



CHILDREN AND SEX WORK

ASIJKI
COALITION TO
DECRIMINALISE
SEX WORK IN
SOUTH AFRICA



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In calling for the decriminalisation of sex work, we are talking about the buying and selling of sexual services between consenting adults. No serious supporter of decriminalisation has proposed that buying sex from a child or employing a child to sell sexual services should be decriminalised, even if that child is willing. This fact sheet outlines problems with existing ways of protecting children from being forced to do sex work. It also explains how the decriminalisation of adult sex work would make it easier to take legal action against people who force children into sex work. In addition, it would make it easier to help children avoid or stop selling sex.

1 BACKGROUND AND CONTEXT

- Under South African and international law, a child is defined as anyone under the age of 18 years. Sex for money involving people younger than 18 is officially seen as the sexual exploitation of children^{1,2}. Thus, although the normal age of consent for sex is 16 years in South Africa, only people aged 18 and over are legally seen as adult sex workers (or 'prostitutes') if they sell sex.
- Under the Sexual Offences Amendment Act of 2007, it is an offence in South Africa to buy sex from a child or to help someone else to do so, whether the child agrees to it or not³.
- It is clearly a problem if children are forced into sex work in South Africa^{4,5}. Little research exists. Much of the information available on children selling sex depends on newspaper articles or interviews with health care workers or social workers. These articles are, at times, muddled and unreliable. Media figures that say tens of thousands of children in South Africa have been forced into prostitution through trafficking are not supported by high-quality research⁶. Such incorrect figures are dangerous.
- Research based on finding specific children who have been trafficked or forced into selling sex usually results in much lower numbers^{7,8}. A nationwide police campaign in 2004 identified 160 children between the ages of 13 and 17 working in brothels, although not all of these were necessarily being forced to do sex work⁹. A thorough survey of the sex industry in Cape Town found only five children selling sex, none of whom were being forced to do so¹⁰.
- Children and young adults who sell sex are especially at risk of violence and HIV infection compared to older sex workers, due to their relative lack of physical strength, experience and emotional development. They also have very little bargaining power with clients because they are hidden away from the public eye^{11,12,13}.

2 CRIMINALISATION HARMS CHILDREN FORCED INTO SEX WORK

- Criminalisation of adult sex work results in police violence against sex workers of all ages, with many South African sex workers reporting that they have been harassed, robbed, assaulted or raped by police, as well as being arrested unlawfully or asked for bribes^{14,15,16}.
- Although under South African law, children selling sex are formally seen as victims rather than criminals, the police still arrest and illegally abuse under-age sex workers^{17,18}. This is partly because the police target sex workers under by-laws around 'loitering' and 'public nuisance', rather than for actually selling sex. They also sometimes arrest sex workers without any intent to lay a charge^{19,20}.
- Research from the United States shows that children selling sex are regularly forced into having sex with police officers²¹.
- Because sex work is criminalised, sex workers, including children, will avoid the police to escape being arrested or illegally abused. This means they may work in out-of-the-way places where they are easily targeted for attack^{22,23}.
- In South Africa both adult sex workers and children forced into sex work face discrimination from health workers. This can make it difficult to get screening and treatment for HIV and other health conditions^{24,25}. Children selling sex will not use services if they think they will be reported, so healthcare providers should make it very clear they offer a non-judgemental service and protect client confidentiality. In the same way service providers must be guaranteed that they will not be targeted for "promoting child prostitution" if they do provide such services.
- Even describing children selling sex as 'victims' – who need to be forcibly placed with their families, foster parents or state care homes – can be a problem. Children can suffer violence and abuse in both family homes and care homes. As a result, they may choose to live on the street, join a gang and/or do sex work as better options^{11,17}. While it is true that children may have a more limited emotional and intellectual ability than adults and may face really difficult circumstances, we must also accept that they still make choices and must consider these when judging what is best for them.



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3 HOW TO HELP CHILDREN WHO SELL SEX

- Although children forced to do sex work are not seen as criminals in South Africa, police and other service providers need to be reminded of this, because they sometimes deny these children services.
- Sex work for consenting adults must be decriminalised. Decriminalisation means the buying and selling of sex becomes legal. Employment of sex workers is also legal. Sex work would be controlled by general labour law, allowing sex workers to organise legally. It also means that employers (e.g. brothel managers) must obey health and safety labour laws. Force, trafficking and other abusive labour practices would remain illegal.
- Under decriminalisation, both adult and under-age sex workers would feel more able to report violence to the police, and even report corrupt police officers themselves, with less fear of arrest or abuse^{26, 27, 28, 29}. Sex workers are well placed to spot and help with cases of forced sex work or sexual exploitation, including with children, and have done so successfully³⁰.
- Decriminalisation would reduce stigma and discrimination against sex work, making people less likely to feel they are right to “punish” those in the sex industry with violence³¹.
- Decriminalising consensual adult sex work would make sex work more visible and allow the police to focus more on the small number of cases where the people selling sex are under age and/or forced into sex work. The 2003 Act decriminalising adult sex work in New Zealand also criminalised adults who buy sex – or help people buy sex (e.g. brothel-owners) – from children. These laws have resulted

in successful arrests²⁷. A survey of sex workers in New Zealand revealed that only 41 out of 772 had entered the sex industry as children after the passage of the Act and expert opinion is generally that there hasn't been any increase in the number of underage workers²⁷.

- Despite the need to lay charges against people who force children into sex work, the way to deal with children in forced sex work is not to rely only on arrests or using force in other ways. The need to avoid police can drive children at risk to hide away even more, making it hard to provide services to them. It also increases the risk of violence. The emphasis should be on providing services and support to help children who sell sex to make other choices.



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

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