



RESPONSE TO THE SOUTH AFRICAN LAW REFORM COMMISSION'S REPORT ON 'SEXUAL OFFENCES: ADULT PROSTITUTION'

For attention:

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23 February 2018 - Doctors Without Borders / Médecins Sans Frontières (MSF) is an international medical humanitarian organization that was founded in 1971. MSF's actions are guided by medical ethics and principles of neutrality, independence and impartiality. In the Southern African region, MSF provides and advocates for health services and tailored models of care to address HIV, TB, sexual health, sexually transmitted infections (STI), sexual & gender-based violence (SGBV), family planning and associated counselling services. Specifically, MSF is working to increase access to healthcare for marginalised groups who are commonly excluded receiving the healthcare they need due to legal, policy and societal restrictions. These include sex workers, MSM populations, prison populations.

Running several in Mozambique and Malawi, MSF's 'corridor' project¹ provides tailored packages of mental and physical healthcare for sex workers and MSM (men who have sex with men) groups who often face violence, criminalisation and exclusion from reproductive healthcare, including prevention of HIV, Sexually Transmitted Infections (STIs) and unwanted pregnancy. MSF works alongside ministries of health in both countries to advocate towards increased access to healthcare for these vulnerable, stigmatised populations.

MSF has been working to assist the humanitarian and health needs of the population of South Africa for nearly 20 years. It started working in South Africa in 1999, as one of the first providers of free antiretroviral therapy (ART) in the public sector. In the struggle to provide treatment for people living

¹ https://www.msf.org.za/system/tdf/publications/corridor_project_report-malawi_mozambique.pdf?file=1&type=node&id=6524

with HIV, civil society demonstrated how structurally harmful policies can directly prevent access to care and have a profound detrimental impact on the health of individuals and society at large.

This submission is in response to the South African Law Reform Commission's Report on "Sexual Offences: Adult Prostitution" (hereon referred to as "the report"). MSF condemns the report released on Friday 26th May 2017 which promotes the criminalization and stigmatization of sex workers. As an international medical organisation, MSF adds its voice to the range of stakeholders that have already raised serious concerns about the report's conclusions.

The report proposes a dangerous policy direction that ignores both the detrimental health implications associated with the criminalization of sex work, and the public health imperative for decriminalization.

MSF supports the decriminalisation of sex work based on witnessing daily in its projects the negative impact that criminalization has on health. Criminalization of sex work increases the barriers to accessing healthcare services, exposing sex workers to violence and discrimination, and poor occupational health conditions.

The HIV epidemic disproportionately affects sex workers and their clients, both in South Africa and globally. In South Africa, HIV prevalence among female sex workers is one of the highest in the world, ranging from 40% to 88%.² Furthermore, *The South African Health Monitoring Survey (SAHMS)* has shown that access to HIV information and prevention strategies were inadequate, and that there is considerable need to improve uptake of HIV testing and treatment.³

Criminalisation of sex work increases the risk exposure to users, as well as sex workers who are already vulnerable to health conditions such as HIV and sexually transmitted infections. Sex workers treated by MSF in its clinics and outreach services across southern Africa are effectively excluded from the formal healthcare system. They present late for HIV treatment and test infrequently for HIV, despite living with incredibly high risk of becoming infected.

A 2016 report from AIDSfonds found that in South Africa, nearly a 71 percent of sex workers reported experiencing some form of violence in the last 12 months, with a third experiencing emotional violence from health workers when accessing health care, while 38% of sex workers reported experiencing direct physical violence by the police.⁴ In MSF's experience, common reasons cited for failing to access care are stigmatising attitudes and fear of prosecution, or abuse by health workers and law enforcement officials.

Violence, physical and emotional injury, disease and death is associated with the criminalisation of sex work, and conversely is shown to be less prevalent when sex work has been decriminalised⁵. Decriminalisation of sex work could prevent between one-third and one-half of all new HIV infections

² <http://sanac.org.za/wp-content/uploads/2016/03/South-African-National-Sex-Worker-HIV-Plan-2016-2019-FINAL-Launch-Copy...pdf>

³ <https://www.health-e.org.za/wp-content/uploads/2016/03/South-African-Health-Monitoring-Survey-An-Integrated-Biological-and-Behavioral-Survey-among-Female-Sex-Workers-South-Africa-2013-2014.pdf>

⁴ <https://aidsfonds.org/files/uploads/manual-handsoff-south-africa.pdf>

⁵ <https://aidsfonds.org/files/uploads/manual-handsoff-south-africa.pdf>

globally.⁶ It could also lead to a scale-up of ARVs between 9-34%, and lead to a reduction in sexual violence of 17-20%.⁷

The so-called “anti-prostitution pledge” of the United States President’s Emergency Plan for Aids Relief (PEPFAR) prevents organisations and health workers dependent on United States funding from speaking out in support of sex workers’ needs.⁸ This atmosphere has implicitly promoted acceptance of the retrograde views expressed in the report.

In light of the clear blindspot in the report in terms of health and the restrictions on some health actors to take a stronger position, MSF stands in solidarity with organisations supporting decriminalisation, therefore:

- MSF, as a member of the Asijiki Coalition, calls for the decriminalisation of sex work and in solidarity with other civil society members and organisations that support this call, such as SWEAT, Sisonke Sex Worker Movement, Women’s Legal Centre, etc.
- The report is biased and should not be considered valid due to the report’s poor quality, including the complete exclusion of the public health evidence that supports the importance of decriminalization.
- The Department of Justice must provide clarity on the law reform process going forward, the timelines for this process and how considerations about health will be included in this process.
- In respect to those that the policy impacts on the most, sex workers must be included in the drafting of legislation and policy.

The report’s recommendations infringe on sex workers’ rights and would be a setback that is in contradiction to South Africa’s progressive Constitution, in which access to health care for all is a fundamental human right.

MSF would be available and willing to submit an oral presentation on this topic at the summit hosted by the Multi-Party Women’s Caucus, to highlight the public health importance of decriminalizing sex work and the importance of all people having access to care without discrimination.

⁶ <https://www.ncbi.nlm.nih.gov/pubmed/25059947>

⁷ <https://www.ncbi.nlm.nih.gov/pubmed/25059947>

⁸ <https://www.spotlightnsp.co.za/2016/12/13/pepfars-anti-prostitution-pledge-impedes-sex-worker-health/>