



HELENSUZMAN
FOUNDATION

For attention: Chief Directorate: Legislative Development

Email: Bills1@justice.gov.za

31 January 2023

Submission on Criminal Law (Sexual Offences and Related Matters) Amendment Bill, 2022.

We attach our written submission in response to the invitation for comments on the Criminal Law (Sexual Offences and Related Matters) Amendment Bill, 2022.

We would like to confirm our interest in making oral representations at a later convenient date.

Should you have any queries, it would be appreciated if you could contact me at the following email address: nicole@hsf.org.za .

Yours sincerely

Nicole Fritz

Director



1. Introduction

1.1. This submission serves to signal HSF’s full support of government’s decision to decriminalise sex work through the Criminal Law (Sexual Offences and Related Matters) Amendment Bill, 2022 (“Criminal Law Amendment Bill”); and to caution that regulations specifically addressed to sex work must be implemented if sex workers are to receive real protection from the law.

1.2. In this regard, HSF submits, in summary, that –

- 1.2.1. decriminalising sex work without proper regulation undermines the stated goals of the Criminal Law Amendment Bill;
- 1.2.2. the Minister of Justice and Constitutional Development’s (“Minister”) reliance on municipal by-laws as interim regulation fails to adequately protect sex workers;
- 1.2.3. the Department of Justice and Constitutional Development (“Department”) should amend the Criminal Law Amendment Bill to prescribe reasonable timelines for when express regulations will be gazetted; and
- 1.2.4. the Department should conduct assessments on the impact of decriminalising sex work and the effect of any future regulatory system.

2. Decriminalisation and the Criminal Law Amendment Bill’s Stated Aims

2.1. Criminalising sex work has left sex workers vulnerable to abuse, unable to approach law enforcement authorities or health facilities and generally unprotected by the law. These are some of the harms the Criminal Law Amendment Bill seeks to address.¹

¹ Address by the Minister of Justice and Correctional Services, Mr Ronald Lamola at the media briefing on the Criminal Law Amendment Bill. The full address can be found [here](#).



2.2. While decriminalisation will play a role in addressing these harms, absent proper regulation that intentionally safeguards their rights, sex workers will still be left vulnerable.

3. Interim Reliance on Municipal Regulation is Inadequate

3.1. The Minister has stated that the Criminal Law Amendment Bill deals with decriminalisation only, “with regulation to follow at a later stage.”² In the interim, the Department appears to envisage reliance on municipal by-laws to regulate sex work.

3.2. Application of by-laws, however, often enables indirect victimisation of sex workers by police.³

3.3. For example, the Johannesburg Public Open Spaces By-law provides in section 12 that “no person may within a public open space – (d) cause a nuisance or (e) behave in an indecent or offensive manner.” Such by-laws are sufficiently vague as to conceivably allow police powers to arrest sex workers on charges other than selling sex.

3.4. It is the HSF’s recommendation that the Department formulate regulations that respond and cater to the reality of sex work and soften the effect of broadly formulated by-laws.

3.5. Due to the constitutional nature of the rights affected by failing to properly regulate sex work, and more specifically to regulate the policing powers that might be employed as against sex workers — these rights being ones of dignity, bodily integrity and freedom of trade, occupation and profession, among others — HSF recommends that the regulations formulated be nationally enacted to avoid various municipal incompatibility.

² Ibid.

³ Women’s Legal Centre ‘Police abuse of sex workers: Data from cases reported to the Women’s Legal Centre between 2011 and 2015’ (April 2016). The full report is available [here](#). As well as ‘SWEAT National Sex Worker Programme Evaluation - Beginning to Build the Picture: South African National Survey of Sex Worker Knowledge, Experiences and Behaviour’ (2013a). The full report is available [here](#).



4. Regulatory Suggestions

4.1.HSF submits that the Department should amend the Criminal Law Amendment Bill to provide reasonable timelines within which government ought to gazette regulations.

4.2.This is a fairly standard approach to legislation that seeks important reform. We point to the recently proposed amendments to the Electoral Amendment Bill [B1B–2022],⁴ which prescribe when the Minister of Home Affairs should appoint the Electoral Reform Consultation Panel to consider further electoral reform.

4.3.The HSF further submits that decriminalisation must be accompanied by such resources within the Department as to allow it to conduct impact assessments of decriminalisations' effect on sex workers and on the effect of any future regulatory scheme.⁵ This will allow any future policy changes regarding sex work to be evidence-based.

4.4.Given the socio-economic complexity of sex work, we request that the public be allowed to make further comment on any ensuing regulations.

5. Conclusion

5.1.In conclusion, HSF welcomes government's decision to decriminalise sex work and, thereby, to provide better protection to sex workers.

5.2.HSF merely cautions that decriminalisation on its own does not adequately protect sex workers. As such, HSF submits that timeous regulations which intentionally safeguard the rights of sex workers need to follow the Criminal Law Amendment Bill.

⁴ The NCOP Proposed Amendments can be read [here](#).

⁵ New Zealand has introduced a similar innovation to monitor the impact of its Prostitution Regulation Act 2003 ("PRA"), which sought to simultaneously decriminalise and regulate sex work. Its Justice and Electoral Committee conducted impact assessments to better understand the PRA's impact on: the number of sex workers working in New Zealand; their working conditions; and their location of work.