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## DECRIMINALISING SEX WORK: FEDUSA'S POSITION

### BACKGROUND

Most countries if not all struggle with the legal treatment of sex work, a practice that is as old as history. The current legal framework in South Africa involves the criminalisation of sex work with consequences such as harassment by police, abuse by clients, pimps and communities and violence against sex workers. According to the Commission for Gender Equity, societal perceptions of sex work are informed by religious opinion that views sex work as “sin” and sex workers as “fallen or sinful” women, splitting the world into a contradiction of good and bad girls/women, and treading it as a moral issue.

The foundation of this belief is rooted in patriarchy and as such its manifestations can be found in how it is directly intersectional with the oppression of women. While the argument has been that it is a bad representation of the human cycle or dents what are socially accepted norms, there is also a need to reflect on why it is that people, as sex work is not limited to women, resort to the trade. Like all vulnerable work, it is rarely the first option of individuals, however, there persists a reluctance in society and in the halls of lawmakers to pave way for improved working conditions and freedoms due to sex workers in South Africa.

The current South African approach to sex work is that of criminalisation and prohibition, meaning that there is legislation prohibiting sex work and activities associated with it, and treating it as a criminal offence. Criminalisation is a position that deems sex work illegal and seeks to reduce or eliminate the sex industry and is supported by those who are opposed to sex work on moral, religious or feminist grounds (“Mossman 2007, Hughes 2009”)

According to Mossman 2007 and Hughes 2009 Decriminalisation also known as non-criminalization is a position advancing for the repeal of all laws against sex work and the removal of provisions that criminalise all aspects of sex work. Decriminalised jurisdictions make a distinction between voluntary sex work and, involving either forced or coerced or child sex work, the latter are criminal in decriminalization states “Hughes 2009”. Decriminalisation is advanced as a way of avoiding the two-tier reality of legal and illegal operations where the latter operates underground “Jordan 2005”. It also helps avoid the social exclusion that renders sex work vulnerable to exploitation.

“Sex work is recognized as a legitimate business and, as such, it comes under conventional employment and health regulations” (Mossman 2007, Jordan 2009).

### SUPPORTS

FEDUSA supports the decriminalization of sex work, and that every South African has Human rights in accordance with the Human rights bill. These rights apply to all South African and include key rights of relevance to sex work as stated below:

- Section 10: human dignity – everyone had inherent dignity and the right to have their dignity respected.
- Section 12: Freedom and security of the person – everyone has the right to bodily and psychological integrity, which includes the right to security in and control over their body.
- Section 22: freedom of trade, occupation, and profession – every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.

In calling for public comments to the Criminal Law (Sexual Offences and Related Matters) Amendment Bill of 2022, the Department of Justice and Correctional Services affirmed a long-standing view among advocates of the decriminalization of sex work. It said “criminalising sex work has not stopped the selling or buying of sex, nor has it been effective. If anything, it has led to higher levels of violence against sex workers. In addition, criminalisation affects predominantly women, with the female sex worker usually being the one who is confronted by law enforcement, but the male client isn’t. The National Prosecuting Authority has also indicated a very low percentage of cases or prosecutions for such transgressions”.

There also exists the reality of a country that has a gender-based violence and femicide crisis. As part of the solutions sought to the travesty, the National Strategic Plan on Gender-Based Violence and Femicide agreed to a series of pillars. Pillar 3 in the interventions commits to the finalization of the legislative process to decriminalize sex work. We believe that the government has to deliver on this commitment. Government’s stance that the aim of the proposed legislation is to repeal the Sexual Offences Act of 1957 and section 11 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act of 2007 to “decriminalize the sale and purchase of adult sexual services and to provide for matters connected therewith” will ensure that the necessary protections afforded vulnerable groups remain in place.

FEDUSA supports the arguments advanced by SWEAT and CGE that Human rights should be also afforded to sex workers in South Africa. The current law criminalises sex work and most of the alternative legal model also offend against other prescripts in the country’s constitution. Therefore, it is in relation to the violation of those rights that we recommend decriminalisation of Sex Work.

Therefore the Federation of Unions of South Africa (FEDUSA Supports:

1. In full support of the Bill as it stands, as it represents the request of sex workers and their allies.
2. Clear that sex work can only be considered to be decriminalised if **Both** the selling and buying of sex are decriminalised. We therefore reject any suggestion that either should be removed from the bill in isolation.
3. In full support of the expungement of all existing criminal records related to the any offences related to the contents of this bill.
4. Support the notion that once this bill is passed there needs to be a further process of making this real for all sex workers. This will include but is not limited to tackling issues such as bylaws that will continue to criminalise sex workers.

ADOPTED BY THE: SOCIAL JUSTICE COMMITTEE

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