Are sex workers entitled to socio-economic rights?
Separating myth from reality

Marlise Richter

Socio-economic rights encompass the basic entitlements of all people in South Africa to social and economic goods and services and provide an important mechanism for the attainment of social justice. By virtue of their inherent human dignity, sex workers are entitled to all the socio-economic rights enshrined in the Constitution. Yet the realisation of these rights is compromised daily by police prosecution, social stigma and gender-based violence. In fact, sex workers’ economic, social and physical vulnerability in South African society is created, sustained and exacerbated by outdated laws that criminalise ‘sex for reward’.
This article describes the barriers that prevent sex workers from enjoying their rights, particularly socio-economic rights. It concludes that, unless sex work is decriminalised, sex workers may not be able to claim their basic entitlements under the South African Constitution. Available research has shown that sex workers live in dire conditions and that the lack of legal protection compounds vulnerability of sex workers to violence, ill health and exploitation. In this article, five areas of extreme concern for sex workers are considered: poverty, education, access to health services, HIV and AIDS and gender inequality.

**Poverty**

Many people who sell sex are already extremely vulnerable as a result of poverty. Often, women sell sex because they have limited options to earn enough money to feed, clothe and educate their dependants (SWEAT et al., 2002).

The Institute of Security Studies (ISS) and the Sex Worker Education and Advocacy Taskforce (SWEAT) conducted one of the biggest surveys of sex work in Cape Town, South Africa, in 2007 and 2008. They found that 76% of sex workers entered sex work for money (Gould and Fick, 2008). Most sex workers remain in the industry because they are able to earn more by selling sex than they could in other jobs. One respondent in the study noted:

> Well, I worked for many years in a factory in the clothing industry, but then with all the difficulties in the industry, I was retrenched. I am the only person bringing in money in my family and I needed to make money. (Street-based sex worker) (Gould and Fick, 2008: 13).

Campbell conducted a study on sex workers near the Carletonville mining community in the North West province, South Africa. She uncovered four reasons why people took up sex work at the mine: first, the death of a parent or both parents; second, leaving school after becoming pregnant; third, running away from the hardships of home; and fourth, leaving an abusive man (Campbell, 2000). Sex workers in this study - as in many other places in South Africa - live in poverty.

The Reproductive Health and HIV Research Unit (RHRU) conducted another study on sex workers in Hillbrow in 1998 and their research revealed that 90.5% of respondents were single and never married, but that 65% of them had children (RHRU et al., 2002). Many women take up the work as a consequence of poverty caused, for example, by the lack of male support, single parenthood, divorce, rape or infertility. Sex work should be understood in light of high levels of female unemployment, limited education of women and the consequent lack of skills. Women’s choices must also be understood in the context of a history of male migrant labour and urbanisation which took men to cities and caused a break-up of families (RHRU et al., 2002).

The criminality associated with sex work has adverse consequences for accessing social services. Many state-initiated programmes which assist people with social security and food might overlook sex workers. Because of the stigma attached to the sex work industry, sex workers may not feel entitled to claim social assistance such as the child support grant. In particular, because of a fear that children will be removed from their care if their identities are disclosed, access to disability and child support grants is inhibited. Also, sex workers fall outside the definition of ‘employee’ for the purposes of unemployment benefit legislation. Even though sex workers have specific needs - for example, in relation to their children - the criminalisation of sex work means that these needs cannot be met by the state. Targeted sex worker programmes would be necessary to realise progressively their constitutional rights to health, water, housing, food and social security.

**Education**

The following tables are drawn from the ISS/SWEAT study. They demonstrate that sex workers earn more from sex work than from other forms of employment:

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<tr>
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<tr>
<td>% with a tertiary education</td>
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</tr>
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Table 1: Education levels of sex workers in Cape Town (Gould and Fick, 2008)

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The study further notes that:

It is clear from the table that the lower the level of education, the greater the difference is between what someone can earn in a ‘normal’ job and what they can earn in the sex industry. A person who has only a high school education is likely to earn on average R1 279 in a formal job but R3 587 in sex work – almost three times more. Economically speaking, a decision to forego domestic work in favour of sex work is therefore a rational choice, even if it creates difficulties in other respects. […] The income differentials indicate that it would be very hard to eradicate sex work by offering women (and men) on the street alternative jobs that are commensurate with their level of skill and education (Gould and Fick, 2008).

It is clear that sex workers need targeted skills and education programmes in order to provide viable alternatives to sex work.

### Access to health services

Access to health care services by sex workers is limited partly because of fear of being discriminated against and partly because of fear of the consequences of disclosing their identity. SWEAT has shown that health clinic staff fail to treat sexually transmitted infections (STIs) confidentially, have negative attitudes, refuse to dispense sufficient condoms and make unwarranted public accusations against sex workers that they are ‘vectors’ of disease. Furthermore, they threaten sex workers with revealing their identity and work to the Department of Social Services so that their children can be removed from their care.

According to the RHRU, sex workers mistrust health workers and live in constant fear that their communities and families will discover their work (Stadler and Delany, 2006; RHRU et al, 2002). This too reduces their chances of accessing health services. Because of these fears and mistrust, sex workers either do not seek help at all for sexual and reproductive health ailments or seek help in the private sector, which often results in exposure to quacks selling unsafe medication on the streets.

### HIV and AIDS

Because sex workers have generally been overlooked in South Africa, research on HIV and AIDS and sex workers is limited. What is known makes it clear that sex workers are vulnerable to HIV. In studies done in 1998, HIV prevalence among sex workers was between 45% and 69% (Williams et al, 2003). It is most likely that HIV prevalence in this group is now much higher.

Sex workers’ health is compromised by violence (perpetrated by clients as well as the police), stigma, the nature and danger of their work, economic difficulties, and the lack of access to services and support. The criminalisation of sex work itself increases sex workers’ vulnerability to STIs, including HIV. There are two reasons for this: first, sex workers’ access to health and welfare services is limited by criminalisation; and second, sex workers are less able to negotiate condom use because of their exposure to violence from clients. The violence that sex workers encounter is made worse by the criminal context in which sex work takes place.

Public health arguments for the decriminalisation of sex work highlight the following consequences of the criminalisation of sex work:
- It increases the vulnerability of sex workers to violence from clients, partners and police.
- It creates and sustains unsafe and oppressive working conditions;
- It increases the stigmatisation of sex workers.
- It restricts access to health, social, police, legal and financial services.
- It has a negative impact on safer sex practices.
- It adversely affects the ability of sex workers to find alternative employment (SWEAT et al, 2002).

All of these factors influence the ability of sex workers to protect themselves against HIV, to prevent HIV transmission to their sexual partners and clients, and to access HIV-testing, treatment and support. Indeed, South Africa’s national AIDS policy has recognised

### Table 2: Education levels related to earnings for street-based sex workers (Gould and Fick, 2008)

<table>
<thead>
<tr>
<th>Level of education (and training)</th>
<th>Average past earnings</th>
<th>Average current earnings</th>
<th>Differential</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tertiary</td>
<td>R4 000</td>
<td>R6 000</td>
<td>1.5 times more</td>
</tr>
<tr>
<td>Matric</td>
<td>R1 560</td>
<td>R2 700</td>
<td>1.7 times more</td>
</tr>
<tr>
<td>Other high school</td>
<td>R1 279</td>
<td>R3 587</td>
<td>2.8 times more</td>
</tr>
<tr>
<td>Primary school only</td>
<td>R1 693*</td>
<td>R3 771</td>
<td>4.4 times more</td>
</tr>
</tbody>
</table>

* Just under half had never done any other work
this, hence the HIV and AIDS and STI Strategic Plan for South Africa 2007 - 2011 explicitly recommends the decriminalisation of sex work.

**Gender equality**

It is clear that, as the vast majority of sex workers in South Africa are female, criminalisation of sex work has a disproportionate effect on women. At the same time, the gender inequality that surrounds the decision to become a sex worker should be taken into account. Although women have fewer economic choices, they do have agency within these constrained choices and deserve to have their choices respected. Even if choice is constrained, there remains room for agency.

The Constitution states that everyone has inherent dignity, which requires that everyone is treated with respect (section 10). This means that the choices that people make about their own bodies, even if they are regarded as ‘morally repugnant’ by some, need to be respected. This is especially so when the choice is sometimes made because of the need to earn a living and provide for one’s family. Many women choose sex work out of desperation and they work under exploitative conditions. Since economic, social and sexual inequality limits women’s choices of profession, recognising the context in which women become sex workers in South Africa allows for the consideration of appropriate legal remedies to improve the conditions under which sex workers work and also to protect women from forced prostitution and trafficking.

Only an approach to sex work that recognises the agency of sex workers within their constrained choices and in the context of poverty is consistent with South Africa’s Bill of Rights. Such an approach would never seek to criminalise sex workers, as such criminalisation further entrenches the disadvantage suffered by this group of vulnerable women. For these reasons, it is submitted that sex work should be decriminalised.

**Conclusion**

This article has argued that sex workers’ economic, social and physical vulnerability in South African society is aggravated by the criminalisation of sex work. Not only do these laws have a direct effect on sex workers’ dignity and freedom, they also create barriers for sex workers who wish to access their socio-economic rights guaranteed by the Constitution. These vulnerabilities must be urgently addressed. South Africa will not reach its Millennium Development Goals by 2015 unless it invests the necessary political will, resources, skills and energy in addressing the concerns, plight and needs of sex workers. In addition to implementing socio-economic programmes that target sex workers, sex work in South Africa should be decriminalised.

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This paper is based on a submission to the South African Human Rights Commission public hearings on the Millennium Development Goals and the realisation of economic and social rights in South Africa (7 February 2009).

**References**


Reproductive Health and Research Unit, Sociology of Work Unit University of Witwatersrand and Vrije University Amsterdam 2002. Women at risk: A study of sex work in Hillbrow (on file with author).
