



Submission to the Department of Justice and Constitutional Development:

## **Support for the Criminal Law (Sexual Offences and Related Matters) Amendment Bill, 2022**

Attention: **Chief Directorate: Legislative Development**

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## 1. WHO WE ARE

Established in 2005, Gender Dynamix (GDX) is the first registered Africa-based public benefit organisation to focus solely on the transgender and gender diverse community. GDX has since become a leading human rights organisation, and a key role-player in the development of the trans and gender diverse rights movement in Southern Africa.

Over the past 17 years, GDX has built a strong track record of conducting research, engaging in advocacy, and improving access to services for the trans and gender diverse community. Based on its organisational values, GDX aims to work in ways that uphold ideals of self-identification, self-determination, respect for diversity, inclusivity, meaningful participation, transparency, and accountability. GDX has contributed extensively to the body of knowledge on trans and gender diverse experiences, needs and rights, and has raised visibility of trans and gender diverse persons at the local, regional, and global level. **We adopt a participatory approach, and engage extensively with community-based partner organisations**, to ensure that our work centres on the lived experiences and needs of trans and gender diverse persons in the region.

## 2. WHY WE ARE IN FULL SUPPORT OF THE BILL

GDX thanks the Department of Justice and Constitutional Development (the Department) for this opportunity to comment on the **Criminal Law (Sexual Offences and Related Matters) Amendment Bill, 2022** (the Bill).

We make this submission to confirm our full support for the repeal of the Sexual Offences Act, 1957; and the amendment of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 to the extent needed to fully decriminalise adult sex work in South Africa.

Through our REAct Programme, GDX actively and directly engages with the trans and gender diverse community. The REAct programme documents, and assesses trends, in human rights violations experienced by trans and gender diverse people on an annual basis. To date we have documented cases of harassment, physical assault, sexual assault, and revenge pornography<sup>1</sup> targeted at **trans and gender diverse sex workers** – by clients and notably by police officers,

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<sup>1</sup> The unlawful disclosure of a data message of an intimate image, as defined in [section 16 of the Cyber Crimes Act 19 of 2020](#).

law enforcement officials and residential security officials.<sup>2</sup> Research by the Women Legal Centre found that **seven out of 10 sex workers have experienced violence at the hands of police and law enforcement officials**. During arrest sex workers reported to experience “violence by police officers who routinely beat them, pepper spray them and sexually assault them”.<sup>3</sup> Reporting these cases often expose them to revictimization.<sup>4</sup>

Transgender sex workers in South Africa face a set of unique challenges on individual, interpersonal, community and structural level, because of their intersecting identities as sex workers, transgender people, and often poor and Black or people of colour.<sup>5</sup> This intersecting identity is met with extreme discrimination and rejection from close relatives, community members, public officials, and on a structural level. The resulting discrimination and stigmatisation often lead to a predisposition to heightened levels of substance use and mental illness.<sup>6</sup>

Transgender sex workers also experience poor access to services because of their criminalised work status and marginalisation. This includes the access to health care and inadequate HIV prevention methods tailored to transgender sex workers.<sup>7</sup> Health care professionals hold stigmatised views on transgender sex workers and conduct themselves according to these hateful views, which result in transgender people overtly decrying health care facilities.<sup>8</sup>

The criminalisation of sex work only serves to indemnify those who victimise and re-victimisation of sex workers, because of the absence of legal protection which also prohibits access to justice. We believe that decriminalisation will contribute to ending these human rights violations – which can take place with alarming impunity while criminalisation endures, and sex workers are silenced by stigma and a lack of legal recognition of their work.

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<sup>2</sup> Available at: <https://drive.google.com/file/d/1Wknn8Clpa5cSYkTFtbDmQnFuljrxH3z/view>

<sup>3</sup> Available at <http://www.sweat.org.za/wp-content/uploads/2019/09/Stop-Harrasing-Us-Tackle-Real-Crime.pdf>

<sup>4</sup> See: Pease, K. and Laycock, G.K., 1996. *Revictimization, reducing the heat on hot victims*. US Department of Justice, Office of Justice Programs, National Institute of Justice.

<sup>5</sup> Poteat, T., Wirtz, A. L., Radix, A., Borquez, A., Silva-santisteban, A., Deutsch, M. B., ... Operario, D. (2016). HIV risk and preventive interventions in transgender women sex workers. *Lancet*, 385(9964), 274–286.

[https://doi.org/10.1016/S0140-6736\(14\)60833-](https://doi.org/10.1016/S0140-6736(14)60833-)

<sup>6</sup> Nemoto, T., Bödeker, B., & Iwamoto, M. (2011). Social support, exposure to violence and transphobia, and correlates of depression among male-to-female transgender women with a history of sex work. *American Journal of Public Health*, 101(10), 1980–1988. <https://doi.org/10.2105/AJPH.2010.197285>

<sup>7</sup> Poteat, T., Wirtz, A. L., Radix, A., Borquez, A., Silva-santisteban, A., Deutsch, M. B., ... Operario, D. (2015). Workers. *Lancet*, 385(9964)(9964), 274–286. [https://doi.org/10.1016/S0140-6736\(14\)60833-3.HIV](https://doi.org/10.1016/S0140-6736(14)60833-3.HIV)

<sup>8</sup> Pauw, I., & Brener, L. (2003). “You are just whores - You can’t be raped”: Barriers to safer sex practices among women street sex workers in Cape Town. *Culture, Health and Sexuality*, 5(6), 465–481.

<https://doi.org/10.1080/136910501185198>

**It is important to note that the criminalisation of sex work does not stop sex work.** It has been proven to make sex workers more vulnerable to violence and discrimination from public and private sources. Research indicates that the decriminalisation of sex work will save lives and afford sex workers their full humanity.<sup>9</sup>

**GDX therefore supports sex workers, and especially transgender sex workers, in their call for the decriminalisation of their work, as a call that is in alignment with the South African constitutional values of human dignity, equality, and the advancement of human rights and freedoms.** We are in full support of the Bill because it finally recognises that sex work is work and acknowledges the lived realities of sex workers. It acknowledges the human rights of sex workers and gives might to human dignity, autonomy, agency, and self-determination. We are also in full support of the expungement of all existing criminal records related to any adult sex work “offences”.

### **3. CONCLUSION**

GDX congratulates the Department on this Bill as a historical first step in protecting a chronically marginalised and vulnerable group of workers in South Africa. **We regard this as the beginning of the fulfilment of a decades-long political promise to all sex workers, to eradicate the needless suffering that comes with criminalisation, and it gives us hope for a better future for transgender sex workers.**

In the coming months, GDX would welcome an opportunity to meet and engage with the Department on the lived realities of transgender sex workers, and we stand ready to offer the Department whatever technical or other assistance it may require in this regard.

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<sup>9</sup> See <https://www.spotlightnsp.co.za/2023/01/27/opinion-changing-the-law-on-sex-work-will-save-lives-we-must-see-it-through/?fbclid=IwAR0Lu-T9HUoJgsUZ2uClPoPSxDTzxiKI61L8bdmwZ0JRvg7OQ1oQdYR9fK8>