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Minister of Justice, Ronald Lamola in December set into motion a public participation process on the laws that govern sex work in South Africa. PHOTO: SG ZA - Own work, CC BY-SA 4.0, <https://commons.wikimedia.org/w/index.php?curid=85307065>

Opinion: Changing the law on sex work will save lives, we must see it through

Comment & Analysis



27th January 2023 | Marlise Richter and Pamela Chakvinga

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In December 2022, the Minister of Justice, Ronald Lamola, set into motion a public participation process (<https://www.gov.za/speeches/speaking-notes-%E2%80%93-media-briefing-criminal-law-sexual-offences-and-related-matters-amendment>) on the laws that govern sex work in South Africa. Cabinet approved the publishing of a draft Bill – The Criminal Law (Sexual Offences and Related Matters) Amendment Bill, 2022 – for public comment.

The Bill (<https://www.justice.gov.za/legislation/invitations/20221208-CriminalLawSexualOffences-%20AmendmentBill.pdf>) is very short – only four pages long. But it will do something quite extraordinary if it does become law – it will fully decriminalise sex work and make South Africa only the second country in the world to do so, after New Zealand.

Health and human rights advocates, sex workers, and sex worker rights allies have been rejoicing.

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But they know a long road still lies ahead.

The department envisions a two-step process for sex work law reform. First, the national laws governing sex work will be amended to remove criminal penalties from sex work (the current Bill), which will be followed up by a later process to regulate the industry. The first step could still take a long time. At the moment, the public has until the end of January to provide comments on the current wording of the Bill. The department will then draw on those comments to make changes to the Bill if needed. The revised Bill will then be introduced in Parliament, published in the Government Gazette for public comment, debated in Parliament, and then voted on. The wording of the Bill could still change in these parliamentary processes.

Minister of Justice Ronald Lamola. PHOTO: GCIS

The content of the Bill is straightforward.

It removes provisions in both the Sexual Offences Act and the Criminal Law (Sexual Offences and Related Matters) Amendment Act that make it illegal to buy or sell sexual services. It also expunges the criminal records of people who have been prosecuted in terms of these laws.

Why are these legal developments so important and why are some groups so vehemently pushing back against them?

The public health evidence for the decriminalisation of sex work is overwhelming (<https://www.thelancet.com/series/HIV-and-sex-workers>).

One of the most painful lessons that the AIDS epidemic has taught us over the last 40 years is that the criminal law has no place in relation to adult, consensual sex (<https://www.groundup.org.za/article/where-the-criminal-law-has-no-place-sex-work/>). Where it has been employed to stop from having sex, or from having sex in certain ways or with certain people, it has stigmatised and expanded prejudice – sometimes violently so. It increases the risk of HIV transmission, driving people away from health and social services (<https://www.ncbi.nlm.nih.gov/books/NBK585704/>), and ultimately propels and deepens the AIDS crisis. This is regrettably still the case in many countries that criminalise sex outside of marriage, LGBTI groups, and/or sex work.

On sex work and HIV, research has shown (<https://pubmed.ncbi.nlm.nih.gov/30532209/>) over and over again (https://www.unaids.org/sites/default/files/media_asset/05-hiv-human-rights-

factsheet-sex-work_en.pdf) that the criminalisation of any aspect of sex work places sex workers and clients at risk of HIV and other illnesses, strengthens prejudice, and makes vulnerable groups reticent to access healthcare and educational support, while increasing violence, rape, corruption, and torture against sex workers. Studies (<https://www.sciencedirect.com/science/article/pii/S2666560321000128>) have shown that a staggering 70% of female sex workers have experienced violence, with more than half having been raped in the last year. This all has an impact on South Africa's public health – both physical and mental.

Cabinet approved the publishing of a draft Bill – The Criminal Law (Sexual Offences and Related Matters) Amendment Bill, 2022 – for public comment. The comment period closes on 31 January. PHOTO: SG ZA – Own work, CC BY-SA 4.0, <https://commons.wikimedia.org/w/index.php?curid=85307077>

Removing all criminal penalties would be the first step in addressing these challenges. A study ([https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(14\)60931-4/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(14)60931-4/fulltext)) has suggested that decriminalisation of sex work could avert 33-46% of HIV infections in 10 years among female sex workers. In the context of South Africa, where female sex workers have “extraordinarily high HIV incidence” ([https://www.thelancet.com/pdfs/journals/lanhiv/PIIS2352-3018\(22\)00201-6.pdf](https://www.thelancet.com/pdfs/journals/lanhiv/PIIS2352-3018(22)00201-6.pdf)) and an HIV prevalence of between 39–89% ([https://www.thelancet.com/pdfs/journals/lanhiv/PIIS2352-3018\(22\)00201-6.pdf](https://www.thelancet.com/pdfs/journals/lanhiv/PIIS2352-3018(22)00201-6.pdf)) across different areas, decriminalisation will have a tremendous impact.

South Africa’s first AIDS Policy in 1994

(<https://www.hst.org.za/publications/South%20African%20Health%20Reviews/14%20Sex%20work%20and%20South%20Africas%20health%20system%20Addressing%20the%20needs%20of%20the%20underserved.pdf>) recognised this harm and recommended decriminalisation. Thirty years later HIV and gender-based violence policies – some of South Africa’s national HIV policies (<https://sanac.org.za/wp-content/uploads/2022/11/NSPn-for-HIV-TB-STIs-2023-2028-Draft-1.pdf>) and the current ‘National Strategic Plan on GBV and Femicide’ (<https://www.justice.gov.za/vg/gbv/nsp-gbvfinal-final-doc-04-05.pdf>) direct government to remove the criminal law from sex work.

It is possible that no other single structural intervention would have such a dramatic impact on HIV and on gender-based violence in South Africa – particularly as it will cost virtually nothing to implement – initially, just the removal of a few sentences from the law books.

Activists argue that the current legal framework has not eradicated sex work – it has only made sex work more dangerous, sex workers more vulnerable, and supported the spread of HIV. PHOTO: SG ZA – Own work, CC BY-SA 4.0, <https://commons.wikimedia.org/w/index.php?curid=85306000>

Some religious and women's rights groups are not persuaded by this evidence.

Some believe that sex-for-reward is wrong/immoral/sinful and against their personal or religious convictions and that the criminal law should be wielded to prohibit certain sexual relationships. Others hold that sex workers have no agency or choice and that sex work is inherently exploitative and degrading. Some even argue that the decriminalisation of sex work would see an explosion of growth in the sex industry and increase trafficking, rape, and child abuse.

Such opponents of decriminalisation often believe that sex work should remain fully criminalised – despite the evidence of the abundance of harms it perpetuates. Alternatively, they argue that only clients should be criminalised while sex workers are 'rehabilitated' and offered alternative forms of employment (the so-called 'Nordic Model').

These arguments do not fully contend with the material realities of South Africa's staggering unemployment rate and poverty, as well as its Constitutional values. Religious convictions and sexual moralism should not automatically form the basis of South African law – human rights principles and evidence should. Nor should the criminal law or the state try to meddle with the private sexual lives of consenting adults.

Sex work is not inherently degrading as many carceral feminists (https://en.wikipedia.org/wiki/Carceral_feminism) argue it is. Sex workers provide a service to those who wish to buy it, and in providing this service, they financially support themselves and their dependents – just like billions of service providers in other sectors worldwide. It may not be a job that they particularly like, but it is a livelihood strategy they choose from a limited range of options like many, many others. What makes sex work dangerous and exploitative is the criminal laws that govern it and that bolster people's prejudices – not sex work itself. These harms continue (<https://pubmed.ncbi.nlm.nih.gov/36414310/>) even if you only partially decriminalise sex work (e.g. retaining the criminal law prosecuting the clients of sex workers).

President Cyril Ramaphosa in 2016 in his position as deputy president attending the South African National Aids Council (SANAC) launch of the 'National Sex Worker HIV Plan', at the Turbine Hall in Newtown Johannesburg. PHOTO: GCIS/ Ntswe Mokoena

New Zealand's sex industry serves as a useful counterpoint (<https://www.jstor.org/stable/j.ctv1453kvn>) to the fears about an increase in social ills once sex work is not illegal any more. New Zealand decriminalised sex work in 2003 (<https://www.parliament.nz/mi/pb/research-papers/document/00PLSocRP12051/prostitution-law-reform-in-new-zealand/>), and contrary to popular fears, there was no increase in the number of sex workers (<https://www.cambridge.org/core/journals/journal-of-social-policy/article/impact-of-decriminalisation-on-the-number-of-sex-workers-in-new-zealand/E5240A985923A0884B2B620973E7410C>) following the law reform. In fact, sex workers reported feeling safer and being able to rely on the police for protection (not prosecution). Contrary to what some feared may happen, sex workers could become allies to law enforcement in identifying potential victims of human trafficking and child sexual exploitation and facilitate access to legal and social assistance for them if wanted.

In conclusion, the current criminal law on sex work – forged during apartheid times – has made a particularly marginalised and underserved group in South Africa more vulnerable, and more prone to experiencing violence, illness, and cruelty while erecting and reinforcing barriers to care and support. The COVID-19 pandemic has compounded (<https://www.southernafricalitigationcentre.org/wp-content/uploads/2021/02/Impact-of-COVID-19.pdf>) these harms. It, therefore, makes no sense to argue for sticking to the current broken law.

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Feminism is about supporting women's choices, control over their bodies, reproductive choices & decisions to have sex (or not) with whoever they choose - exchange of money should not matter. Make comments before 31 Jan pmg.org.za/call-for-comme... in support of bill to [#DecrimSexWork](#)

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The current legal framework has not eradicated sex work (if that indeed was its intention) – it has only made sex work more dangerous, sex workers more vulnerable, and supported the spread of HIV.

This law urgently has to change and the Department of Justice has laudably heeded sex workers' appeals to reform the law. It is now time to see this life-saving process through.

****Richter is a researcher at the Health Justice Initiative and an honorary researcher at the African Centre for Migration & Society, Wits University. She was a co-founder of the Asijiki Coalition for the Decriminalisation of Sex work and served on the Sisonke National Sex Worker Movement Board from 2017-2022. Chakvinga is the assistant National Coordinator of the Sisonke National Movement.***

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Before any COVID-19 vaccines can be made available in South Africa, they must be authorised by South Africa's medicines regulator—the South African Health Products Regulatory Authority (SAHPRA). Catherine Tomlinson explores how SAHPRA is preparing to review and authorise the use of COVID-19 vaccines in the country and the different authorisation approaches they may use.

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January 25, 2021 (<https://www.spotlightnsp.co.za/2021/01/25/covid-19-the-evolving-science-behind-long-covid/>)

A study published in the Lancet medical journal confirms that the health effects of COVID-19 can linger months after someone has 'recovered'. Kathryn Cleary asked local experts about the underlying science and whether the South African public healthcare system is ready for so-called long-COVID.

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Pharmacists do much more than stand behind a counter dispensing medicine. These professionals have a key role to play in the health care system and the overall well-being of people. Tiyese Jeranji spoke to a community pharmacist and pharmacists in the public health sector to understand their role and the challenges they face.

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October 13, 2022 (<https://www.spotlightnsp.co.za/2022/10/13/mixed-reactions-to-health-departments-plans-to-mitigate-loadshedding/>)

Health minister Dr Joe Phaahla last week announced several measures to mitigate the impact of loadshedding on healthcare services – a move that was met with mixed responses. Some have welcomed the move, while others argue it is long overdue. Thabo Molelekwa reports.

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February 10, 2022 (<https://www.spotlightnsp.co.za/2022/02/10/life-esidimeni-inquest-part-2-recap-on-its-progress-and-what-to-expect/>)

The Life Esidimeni Inquest stands as a crucial accountability process for a national tragedy that ought never to have happened and should never happen again, writes Julia Chaskalson and Mbali Baduza as they summarise and assess progress at the inquest since October – having previously written about the first months of the inquest from July to October last year.

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 Spotlight
Unit 6, Draper Square
Cnr Draper Street & Claremont Blvd,
Claremont, 7708,
Cape Town

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