

The Director-General: Justice and Constitutional Development

Mr Tsietsi Sebelemetja

Per Email: Bills1@justice.gov.za

31 January 2023

Dear Mr Sebelemetja

Comments on the Criminal Law (Sexual Offences And Related Matters)

Amendment Bill, 2022

On 9 December 2022 the Minister of Justice and Constitutional Development, Mr Ronald Lamola, announced that a public participation process has been initiated for comments on the Criminal Law Amendment Bill of 2022.¹ The Health Justice Initiative (“the HJI”) thanks the Department for the opportunity and this submission is a response to this call.

The HJI is a dedicated public health and law initiative addressing the intersection between racial and gender inequality. Our work centres on issues of access to life saving diagnostics, treatment and vaccines and ensuring the right of access to health for all.² One of our focus areas is the structural and commercial determinants of health and how these compound the risk of ill health and mortality for particularly marginalised groups such as sex workers³ and migrants.

Apartheid-era laws criminalised sex work and this legal framework endures until today despite South Africa’s democracy and Constitutional framework.⁴

Research is unequivocal: the criminal law makes sex workers immensely vulnerable to violence, to ill health and to death. In fact, UNAIDS notes that female sex workers’ risk of acquiring HIV is 30 times that of other adult women.⁵ In South Africa, a recent study found that in the year

¹ “Minister Ronald Lamola on Criminal Law Amendment Bill of 2022 - decriminalisation of sex work” 9 Dec 2022, available <https://www.gov.za/speeches/speaking-notes-%E2%80%93-media-briefing-criminal-law-sexual-offences-and-related-matters-amendment>

² To read more about our work, see www.healthjusticeinitiative.org.za

³ Sex work refers to adult, consensual sex for reward. It does not include trafficking or sexual exploitation of children.

⁴ Boudin, Chesa and Marlise Richter “Adult, Consensual Sex Work in South Africa - The Cautionary Message of Criminal Law and Sexual Morality” *South African Journal on Human Rights*, Vol. 25, Issue 2 (2009), pp. 179-197

⁵ UNAIDS Fact Sheet 2022 available: <https://www.unaids.org/en/resources/fact-sheet#:~:text=Key%20populations&text=The%20risk%20of%20acquiring%20HIV,with%20men%20than%20adult%20men>.

preceding the survey, 71% of female sex workers said they had been exposed to physical violence, and more than half reported to researchers that they had been raped.⁶

Research in New Zealand, where sex work has been decriminalised, found that sex workers felt safer and that they had employment, legal, health and safety rights, that they could refuse clients and that law enforcement officer attitudes towards them had changed.⁷

The proposed law laudably removes criminal penalties from the selling and buying of sex work and makes provision for the expungement of criminal records of sex workers in South Africa.

We believe that the full decriminalisation of sex work would make the sex work context safer and thus supports the health and human rights of sex workers. This would serve public health and human rights goals in South Africa.

We are in strong support of the Bill in its current format.

If you have any queries on this submission, please feel free to contact us below.

Yours sincerely



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⁶ Rachel Jewkes, Kennedy Otwombe, 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.

⁷ For a summary of the main research findings, see Fraser Crichton "Decriminalising sex work in New Zealand: its history and impact" *OpenDemocracy* 21 August 2015