



Southern African Catholic Bishops' Conference
PARLIAMENTARY LIAISON OFFICE



Submission

to the

Department of Justice & Correctional Services

on the

DRAFT CRIMINAL LAW (SEXUAL OFFENCES AND RELATED MATTERS) AMENDMENT BILL, 2022

Introduction

1. The Parliamentary Liaison Office of the Southern African Catholic Bishops' Conference welcomes the opportunity to comment on the proposed decriminalisation of sex work. We commend the Department of Justice and Correctional Services for facilitating public debate and comment on this issue.

2. We do not intend to adopt a simple 'for' or 'against' stance regarding this question. It is far too complex, and it involves far too many competing considerations, to admit of a simplistic approach. This is also a topic on which we must concede that it will never be possible for the law to satisfy all the different standpoints.

3. We stress that the points we make below are not based on narrow religious considerations, or purely on the Catholic Church's doctrines relating to sexual activity. The Deputy-Minister of Justice and Constitutional Development is on record as saying that people should not seek to impose their 'religious beliefs' on others. That is undoubtedly so, especially in a Constitutional democracy, but at the same time it must be borne in mind that religious teachings on sexual morality serve important social purposes – they are intended:

- to uphold human dignity;
- to underpin family stability;
- to protect the vulnerable from exploitation;
- to enhance loving and self-giving relationships; and
- to guard against the objectification and commodification of people's bodies and sexuality, especially, in this context, those of women and girls.

4. It may be argued that, in itself, the criminalisation of sex work has not helped to achieve any of these ends, but that does not mean that decriminalising and normalising sex work is the answer. Before doing so, government – which carries a heavy social responsibility – must be satisfied that such a move will not do more harm than good.

Socio-Economic Context

5. In his address to the media briefing announcing the publication of this Draft Bill, Minister Lamola said the following:

“Sex work is driven by a complex intersection of social and economic factors in which poverty, unemployment and inequality are key drivers. Within the current South African context the debate around sex work has been complicated by high levels of unemployment, crippling poverty, burgeoning numbers of migrant and illegal foreign job seekers, high levels of sexual violence against women, the HIV/AIDS epidemic, drug/substance abuse and targeted exploitation of women engaging in sex work by third parties, authorities and buyers.”⁴

We agree with this description of the situation. It seems accurate to say that very few, if any, sex workers enter this occupation out of free choice or career aspiration; rather, they are ‘driven’ to it, to use the Minister’s word, by the combination of social factors that he mentions.

6. Sex work, therefore, is often a ‘last resort’ job for people, overwhelmingly women, who find themselves in desperate situations for the reasons outlined by Mr Lamola. We are concerned that the summary decriminalisation of sex work risks giving the impression that this kind of work is just a job like any other; that some people choose to be sex workers the way others choose to be teachers or shop assistants or police officers. This, in turn, means that less and less attention will be given to the socio-economic forces that push people into sex work. Instead of society, led by government, devising policies and interventions to make it unnecessary for women to enter sex work, it will become a new norm, and the underlying ‘push factors’ will increasingly be ignored.

Patriarchy and Cultural Attitudes

7. As mentioned above, the great majority of sex workers are women, whose paying clients are men. The commercial sex transaction consists of women ‘serving’ the needs or desires of men; and of men paying, from their position of relative financial power, for the service. This reinforces the extremely harmful cultural stereotype that women exist, at least in part, to do men’s bidding, to fulfil men’s wishes. It perpetuates the unequal power relationships between men and women that we term ‘patriarchy’; and we know that patriarchy and associated attitudes play a major part in gender-based violence, in the economic oppression of women, and in sexual and other forms of exploitation of women by men.

8. This is the case whether or not sex work is classed as a crime, but normalising sex work will inevitably tend to legitimise patriarchy and the sexual exploitation of women. Many people – mostly men and boys, perhaps – will simply assume that, since sex work is no longer a crime, there is nothing wrong with it. It will come to be seen as an acceptable, ethically-neutral, phenomenon when, in fact, it will remain an example of the exploitation of women by men, and a manifestation of unequal power relationships.

9. In this regard we refer to the SA Law Reform Commission's Report on Sexual Offences: Adult Prostitution,ⁱⁱ in which it states:

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. The Commission has concluded that changing the legislative framework could create an extremely dangerous cultural shift juxtaposed against the high numbers of sexual crimes already committed against women. Women would be considered even more expendable than at present. The Commission has noted that the prevalence of prostitution in our society and the inherent exploitation associated with it is primarily a social phenomenon, which is reflective of deep-seated, economic and sexual inequality, and that legal mechanisms to address this social phenomenon are limited and are reactive in nature, but nonetheless necessary.

10. We share the SALRC's concern that decriminalisation of sex work could promote "an extremely dangerous cultural shift" and that women "would be considered even more expendable than at present."

Human Traffickers, Brothel Keepers, etc.

11. It is often noted that the sex work 'industry' has existed for millennia (the so-called 'oldest profession') and that efforts to eradicate it through mechanisms of criminal law have not worked. These assertions are no doubt true. However, it also seems reasonable to suppose that some people who might seek to profit by involvement in this industry are put off from doing so due to fear of criminal prosecution. This applies perhaps not so much to the sex workers themselves, but to those others who make a living by exploiting them – pimps, brothel-keepers and human-traffickers, for example.

12. Decriminalisation, therefore, will not merely assist sex workers by relieving them of the threat of criminal sanctions, it will also give encouragement and protection to those who live off the work of the

sex workers as, in effect, human parasites. It is difficult to see how decriminalisation will not act as an incentive to human traffickers, for example – they will be able to argue that they are simply ‘labour brokers’ or ‘recruiters’ in a legitimate industry; and it will be extremely difficult for their victims to argue otherwise, since the industry in question will have been legally sanitised by the present Bill.

13. The proposed repeal of the whole of the **Sexual Offences Act 23 of 1957**, especially sections **2** [keeping a brothel]; **10** [procuration]; and **20(1)(a)** [Persons living on earnings of prostitution] will give free reign to people who profit from the sexual exploitation of vulnerable people (mostly women) and who, in the process, exploit them financially as well. The facilitation of such double-exploitation is not a worthy, or even legitimate, purpose of legal reform.

The Two-Step Approach

14. According to Minister Lamola, the first step to be taken is decriminalisation; the second will be regulation. Nothing has been published regarding regulation, so it is not possible to comment on whether or not some of the concerns expressed above will be addressed thereby. However, it seems precipitate to embark on full-scale decriminalisation without at the same time preparing regulations that, we assume, will offer some protection to the vulnerable – the sex workers themselves.

15. The provisions of the Sexual Offences Act mentioned in paragraph 13 above are relevant here: it would make sense to keep these on the statute book at least until such time as the regulations – which, to repeat ourselves, we expect will offer some protection to vulnerable sex workers – are firmly in place. Otherwise, numerous women will be just as much at the mercy of pimps and traffickers as they are now, if not more so; which is hardly the intention of the Bill.

Conclusion

16. The Catholic Church does not expect or wish the State to legislate on issues of personal morality. We do, however, expect the State to legislate carefully on issues that have important social ramifications – and sex work is one such issue. It may well be that the time has come to move away from the criminalisation of sex work. We accept that criminal law can be a very blunt and ineffective instrument when it comes to dealing with complex and problematic social questions. We also accept that our country’s Constitution, rightly, places a high premium on individual autonomy and personal freedom.

17. At the same time, we also hold that the State has a duty to promote the well-being of society as a whole; to intervene where necessary to mitigate the malign effects of unequal power relationships; to combat unhealthy social stereotypes; and to protect the vulnerable. Sex workers are almost always vulnerable; they are often in a weak position *vis a vis* the men who seek their services; and the commodification and objectification of women's bodies stems from and perpetuates damaging gender stereotypes.

18. We are not persuaded that the Draft Bill, as it stands, serves the interests of sex workers or of wider society. Without knowing how government proposes to regulate sex work it is impossible to judge whether or not the step of decriminalisation will help either individual sex workers, or society as a whole. At a minimum, the existing provisions of the Sexual Offences Act that criminalise those who victimise, and profit from, sex workers should be preserved.

19. We wish the Department well in its endeavours regarding this very difficult and complex question.

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ⁱ https://www.justice.gov.za/m_speeches/2022/20221209-DSW-Min.html

ⁱⁱ Project 107, at paragraph 8, emphasis added. See <https://www.justice.gov.za/salrc/reports/r-pr107-SXO-AdultProstitution-2017-Sum.pdf>