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Re: GNP+ written comments on the proposed Criminal Law (Sexual Offences and Related Matters) Amendment Bill, 2022 (the Bill).

We are the [Global Network of People Living with HIV](#) (GNP+), a network for people living with HIV, run by people living with HIV. We have Offices in South Africa and in the Netherlands.

The meaningful involvement of people living with HIV is at the heart of everything we do. Using evidence-based advocacy, we challenge governments and global leaders to improve access to quality HIV prevention, treatment, care and support services.

As such, we have called on Governments around the world to [end the criminalisation](#) of consensual, adult sex work because we know that this is a driver of new HIV infections and a barrier to treatment and care for people living with HIV.

We support the decriminalisation of both the buying and selling of adult, consensual sexual services through the repeal of the Sexual Offences Act, 1957 (Act No. 23 of 1957) and Section 11 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007).

The Bill is consistent with global evidence and reflects the voices of South African sex workers, as well as allied organisations and institutions working with sex workers in South Africa and around the world.

We agree with the Bill's proposal that all records related to the offences contained in the Bill should be expunged.

We support the Bill Because:



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- Repealing the Sexual Offences Act, 1957 (Act No. 23 of 1957) and Section 11 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007) does not remove any protections that the 2007 Sexual Offences Act 32 offers in terms of rape, compelled tape and other sexual offences as well as kidnapping.
- Research shows that countries with restrictive laws on sex work fair worse in key HIV prevention efforts<sup>1</sup>
- The South African National AIDS Council, a multi-sectoral body responsible for coordinating the national response to HIV, [support the decriminalisation of sex work](#) in order to address barriers to HIV prevention in the national response;
- Criminalisation of sex work in South Africa has not meant better protection of vulnerable women and men who sell sex, nor has it led to the arrest and prosecution of those who abuse and exploit sex workers<sup>2</sup>.
- Rather, it reinforces stigma against people who sell sex and isolates them from the criminal justice system. Even when women in sex work experience violence, they do not report it – either because they believe that violence is acceptable in sex work, or because they fear persecution from the police<sup>3</sup>. Criminal laws, law enforcement practices, stigma and discrimination increase risks of violence for sex workers such that 45% to 75% of adult female sex workers are assaulted or abused at least once in their lifetimes<sup>4</sup>.
- Consensual sex between adults should be kept outside the remit of the criminal justice system, which is systemically biased against women, women who sell sex<sup>5</sup>,

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<sup>1</sup> Kavanagh MM, Agbla SC, Joy M, et al: Law, criminalisation and HIV in the world: have countries that criminalise achieved more or less successful pandemic response? *BMJ Global Health* 2021;6:e006315 and *The Lancet* 2014 <https://www.thelancet.com/series/HIV-and-sex-workers>

<sup>2</sup> UNAIDS: HIV and Sex Work: Human Rights Fact Sheet UNAIDS Geneva 2021 [https://www.unaids.org/sites/default/files/media\\_asset/05-hiv-human-rights-factsheet-sex-work\\_en.pdf](https://www.unaids.org/sites/default/files/media_asset/05-hiv-human-rights-factsheet-sex-work_en.pdf). Human Rights Watch and SWEAT 2019 [https://www.hrw.org/sites/default/files/report\\_pdf/southafrica0819\\_web\\_0.pdf](https://www.hrw.org/sites/default/files/report_pdf/southafrica0819_web_0.pdf)

<sup>3</sup> NSWP: Briefing Paper: How Sex Work Laws are Implemented on the Ground and Their Impact on Sex Workers - A Study of Ten African Countries NSWP 2022 <https://www.nswp.org/resource/nswp-briefing-papers/briefing-paper-how-sex-work-laws-are-implemented-the-ground-and-their>

<sup>4</sup> UNAIDS: HIV and Sex Work: Human Rights Fact Sheet, UNAIDS 2021 Geneva [https://www.unaids.org/sites/default/files/media\\_asset/05-hiv-human-rights-factsheet-sex-work\\_en.pdf](https://www.unaids.org/sites/default/files/media_asset/05-hiv-human-rights-factsheet-sex-work_en.pdf). Rachel Jewkes, Kennedy Otjombe, Kristin Dunkle, Minja Milovanovic, Khuthadzo Hlongwane, Maya Jaffer, Mokgadi Matuludi, Venice Mbowane, Kathryn L. Hopkins, Naomi Hill, Glenda Gray, Jenny Coetzee:

Sexual IPV and non-partner rape of female sex workers: Findings of a cross-sectional community-centric national study in South Africa, *SSM - Mental Health*, Volume 1, 2021, <https://doi.org/10.1016/j.ssmmh.2021.100012>

<sup>5</sup> Donna Evans and Dr Rebecca Walker: The Policing Of Sex Work In South Africa: A Research Report on the Human Rights Challenges Across Two South African Provinces Sonke Gender Justice and SWEAT, December 2017 <http://www.sweat.org.za/wp-content/uploads/2019/09/Policing-Report.pdf>



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and most marginalised people like trans people<sup>6</sup>, migrant<sup>7</sup> and undocumented people.

- Criminalisation creates an adversarial relationship between police and sex workers, clients and third parties in sex work. Rather than helping to combat the exploitation and trafficking in people for sexual purposes, it ensures that sex work venues are hidden and inaccessible to accountable practices and criminal investigation. Decriminalising sex work does not hinder efforts to address trafficking in persons.

With the understanding that this Bill is the beginning of more law reform changes to come, our organisation looks forward to contributing further, and we wish you the best in your deliberations.

*Sbongile Nkosi*

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<sup>6</sup> Human Rights Watch: "We'll Show You You're a Woman" Violence and Discrimination against Black Lesbians and Transgender Men in South Africa. Human Rights Watch 2011  
[https://www.hrw.org/reports/southafrica1211ForUpload\\_0.pdf](https://www.hrw.org/reports/southafrica1211ForUpload_0.pdf)

<sup>7</sup> Louise Edwards and Laura Freeman: Policing and non-nationals Analysis of police prevention, detection and investigation of xenophobic violence in South Africa, African Policing Civilian Oversight Forum, 2021  
[https://www.saferspaces.org.za/uploads/files/TBU\\_Final\\_Deficit\\_Analysis\\_research\\_report.pdf](https://www.saferspaces.org.za/uploads/files/TBU_Final_Deficit_Analysis_research_report.pdf)