

30 January 2023

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For the attention of: Adv. Tsietsi Sebelemetja

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

This submission serves to confirm my strong support to the repeal of the Sexual Offences Act, 1957 (Act No. 23 of 1957), as well as section 11 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), insofar as to decriminalise sex work as it relates to the buying and selling of adult sexual services.

In my professional capacity, I have 20 years experience working in the human rights field locally (South Africa), regionally (Africa) and internationally. Currently, I consult for a number of respected human rights institutions (Amnesty International, Human Rights Watch, the Open Society Foundation, University of Pretoria Centre for Human Rights, African Women's Development Fund to name a few). I was recently recognised as one of "BBC's 100 Women of 2020" for my work in the human rights field. I also have extensive experience in advocating for women's rights in South Africa, including the rights of sex workers and I have written on this issue for a number of peer reviewed journals and newspapers<sup>1</sup>.

The reason for me listing some of my experience and accolades upfront is I would like to make it clear

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<sup>1</sup> International Journal of Critical Diversity Studies. Troubling Seasons of Hate, Volume 3 Issue 1 (2021): Journal Article I Lakhani, M Richter and Z Wasserman "Targets for hate, shame or exploitation the (violent) conundrum of sex work in democratic South Africa"

Journal of the International AIDS society (2021): Article N Were, F Hikuam, I Lakhani B Nibogora and M Mkhathshwa "An investment case: the role of advocacy in addressing discrimination of vulnerable and marginalized populations at risk for HIV in Sub-Saharan Africa"

Mail and Guardian (2017): Opinion Piece "Sex, shrugs and policy holes: Why partially decriminalising sex work isn't enough"

Amandla! Magazine Issue 55-56 (2017): Article "No bad woman, just bad laws: why the decriminalisation of sex work in South Africa is a feminist issue"

City Press (2017): Rebuttal "Sex sells or sex cells?"

African Centre for Migration in Society (2016): Article "InterSEXionality in Theory and in Practice"

Research for Sex Work Issue 15 (2016): Article I Lakhani & D Dlamini, "Mmangwana o tshwara thipa kabohaleng: The mother of a child holds the knife on the sharper edge"

that my submission in support of the repeal of the Sexual Offences Act, 1957 (Act No. 23 of 1957), as well as section 11 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), is firmly based in a human rights analysis which is supported by research that has been conducted locally, regionally and internationally. This is important as any legislation pertaining to the rights of sex workers, especially one in support of their basic human rights, is undoubtedly going to receive a backlash from those who have moral biases not only to the occupation itself, but problematic sexist, racist and classist views about women, people of colour, and people who live in poverty. This moral backlash has been experienced many times in South Africa's rocky road to democracy including during the fight to end apartheid, the struggle to recognise the rights of the LGBTI people, and women's rights to access termination of pregnancy being just a few. I implore those who are making decisions about this legislation to consult evidence-based research and to listen to the lived experience of sex workers.

In terms of evidence, the reputable research in support for the full decriminalisation of sex work is overwhelming. As such there are a multitude of respected institutions that support the full decriminalisation of sex work for a number of reasons:

- **Decriminalisation will increase access to basic healthcare for sex workers and reduce HIV transmission**

This position is supported by the South African National Aids Council; the South African Medical Research Council; UNAIDS; the World Health Organisation

- **Decriminalisation will increase access to women's rights for sex workers**

This position is supported by South Africa's Commission for Gender Equality; Global Alliance Against Trafficking in Women

- **Decriminalisation will decrease violence perpetrated against sex workers**

This position is supported by Human Rights Watch; Amnesty International; the Open Society Foundation

- **Decriminalisation will increase access to labour rights for sex workers**

This position is supported by the International Labour Organisation; South Africa's biggest Trade Unions COSATU and FEDUSA

These are only a few of the reasons and some of the human rights organisations, social justice movements and development institutions that supports the full decriminalisation of sex work (the actual list is far longer). There are many more including local South African organisations like the Asijiki Coalition, which has over 130 South African member organisations, that work directly on a number of issues including women's rights, gender based violence, LGBTI rights, access to healthcare, access to justice, workers rights etc. They recognise that the rights of sex workers cut across many issues and that sex workers must be included in the struggle for equality and justice in South Africa. It is important to note that respected South African organisations such as the Women's Legal Centre, Sonke Gender

Justice, the Sex Workers Education and Advocacy Taskforce, the Treatment Actions Campaign, Section27, Triangle Project are members of the Asijiki Coalition. These organisations have a long history of providing direct services and support to marginalised communities in South Africa. As such, their support of the full decriminalisation of sex work is based on evidence and rooted in the experience of working everyday in the South African context.

In terms of listening to those who will be most affected by this legislation, that is, those working in the sex industry. Sex workers in South Africa (as well as Africa and internationally) have been organising and fighting for their rights for decades. Sex worker-led organisations such as Sisonke (South Africa), the African Sex Worker Alliance (Africa) and the Global Network of Sex Work Projects (International) are all examples of sex worker-led, human rights based organisations that have been calling for the full decriminalisation sex work based on their experience working with and providing services and support to hundreds of thousands of sex workers who have been forced to the margins of society by criminalisation.

I am in full support of the Bill as it stands as it represents the evidence as well as the views of those who will be most affected by these laws. In addition, the current legal framework is inconsistent with international, regional and domestic laws including South Africa's Constitution in relation to violence against women, discrimination and gender equality more broadly. I applaud this first step to include sex workers in our collective struggle to create a more equal and just society. Again, I would implore policy makers to look at the evidence and the experience of those who work in the sex industry as opposed to those who use individual moral preferences as a basis for their arguments. We must remember that this is not the first time democratic South Africa has had to struggle in the face of dangerous moralistic conjecture. South Africa has succeeded in providing access to safe abortions, we have abolished capital punishment, we provide healthcare and treatment for people living with HIV, and we have led the world in supporting the rights of LGBTI people. Ultimately we recognise that human rights is our ultimate priority. And we will continue to be guided by our desire to live free from discrimination, prejudice and violence rather than fall prey to unsubstantiated opinions. In our call for the full decriminalisation of sex work, we will remain steadfast in the evidence and I believe that the South African public, as well as policy makers, will continue to fight for the rights of all those who live in this country.

I am prepared to provide Parliament with an oral submission if required.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Ishtar Lakhani', with a horizontal line extending to the right.

Ishtar Lakhani

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