of the sex industry. The decriminalisation model aims to support occupational health and safety and workplace issues through existing legal and workplace mechanisms.

**Legalisation** is the use of criminal laws to regulate or control the sex industry by determining the legal conditions under which the sex workers can operate. Legalisation can be highly regulatory or merely define the operation of the various sectors of the sex industry.

It can vary between rigid controls under legalised state controlled systems to privatising the sex industry within a legally defined framework. It is often accompanied by strict criminal penalties for sex industry businesses that operate outside the legal framework.

## Global context

Activist Carol Leigh coined the term "sex worker" in 1980. This term is rejected by many of those morally opposed to the sex industry, such as social conservatives, anti-prostitution feminists, and other prostitution abolitionists. Such groups view prostitution as a crime or as victimisation, and see the term "sex work" as legitimising criminal activity or exploitation as a type of labour.



Sex worker rights activist Carol Leigh first coined the term "sex worker" in 1980. Photo: Google Images

In 2010, the UN Secretary General convened a commission to look into legal issues linked to HIV. The Global Commission on HIV and the Law released its report in 2012, calling for nations to do away with "punitive" laws against sex work. It recommended the decriminalisation of all laws prohibiting "adult consensual sex work" and noted the need for legislation to distinguish between trafficking and prostitution.<sup>2</sup>

The United Nations Population Fund (UNFPA) defines sex work as: "The exchange of money or goods for sexual services, either regularly or occasionally, involving female, male, and transgender adults, young people and children where the sex worker may or may not consciously define such activity as income-generating."

UN Secretary General Ban-Ki Moon has stated unequivocally that all countries should live up to their commitments and enact or enforce legislation that outlaws discrimination against members of vulnerable groups - including sex workers. He has said without laws to protect sex workers only a fraction will have access to critical services, including HIV prevention services. He has stated that punishing sex workers will not curb the spread of HIV and AIDS.



The red umbrella is the international symbol for sex worker solidarity. It is often used in protests on 17 December, the International Day to End Violence Against Sex Workers. Photo: Google Images

The African Union Youth Charter Article 23 calls on state parties to enact and enforce legislation that protects girls and young women from all forms of violence, including "sexual exploitation, trafficking, prostitution and pornography."<sup>3</sup>

While women and girls remain the largest group involved in sex work, the numbers of boys and men acknowledged to be involved is growing. Although far less numerous, transgender

Individuals are also active in sex work. These people face acute discrimination and danger. According to numbers released by the Trans Murder Monitoring project in 2010, since 2008 more than 420 transgendered people - including many sex workers - have been murdered internationally.

Society tends to view sex workers as immoral and they face high levels of discrimination in all aspects of their lives, in all parts of the world. While sex work is a last option for many, others freely choose it as a form of employment. Many more women, young girls and boys are coerced through violence, trafficking, debt-bondage or the influence of more powerful adults.

Many countries have in recent years moved toward decriminalisation. This includes Senegal, the Netherlands, Belgium, Australia, Canada and New Zealand, which have all decriminalised sex work in some way. However, only New Zealand has completely decriminalised sex work, instead moving toward a system of regulation based on civil codes. The 2003 Prostitution Reform Act decriminalised soliciting and brothels while distinguishing between voluntary and forced sex work.

<sup>2</sup> <http://www.hivlawcommission.org/resources/report/FinalReport-Risks,Rights&Health-EN.pdf>

<sup>3</sup> <http://www.africa-union.org/root/ua/conferences/mai/hrst/charter%20english.pdf>

### Arguments for legalised sex work

- Sex-workers are denied basic human rights by the systematic denial of their access to protective legislative frameworks;
- Legalisation means an end to police raids. It also means sex workers would have access to police protection;
- Legalising sex work means safer sex;
- Sex workers will have access to health care and counselling, which might assist them into transitioning out of the industry;
- Sex workers will be able to realise their labour rights, including redress for withheld wages;
- HIV transmission will be significantly reduced if sex work is decriminalised;
- Sex work can serve as a preferable form of informal income.

### Arguments against legalised sex work

- Proposals to legalise sex work don't protect sex workers, they provide legal pleasure to "foreign sex-buying men."<sup>4</sup>
- Sex work is a practice that takes advantage of poor and marginalised women;
- Sex work is to blame for the problem of human trafficking;
- Minors tend to be involved in sex work, which violates child rights legislations;
- Sex work is immoral and a bad example to society;
- Sex workers spread HIV and AIDS;
- Sex work contributes to loitering and public disorder; and
- Most sex workers do not see sex work as a permanent job.

## Sex work and Southern Africa

There is very little research into sex work in Southern Africa, partly because of the stigma related to the sale of sexual services. While laws vary from country to country, eight SADC countries have outright criminalised sex work while several others have no explicit legislation related to it. Sex work is not legal in any SADC country.



Gender Links Swaziland Manager Ncane Maziya (left) speaks with a young teenager whose grandmother forced her into prostitution so that the poverty-stricken family could afford food.

Photo by Samkelo Ngwenya

South Africa, as the region's largest country and a main destination for victims of human trafficking for the sex industry, criminalises sex work in its Sexual Offence Act of 2007. The South African Law Reform Commission (SALRC) sets out four scenarios in a report released in May 2009: maintaining the status quo, partial criminalisation, non-criminalisation, or the "regulation of adult prostitution and prostitution-related acts." The decriminalisation of sex work is recommended in South Africa's HIV and AIDS and STI National Strategic Plan (2007-2011), but the process of changing the law remains under the South African Law Reform Commission, which has been reviewing the Sexual Offences Act for several years.

A 2010 study found very high prevalence of HIV and AIDS among SADC sex workers - including as high as 86% in Zimbabwe and 70% in Namibia. It also noted that police and clients regularly harass sex workers in SADC, who also have insufficient health care and suffer under exploitative working conditions. In addition, researchers noted that "sex workers throughout the region are often targeted indirectly by public by-laws such as public nuisance offences." Healthcare and police services are withheld from sex workers due to negative attitudes toward the profession,

the report noted, calling for the decriminalisation of sex work in the region.<sup>5</sup>

Another 2009 report on the lives of sex workers in Namibia, South Africa and Botswana found that police regularly sexually assault sex workers. Police regularly raid brothels, extort money from sex workers and steal condoms. For these reasons and many others, sex workers in the SADC region live a life of instability in which they constantly feel threatened.<sup>6</sup>

While the SADC Protocol on Gender and Development doesn't make explicit mention of sex work, it does call on governments to ensure that laws on gender-based violence provide for comprehensive testing, treatment and care of survivors of sexual assault. It further mandates legislative provisions to prevent human trafficking and sexual harassment in all spheres. The women's equal access to resources and employment - a key issue for sex workers who live in poverty in an underground economy.

The article *Sex Workers Searching for Legal Safety* examines the lives of sex work in Namibia and notes that "even when the clients do pay, it is barely enough to buy food. The going rate for sex on the streets of Windhoek is N\$30 (R30)." One sex worker in the study admits that if she is hungry, she has had sex for as little as N\$10 (R10). The sex worker "believes that sex work would be much safer if it was not illegal. She says that if she would knew that she would be protected by the police, she could better negotiate safe sex and avoid being robbed and beaten by her clients."<sup>7</sup>

In a 2010 Facebook debate hosted by the Gender and Media Diversity Centre, students and other young participants voiced their opinions about sex work in SADC, many felt decriminalising sex work is immoral. One young lady had a slightly different take: "Selling sex should not be illegal, all women do it. It is just the payment arrangements that are different, and for some reason society has decided that all sex should be paid for on long term contracts instead of cash." Other participants noted that the demand for sex work is one symptom of today's widespread sexualisation of female bodies in advertising, media and pornography, especially via the internet.

<sup>4</sup> Henry Trotter, *Sugargirls and Seamen*.

<sup>5</sup> Malone, K. 2010. *Sex Work in the SADC Region: The Importance of Creating a Framework to Protect Sex Workers from HIV and Human Rights Abuses*.

<sup>6</sup> [http://www.opensocietyfoundations.org/sites/default/files/rightsnotrescue\\_20090706.pdf](http://www.opensocietyfoundations.org/sites/default/files/rightsnotrescue_20090706.pdf)

<sup>7</sup> From: <http://www.lac.org/na/news/specialfeatures/sexworkers.html> [accessed on 21 March 2010]

## Case study: Mozambican sex workers form alliance

By Fred Katerere

Mozambican parliamentarians in 2010 faced a challenge from an advocacy group new to the country's political scene, on an issue most people are unwilling to even talk about - sex work. The newly formed Mozambique chapter of the Pan African Sex Workers Alliance (ASWA) is pressing parliament to recognise the rights of sex workers, especially to ensure their health and security.

Laila Matsinhe, one of the two coordinators of ASWA said in a recent interview that the objective of her organisation is to organise sex workers so that they understand their rights. Questioned on what they wanted parliamentarians to do, Matsinhe was blunt, posing a challenge that may kick off debates on possible decriminalisation. "We want the government to look at us as just any other worker. And if they legalise the profession we can pay taxes," said Matsinhe. In a country where sex work is highly stigmatised, Matsinhe said ASWA is holding two public meetings each week in places where most of the sex workers are.

Sandra Odete, another ASWA coordinator said most sex workers face physical abuse from police officers, customers and even thieves who robbed them on the streets. "What we want is for the sex workers to understand their rights and be able to denounce cases of abuse and refuse to be forced to have unsafe sex," said Odete. "We want them to be organised."

However, public opinion may not be easy to sway - many Mozambicans do not appear ready to accept legalisation of sex work.<sup>8</sup>

## Sex work and HIV and AIDS

Around the world, sex workers among those at highest risk for HIV and AIDS. However, sex workers are also most likely to be dehumanised and denied services which could protect them against HIV and other sexually transmitted



Research has linked the criminalisation of sex work to an increase in HIV among sex workers - one of the reasons why it's important to educate youth about sex and HIV. Above, an HIV awareness workshop in Mauritius.

*Photo by Mary-Jane Piang-Nee*

infections. A 2012 Global Commission on HIV and the Law report found that the criminalisation of sex work and fear of arrest drives sex workers underground, "away from HIV and harm reduction programs." Further, incarceration exposes sex workers to unsafe practices and sexual assault - and antiretroviral drugs are often denied.<sup>9</sup>

Unlike in most other regions, HIV and AIDS is not concentrated in any one community (e.g. sex workers or men who sleep with men) in SADC. Regardless, studies have shown sex workers in Southern Africa to have alarmingly high rates of HIV.<sup>10</sup> Many believe that the legalisation of sex work will allow sex workers better access to healthcare and contraceptives, which would greatly reduce the spread of the virus. SWEAT, a Cape Town organisation that advocates on behalf of sex workers, advises that legalising sex work will provide sex workers with greater protections, including the education necessary to insist that clients use condoms. The Open Society Institute also recommends decriminalisation, calling on foreign donors and civil society to strengthen sex worker-led initiatives and targeted interventions to increase HIV awareness and access to prevention and treatment services.

## Case study: Sex work, South Africa and the World Cup

The issue of sex work dominated headlines in advance of the 2010 FIFA World Cup in South Africa. Heated debate focused on the topic of legalisation and concern about the spread of HIV and AIDS. Indeed, The Netherlands' State Secretary for Health, Welfare and Sport even warned Dutch football fans to bring their own condoms in anticipation of a shortage in South Africa.<sup>11</sup>

On 16 March 2010, SWEAT distributed a press release noting that police and vice squad action against sex workers "puts back HIV work with sex workers and places sex workers lives at risk."



<sup>8</sup> <http://www.genderlinks.org.za/article/new-sex-workers-alliance-formed-2010-07-13>

<sup>9</sup> <http://www.hivlawcommission.org/resources/report/FinalReport-Risks,Rights&Health-EN.pdf>

<sup>10</sup> [https://arasa.info/sites/default/files/ARASA\\_sex%20work\\_oct%2008.pdf](https://arasa.info/sites/default/files/ARASA_sex%20work_oct%2008.pdf)

<sup>11</sup> Richter, Chersich, Scorgie, Luchtters, Temmerman and Steen. "Sex work and the 2010 FIFA World Cup: time for public health imperatives to prevail." *Globalization and Health* 2010, 6:1doi:10.1186/1744-8603-6-

The release stated:

*“A large number of women are not coming to health care clinics, as they are encountering police everywhere. The police have vowed to ‘clean up’ the streets ahead of the World Cup, and sex workers have been told that if the police ‘catch’ them, they will hold them till after the soccer tournament is over. In recent incidents in Cape Town, police have raided escort agencies searching and confiscating condoms as evidence of sex work activities. The City of Cape Town recently introduced a vice squad, which has been specifically targeting sex workers.*

*Firstly, street-based sex workers are being driven into harder-to-reach areas, where they are more vulnerable to abuse and violence. Secondly, because of fear of their treatment at the hands of the authorities, many sex workers will have no access to health care for the next four months. Thirdly, when sex workers are arrested and detained for long periods, the loss of income means hunger and suffering for their dependants.*

*Even when not directly responsible for violence against sex workers, the actions of South African Police and the Vice Squad create an environment where violence against sex workers can flourish. Sex workers are assaulted and murdered with alarming frequency. In one survey of 50 sex workers in Johannesburg, interviewees overwhelmingly said that they did not feel they could approach the police for assistance if they had been assaulted or subjected to violence.”*

While estimates on the number of sex workers in South Africa vary greatly, a 2008 book, *Selling Sex Work in Cape Town*, documented 245 street-based sex workers and 964 brothel-based sex workers in Cape Town. In November 2008, sex workers from across Southern Africa participated in the International Forum on Women’s Rights and Development in Cape Town, South Africa, to demand respect for their rights, an end to violence, and acknowledgement of sex work as work.

### Sex work and the media

The media maxim that “sex sells” is as true today as when PR pioneer Edward Bernays used sex to sell cigarettes to unsuspecting Americans in the 1960s. The media is also often responsible for whipping up moral panic on social issues like sex work. The combination results in misinformation, typically painting sex workers in a very negative light. In addition, the majority of media stories about sex work fail to access actual sex workers as sources, rendering them invisible.

The 2010 *Gender Links Gender and Media Progress Study* found that men’s voices dominate in all story topic categories, including stories about gender equality and gender violence. Indeed, 59% of stories on sex and sexuality accessed men as sources and just 41% spoke with women. The study also found the media’s perpetuation of sexist stereotypes in both subtle and overt ways.



Some groups tackle high HIV rates and sexual abuse, including among sex workers, with education campaigns. Namibia’s Ama Buruxa Cultural Group presents theatre productions about safe sex and sexually-transmitted diseases. *Photo by Marijtje van Dyk*

### Common misperceptions about sex work

Myths	Facts
<ul style="list-style-type: none"> <li>• If sex work is legalised, human trafficking will increase.</li> </ul>	<ul style="list-style-type: none"> <li>• It is unclear how many people are trafficked into the sex industry in South Africa. Proponents of legalisation of sex work note that decriminalisation should be accompanied by stricter laws to fight human trafficking.</li> </ul>
<ul style="list-style-type: none"> <li>• If a Sex Trade Worker really wanted to exit the sex trade, s/he would just quit.</li> </ul>	<ul style="list-style-type: none"> <li>• Quitting, far too often, is not an option due to social stigma, economic reasons, forced labour, homelessness or addictions issues.</li> </ul>
<ul style="list-style-type: none"> <li>• Educated people do not become sex workers.</li> </ul>	<ul style="list-style-type: none"> <li>• Anyone can become a sex worker. Some women become sex workers in order to pay for post-secondary education for themselves and/or their children.</li> </ul>
<ul style="list-style-type: none"> <li>• Only women sell sex.</li> </ul>	<ul style="list-style-type: none"> <li>• While the majority of those who sell sex are female, male and transgender sex workers experience many of the same issues of exploitation and abuse. What is clear is that it is predominantly men who buy sex.</li> </ul>

## International perspectives on sex work

### Finland

Forced prostitution is rare in Finland as a result of free education, low unemployment and social security benefits that guarantee a minimum standard of living for all. Anna Kontula, a researcher on sex work, argues that selling sex is an alternative to low-paid and highly controlled jobs in the service sector. Finnish women choose sex work because it offers them more autonomy in their work but also because it gives them more free time: one half-an-hour meeting with a customer per day guarantees higher standard of living than full time service jobs available. Kontula argues that sometimes sex work can be pleasurable.<sup>12</sup>

### DRC

A 2010 BBC report into prostitution in the Democratic Republic of the Congo found that sex workers there regularly face beatings, insults and rape. However, some have received assistance from the Collective for Integrated Economic, Social and Cultural Development (CODESCI), an organisation that seeks to create awareness about sex work and sex worker rights through advocacy and community programmes. The BBC reporters spoke with one sex worker, Jeannette, in Mbuji Mayi, a town in the province of Kasai-Oriental. The 40 year-old sells her body for one dollar per session to meet her needs. Of the 400 prostitutes in Mbuji Mayi, the majority have fallen victim to sexual assault and physical violence. It is not uncommon for clients to force sex workers there to have unprotected sex.<sup>13</sup>

### Canada

Canada has historically practiced a hybrid form of criminalisation. Although prostitution itself is theoretically legal, practicing it has not been. However, a 2012 Appeals Court decision paved the way for the legalisation of brothels. The decision also modified a law that had made it illegal to live off the avails of sex work. Yet judges upheld a law that makes it illegal to communicate for the purposes of prostitution. While the ruling means it is possible to operate indoor sex work operations, it continues to criminalise those sex workers who work on the streets; often the industry's most vulnerable. Canada's government appealed the decision, which is now before the country's highest court.<sup>14</sup>

### Russia

The Coalition Against Trafficking Women reports that trafficking in women from the Soviet Union has "exploded" since 1989. The report notes that the country's women for a large percentage of those trafficked in the international sex market, often surpassing traditionally high source



World governments are increasingly beginning to see that sex workers deserve the same protections as other people in other professions. This includes access to healthcare, social services and the justice system. Photo: Google images

countries in Asia and Latin America.<sup>15</sup> Russia is also known as a major destination for victims of sex trafficking, including children. A 2006 joint World Vision, UN and IOM report found that Russia has become a destination for child sex tourists and that sexual exploitation of children is on the rise.<sup>16</sup>

### New Zealand

New Zealand Legislators legalised sex work with the passage of the New Zealand Prostitution Reform Act in 2003. The government measured its effects five years later and contrary to public fears, researches found no increase in the number of people entering the sex trade. Meanwhile, sex workers reported improved working conditions and wellbeing, improved safety and a better relationship with police. In addition, a 2008 government study found New Zealand has posted a decrease in HIV transmission.

### Next steps

- Developing country-specific protections for sex workers who have been abused or sexually assaulted.
- Ensuring sex workers have access to social programs, health care and HIV prevention and counselling services.
- Lobbying for all SADC countries to implement anti-trafficking legislation in line with the SADC Protocol on Gender and Development and international legal instruments.
- Lobbying for SADC governments to honour their obligations under the SADC Protocol and mandate legislative provisions to prevent sexual harassment in all spheres as well as to ensure women's equal access to resources and employment.
- Mobilising governments and civil society to push for accountability and gender-sensitive training within the justice system.

<sup>12</sup> Kontula, A. The Sex Worker and Her Pleasure Article in Current Sociology, Vol. 56, No. 4, 605-620 (2008) <http://www.sexwork.com/coalition/Finland.html> [accessed on 13 March 2010]

<sup>13</sup> From: DRC: Prostitutes claim their rights, Stéphanie Plasse, 4 March 2010, BBC

<sup>14</sup> [http://www.xtra.ca/public/National/Activists\\_divided\\_on\\_sex\\_work\\_ruling-11751.aspx](http://www.xtra.ca/public/National/Activists_divided_on_sex_work_ruling-11751.aspx)

<sup>15</sup> Global Survival Network, Christina Ling "Rights Activists Rap Ex-Soviet States on Sex-Trade," Reuters, 6 November 1997

<sup>16</sup> [http://www.worldvision.org.nz/media/72259/the\\_global\\_sex\\_trade.pdf](http://www.worldvision.org.nz/media/72259/the_global_sex_trade.pdf)