

20th February 2018

To: The Joint Multi-Party Women's Caucus
Chair: Hon RMS Morutoa

Attention: Bryan Mantyi
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RE: Response to the South African Law Reform Commission's Report on 'Sexual Offences: Adult Prostitution'

Submission from: Prof Jo Vearey and Dr Rebecca Walker of The Health and Migration Project Southern Africa (maHp), African Centre for Migration and Society (ACMS) at the University of the Witwatersrand (WITS)

About the ACMS

The ACMS is Africa's leading scholarly institution for research and teaching on human mobility. Established in 1993, ACMS is an independent, interdisciplinary and internationally engaged institution focusing on the relationships among human movement politics, poverty, and social transformation. While oriented towards southern Africa, the Centre conducts collaborative scholarly and policy-oriented work across sub-Saharan Africa, and has partnerships in Asia, Europe and the Americas. While maintaining its scholarly independence, the Centre regularly partners with organisations in government and civil society in identifying data needs, conducting research and shaping policy. Centre staff are also regularly called on to provide expert advice and commentary to international organisations, governments, and the media.

One of our areas of interest is the intersections of migration and sex work and the experiences of migrant sex workers in South Africa. Over a number of years Prof Jo Vearey and Dr Rebecca Walker have been involved in research projects which have explored the challenges and vulnerabilities faced by cross-border and internal migrant sex workers, their healthcare experiences and access challenges including to HIV/STI services and, the multiple forms of violence experienced by sex workers, which often heighten when they are non-nationals. We have published widely on this issue and provide a list of publications for your interest at the end of this submission.

Based on our research undertaken with migrant and non-migrant sex workers in South Africa and research on policy processes relating to migration, sex work and health – including research both state and non-state actors we have a number of concerns with the South African Law Reform Commission’s Report on ‘Sexual Offences: Adult Prostitution’.

Critially, in 2016, the South African Health Review included – for the first time - a paper on sex work and health. This key publication is published annually by the Health Systems Trust and is used to inform health system and public health planning nationally. Therefore, the evidence presented in this peer-reviewed journal should be used in the development of the SALRC’s report. The reference for this is:

Scheibe, A., Richter, M. and Vearey, J. (2016) Sex work and South Africa’s health system: Addressing the needs of the underserved *South African Health Review* 19 165-178 OPEN ACCESS

Our concerns with the SALRC report are informed by the evidence generated at the ACMS and other research institutions over the past decade. We are concerned that the report is contrary to the evidence that exists relating to the regulation of sex work.

We outline four key concerns with the report below:

- (1) the absence of evidence-informed recommendations;**
- (2) the lack of sex worker voices;**
- (3) the insufficient recognition of sex work as a key livelihood strategy for some;**
- (5) the absence of engaging with the intersections between migration and sex work.**

1. The absence of evidence-informed recommendations

In it’s current formulation, the report makes very little use of the broad body of research on sex work in South Africa and globally. Key here is the limited attention to quality scholarship generated in South Africa, regionally and internationally. Contextually relevant quality research that has been produced at the ACMS and published in international peer reviewed academic journals includeⁱ:

- Dill, L., Vearey, J., Oliveira, E. and Martinez Castillo, G. (2016) “Son of the Soil...Daughters of the Land”: poetry writing as a strategy of citizen-making for lesbian, gay, and bisexual migrants and asylum seekers in Johannesburg *AGENDA* 30(1) 85-95 OPEN ACCESS
- Hushke, Susann. ‘Victims without a choice? A critical view on the debate about sex work in Northern Ireland’. *Sexuality Research and Social Policy* 14(2): 192-205
<https://doi.org/10.1007/s13178-016-0254-9>
<https://link.springer.com/article/10.1007/s13178-016-0254-9>

- Oliveira, E. and Vearey, J. (2017) Beyond the single story: creative research approaches with migrant sex workers in South Africa *Families, Relationships and Societies* 6(2) 317-321
- Olivera, Elsa. “I am more than just a sex worker but you have to also know that I sell sex and it’s okay”: Lived experiences of migrant sex workers in Johannesburg’. *Urban Forum* 28(1): 43-57.
<https://doi.org/10.1007/s12132-016-9281-0>
<https://link.springer.com/article/10.1007/s12132-016-9281-0>
- Oliveira, E. and Vearey, J. (2015) Images of place: Visuals from migrant women sex workers in South Africa *Medical Anthropology* DOI: 10.1080/01459740.2015.1036263
- Richter, M., Chersich, M.F., Vearey, J., Sartorius, B., Temmerman, M. and Luchters, S. (2012) Migration Status, Work Conditions and Health Utilization of Female Sex Workers in Three South African Cities *Journal of Immigrant and Minority Health* doi: 10.1007/s10903-012-9758-4 OPEN ACCESS
- Scheibe, A., Richter, M. and Vearey, J. (2016) Sex work and South Africa’s health system: Addressing the needs of the underserved South African *Health Review* 19 165-178 OPEN ACCESS
- Schuler, Greta. “At your own risk”: Narratives of migrant sex workers in Johannesburg’. *Urban Forum* 28(1): 27-42.
<https://doi.org/10.1007/s12132-016-9282-z>
<https://link.springer.com/article/10.1007/s12132-016-9282-z>
- Vearey, J. (2017) Urban Health in Johannesburg: Migration, Exclusion and Inequality *Urban Forum* doi:10.1007/s12132-017-9306-3 OPEN ACCESS
- Walker, Rebecca. “If this isn’t for my children who is it for?” Exploring the experiences of structural violence among migrant mothers who sell sex in Johannesburg’. *Families, Relationships and Societies* 6(2). 291-306.
<https://doi.org/10.1332/204674317X14861128573280>
<http://www.ingentaconnect.com/contentone/tpp/frs/2017/00000006/00000002/art00009>
- Walker, Rebecca. ‘Selling sex, mothering and “keeping well” in the city: Reflecting on the everyday experiences of cross-border migrant women who sell sex in Johannesburg’. *Urban Forum* 28(1): 59-73.
<https://doi.org/10.1007/s12132-016-9284-x>
<https://link.springer.com/article/10.1007/s12132-016-9284-x>

- Walker, Rebecca, Jo Vearey and Lorraine Nencel. 'Negotiating the city: exploring the intersecting vulnerabilities of non- national migrant mothers who sell sex in Johannesburg, South Africa'. *Agenda* 31(1): 91-103
 - <http://www.tandfonline.com/doi/full/10.1080/10130950.2017.1338858>
- Walker, R. J & T. Galvin (2017) 'Labels, victims and negotiating insecurity: the Trafficking in Persons (TiP) Act and women migrants who sell sex in South Africa. *Third World Thematics: Gendering (In) Security in Contemporary States of Exception (Special Issue)*
- Walker. R. & A. Huncke (2016). 'Sex work, human trafficking and complex realities in South Africa' in *Trafficking, Smuggling and Human Labour in Southern Africa (Special Issue)* Edited by Walker, R, Camden, B and T, Galvin. Vol. 2 (2): 127-140.
- Walker. R. C Oliveira, E., (2015). 'Contested spaces: Exploring the intersections of migration, sex work and trafficking in South Africa' *Graduate journal of Social Sciences: Blurred Lines: The Contested Nature of Sex Work in a Changing Social landscape*. Vol. 11: 2: pp-129-153.

Book chapters include:

- Oliveira, Elsa and Jo Vearey (2018). 'Making Research and Building Knowledge with Communities: Examining Three Participatory Visual and Narrative Projects with Migrants Who Sell Sex in South Africa'. In M. Capous-Desyllas and K. Morgaine (eds). *Creating Social Change Through Creativity: Anti-Opressive Arts-Based Research Methodologies*, pp. 265-287 (Cham: Palgrave Macmillan).
- Richter, M. and Vearey, J. (2016) Migration and sex work in South Africa: key concerns for gender and health. In: Gideon, J. (ed) *Gender and Health Handbook*. Edward Elgar Publishing: UK
- Vearey, J. and Richter, M. (2015) A World Class African host for whom? Implications of hosting the 2010 Soccer World Cup on the lived experiences of migrant sex workers in Johannesburg, **South** Africa. In: Bonini Lessing, E. (ed) *Design practices for urban safety and security*. Il Poligrafo: Padova

2. The lack of sex worker voices

The report also fails to cite a diverse range of sex worker voices and perspectives.

In the report very few sex workers are cited. However, with a few exceptions, the majority who are cited are participants in the "Rocking Chair documentary" produced and directed by the Christian Broadcasting Network (CBN). This results in a biased and narrow representation of the experiences and views of sex workers. Alongside the many voices of sex workers represented by the sex worker movement and supporting organisations in South Africa (which include complex

and diverse perspectives) there are also many publications which draw on the different experiences of sex workers through evidence-based research and participatory methods. These allow sex workers to tell their stories in their own way and provide an invaluable resource in recognising the diverse and often complex perspectives of sex workers.

Such resources include:

- Hushke, S (ed) (2017) **Know My Story. MoVE and ACMS. Johannesburg**
- Oliveira, E and Vearey, J (eds) (2016). **The Sex Worker Zine Project. MoVE and ACMS. Johannesburg**
- Schuler, G., Oliveira, E and Vearey, J. (eds). (2016). **Izwi Lethu. MoVE and ACMS, Johannesburg**

3. The lack of recognition of sex work as a key livelihood strategy for some

The report states that The Commission is of the view that **exploitation**, particularly of women in prostitution, seems **inherent** in prostitution and depends on the external factors of gender violence, inequality and poverty. Thus it claims that exploitation is not caused by the legislative framework in which it finds itself. Although sex work is considered an informal livelihood strategy, however, the criminalisation of sex work alongside the emphasis on sexual exploitation means that migrants selling sex are not considered as contributors in the areas of work and livelihood; rather they are framed as deviants, criminals and/or victims. However, Sex work remains a viable option for many especially given the constrained choices and the high levels of unemployment that those seeking work in South Africa face. Poverty in South Africa is highly racialised and feminised. The unemployment rate of approximately 27.7% (of a 55 million population) is most notable among black women, accounting for 49.1% of unemployed people (Africa Check 2014). Therefore, for many poor black women with limited formal education selling sex is a viable means of making a living. Sex workers with a primary school education are able to earn nearly six times more than the typical income from formal employment, such as domestic work (Gould and Fick 2008).

4. The absence of engaging with the intersections between migration and sex work

A key concern is the failure to acknowledge the relationship between migration and sex work and what this means in terms of the experience and vulnerabilities faced by sex workers operating under a criminalised system. **Research shows that there is a significant overlap between sex work and migration and that sex workers are a highly mobile population (Richter & Vearey 2016)**. A research project conducted at four sites in South Africa in 2010 during the 2010 Soccer World Cup ('the World Cup study') showed that more than 85 per cent of female sex workers had migrated from their place of birth, with 39 per cent being internal migrants and 46 per cent cross-

border migrants (Richter et al., 2012). There are a number of reasons why sex workers are a mobile population and these include access to different client bases, improved work conditions, servicing mobile populations such as truckers and to avoid violence and stigma (Scourgie et al., 2012).

This World Cup Study showed the cross-border migrants had higher education levels, predominantly worked indoors and on a part-time basis, and earned more per client than internal or non-migrants. However, their access to healthcare was low. They were also responsible for more dependents: non-migrants had a median of two dependents, internal migrants three dependents and cross-border migrants four dependents. **The findings also show that being a cross-border migrant and particularly, not having the correct papers, can heighten the risks that sex workers face – resulting in them being arrested more frequently, having to pay higher bribes, threatened with deportation and, also being less able to exercise their rights.** This shows that the combination of a criminalised industry in which sex workers cannot access their rights and face multiple forms of violence and where migrants, particularly non-nationals experience xenophobia and discrimination heightens the risks that sex workers face. This is also highlighted in the following papers: Walker, Vearey and Nencel 2017; Walker and Oliveira 2015; Walker and Huncke 2016; Walker 2016; Richter and Vearey 2016.

A quarter of female, cross-border migrants reported that they worked as sex workers before they had left their place of birth, in comparison to only 10 per cent of internal migrants. This is significant because, along with other recent studies it shows that contrary to popular belief, foreign-born sex workers in South Africa are not victims of human trafficking and sexual exploitation (Walker and Oliveira 2015; Walker and Huncke 2017; Richter et al., 2012; Flak, 2011; Gould, 2011; Oliviera, 2011). The Gould and Fick (2008) study for example revealed that trafficking is not a significant feature of the sex work industry in Cape Town. Only two female sex workers out of the 164 respondents had experienced some form of trafficking as defined by the UN Trafficking Protocol. Moreover, these had taken place in the past, and the trafficked sex workers had managed to escape those conditions by themselves. The study also found five children selling sex, although they had not been trafficked. Reports of coercion and exploitation, especially by brothel-owners/managers, which did not meet the criteria of trafficking, were however commonplace. In addition other studies have revealed that in comparison to other forms of human right violations that occur in the sex industry human trafficking is not a significant issue. Where the discourse of human trafficking often fails to make a distinction between sex workers and victims of trafficking this is often used in support of continued criminalisation, citing the risk of increased trafficking if sex work is decriminalised.

Recommendations

- **There is an urgent need for the Committee to engage with existing quality evidence relating to sex work in the South African context**
- **This evidence should be used to inform policy processes and the development of the SALRC report**

We would be happy to address the committee at the time of oral submissions.

Sincerely



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ⁱ Additional relevant scholarships includes, but is not limited to:

- A van Wyk, Are 37.5% of jobless young S.Africans black women, and 31.5% white men? Africa Check 19 November 2014: <http://africacheck.org/reports/https://africacheck.org/reports/do-black-women-make-up-37-5-of-unemployed-south-africans-aged-15-34/>
- Gould, C. & Fick, N. 2008. Selling Sex in Cape Town: Sex Work and Human Trafficking in a South African City . Institute for Security Studies: South Africa.
- Scorgie F., et al. 2013a. Human rights abuses and collective resilience among sex workers in four African countries: a qualitative study. *Globalization and Health* , 9 : 33.
- Scorgie F., et al. 2013b. 'We are despised in the hospitals': sex workers' experiences of accessing health care in four African countries. *Culture, Health & Sexuality* , 15 (4):450-465.