

Universal Periodic Review of South Africa

4th cycle

41st session

November 2022

Joint submission by:



Sisonke National Sex Workers Movement

Sisonke, meaning “Togetherness” is a movement formed by sex workers for sex workers. The organisation started after sex workers grew tired of being abused, isolated and suffering human rights violations. It was officially launched in the Western Cape, 2003 and has since established offices in six provinces: Western Cape, Eastern Cape, KwaZulu-Natal, Gauteng, Limpopo and North West. Sisonke has membership all over South Africa and endeavours to set up offices in all nine provinces in the near future. Currently having a head office in Observatory, Cape Town, Sisonke has a staff complement of more than 30 employees nationally and continues to grow.

Address: 19 Anson Street, Observatory, Cape Town 7925, South Africa

Email: kholib@sweat.org.za, Website: www.sisonke.org.za

African Sex Workers Alliance

The African Sex Workers Alliance (ASWA) is the Pan African alliance of sex worker-led organisations formed in 2009 with membership from 35 countries. The organisation’s mission is to amplify the voices of sex workers as well as advocate for the health and human rights of the diverse community of sex workers working and living in Africa.

Address: Oakwood Springs, Mirema Rd; Room 56A, P.O Box 5986-00200 Nairobi, Kenya.

Email: rosewanjiku@aswaalliance.org, Website: www.aswaalliance.org

Sexual Rights Initiative

The Sexual Rights Initiative is a coalition of national and regional organizations based in Canada, Poland, India, Argentina, and Southern Africa that work together to advance human rights related to sexuality at the United Nations.

Address: Rue de Monthoux 25, Geneva, 1201. Website: www.sexualrightsinitiative.com

Email: anthea@srigenova.com, Tel: +41767656477

Key words: sex work, criminalisation, right to work, right to health, HIV/AIDS, gender based violence, decriminalisation

Executive Summary

1. The legal, policy, social, economic and health conditions for sex workers in South Africa has deteriorated since the last UPR report. Violence against women was rife in South Africa before the onset of the COVID-19 pandemic, and since the pandemic, gender based violence has been described as a “second pandemic”¹. Sex workers experience numerous human rights violations as a result of the criminalisation of their work, and as a result of the stigma and discrimination that said criminalisation fosters. Sex workers are unable to approach the police or the courts for remedies due to criminalisation, and due to the risk of police violence and extortion.
2. This report has been jointly prepared by the African Sex Workers Alliance (ASWA), the Sexual Rights Initiative (SRI) and Sisonke, South Africa. It seeks to highlight the existing and ongoing human rights violations against sex workers due to restrictive and punitive laws and policies in South Africa. It also outlines South Africa's commitment to provision and protection of rights through various national and international mechanisms, including the previous cycle of the Universal Periodic Review (UPR) and the relevant recommendations.
3. When looked at from an intersectional perspective: poverty, stigma, discrimination and high risk of HIV infection, gender inequality, patriarchy, social and cultural barriers negatively impact the lives of sex workers. Sex workers are not only more likely to experience violence, but are also less likely to receive help when they need it, from the police, health care workers and others tasked with assisting victims of violence. On the contrary, further abuse by service providers leads many sex workers to feel that reporting crimes against them is an exercise in futility, which further exacerbates marginalisation. These systemic, structural challenges which sex workers face have many negative outcomes for their health and wellbeing.

Introduction

4. It is estimated that there are between 130 000 and 180 000 sex workers in South Africa. 90% of sex workers in South Africa are cisgender women and 10% are male or transgender.² Most sex workers in South Africa are poor, black, and female, and sell sex primarily in order to support their children, as well as other dependents³. This report focuses primarily on the experiences of female sex workers.
5. Poverty, inequality and sex work are inextricably linked. Gender, race and class dynamics play a significant role in sex workers' experiences. In South Africa, this is more pronounced because

¹ Isilow, H., 2022. *Violence against women is like second 'pandemic' in South Africa: President*. [online] Aa.com.tr. Available at: <<https://www.aa.com.tr/en/africa/violence-against-women-is-like-second-pandemic-in-south-africa-president/2427879>> [Accessed 31 March 2022].

² Michael A Grasso and others, 'Estimating The Population Size Of Female Sex Workers In Three South African Cities: Results And Recommendations From The 2013-2014 South Africa Health Monitoring Survey And Stakeholder Consensus' (2018) 4 *JMIR Public Health and Surveillance* <<https://publichealth.jmir.org/2018/3/e10188/>> accessed 31 March 2022.

³ Human Rights Watch, 'Why Sex Work Should Be Decriminalised In South Africa' (2019) <https://www.hrw.org/sites/default/files/report_pdf/southafrica0819_web_0.pdf> accessed 31 March 2022.

of historical systems of exclusion and discrimination. Whilst sex work is criminalised in South Africa, people continue to sell sex to make a living. Sex workers experience numerous human rights violations as a result of the criminalisation of their work, and as a result of the stigma and discrimination that said criminalisation fosters.

6. The current legal framework in South Africa is inconsistent with international, regional, and domestic laws – including South Africa’s own Constitution – in addressing violence against women and gender equality. Criminalisation of sex work leads to stigma, discrimination, and disproportionate violence against sex workers, and creates an enabling environment for law enforcement officials to abuse their power.
7. This submission outlines the legal and policy context of sex work⁴ in South Africa with a focus on criminalisation, freedom from violence, and access to services especially healthcare. Lastly, the report makes recommendations on ensuring that sex workers enjoy their human rights.

Legal and policy context

8. Selling sex has been unlawful in South Africa since at least the early 1900s. Sex work is explicitly criminalised by the Sexual Offences Act⁵ and the Criminal Law (Sexual Offences and related matters) Amendment Act⁶. The latter Act also introduced the criminalisation of buying sex in South Africa, a relatively new phenomenon introduced by the Criminal Law (Sexual Offences and related matters) Amendment Act. South African laws also prohibit other aspects of sex work, including running or owning a brothel, living off the earnings of “prostitution,” and enticing a woman into “prostitution.” There are other municipal provisions that prohibit sex work such as “importuning any person for the purpose of prostitution” and “soliciting”⁷.
9. South Africa has in place a model of sex work regulation that is known as full criminalisation which aims to restrict the “supply” and “demand” for sex work through criminal imposing sanctions. Imposing criminal sanctions on demand is a strategy is often advocated for by neo-abolitionists as a means of reducing male demand for sex work. According to neoabolitionists, sex work is inherently a form of violence against women, is harmful to both individual and society and so must be abolished. This reasoning also underpins the “Nordic model”. The Nordic Model aims to eradicate sex work both in the short term, via criminalisation and fines for buying sex, and in the long term, by creating an understanding of sex work as inherently harmful to both the individual and society. Sex work should not be conflated with sex trafficking - the former refers to voluntary work done by adults, whereas the latter refers to a major abuse of human rights.

⁴ 'Prostitution / Sex Work In South Africa: Developing A Research Agenda, 14 - 15 April 2010, Pretoria, South Africa | Sexual Violence Research Initiative' (*Svri.org*, 2022) <<http://www.svri.org/what-we-do/capacity-development/events-and-seminars/prostitution-sex-work-south-africa-developing-research-agenda>> accessed 31 March 2022.

⁵Sexual Offences Act (previously Immorality Act) 23 of 1957

⁶ The Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007

⁷ 'Decriminalisation Of Sex Work In South Africa | Global Network Of Sex Work Projects' (*Nswp.org*, 2017)<<https://www.nswp.org/es/news/decriminalisation-sex-work-south-africa#:~:text=Sex%20work%20is%20illegal%20in,have%20very%20little%20legal%20protection.>>> accessed 31 March 2022.

10. However, despite the legal restrictions, sex workers continue to sell sex, but they do so in conditions of precarity as criminalisation makes sex work less safe. Additionally, sex work is stigmatised and illegal, and sex workers are a particularly marginalised section of the population.
11. The sex workers rights and the sex worker movement has been advocating for full decriminalisation of sex work for more than 20 years. Through the advocacy of lobby groups such as Sisonke National Sex Workers Movement, Sex Workers Education and Advocacy Taskforce (SWEAT), Sonke Gender Justice and Commission for Gender Equality (CGE), progress has been made. This year, for the first time in history, sex workers had a closed engagement with the Deputy Minister of Justice to discuss what decriminalisation of sex work should entail such as repealing some of the sections of the Sexual Offences Act that makes sex work illegal. Decriminalisation of sex work would make reduce instances of violence, stigma and discrimination the community when it comes to accessing legal and health services.

Impact of current laws and policies

12. The current laws in place in South Africa are a denial of sex workers' right to work, and of their rights to bodily autonomy and agency. The right to work includes the rights to freely choose the work one engages in, to just and favourable working conditions, and to access social security to protect against unemployment.⁸ Currently, no one is permitted to choose sex work as a form of work, and criminalisation means that the working conditions for sex workers are abysmal, marked by labour exploitation, stigma and discrimination, arbitrary arrest, and violence. Additionally, criminalisation means that sex workers are not afforded the opportunity to benefit from social security schemes, including unemployment and pension schemes as they are not regarded as "real" workers.
13. Sex workers are arguably "collateral damage in public policy"⁹ in that criminalisation hinges on moral precepts about what women, in particular, should be permitted to do with their bodies. Sex workers are penalised for exercising the right to bodily autonomy for consideration, and framed as a moral scourge, an urban blight, or as vectors of disease. Ironically, despite the latter framing, sex workers struggle to access healthcare services and their stigmatised image exposes them to all manner of risk.

Criminalisation, violence, and precarity

14. South Africa received 27 recommendations on addressing violence against women, GBV, domestic and sexual violence, and accepted 25 of them. The accepted recommendations included:
 - 139.195 Step up its fight against gender-based discrimination and violence, uproot its social acceptability and increase efforts for the protection of its victims and redress for violations of their rights, as well as efforts on accountability of perpetrators (Czechia);

⁸ See article 23 of the Universal Declaration on Human Rights

⁹ Rosie Campbell and others, 'Not Collateral Damage: Trends In Violence And Hate Crimes Experienced By Sex Workers In The Republic Of Ireland' (2020) 28 Irish Journal of Sociology.

- 139.196 Prevent and combat all forms of discrimination and eliminate violence against women, including domestic violence (Philippines);
 - 139.197 Reduce violence against women through awareness and mobilization campaigns to change social norms, significantly strengthen legal accountability in cases of violence against women and improve national strategic planning to mobilize resources and improve coordination in combating violence against women (Canada);
 - 139.199 Strengthen efforts to prevent and combat all forms of discrimination and violence against women, also by adopting and implementing effective measures on the issue, and ensure that women victims of violence receive appropriate help and that perpetrators are brought to justice (Italy);
 - 139.202 Continue to combat gender-based violence (Djibouti);
 - 139.203 Strengthen efforts undertaken to combat violence against women (France);
15. Violence against women in South Africa was rife before the onset of the COVID-19 pandemic, and since the pandemic has been described as a “second pandemic.”¹⁰ Sex workers are not immune to the generalised misogynistic violence, and they suffer a disproportionate burden at the intersections of whorephobia and misogyny, as sex workers are considered disposable to society and framed as an embodiment of failed womanhood. Violence against sex workers must be understood as part of the broader fight to end violence against women, and the fight to ensure all women enjoy freedom from violence.
16. Criminalisation increases the risk of experiencing violence, stripping sex workers of the right to live and work in safety. It forces sex workers to work in “discrete” areas that are often dark or dangerous, and to work on their own. This isolation also exposes them to a plethora of crimes. Sex workers are targeted by criminals, including thieves, and rapists, who pretend to be clients, and take advantage of sex worker’s devalued social status and their reluctance to engage the police¹¹. By denying sex workers the ability to work indoors, or in brothels, the government of South Africa impedes sex workers’ ability to “implement safer working practices”¹². Criminalisation is a social justice issue.
17. Violence against sex workers is widespread in South Africa. There have been a number of studies done that put this in perspective. For example, SWEAT and Sisonke, collected data on all sex workers’ deaths reported to them between 2013 and 2017 and found that, of the 118 cases of sex workers’ deaths documented, 65% were due to murder (SWEAT & Sisonke, 2017). Based on this data, the violence, stigma, and discrimination was perpetrated primarily by the local communities (e.g., clients, pimps or brothel owners, intimate partners and community members) as well as institutionally (law enforcement, healthcare workers, justice systems).

¹⁰Isilow, H., 2022. *Violence against women is like second 'pandemic' in South Africa: President*. [online] Aa.com.tr. Available at: <<https://www.aa.com.tr/en/africa/violence-against-women-is-like-second-pandemic-in-south-africa-president/2427879>> [Accessed 31 March 2022].

¹¹ Bronwyn McBride and others, 'Underreporting Of Violence To Police Among Women Sex Workers In Canada: Amplified Inequities For Im/Migrant And In-Call Workers Prior To And Following End-Demand Legislation' (2020) 22 Health and Human Rights Journal <<https://www.hhrjournal.org/2020/12/underreporting-of-violence-to-police-among-women-sex-workers-in-canada-amplified-inequities-for-im-migrant-and-in-call-workers-prior-to-and-following-end-demand-legislation/>> accessed 31 March 2022.

¹²Pitcher, J (2015) Sex work and modes of self-employment in the informal economy: Diverse business practices and constraints to effective working. *Social Policy and Society* 14(1): 113–123.

18. The African Sex Workers Alliance published research in 2019, “Violence Against Sex Workers in Africa: *Every Sex Worker Has a Story to Tell*” that shows that violence against sex workers is rampant.¹³ The research showed that in Soweto, South Africa, the prevalence of exposure to physical/sexual violence in the year preceding the study was 53.8% by intimate partner, 46.8% by clients, and 18.5% by police. Past year prevalence of sexual/physical violence by any perpetrator category was 70.8% and lifetime exposure was 76.0% (Coetzee et al. 2017).
19. A recent study by the South African Medical Research Council (SAMRC) and the Perinatal HIV Research Unit (PHRU) also shows that female sex workers (FSWs) are exposed to extremely high levels of violence. The report was aimed at investigating and describing the prevalence and patterns of exposure of FSWs to violence from intimate partners and other men (clients, police and others), this was a national study of female sex workers (FSWs) linked to sex worker programmes, using interviews conducted with 3005 FSWs from across all South African provinces. The results from August 2021 showed that sex workers are exposed to extremely high levels of violence – previous year, almost 71% exposed to physical violence and 58% raped. Of 3005 Sex Workers surveyed, one in seven women had been raped by a policeman. The study also sought to describe the factors associated with having been raped in the past year.
20. As a stigmatised, marginalised, oppressed, dehumanised and criminalised population, sex workers are not only more likely to experience violence, but are also less likely to receive help when they need it. Despite the high levels of violence experienced - sex workers are unable to approach the police or the courts for remedies due to criminalisation, and the related risk of police violence and extortion. Almost three-quarters of the sex workers interviewed by Human Rights Watch in 2019 have been arrested multiple times, some as often as two or three times per month. Sex workers are targeted by police for arbitrary arrests because the police either know them from previous contact, or believe that the women match the profile of a sex worker, and not because they have been seen to engage in illegal activities¹⁴. Additionally, several municipal by-laws are misused by authorities to fine, arrest and detain sex workers.¹⁵
21. When sex workers are the victims of crimes, they will tend towards avoiding contacting the authorities even after violent robberies due to fear of arrest, charges, police harassment, and discrimination. Criminalisation and police prejudice against sex workers cultivates a culture of impunity and violence by predators. As a result, sex workers and the police have a tense and complicated relationship.
22. Therefore, without activists, community-led organisations, coalitions, legal centres, non-profit organisations and civil society at both local and international levels, there would be little support

¹³African Sex Worker's Alliance, 'Every Sex Worker Has Got A Story To Tell About Violence: Violence Against Sex Workers In Africa' (2019) <https://www.nswp.org/sites/default/files/aswa_report_final_low_res-2.pdf> accessed 31 March 2022.

¹⁴Human Rights Watch, 'Why Sex Work Should Be Decriminalised In South Africa' (2019) <https://www.hrw.org/sites/default/files/report_pdf/southafrica0819_web_0.pdf> accessed 31 March 2022.

¹⁵ Magnus Killander, 'Op-Ed: It'S Time To Rethink By-Laws That Criminalise Poverty - Centre For Human Rights' (*Chr.up.ac.za*, 2019) <<https://www.chr.up.ac.za/news-archive/2019/1340-op-ed-it-s-time-to-rethink-by-laws-that-criminalise-poverty>> accessed 31 March 2022.

for key and vulnerable populations; particularly sex workers.

Criminalisation, HIV, and the right to Health

23. In the last UPR review, South Africa received 6 recommendations on HIV and AIDS and the right to health and accepted all of them including:
- 139.166 Continue its measures to eliminate discrimination and increase its efforts to tackle HIV infection by ensuring equal access to treatment and support. (Japan)
 - 139.168 Increase its efforts in addressing the HIV epidemic. (Turkey)
 - 139.171 Continue implementing measures to prevent HIV transmission. (Iran)
24. The South African national plan for STI and HIV prevention has many positive goals, such as the 90-90-90 treatment target. This ambitious goal is to ensure that 90% of HIV-positive people know their status, receive sustained antiretroviral therapy and suppress the virus by 2020. However, HIV prevalence is three to four times higher among female sex workers than in women in the general population of their age group.
25. Despite the explicit support of the Department of Health, including the minister, for sex workers' health rights, criminalisation obstructs access to health care for sex workers and hinders efforts to meet the targets. ¹⁶ Criminalisation and violence at the hands of police has a direct impact on sex workers' sexual and reproductive health, affecting the ability to safely negotiate safer sex practices, and as condoms are often confiscated and used as evidence to lay a formal charge.
26. There are signs of slow progress with regards to taking the rights of sex workers seriously as a key component to a public health approach to the HIV epidemic in the country. With key inputs from the South African National AIDS Council Civil Society Forum (SANAC CSF), the National Strategic Plan for HIV/TB and STIs 2017-2022 (hereafter 'NSP') has been developed and endorsed by the country's Deputy President who chairs the CSF. Inputs from the Sex Work Sector on the National Sex Work HIV/TB and STIs Plan mean that for the first time the decriminalisation of sex work has been acknowledged as key with 39 references to it in the National Strategic Plan. The National Sex Work HIV/TB and STIs Plan seeks to emphasise a multi-sectoral approach to achieving its goals of reduced new HIV infections and increased uptake in treatment and adherence.
27. The sex worker movement continues to advocate for the full decriminalisation of sex work in South Africa, as this is the only approach that can lead to sex workers enjoying the full range of their human rights including sexual and reproductive health and rights.

Recommendations

¹⁶ Human Rights Watch, 'Why Sex Work Should Be Decriminalised In South Africa' (2019) <https://www.hrw.org/sites/default/files/report_pdf/southafrica0819_web_0.pdf> accessed 31 March 2022.

1. Decriminalise sex work to reduce multiple rights violations, enhance the ability of sex workers to work without interference, and increase access to services and redress. Increase investments in key population led organisations, and particularly sex worker led organisations, as they are the key stakeholders who bring evidence indicating whether or not health, social and legal policy implementations are effective.
2. Introduce curriculum on the human rights of sex workers to sensitise those in police training colleges to lay the foundation for improved access to justice for sex workers..