

Geneva, Switzerland  
International Commission of Jurists



The Director-General: Justice and Constitutional Development,  
Mr. Tsietsi Sebelemetja  
Per Email: [Bills1@justice.gov.za](mailto:Bills1@justice.gov.za)

31 January 2023

### **Criminal Law (Sexual Offences and Related Matters) Amendment Bill, 2022: Support of the current Bill**

Dear Mr. Sebelemetja,

We are referring to the invitation by the Department of Justice and Constitutional Development for public comment on the Criminal Law (Sexual Offences and Related Matters) Amendments Bill, 2022 (“the Bill”).

Our organization, the International Commission of Jurists, fully supports the Bill decriminalizing adult sex work in the Republic of South Africa.

As an organization specialized in human rights law, we observe that criminal law proscribing conduct associated with sexuality, reproduction, drug use, HIV, homelessness and poverty has a particularly detrimental effect on already marginalized or disadvantaged individuals or groups of people, such as sex workers, as well as lesbian, gay, bisexual, transgender, non-binary, gender diverse and intersex persons, people using drugs and people experiencing homelessness and living in poverty. Indeed, the criminalization of the sale and purchase of adult sexual services, for example, engenders and perpetuates stigma, harmful gender stereotypes and discrimination against such individuals or groups of people based on grounds protected under international human rights law, such as (but not limited to) sex, sexual orientation, gender identity and gender expression, health status including HIV status or drug dependence or economic and social status. In fact, unless directed at coercion, force, violence or otherwise at the absence of free and autonomous decision-making, the mere existence of criminal law proscribing the sale and purchase of adult sexual services – and all the more so its threat or actual use – violates a broad range of human rights, including especially the rights to : freedom from discrimination, equality before the law and equal protection of the law without discrimination; life; freedom from torture or other ill-treatment; freedom from violence including gender based violence against women; liberty and security of person; the highest attainable standard of physical and mental health; adequate standard of living; private and family life; freedom of opinion, expression, peaceful assembly and association; freedom of thought, conscience and religious belief; freedom of movement; rights to and at work and participation in public affairs.

Moreover, the failure to uphold human rights and protect people against abuses, such as violence and discriminatory laws and practices, constitute violations of international human rights law. Such a failure has a far-reaching, harmful impact on society, contributing to increased risks of ill health, including HIV infection and to social and economic exclusion. This harmful societal impact puts a strain on individuals, families and communities. Therefore, there is an urgent need to address the existence of unjust, arbitrary and unlawful criminal laws, such as criminal laws proscribing the sale and purchase of adult sexual services, and the human rights violations to which such laws give rise.

For these reasons, we consider that the exchange of sexual services between consenting adults for money, goods or services and communication with another about, advertising an offer for, or sharing premises with another for the purpose of exchanging sexual services between consenting adults for money, goods or services, whether in a public or private place, may not be criminalized, absent coercion, force, abuse of authority or fraud.

Criminal law should furthermore not proscribe the conduct of third parties who, directly or indirectly, for receipt of a financial or material benefit, under fair conditions – without coercion, force, abuse of authority or fraud – facilitate, manage, organize, communicate with another, advertise, provide information about, provide or rent premises for the purpose of the exchange of sexual services between consenting adults for money, goods or services.

In conclusion, we recommend that the sale and purchase of adult sex work be fully decriminalized and that the Sexual Offences Act, 1957 (Act No. 23 of 1957) and section 11 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007) be repealed in accordance with the Bill.

We welcome the fact that the South African government is taking the necessary first steps toward decriminalizing adult sex work.

Yours sincerely,

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