



30 January 2023

**FOR ATTENTION:** Chief Directorate: Legislative Development

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## **Asijiki Coalition for the Decriminalisation of Sex Work**

### **Submission to the Department of Justice and Constitutional Development in full support of the** of the Sexual Offences Amendment Bill of 2022

#### **Objects of the Act**

The Coalition is in **full support** of the objects of the act, namely, to decriminalize adult consensual commercial sex work and to repeal the statutory provisions that criminalise sex work and all aspects of the sex work industry.

#### **The Asijiki Coalition**

[The Asijiki Coalition for the Decriminalisation of Sex Work](#), founded in 2015, consists of sex workers, allied organisations, activists, advocates and human rights defenders who advocate for the decriminalisation of sex work in South Africa. The standing steering committee entities are the [Sex Workers Education and Advocacy Taskforce \(SWEAT\)](#), [Sisonke](#), the National Movement of Sex Workers and [Sonke Gender Justice](#). Currently, the coalition consists of **131** members.

#### **1. Repeal of laws**

##### **1.1 The Sexual Offences Act 23 of 1957**



South Africa has criminalised the selling of sex since 1957. In 2007 it also became a crime to pay for sex and or to benefit from the proceeds of sex work. This old immorality act has been used to suppress and oppress sex workers and effectively has given rise to numerous human rights abuses, resulting in untold harms and many lives lost.

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This outdated law infringes on the rights of sex workers, the right to bodily autonomy being one of these rights. It has denied persons selling sex the right to work due to the lack of labour recognition and protections. Sex workers are unable to access basic labour protections that would be afforded to other employees and are forced to work in unsafe environments with no labour recourse. Sex workers face discrimination and stigma from their community members along with local health service providers.

As the Asijiki Coalition, another main concern is the high levels of Gender-Based Violence and Femicide that sex workers are facing. The President's address on gender-based violence in our country and in the Declaration following the Presidential Summit on Gender Based Violence points to the need to decriminalise the sex work industry in South Africa. The call in Pillar three of the [National Strategic Plan on Gender-Based Violence and Femicide](#) to decriminalise sex work by 2023 forms part of a broader call from civil society for strategic legislative intervention to review laws and policies applicable to gender-based violence and femicide.



Sex Workers are experiencing different forms of violence including emotional, psychological, , verbal abuse, as well as threats of physical or sexual violence or harm, coercion, controlling behaviours, name calling and insults, intimidation, isolation, and bullying. This includes the use of money or resources to control an individual or harm them economically, blackmail, refusing individuals the right to work or taking their earnings

Without addressing these diverse human rights violations, an effective response to HIV will remain out of reach. Criminalisation works against efforts towards preventing new HIV infections. In 2021 UNAIDS brought out a [fact sheet on HIV and Sex Work](#). In 2019 it was calculated that sex workers had a 30 times greater risk of acquiring HIV than the general female population. UNAIDS repeated its call for evidence-based interventions around HIV prevention, treatment and care. A critical aspect is that of ending the criminalisation of sex work.

Although our South African Police Service have a duty to respect our laws and protect the people in South Africa, they have often been found to be the perpetrators of violence against sex workers in the manner in which they arrest and harass sex workers. Sex workers face grave human rights violations at the hand of law enforcement officials who are supposed to uphold and respect the law.

In a recent study carried out by SWEATs #SayHerName Campaign, *“101 female and transwoman sex workers died in South Africa. Most died before the age of 40 and 45% of the deaths were attributed to murder.”*<sup>1</sup>

In March 2019, President Ramaphosa again committed to the decriminalisation of sex work at the signing of the Gender-Based Violence and Femicide Declaration, where President Ramaphosa said he *“will work with all stakeholders to develop policy around the decriminalisation of sex work”*.<sup>2</sup>

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<sup>1</sup> Nortier, C “#SayHerName: Murders of sex workers remain high, yet invisible” Daily Maverick 5 March 2020, available at <https://www.dailymaverick.co.za/article/2020-03-05-sayhername-murders-of-sex-workers-remain-high-yet-invisible/>

<sup>2</sup> Mafokwane, P “Sex work might be decriminalised” Sowetan Live 29 March 2019, available at <https://www.sowetanlive.co.za/news/south-africa/2019-03-29-sex-work-might-be-decriminalised>



There is a wealth of evidence to indicate that decriminalisation is the only legal option in order to address the health and safety concerns of all who choose to enter this form of work, women, men, and trans women.

## **1.2 Section 11 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007)**

The Coalition is **in full support** of repealing Section 11 that will essentially decriminalise clients of sex workers. We support the **full** decriminalisation of the sex work industry, as keeping clients of sex workers criminalised places the sex worker at greater risk and essentially forces the sex work industry underground as potential clients want to avoid detection and arrests. The sex worker also faces situations where transactions are hurried, and this can lead to unsafe and difficult transactions. It is also common sense that you cannot sell a service freely if the buyer faces criminal sanction.

The proponents of a so called 'Nordic' model that claims to protect sex workers by maintaining clients as criminals, do so from a flawed position that all persons selling sex are actually being sexually exploited and in need of rescue and rehabilitation. Such a position asserts that sex workers, the majority of whom are women, do not possess agency nor are they capable of making choices regarding the type of work they do. This position violates the rights of persons selling sex particularly the rights to dignity, bodily autonomy, and the right to fair labour practices.

Decriminalising clients of sex workers will also open up spaces for harm reduction interventions with potential clients. This is what sex workers are already calling for within a criminalised environment.

## **2. Clause 2 - Expungement of criminal records of persons convicted of, engaged in, rendering or receiving sexual services from persons 18 years or older.**

As the Asijiki Coalition we are full in support of the expungement of records as set out above. There are sex workers who have been directly and indirectly impacted by the criminal records system. It



automatically creates room for stigmatisation regarding their criminal history and creates barriers to employment. starting a business, accessing skills, learning opportunities, and generally engaging in the economy. Excluding people due to their criminal records from the economy contributes to the country's soaring unemployment rates, thereby adversely affecting the safety and security of their families, community and society as a whole.

We believe decriminalising sex work will restore the dignity of sex workers with criminal records by challenging the legitimacy of the narratives that have been used to justify their exclusion from society.

### 3. Transitional provisions

We are in **full support** that all criminal proceedings relating to sexual services instituted prior to the commencement of this Act, and which are not concluded before the commencement of this Act must be ceased and withdrawn.

### Conclusion

As a coalition, actively pursuing the decriminalisation of sex work, we feel that it is time for the Department of Justice and Correctional Services to decriminalise sex work. We strongly believe that if our government is serious about contributing to the end of gender-based violence and femicide in South Africa. It will recognise that criminalisation continues to perpetuate systemic violence against women and persons who conduct sex work.

We therefore support the full decriminalisation of Sex Work and ask the department to urgently repeal the said legislation. . This is a human rights issue not a moral one and the full decriminalisation of the sex work industry is the best suited model.



This process needs to move swiftly sex workers are facing human rights abuses daily and in some instances dying. We are taking too long. Therefore, as the Asijiki Coalition we urgently request that no extension be given regarding the Submission process.

We also respectfully request an opportunity to make an oral presentation within the deliberations on this proposed Bill. Page | 6

**Signed on behalf of the Coalition :**

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[SWEAT](#)

[Sisonke](#)

[Sonke Gender Justice](#)

**Endorsed by Supporting Organisation**

[Human Rights for Lawyers](#)

[Raise Up Against Gender Based Violence](#)

[Forum for the Empowerment of Women](#)

[People Opposing Women Abuse \(POWA\)](#)

[South City Institute](#)

**HUMAN RIGHTS  
FOR EVERYONE**

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[Total Shutdown](#)

[Hate Crimes Working Group](#)

[Just Association, Southern Africa, Malawi and Zimbabwe](#)

[Vuka Vala Rainbow Movement](#)

[Tosunga Banninga](#)

[Msikhale Gender Aids Alliance](#)

[Section 27](#)

[People living with HIV Estian](#)

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