

Submission to the Department of Justice and Constitutional Development in full support of the of the Sexual Offences Amendment Bill of 2022

I am **Kholi Nomsa Buthelezi**, a **49-year-old** South African activist residing in South Africa, supporting the rights of sex workers across the globe, regardless of nationality, race, and gender.

First and foremost, Section 22 of the South African Constitution guarantees individuals the freedom of choice to trade or occupation. The Constitutional Court in *S v Jordan* (2002) 6 SA 642 (CC), considered the vulnerability of sex workers, finding that the legislature should consider the appropriate legal framework, but also was obliged to ensure the rights of sex workers are protected.

The minority judges stated, “it would be unconstitutional to penalise only one party in the act of prostitution”. However, the state missed the opportunity to reform the law holistically in line with the Constitution, and rather inserted a section into the Sexual Offences Act, 2007 which also criminalises the actions of clients of adult sex workers. This was done without consideration of the process already underway with the South African Law Reform Commission.

Sex workers in South Africa are forever a vulnerable, marginalised community facing stigma and discrimination from both state and non-state actors; encouraging police brutality, unlawful arrest and detention as well as compromised access to healthcare services and justice.

During a number of these countless arrests, sex workers are routinely beaten, pepper sprayed, sexually and physically assaulted, even framed for other crimes by the very police officials who should be upholding the law - which is a clear violation of their [sex workers] rights. Often in these acts of gross human rights violations, police officers regularly fail to follow proper procedure when arresting sex workers, and frequently detain them beyond the maximum 48 hours before releasing them without charging them.

The Criminal Law Act of 1957/2007 deters sex workers to fully and confidently access healthcare services including justice. This has resulted in increased cases of gender-based violence, complacency in antiretroviral treatment adherence; making sex workers vulnerable to opportunistic diseases and further abuse at healthcare centres across the country.

We can no longer live in a country where the Constitution is well written and developed, but the practical implementation thereof is running in the opposite direction.

Deliberate marginalisation of sex workers through criminalisation of the industry, has been nothing, but a major contribution at stretching beyond imagination of every sex workers' access to health and justice compromising every worker right to life.

The opportunity that will enable sex workers their rights, and bring change into sex workers' lives, where they will not fear public law enforcement officers within SAPS, but respect SA laws and together continue to advocate for progressive laws not the

ones which are not aligning to the country's Constitution, living a number of entrepreneurs to openly fend for themselves in appalling and unforgiving conditions, yet we are talking of a democratic state.

I fully recommend the full decriminalisation of adult consenting sex work as the only model, that recognises sex workers' rights which will enable sex workers their long-deserved access to labour rights, improved access to healthcare to reduce new HIV, STI infections and the spread of HIV and other sexually related diseases. Further encouraging the country's 95-95-95 targets on HIV treatment.

With my submission I put forward and encourage the recognition of sex workers' rights as human rights and therefore stand by the current move and Bill to decriminalise the sale and purchase of adult consenting sex in South Africa.

Nothing About Sex Workers Without Sex Workers!