

WRITTEN SUBMISSION

Criminal Law (Sexual Offences and Related Matters) Amendment Bill, 2022

SUBMITTED TO:

The Department of Justice and Constitutional Development

SUBMITTED BY:

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DATE:

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INTRODUCTION

My name is Maria Stacey, and I am a Director of Equal International, a global organisation which works towards inclusive and just development, as well as being a director of Equal’s African chapter, Equal Africa.

Our organisation supports governments, donors, international and local organisations with research, strategy, policy and consultation¹. I am a professional nurse and a clinical psychologist by profession.

My current personal area of specialization is the intersection of HIV and public health concerns and human rights, with a particular focus on groups which are key and vulnerable populations for HIV, which as you may know, includes sex workers.

Equal International fully supports the draft bill to repeal the clauses of the Sexual Offences Act which criminalise the selling and buying of sex by adults.

Experience in sex worker programme management and research

Between 2010 and 2016, I set up, and managed South Africa's first national sex worker programme, funded by the Global Fund, which, as of Q1 2022 reached 36 416 sex workers per quarter in 14 districts. Through this programme, sex workers are provided with peer support, information and education, condoms and lubricant, group activities, and are mobilised to take up biomedical, psychosocial and human rights services.

Based on WHO recommendations, sex workers have been included in the development and strengthening of the programme. The programme employs over 1500 trained sex workers as peer educators, site coordinators, programme managers, data capturers, human rights defenders and HIV testing officers. The current programme is built on [international best practice](#), it is responsive to the [South African National Sex Worker HIV Plan 2019-2023 \(NSWP\)](#) and the South African National Strategic Plan on HIV, STIs and TB, 2017-2023 (NSP). Four successive programme evaluations have found that the programme has made a significant contribution to preventing HIV, and keeping HIV+ sex workers healthy. It has also strengthened sexual and reproductive health more broadly, improved human rights, reduced violence, reduced stigma and discrimination, improved psychosocial wellbeing and strengthened social capital.

In the course of setting up and managing these programmes, and in the course of my subsequent involvement in participatory research and consultation with sex workers, I estimate that I have personally engaged with between 5000 and 6000 sex workers, in every province of South Africa, in other African countries, and internationally. I have spoken to them in their homes, in brothels, in taverns, at truck stops, and on street corners from Komatipoort to Mafikeng and from Musina to Cape Town. The sex workers I have met have been incredibly diverse. They have been mostly female, but also male and transgender; mostly South African, but also migrants from Lesotho, Zimbabwe, Burundi, Kenya and other countries. They have belonged to a range of races, ethnic groups, religions and cultural backgrounds. They have ranged from people who abstain from all substances to those who inject drugs. They have earned anything from R50 to R4000 for a session.

THE IMPORTANCE OF EVIDENCE-BASED POLICY

¹ Our clients include the World Health Organisation, UNAIDS, UNFPA, the Global Fund, the World Bank, the Global Alliance Against Trafficking in Women, the Bill and Melinda Gates Foundation, the Ford Foundation, Open Society Institute, Aidsfonds Netherlands, Baring Foundation, Frontline AIDS, the African Union, the African Peer Review Mechanism, Southern African Development Community (SADC); SADC Parliamentary Forum, Paediatric AIDS Treatment Alliance (PATA); AIDS and Rights Alliance of Southern Africa, the South African National AIDS Council, the Uganda AIDS Commission, Kenya National Police Service and many others.

I have taken time to establish my credentials, because in the debate on sex work, you will hear many gross exaggerations, distortions, myths, and, frankly, falsehoods. It is very common for proponents of partial and full criminalization to focus on the most extreme abuses in the sex work industry, and to suggest that the entire industry is characterized by these abuses, and therefore the industry must be abolished.

Coercion, exploitation and trafficking do indeed exist within the sex work industry. But they are not synonymous with sex work.

The Palermo Protocol clearly distinguishes between sex work and exploitation

For example, you may read submissions that human trafficking and sex work are synonymous. This abolitionist argument often cites the *“Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime”*, United Nations, 2000 (known as the Palermo Protocol)

Under The Protocol, trafficking in persons is defined as having three constituent elements:

- **Act:** recruitment, transportation, transfer, harbouring or receipt of a person.
- **Means:** threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim.
- **Purpose:** exploitation.

In defining ‘purpose’, The Protocol outlines that “exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

‘Exploitation of the prostitution of others’ is not clearly defined or explained; this ambiguity lays the groundwork for the continued conflation of sex work, exploitation, and trafficking.

In their 2015 Issue Paper, The United Nations Office on Drugs and Crime (UNODC) reflected on the concept of ‘exploitation’ in the Trafficking in Person Protocol. This paper clearly acknowledges that sex work must not be conflated with human trafficking:

“It is important to note that the Protocol does not equate prostitution with trafficking. For prostitution involving adults to fall within the definition of trafficking all three definitional elements (act, means and purpose) [must be present].”

Furthermore, the paper attempted to clarify that ‘sexual exploitation’ does not refer to all sex work: “While the meaning of ‘sexual exploitation’ is not fixed, a contextual analysis reveals certain parameters. When used in the context of the Protocol, this term could not be applied to prostitution generally as States made clear that was not their intention.”

THE HUMAN IMPACT OF THE GOVERNMENT OF SOUTH AFRICA’S DECISION

The Government of South Africa is responsible for making a decision that will affect the sex workers in South Africa, plus their dependents. While [research which I co-authored](#) in 2012 estimated that there were a median number 153 000 sex workers in South Africa, those estimates were conservative, and by now are almost certainly much higher. Furthermore, the [International Labour Organisation estimates](#) that only about 65% of those in the sex industry actually sell sex. The

remaining 35% work as cleaners, drivers, security guards, laundry workers etc who support the sex industry. ILO also estimates that people in the sex industry support an average of 5 and 8 dependents. If we apply these estimates to South Africa, we can estimate that around 235 000 people work in the sex industry, and they have roughly 1 177 000 dependents.

So, Government’s decision will directly affect the income and survival of roughly 1 412 307 human beings.

In the light of South Africa’s unemployment crisis, which affects mostly people who are black, young, female, and without matric, the same demographic that makes up the majority of sex workers, Government has a great weight of responsibility on its shoulders. It is very important for Government to base its policy recommendations on the best available evidence. I thank you for allowing me to present some evidence to you today on some of the topics that the CGE has identified as having evidence gaps.

RESEARCH ON SEX WORKERS IN SOUTH AFRICA

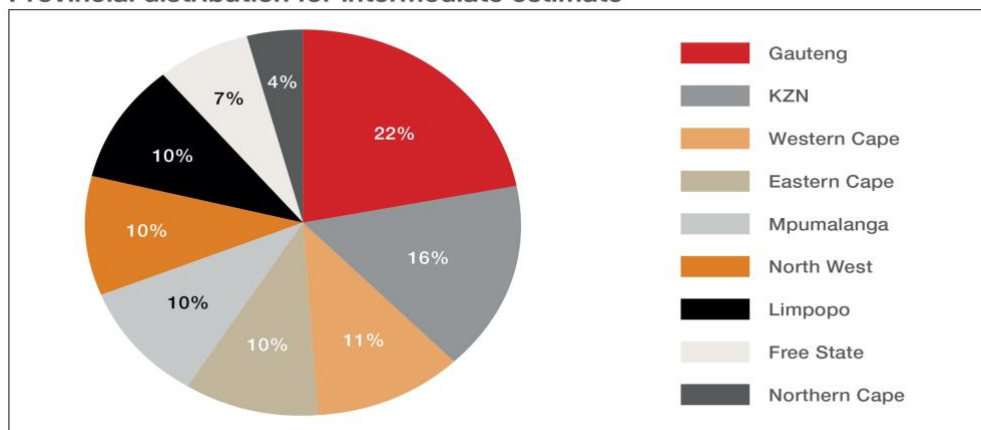
Population size estimates

As mentioned above, in 2012, I was involved in South Africa’s first [sex worker national size estimation study](#). Subsequent unpublished studies have found similar figures.

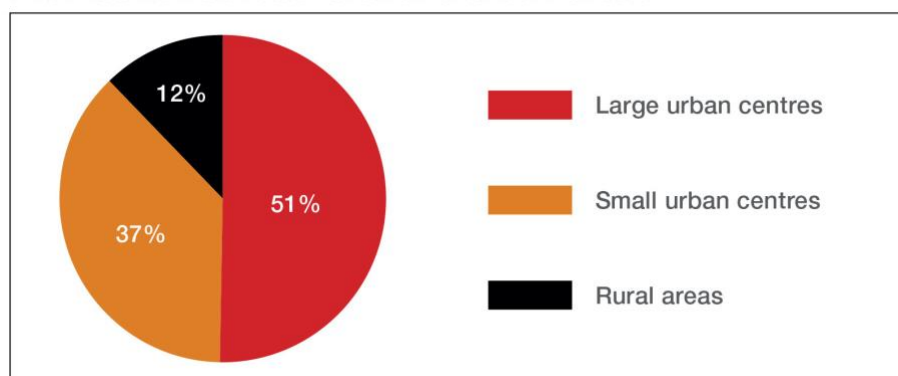
National estimates

Number of sex workers in South Africa (rounded to the nearest 1000)			
	Minimum	Intermediate	Maximum
Female sex workers	121 000	138 000	167 000
5% Male	6 000	7 000	8 000
4% Transgender	5 000	6 000	7 000
NATIONAL TOTAL	132 000	153 000	182 000
% of adult female population	(0,8%)	(0,9%)	(1,1%)

Provincial distribution for intermediate estimate



Distribution across rural and urban areas



Socio-demographics of sex workers

The data below is from an integrated biological and behavioural survey (IBBS) on female sex workers, conducted on behalf of the Dept of Health and SANAC, by Aurum, NICD, Anova Health, with support from CDC, PEPFAR and University of California, San Francisco. The study was conducted in Cape Town, Durban and Johannesburg.

The study found that female sex workers (FSW) in Cape Town and Johannesburg were of a similar median age (age 32), while FSW in Durban were slightly younger (median 29 years). The majority of participants were South African citizens; Johannesburg had highest proportion of non-South African citizens (12.2%). In Johannesburg (97.9%) and Durban (92.0%) most participants were Black Africans. In contrast, the majority of FSW in Cape Town were Coloured (64.7%), and about a third were Black (30.3%). Across all three cities, most FSW were not in a marital union and had not gone beyond primary school education level.

Sociodemographic characteristics, South Africa Health Monitoring Study 2018

Measure	Cape Town N=781			Durban N=600			Johannesburg N=546		
	n	%	95% CI	n	%	95%CI	n	%	95%CI
Age years									
16–24	99	18.8	14.5, 24.2	107	20.2	16.2, 24.9	82	16.1	12.6, 20.3
25–29	198	22.8	19.2, 26.8	197	31.6	26.8, 36.7	117	22.5	18.2, 27.5
30–34	214	26.3	22.1, 31.1	117	19.5	15.6, 24.0	137	24.3	20.0, 29.3
≥35	270	32.0	27.5, 36.9	179	28.8	24.0, 34.0	210	37.1	32.2, 42.3
Median (interquartile range)		32	27–37		29	26–36		32	27–38
Citizenship									

Measure	Cape Town N=781			Durban N=600			Johannesburg N=546		
	n	%	95% CI	n	%	95%CI	n	%	95%CI
South Africa	762	97.8	96.4, 98.7	589	98.7	97.0, 99.4	490	87.8	83.2, 91.2
Non-South African	19	2.2	1.3, 3.6	11	1.3	0.6, 3.0	56	12.2	8.8, 16.8
Race									
Black/African	247	30.3	26.0, 35.0	548	92.0	88.8, 94.3	533	97.9	96.0, 98.9
Coloured	493	64.7	59.8, 69.3	35	4.5	2.9, 6.7	11	1.9	1.0, 3.8
Indian	4	0.6	0.1, 2.2	11	1.8	0.9, 3.9	1	0.1	0.1, 1.0
White	37	4.4	2.9, 6.6	6	1.7	0.7, 4.2	1	0	0, 0.3
Marital status									
Not in a union	695	89.7	86.1, 92.5	559	92.3	88.9, 94.8	512	93.9	91.0, 95.9
Married	12	1.1	0.5, 2.1	8	1.1	0.5, 2.6	6	1.0	0.2, 1.7
Living with someone as married	74	9.2	6.5, 12.8	33	6.5	4.3, 9.9	28	5.4	3.5, 8.3
Current Student Status									
Not Studying	778	99.8	99.3, 99.9	594	98.9	96.7, 99.6	534	98.2	96.1, 99.2
Currently Studying	3	0.2	0.1, 0.7	6	1.1	0.4, 3.3	12	1.8	1.0, 3.9
Highest Education Completed									
Primary school and below	682	89.2	86.1, 91.7	480	81.2	76.7, 84.9	326	68.3	63.2, 72.9
Secondary School and above	99	10.8	8.3, 13.9	120	18.8	15.1, 23.3	220	31.7	27.1, 36.8

Entry into sex work, working conditions and earnings

The IBBS study cited above also looked at sexual history and sex work practices. The study found that the majority of FSW in all three cities had their sexual debut before the age of 18 years, although most started sex work after the age of 18 years. About a third of FSW had been engaging in sex work for three years and less.

Sex work was the main source of income for most FSW, with most reporting the need for money to cover daily life expenses as the reason for engaging in sex work. In Cape Town (90.3%) and Durban (82.2%) most FSW usually meet their clients on the streets. In Johannesburg, venue-based sex work was more common (73.3%). Very few sex workers met clients through dating sites or intermediaries.

By far the most common reason for entering into sex work was “needing money for everyday life” (90.4%).

The highest amounts exchanged for sex in the month preceding survey participations ranged from R101–500 for most participants.

Sexual history and sex work practices, South Africa Health Monitoring Study 2018

Measure	Cape Town N=781			Durban N=600			Johannesburg N=546		
	n	%	95% CI	n	%	95% CI	n	%	95% CI
Age at sexual debut									
≤ 18 years	645	82.6	78.1, 86.4	505	83.9	79.7, 87.4	452	81.2	76.1, 85.4
>18 years	136	17.4	13.6, 21.9	95	16.1	12.6, 20.3	94	18.8	14.6, 23.9
At what age did you start sex work									
≤ 18 years	166	23.1	19.0, 27.7	120	21.1	17.0, 25.8	67	15.1	11.5, 19.5
>18 years	615	76.9	72.3, 81.0	480	78.9	74.2, 83.0	479	84.9	80.5, 88.5
Duration of sex work									
0 to 1 years	58	13.1	9.3, 18.0	43	7.5	5.1, 10.8	28	6.8	4.5, 10.3
2 to 3 years	186	26.0	21.6, 30.8	142	27.2	22.7, 32.3	155	27.7	23.2, 32.8
4 to 5 years	170	15.5	12.8, 18.7	106	18.8	15.0, 23.3	132	25.9	21.4, 30.9
6 to 10 years	157	19.7	16.1, 23.9	193	30.5	25.7, 35.8	129	23.1	19.0, 27.7
11+ years	210	25.8	21.5, 30.5	116	15.9	12.5, 20.2	102	16.5	13.1, 20.6
Sex work as main source of income									
Yes	734	94.4	92.1, 96.0	568	97.1	95.1, 98.3	473	90.6	87.4, 93.1
No	47	5.6	4.0, 7.9	32	2.9	1.7, 4.9	73	9.4	6.9, 12.6
Where usually meet client									
Fixed venues	192	20.8	17.4, 24.6	177	29.0	24.3, 34.2	416	73.3	68.3, 77.8
Streets	728	93.0	89.6, 95.3	467	82.2	77.6, 86.0	269	52.1	46.8, 57.3
E-meeting dating sites/internet	19	2.7	1.1, 6.2	26	5.3	3.4, 8.3	13	1.8	1.0, 3.5
Intermediary	16	2.2	1.3, 3.8	6	0.7	0.2, 2.0	19	2.5	1.4, 4.4
Reasons for sex work									
Need money for daily life	711	90.4	87.3, 92.8	447	83.1	79.4, 86.3	466	87.6	83.6, 90.7
Didn't know any other work to do	14	2.1	1.0, 4.1	115	31.5	26.5, 37.0	244	38.9	34.0, 44.1
Encouragement from friends and family	52	5.4	3.4, 8.5	72	9.6	7.1, 12.9	85	12.8	9.6, 16.9
Mean number of paying sexual clients in the past 30 days									
Mean (± standard deviation)	25	±1		25	±1		21	±2	
Ever worked as a sex worker in another province									

Measure	Cape Town N=781			Durban N=600			Johannesburg N=546		
	n	%	95% CI	n	%	95% CI	n	%	95% CI
Yes	71	7.7	5.8, 10.3	98	15.1	11.7, 19.1	90	16.1	12.2, 20.9
No	710	92.3	89.7, 94.2	502	84.9	80.9, 88.3	456	83.9	79.0, 87.9
Least amount of money exchanged for sex in the past 30 days									
<ZAR20	58	7.3	4.9, 10.9	64	8.7	6.2, 12.1	16	3.7	2.1, 6.7
ZAR21–ZAR50	290	40.2	35.2, 45.5	403	65.7	60.5, 70.7	358	63.2	57.9, 68.2
ZAR51–ZAR100	271	31.2	26.9, 35.9	93	18.2	14.4, 22.9	95	18.1	14.5, 22.5
>ZAR101–ZAR500	154	20.6	16.8, 25.0	38	7.2	4.8, 10.4	73	13.9	10.5, 18.2
>ZAR501	7	0.6	0.3, 1.5	2	0.2	0.0, 0.8	4	1.0	0.3, 2.8
Largest amount of money exchanged for sex in the past month									
<ZAR20	2	0.3	0.1, 1.5	–			-	-	-
ZAR21–ZAR50	8	1.3	0.6, 3.2	12	3.4	1.8, 6.2	6	2.1	1.0, 4.7
ZAR51–ZAR100	41	7.6	4.8, 12.0	27	5.6	3.5, 8.8	37	6.4	4.4, 9.3
>ZAR101–ZAR500	508	66.5	61.5, 71.2	315	56.7	51.4, 62.0	419	77.4	72.5, 81.6
>ZAR501	221	24.1	20.3, 28.5	246	34.3	29.5, 39.5	84	14.2	10.7, 18.5

The findings of the IBBS and a study which I recently participated in, an evaluation of PrEP in the Global Fund programme, found slightly different, but still consistent data on sex workers practices.

Table: Sex workers work practices, NACOSA PrEP Process Evaluation 2022

What are your primary places of work?	
Street	36%
Tavern/shebeen	23%
Home-based	22%
Truck stop	10%
Hotel	7%
Internet/online	7%
Bushes and trees	7%
Brothel	6%
Average many days in a week you do sex work?	
1	2%
2	10%
3	29%

4	20%
5	17%
6	6%
7	15%
Do you work full time or part time as a sex worker?	
Full time	48%
Part time	52%
Is sex work currently your primary source of income?	
No	27%
Sometimes	15%
Yes	58%

Data on 'pimps'

Fiona Scorgie and colleagues, in a 2012 study conducted for WHO on the socio-[demographics of sex work in sub-Saharan Africa](#), found that sex work in the region “predominantly occurs without intermediaries, with FSW accepting money directly from the client, a setup that potentially gives them better control over their resources and the number of clients they accept. “

My own experience in the field backs this up. I have engaged in several surveys of sex workers in which sex workers are trained as research fieldworkers, to interview their peers.

We usually include a question which asks if sex workers work with intermediaries, such as managers or “pimps”.. When training sex workers in Southern African countries, they sometimes ask “What do you mean by pimp?” It is a foreign concept to them. When I explain what a pimp is, they laugh and say “Oh like in American movies” or “We don’t need anything like that here”. However, there are a minority of places where intermediaries are more common, such as Cape Town, Mzuzu in Malawi (see below),

Here is data from a sample of studies:

[NACOSA \(2016\) Creating safe spaces: Evaluation of the Red Umbrella Sex work Programme](#)

N=1410

“Sex workers mostly work independently, although a small percentage of survey respondents claimed to work for a manager or pimp (7.8%)”.

OSISA (2018) Status of access to health care for sex workers in five Southern African countries
(unpublished baseline report)

Percentage of sex workers who work with intermediaries n=2098		
Botswana	Kasane	8.1%
	Palapye	7.8%
Malawi	Blantyre	11.02%
	Mzuzu	24.1%
Mozambique	Maputo	7.5%
	Tete	7.4%
Namibia	Windhoek	7%
	Katima Mulilo	10%
Zimbabwe	Mutare	10.81%
	Victoria Falls	18.08%

South African Health Monitoring Study (IBBS) (2018)

Percentage of sex workers who meet clients through intermediaries	
Cape Town	2.2%
Durban	0.7%
Johannesburg	2.5%

NACOSA (2022 – draft report not yet published). Evaluation of PrEP processes within the Global Fund South African Sex Work Programme

Working for or with a manager/pimp? N=546	
No	90%
Sometimes	3%
Yes	6%

THE EVIDENCE IS CLEAR: SEX WORK IS WORK

President Ramaphosa was correct when he stated publicly, in 2016, that sex work is work. Sex work is first and foremost an income-generating activity. As I have noted above, sex work is responsible for the survival of roughly 1 and a half million human beings in South Africa

Sex workers contribute to the economy. The [International Labour Organization \(ILO\) surveyed the sex industry in 4 countries and found that the industry provides between 2 and 14 percent of gross domestic product.](#)

Exploitation and unsafe and unhealthy working conditions exist in many labour sectors. Work does not become something other than work in the presence of these conditions. Even when performed under exploitative, unsafe or unhealthy conditions, sex work is still work.

Indeed, criminalisation, by perpetuating stigma, discrimination and social marginalisation and by alienating sex workers from formal labour protections, creates conditions in which violations of sex workers' rights, including their labour rights, can continue with impunity.

INTERNATIONAL POLICY FRAMEWORK

The right to work, to choose one's work, and to fair and safe working conditions are fundamental human rights.

The Universal Declaration of Human Rights (UDHR) states that "[e]veryone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment 4." These provisions are expanded and made legally binding in the International Covenant on Economic, Social and Cultural Rights (ICESCR), which South Africa has ratified. The ICESCR requires states to "recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right5."

It further obliges countries to ensure "safe and healthy working conditions" and a fair wage. Other labour rights enshrined in the ICESCR include gender equality in working conditions and remuneration, the right to form associations and trade unions, and access to social security benefits, including paid maternity leave or maternity leave with adequate social security benefits.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), also ratified by South Africa, reaffirms the right to work "as an inalienable right" and commits its signatories to working towards the realisation of equal workers' rights for men and women6, including choice of employment and access to work-related benefits, occupational health and safety provisions, and the support required to fulfil family obligations, work responsibilities and participate in public life. CEDAW specifically obliges states to counter "exploitation of prostitution of women." Thus, states have committed to addressing exploitation in the sex industry. This statement does not imply that all 'prostitution' is exploitation; rather where exploitation exists, it must be addressed.

ILO's Stance on Sex Work

[ILO's Recommendation 200](#), adopted in 2010, addresses HIV and AIDS and the world of work. Recommendation 200 establishes principles and standards for workers' rights to be free from HIV-related stigma and discrimination; to occupational health and safety; and to access to HIV testing, prevention, treatment, care and support. It also addresses employer and government obligations to develop policies and programmes which protect those rights.

While sex work is not specifically mentioned in the original Recommendation 200, it states that it applies to all workers working under all forms or arrangements, and at all workplaces, including “persons in any employment or occupation” in “all sectors of economic activity, including the private and public sectors, and the formal and informal economies.” The [Committee minutes](#) concretely affirm that sex work is covered by the instrument

Subsequent ILO documents [reinforce](#) and [expand](#) on the acknowledgement of sex work as work.

IMPACT OF PROHIBITIONIST/ABOLITIONIST LAWS

The 2017 SALRC Report on Adult Prostitution proposed a second, alternative legal model whereby clients or managers of sex workers are criminalised, while the selling of sex is decriminalised (also known as the Nordic Model) This model is flawed for many reasons; it is based on ideology and not on evidence; it ignores and disregards the voices of sex workers; it makes sex work more dangerous; and it is unenforceable in South Africa (as DoJ is aware, since the purchase of sex has been illegal since 2007, very few clients have been arrested, and sex workers continue to be the focus of police harassment and abuse).

In this submission, I will provide a snapshot of some of the evidence on the impact of the Nordic Model. Preference is given for government reviews, where available.

[Norway](#)

In 2014, [a study commissioned by the Norwegian government](#) concluded that sex workers in Norway today suffer from diminished bargaining power and increased safety concerns, instead relying more on abusive third parties.

[Northern Ireland](#)

A review, [carried out by Queen’s University Belfast, was commissioned by the Department of Justice](#) under section 15 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act 2015 which introduced the offence and required a review of its operation after three years.

The review reported on the impact of the legislation on the demand for sexual services, the safety and well-being of sex workers, and human trafficking for the purpose of sexual exploitation.

Higher numbers of sex workers advertising online in the post law period were reported, rising from 3,351 to 3,973: an increase of 622. An increase in demand for sexual services was also reported by sex workers in the period following the introduction of the legislation. However, on-street prostitution has declined in comparison to previous research, reducing from an estimate of 20 active on-street sex workers operating in Northern Ireland in 2014 to currently less than ten.

The research reported that it is not possible to say that the change in the law is responsible for any increase in crime against sex workers, but a heightened fear of crime has contributed to a climate whereby sex workers feel further marginalised and stigmatised.

The review concluded that the legislation has had minimal effect on the demand for sexual services; and due to the absence of any evidence that demand had decreased, it was unable to determine how the offence could have impacted on human trafficking.

Republic of Ireland

No government review has been conducted, but [reported incidences of violent crime against sex workers](#), from threats to assaults with weapons, have risen, according to UglyMugs.ie, an organisation that collates reports from those working in the sex industry. There were 900 in the year preceding the change, and more than 1,400 since, an almost 50 percent rise.

Canada

- ***Harms of third party criminalisation under end-demand legislation: undermining sex workers' safety and rights***
As part of a [longstanding community-based study](#) in Vancouver, an analysis by McBride et al (2020) drew on 25 in-depth interviews with third parties who provide services for indoor sex workers. The researchers explored how end-demand third party criminalisation shapes indoor sex workers' working conditions, health and safety. We found that most third parties were women and current/former sex workers, problematising assumptions of third parties as exploitative male "pimps". Third parties provided client screening, security and sexual health resources for sex workers, yet end-demand laws restricted condom availability and access to police protections in case of violence, thereby undermining sex workers' health and safety. Findings highlight that third party criminalisation under end-demand legislation reproduces the unsafe working conditions under the previous laws deemed unconstitutional by Canada's highest court.
- ***Canada's law did not lead to increased access to HIV care for sex workers***
The University of British Columbia conducted an analysis of the Protection of Communities and Exploited Persons Act (PCEPA), a policy adopted by Canada in 2014 that criminalizes sex work clients and third-party advertising. The [analysis revealed substantial evidence](#) that criminalization impedes access to services and support for sex workers, even though an explicit goal of "end demand" approaches is to increase access.

The study concluded that "end demand" approaches may, in fact, exacerbate barriers to healthcare and community-led services

Sweden

The Swedish government has not undertaken a review of the Sex Purchase Act. An [independent review report](#) found sex workers' living and working conditions have deteriorated since 1999 because of the Swedish government's "widespread systematic attempts to eradicate the sex industry." Rather than empowering women, the Swedish model increases the stigmatization and vulnerability of workers in a criminalized industry. This criminalization is particularly dangerous for immigrants and women of colour.

France

Médecins du Monde (Doctors of the World) and CNRS Centre de Recherches Internationales, conducted a survey aimed at evaluating the impact of the 2016 law criminalising clients and third parties on sex workers' health, rights and well-being. Between April 2016 and January 2018, researchers conducted qualitative semi-directive interviews and a questionnaire-based quantitative survey.

An analysis showed that the law's most direct effect has been an acute increase in the socio-economic vulnerability of sex workers, including: an increase in experienced violence; degrading working conditions; and negative health consequences.

The authors also found a decrease in condom use and increased difficulty for sex workers to negotiate safe-sex practices after the law took effect. Additionally, HIV-positive sex workers faced difficulty accessing services.

While it is still too early to evaluate the impact in terms of HIV infections, the research pointed to an increase in some sexually transmitted infections, notably of syphilis, among sex workers in France. The authors concluded that policy makers should consider these findings when designing new laws to mitigate harmful health effects.

IMPACT OF DECRIMINALISATION

Let us compare the above evidence with evidence from New Zealand, which has fully decriminalised sex work.

Government review of the NZ Prostitution Reform Act

Opponents of New Zealand's Prostitution Reform Act had feared its introduction would lead to an explosion of brothels and of human trafficking, and in response to this a review was built into the new legislation. Five years after its introduction the [Prostitution Law Review Committee](#) provided a report to the Ministry of Justice which found:

The sex industry has not increased in size, and many of the social evils predicted by some who opposed the decriminalisation of the sex industry have not been experienced. On the whole, the PRA has been effective in achieving its purpose, and the Committee is confident that the vast majority of people involved in the sex industry are better off under the PRA than they were previously.

The report found numerous benefits of the PRA, e.g., that:
*95% of sex worker respondents felt that they had rights in the decriminalised context.
60% of participants felt more able to refuse to see clients since the law had changed.*

Later research conducted with street-based sex workers indicated that decriminalization better supports safety strategies, and improved relationships between sex workers and police.

Global Alliance Against Trafficking in Women report

In 2017, I led an [international research project](#) for GAATW on the experiences of sex workers regarding human trafficking in 7 countries on 6 continents. My colleague in this study, Ntokozo Yingwana from the Wits African Centre for Migration Studies, conducted the South African research, and has shared the research with the Deputy-Minister of Justice's office. The New Zealand research was conducted by Dr Lynzi Armstrong from the University of Wellington.

Regarding trafficking she stated:

All participants were unequivocal that they had not observed or heard of any cases of people being forced to come to New Zealand to engage in sex work. This is consistent with existing data which shows that despite intensive investigations by Immigration New Zealand, no cases of trafficking in the sex industry have been identified to date. One key informant noted:

Immigration has continued to visit brothels on a regular basis to inspect to see if there is anybody who could be trafficked and when they go in they do check to see if it's a double wall, if there's hidden cupboards, people under crawl spaces and things like that, so they do a complete search and they have not yet found one person who's been trafficked into sex work in New Zealand.

It was also felt that the proliferation of anti-trafficking discourse internationally influenced a minority of NGOs in New Zealand to draw on inaccurate statistics and claims about trafficking into sex work, as the external key informant noted:

Think it's fair to say there's still within some of the anti-trafficking groups that we have in New Zealand there's still that near obsession with sex trafficking... and we've still got this mentality and we over-exaggerate figures as you would well know. So, the same old figures that got no basis to them keep getting rolled out again and again and again.

It was acknowledged that, while a minority of individuals and organisations continue to make claims about trafficking into sex work that are not based on evidence, on the whole it is recognised that in New Zealand trafficking appears to be an issue that is associated more with other industries, such as fisheries, agriculture and hospitality, than with sex work. Thus, while anti-trafficking discourse had the unfortunate consequence of shaping aspects of sex work policy in the past, in the current context local debates relating to trafficking are, overall, grounded in evidence and trafficking is not framed nationally as a sex work issue.

Improved relationship with police

Decriminalisation shifted the relationship between the sex worker community and the police from one of harassment and mistrust to one of collaboration, so that sex workers now feel that they can rely on the police for protection. The leader of the New Zealand Prostitutes Collective, Dame Catherine Healey, stated:

“After decriminalisation that dynamic shifted dramatically, and importantly the focus on the sex worker wasn't on the sex worker as a criminal. It was on the rights, safety, health and well-being of the sex worker”.

For example, [an article from the New Zealand Herald](#) describes how:

*Police resolved a dispute between a sex worker and a client who refused to pay – by escorting the man to a cash machine to settle his \$100 bill. The client had refused to pay the woman...Police settled the matter by driving the man home to get his wallet, taking him to an ATM and then delivering the cash to the worker.
A Counties Manukau police spokesperson said the incident was common. “It sounds remarkable but it is a routine thing. Police would help any citizen having a disagreement whether they were a sex worker or working in a pizza shop.”*

Legal protection from sexual harassment

Since passage of the Prostitution Reform Act in 2003, sex workers have had access to employment mediation services such as the Disputes Tribunal and the Human Rights Commission, to uphold their workers' rights. In [one judgement](#) in 2014 by the Human Rights Review Tribunal, a brothel operator was ordered to undertake sexual harassment training and to pay a sex worker NZ\$25,000 damages "for humiliation, loss of dignity and injury to the feelings of the sex worker."

CONCLUSION

In conclusion, I would like to thank the Government of South Africa for listening to sex workers, soberly considering the evidence, and respecting the human rights of ALL who live in South Africa. On behalf of Equal International, I fully support the draft bill to repeal the clauses of the Sexual Offences Act which criminalise the purchase and selling of sex by adults.