

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

Attention:
Bryan Mantyi
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Date: 26 February 2018

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

Whom is the submission from?

This submission is being made by **Maria Stacey** and **Ntokozo Yingwana** as independent researchers.

Maria Stacey is the Director of Equal Africa, a health, human rights and development consulting company. She is a specialist in the field of sex workers' health and human rights. She has provided technical assistance to global organisations, including UNAIDS, UNFPA, WHO, Global Fund for AIDS, TB and Malaria, AIDSFonds, Open Society Foundation, Global Network of Sex Worker Projects (NSWP) and the Global Alliance Against Trafficking in Women. Maria is a clinical psychologist, with over two decades of experience in programme management in the development sector, with a focus on health, HIV, human rights, mental health and participatory community development. She previously worked for the Sex Workers Education and Advocacy Taskforce (SWEAT), where she set up and managed a national sex worker HIV programme, and coordinated several research projects, including a South African sex worker size estimation study, a mapping study, and a good practice guide to integrated sex worker programming.

Ntokozo Yingwana is a researcher and PhD candidate with the African Centre for Migration & Society (ACMS) at the University of Witwatersrand. Her expertise lies in gender, sexuality, and sex worker rights' activism in Africa. She has also worked for SWEAT and currently serves on its board. She occasionally consults for the African Sex Worker Alliance (ASWA), and the Global Network of Sex Work Projects (NSWP).

The submission is mainly based on a recent multi-country study that was conducted by the Global Alliance Against Traffic in Women (GAATW)¹ whereby Stacey served as the lead researcher and Yingwana the South African researcher. This seven-country study (involving Canada, India, Mexico, New Zealand, Spain, Thailand and South Africa) explored the negative impact that ideology- and morality-driven anti-trafficking frameworks have had on the lives of sex workers and their working conditions in the sex industry². It also looks at this industry as one

¹ The Global Alliance Against Traffic in Women (GAATW) is an alliance of over 80 nongovernment organisations from all regions of the world that promote and defend the human rights of all migrants and their families against the threat of an increasingly globalised labour market. Alliance members include service providers, advocacy organisations, and self-organised groups who share a deep concern for the women, children, and men whose human rights have been violated by the criminal practice of human trafficking.

²GAATW (2018) Sex workers organising for change: self-representation, community mobilisation and working conditions. Available at: <http://www.gaatw.org/resources/publications/941-sex-workers-organising-for-change>

sector where women (often migrant and of low socio-economic status) work and the strategies that they, and the organisations that support them, employ to improve working conditions and address violence, exploitation, and trafficking in the industry.

The submission also draws on a research which informed a policy brief for the Global Network of Sex Work Projects (NSWP) on Sex Work as Work.

What concerns/comments do you have regarding the particular Report?

General comments

The authors of this submission maintain that the SALRC has a duty to consider the most recent and robust evidence which is available when conducting an investigation. In reviewing the evidence cited in this report, the authors have the following concerns: 1) a wealth of pertinent, peer-reviewed evidence from South Africa and the SADC region, of which the authors are aware, has not been included in the report; 2) neglect of the evidence regarding HIV/AIDS is particularly concerning, given the alarmingly high rates of HIV found amongst sex workers in South Africa (e.g. 72.2% in Johannesburg)³ 3) Research studies from other countries, (for example countries in the Global North) are sometimes cited, with the assumption that these findings automatically apply to South Africa; 4) On the other hand, normative guidance developed by reputable international bodies, such as WHO and UNAIDS, based on thorough and rigorous consultation and consideration of best available evidence, is neglected; and 5) ideological opinion pieces are given the same weighting, or even greater weighting than formal research.

Findings related to the ILO's stance on sex work

According to the report, "*Neither the ILO nor the above South African policy documents [New Growth Path, 2009-2014 Medium Term Strategic Framework and National Planning Commission] have promoted legalising prostitution as a solution to poverty; nor have they identified prostitution as an employment option for poor or marginalised people*".(para 31, pg.13)

Regarding the ILO, this conclusion is not accurate. ILO's Recommendation 200⁴, adopted in 2010, addresses HIV and AIDS and the world of work. Recommendation 200 sets down principles and standards regarding the rights of workers to be free from HIV-related stigma and discrimination; to occupational health and safety; and the right to access to HIV testing, prevention, treatment, care and support. It also addresses the obligations of employers and governments to develop policies and implement programmes which protect those rights.

Whilst sex work is not specifically mentioned in the standard itself, Recommendation 200 applies to "all workers working under all forms or arrangements, and at all workplaces, including, in paragraph 2 (a)(i) "persons in any employment or occupation" and, in paragraph 2 (b) to "all sectors of economic activity, including the private and public sectors, and the formal and informal economies". The report of the Committee minutes a discussion on the status of

³ UCSF, Anova Health Institute & WRHI. 2015. South African Health Monitoring Study (SAHMS), Final Report: The Integrated Biological and Behavioural Survey among Female Sex Workers, South Africa 2013-2014. UCSF, San Francisco

⁴ International Labour Organisation, 2010, "Recommendation 200: Recommendation concerning HIV and AIDS and the world of work", available at http://www.ilo.org/ilc/ILCSessions/99thSession/texts/WCMS_142613/lang--en/index.htm (last accessed 26 June 2016)

sex work within the Recommendation, *which clearly resolves that sex work is covered by the instrument*⁵.

Later ILO documents reinforce and expand on the acknowledgement of sex work as work: *Reaching out to Sex Workers and their Clients* emphasises that the scope of HIV prevention interventions with sex workers should extend to addressing the structural drivers - such as lack of social protections, stigma, discrimination, marginalisation and violence – which make sex workers vulnerable to HIV⁶. *Leaving No one Behind: Reaching Key Populations through workplace action on HIV and AIDS*⁷ documents good practices in workplace interventions to address HIV among key populations, emphasising “how the workplace and/or the workforce could be creatively used to increase access to HIV services for key populations”, and challenging readers “to have a paradigm shift in their understanding of what HIV workplace programme are or should be”.

The debate on whether sex work is work or exploitation

The Report notes that “*internationally the main factor used to determine how the law should respond to adult prostitution is whether prostitution is viewed predominantly as work or exploitation*” (para 27, pg. 12). The Report finds 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 and is not caused by the legislative framework in which it finds itself*” (para 8, pg. 4). The Report further concludes that, “*The Commission believes that, based on current indicators, the legislative options of partial- and non-criminalisation across the board might well encourage an increase in both legal and illegal migration, and **possibly trafficking**, for the purpose of prostitution*” (para 38, pg.). The Report also addresses employment by sex workers in brothels with exploitation, as follows: “*The Commission concludes that there is no reason for legalising brothels. The Commission is of the view that **restricting the commercial exploitation of prostitutes by prohibiting such practices is a justifiable limitation** on the individual rights of third parties to freedom of trade, occupation and profession*” (para 61, pg. 25).

However, the findings of the research study in which both the authors of this submission participated, do not support the conclusion that sex work is inherently exploitative, synonymous with coercion, nor conducive to human trafficking. These findings are summarised below

For sex workers in all seven countries, sex work was first and foremost a livelihood strategy. In all settings, sex workers reported that they wanted the same thing: to be able to earn a living without interference, discrimination, harassment or judgement. Like everyone else, sex workers had chosen the best option for making a living from the limited options they have. For most, sex work was preferable to the generally lower-paid jobs available to them, such as domestic work, factory work or farming.

Most of the sex workers interviewed reported that, despite the frequent conflation of sex work and trafficking, that situations which meet the definitional criteria for human trafficking were not

⁵ International Labour Organisation, “Fifth item on the agenda: HIV/AIDS and the world of work - Report of the Committee on HIV/AIDS”, available at http://www.ilo.org/ilc/ILCSessions/99thSession/pr/WCMS_141773/lang-en/index.htm (last accessed 26 June 2017)

⁷ International Labour Organisation, 2014, “Leaving no one behind: Reaching Key Populations through workplace action on HIV and AIDS”, available at http://www.ilo.org/aids/Publications/WCMS_249782/lang-en/index.htm (last accessed 26 June 2017)

common in their experience. Nevertheless, South African sex workers noted that human trafficking existed, even though it was rare. All sex workers interviewed had a general understanding of human trafficking and considered it abhorrent: as people who are working in the industry voluntarily, the idea of women being forced to work against their will was unacceptable to them.

Sex workers and the sex worker organisations spoke about different challenges which were much more common than human trafficking. Stigma and criminalisation were an overarching problem: they argued that stigma forms the rationale for criminalisation, which in turn perpetuates further stigma. As one of the respondents in Thailand said “The real problem is that our work is illegal, so it makes people pity us... People look down on us and think we must be trafficked”. Stigma, while not non-existent, was the lowest in New Zealand, where participants noted that decriminalisation had improved the attitudes of police, health and social services, as well as the community.

Respondents noted that unsafe, unhealthy and unfair working conditions, such as high rents, fines or long working hours, certainly exist in sex work, but did not believe that these were unique to the sex work sectors. Criminalisation, by perpetuating stigma, discrimination and social marginalisation of sex workers, was seen by participants as creating the conditions in which violations of sex workers’ rights, including their labour rights, continue with impunity, and as blocking avenues for redress that are available to other workers. While exploitative labour practices were described as relatively common, many of our participants pointed out that governments’ and media’s obsession with human trafficking and ‘sexual slavery’ obscure these more mundane forms of exploitation.

The study also found that migrant sex workers face additional challenges: they are more likely to accept exploitative conditions, or agree to risky sexual practices, due to the threat of being exposed and deported, and are also less likely to access health care. This vulnerable position, in which migrant sex workers are placed, was reported in all countries, even in New Zealand, where migrants (who can work in all other sectors) are not allowed to work in the sex sector. Furthermore, in all countries, migrants are particularly targeted by anti-trafficking operations of law enforcement, which erodes their trust in authorities and makes it less likely to report violations against them. Thus, some participants noted that anti-trafficking operations have the paradoxical effect of exacerbating the vulnerability of migrants.

The study found that organisations which are led by or meaningfully involve sex workers, uphold and protect the human rights of sex workers, and respond to sex workers’ needs by providing person-centred, holistic, non-judgemental support, which have contributed to a reduction in marginalisation and vulnerability. In general, the study found that in instances where situations of trafficking or severe exploitation was identified, sex worker organisations addressed these in ways that were smart, creative, appropriate for the context, and did not cause further harm to the victim.

Recommendations

Based on the findings from our research, we make the following recommendations:

1. Decriminalise all aspects of consensual adult sex work, while retaining the existing provisions against human trafficking, kidnapping, rape, child sexual exploitation, and related crimes;
2. Recognise sex work as work and regulate it through existing health and labour laws, so that sex workers have access to labour rights and measures to seek redress for any

rights violations;

3. Train law enforcement and other relevant agencies on the distinctions between human trafficking and sex work, and sensitise them in respectfully dealing with sex workers;

4. Devise and implement socio-economic programmes that provide opportunities to those who wish to leave the sex industry and, more broadly, better economic opportunities for marginalised people.

Addressing the Committee

Maria Stacey is available and willing to elaborate on the above research findings, if required.