



International liaison, dialogue and research

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Policy Dialogue Report

25 October 2022, Zoom Platform

SALO Community and Youth Dialogue on migrant and South African sex workers in South Africa

SALO VIRTUAL COMMUNITY & YOUTH DIALOGUE: @salo_info
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HATE CRIMES AGAINST FOREIGN AND SOUTH AFRICAN SEX WORKERS IN SOUTH AFRICA.
TUESDAY 25 OCTOBER
11:00 - 13:00 (CAT)
VIA ZOOM & FACEBOOK LIVE



MEGAN LESSING
SEX WORKERS
EDUCATION AND
ADVOCACY
TASKFORCE
(SWEAT)

PATSY ALLEY
NATIONAL
CONVENOR OF
THE ANCWL
LGBTQI+ DESK

MULUTI PHIRI
ADVOCACY
OFFICER AT
CONSORTIUM FOR
REFUGEES AND
MIGRANTS IN
SOUTH AFRICA
(CORMSA)

NOMONDE
ANONYMOUS SEX
WORKER

JOHN JEFFERY
DEPUTY MINISTER
OF JUSTICE &
CONSTITUTIONAL
DEVELOPMENT

On October 25th, 2022, Southern African Liaison Office conducted a public dialogue together with the Norwegian People's Aid. The workshop sought to have a conversation around the challenges faced by migrant and South African sex workers in South Africa.

Following the murder of six women working as sex traders, the Southern African Liaison Office hosted a virtual meeting. The panel was composed of various individuals with different backgrounds and expertise, including professionals who have direct experience with sex work, advocates for sex work, and policymakers who are involved in shaping laws and regulations around the decriminalisation of sex work. Nomonde (Anonymous sex worker), Megan Lessing (SWEAT)], Muluti Phiri (CORMSA), Patsy Alley (ANCWL) and John Jeffery (Deputy Minister of Justice and Constitutional Development) were speakers.

Migration and sex work

According to Muluti Phiri, the term "migrants" refers to individuals who relocate from their land or country of origin to another nation for various reasons. These may include seeking refuge from conflict, pursuing opportunities for improved education or livelihoods, and escaping human rights violations in their homeland. Additionally, Phiri notes that individuals may leave their place of birth due to climate-related issues, further expanding the range of factors that can contribute to migration.

Muluti Phiri contends that migrant sex workers are a distinct subset of migrants, primarily driven to relocate due to punitive laws and discrimination they face in their country of origin. Patsy Alley observes a pattern of disconnection and stigma directed at sex workers, resulting in many women and men operating in precarious conditions to earn a livelihood. This highlights the challenges faced by sex workers in gaining social acceptance and legal protection and underscores the need for greater awareness and policy support to address these issues.

Safety and sex Work

In the current legal framework, engaging in sex work is considered a criminal offense. Patsy Alley draws attention to the heightened levels of violence associated with this form of work. She cites the case of six murdered sex workers, noting that such brutal

killings are not isolated incidents and warns that further deaths are likely to occur unless action is taken. She advocates for a community-centred and humanitarian approach to address these issues.

Muluti Phiri sheds light on the challenges faced by sex workers, who often operate in dangerous and inhospitable environments that impede their access to essential services such as healthcare and psychosocial support. Decriminalisation challenges further compound the situation, forcing sex workers to operate clandestinely and in fear of authorities. Xenophobic attitudes within the communities where most migrant sex workers reside only exacerbate their precarious situation.

Sex Work as an Occupation

Nomonde highlights the gap between the recognition of sex work as a form of employment and the challenges associated with its legalisation. She argues that the government can play a crucial role in decriminalising this trade, as the current legal status of sex work prevents individuals from even renewing their work permits. Since the profession is not recognised, authorities such as Home Affairs require a letter from an employer to renew work permits, creating additional obstacles for sex workers. Nomonde suggests that recognising sex work as a legitimate form of employment would help alleviate some of the difficulties faced by sex workers in accessing basic rights and services. *“I don't have an employer as a sex worker, I'm self-employed and it doesn't even fall under the critical skills that Home Affairs is asking for”.*

Megan Lessing asserts that sex work should be recognized as a professional trade since sex workers generate income from it. She further explains that as activists advocating for the decriminalisation of sex work, their focus is on legal frameworks that recognise sex work as a form of labour. They also aim to protect the labour rights of sex workers. By emphasising the economic and labour aspects of sex work, Lessing seeks to counter the stigmatisation of this trade and promote the recognition of sex work as a legitimate profession.

From the LGBTQI+ perspective, Patsy Alley poses a fundamental question: Why is it that a significant proportion of transgender women are compelled to engage in sex work at some point in their lives to make a living? She identifies micro-oppressions from societal and familial structures as the root cause of discrimination against

individuals with diverse gender identities. Consequently, many are forced to leave their homes and turn to sex work as a means of survival. By highlighting these systemic issues, Alley calls attention to the complex intersections of gender identity, discrimination, and economic marginalisation that underlie the experiences of LGBTQI+ individuals.

Legislation and Sex Work

Deputy Minister John Jeffery asserts that the South African government had tasked the South African Law Reform Commission with investigating the legalization of sex work in the country. He notes that the Commission's findings recommended either the continuation of criminalization or partial decriminalization of sex work. According to Jeffery, partial decriminalization would mean that sex work would no longer be considered a criminal offense. However, legal regulations would still apply to monitor the practice of sex work.

Partial decriminalisation of sex work would provide certain legal protections for sex workers, such as the ability to report crimes like rape to the police without fear of being charged for engaging in sex work. However, the legal regulations governing the transaction between a sex worker and a client would still be in place, potentially causing clients to conduct transactions clandestinely. In practical terms, street-based sex workers would be governed by municipal by-laws, while those working in brothels would be subject to labour laws that dictate how and where they can conduct their trade.

Partial decriminalisation of sex work is based on the Swedish or Nordic model. John Jeffery believes that *“there are fundamental differences between proponents of the Nordic model, and proponents of full decriminalisation with, generally, proponents of the Nordic model seeing prostitution as something which is negative, and not as work.”* The problem in this is that sex work remains hidden and full protections cannot be offered to sex workers in such a system.

There have been recommendations to include asylum seekers in the proposed act. The minister noted that countries like New Zealand has had a total decriminalisation of sex work although they do not allow foreign sex workers to work within the country.

This type of legislation would exclude migrants and asylum seekers in South Africa to be legally recognised as sex workers.

“If we have a situation where the normal rules apply, then you would not be able to be a foreigner and be a sex worker unless you have the right to work. As other speakers have said, you're unlikely to get a work permit because one of the requirements for a work permit is that the employer can show that there's no South African who could [be] suitable for this position that you've taken. Obviously, in the case of sex workers, there isn't an employer, but if one looks at the other aspect, there are lots of South Africans who would be willing to do that work. So, the work permit is going to be difficult.”

Consent, Violence and Stigma

Nomonde explains that it is not easy being a sex worker and a rape victim because of the stereotypes attached to sex work. Illustratively, sex workers often experience repeated incidents of rape, yet they are reluctant to report these incidents to the police due to fear of being ridiculed and not taken seriously. The fear of being stigmatised and discriminated against by society and law enforcement officials is a significant barrier that prevents sex workers from seeking justice and protection. She says, *“if they know that you're a sex worker and tell them that [you've] been raped, they'll ask you, how do you get raped if you're a sex worker.”*

There is a significant problem with the issue of consent when it comes to interactions between sex workers and police officers. In some cases, police officers may demand sexual favours from sex workers as a form of bribe or payment for avoiding arrest or other penalties. This type of behaviour not only constitutes a violation of sex workers' rights but also undermines the rule of law and the trust between law enforcement and the community. Nomonde argues that *“As migrants, we get so abused by the uniform guys, especially the police, [be]cause they have turned us into ATMs. Whenever they feel like getting money, they'll go to a certain place where they know there are sex workers”*.

Megan Lessing purports that sex workers face high levels of violence from clients, their intimate partners as well as from the police. On top of this, migrant sex workers also experience xenophobia.

“There is a notion to blame all crime on foreign nationals. There is a notion about drugs and sex work attached to foreign nationals in this country, and it gets reinforced, to some extent ... We've seen politicians make the most irresponsible statements and it gets backed by citizens in this country or the vice versa happens, that citizens violate the rights of migrants and foreign nationals in this country and it gets reinforced by politicians.”

Health and Sex Work

Nomonde brings attention to the fact that sex workers constantly face the risk of assault from both clients and law enforcement officials. This creates a difficult situation where the victims of such assaults are unable to report them to the authorities due to the fear of being arrested. This predicament is exacerbated by the fact that undocumented migrants, who often engage in sex work, are afraid of being deported upon reporting these crimes. She continues, *“it's very difficult nowadays what's happening to migrants, whereby when you get to hospital, you should produce documentation before any treatment is commenced.”*

Conclusions and Recommendations

In conclusion, the discussions on the topic of sex work in South Africa bring to light the various challenges faced by sex workers, including violence, lack of access to healthcare and psychosocial support, and the fear of being criminalised or deported when reporting crimes. While some stakeholders are advocating for partial decriminalisation, others are calling for complete decriminalisation to recognise sex work as a legal and professional occupation. It is evident that the lack of recognition and legal protection for sex workers has led to a number of vulnerabilities and injustices. To promote a safer and more humane environment for sex workers, there is a need for a more effective approach that recognises the dignity and human rights of all individuals, regardless of their profession. It is time for society to challenge stereotypes and biases towards sex workers and work towards creating a conducive environment for them to operate under recognised labour laws.

The analysis and recommendations included in this Policy Report do not necessarily reflect the view of SALO or any of the donors or conference participants, but rather draw upon the major strands of discussion put forward at the event. Participants neither reviewed nor approved this document. The contents of the report are the sole responsibility of SALO, and can under no circumstances be regarded as reflecting the position of the donors who provided financial assistance for this policy dialogue session.

About the Southern African Liaison Office:



The Southern African Liaison Office (SALO) is a South African-based not-for-profit civil society organisation which, through advocacy, dialogue, policy consensus and in-depth research and analysis, influences the current thinking and debates on foreign policy especially regarding African crises and conflicts.

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Norwegian People's Aid