

Government Accountability: Sex Work decriminalisation in South Africa

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Introduction

I know there is likely to be a wide range of knowledge and experience in the room today, some of you probably know a huge amount about sex work and the decrim struggle and for some of you it might be very new.

In South Africa we have been fighting for 25 years for the full decriminalisation of sex work and are closer now than we have ever been. I want to tell you a bit of this story and share some tips and tricks that have worked for us and also some of the traps we fell into and how you might avoid them in your work.

We do not have a very long time for intense group work or a huge amount of interaction but I hope that I might plant some seeds and inspire some thoughts. I know you are having further sessions with some of my colleagues from the sector and that this presentation might help you to understand some of what they share with you.

A bit about language

- We use the terms sex work and sex workers all our work. There are many alternative words and what is appropriate in different countries might differ. More controversial words like prostitute or whore are reclaimed and used by sex workers in some places. We totally respect this but we are not there yet.
- There is a lot of other language that we use, words like brothels, street walkers, pimps, clients. We are thoughtful about all of these as they can have differing implications and reactions from different people. If you are wanting to talk about sex work in your context I suggest you speak to sex work activists about language so you do not accidentally cause offense or feed stigma.

What is decrim?

- This may seem like a simple question and indeed for us there is a simple answer, it is a situation where it is not a crime to buy or sell sex or to otherwise work in that industry.
- There are however differences from country to country in terms of what that means in practice, this often depends on what the law currently says. In some places it is a crime to sell but not to buy sex, in some a crime to buy but not to sell. In some it is not a crime to buy or sell sex but there are associated crimes such as brothel owning or pimping.
- There are also different views of what the colleagues ideal situation should be.

Legal Models

- Full decrim in its purest form simply means the absence of any laws. This does not mean that other laws and bylaws do not apply to sex work simply that there are no special laws for sex work.
- Partial decrim, otherwise known as the Nordic model means that it is not a crime to sell sex but it is a crime to buy sex and various other activities are also criminalised. Sex workers have never supported this model but it is popular with some women's rights activists who ultimately aim to end all sex work but not to criminalise sex workers.
- Legalisation is a model in which sex work is not criminalised but special laws still exist, these might involve red light districts, registration rules or compulsory health requirements.

What have we done?

- We find ourselves as close to decrim as we have ever been with both a law reform process on the go and a strategic litigation case coming to court this year. This did not come from nowhere however, it is the result of two decades of building a consensus to support decrim within civil society, political parties, trade unions, government structure and the general public.
- This was built through intense lobbying, building partnerships with other structures, developing research, media blasting, public campaigns, sensitisation training, developing different messaging for different audiences (public health, women's rights, anti-violence, economic empowerment).

We now have two processes on the go:

1. Law reform, the Department of Justice developed a decrim bill and released it for public comment, unfortunately it was withdrawn for redrafting in 2023 and we still await the new draft but the department has indicated their ongoing support for decrim on a number of occasions.
2. We have a strategic litigation in the works that is aimed at declaring unconstitutional the legal provisions that criminalise buying and selling sex, it is due to come to court in November of this year.

Government accountability?

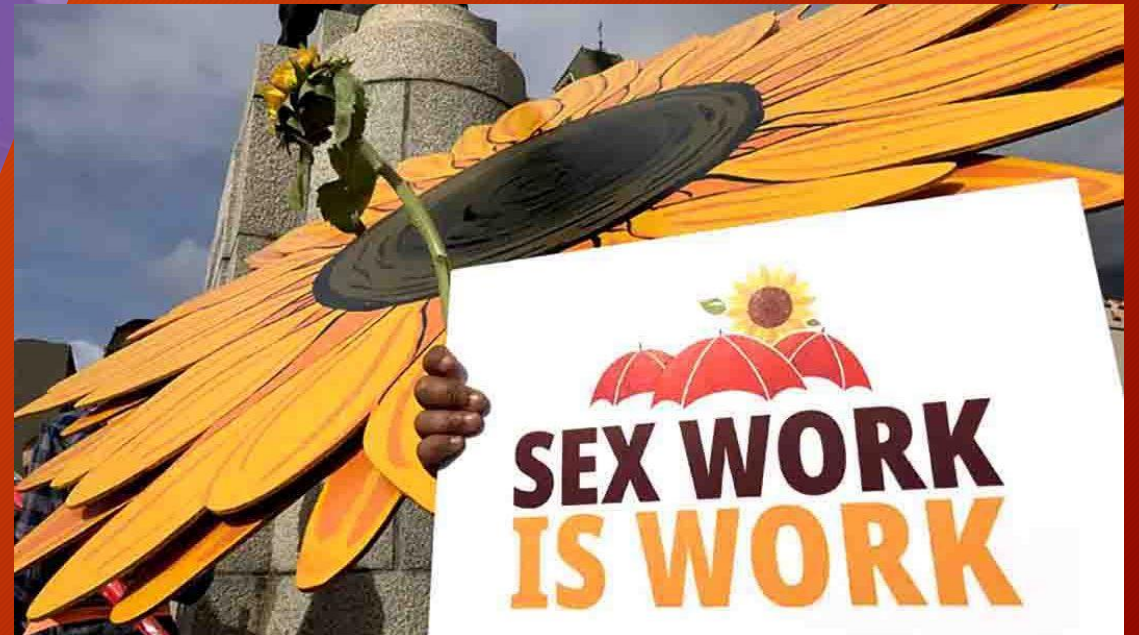
There are two forms of government accountability at play here.

The first is the broad accountability towards the Constitution and the legal framework that has been born from it. This may seem self evident but in recent years we have seen in South Africa (as in many other places) a right wing, conservative backlash to many of the rights enshrined in and by the Constitution. There is a tension between Constitutional rights and populism in terms of what motivates politicians.

The second is specific accountability to the commitments to decrim made by the Government. The key to this second is that you often have to work for years to get the commitments that you then want to hold the government accountable to. What do I mean by this kind of commitment.

Some Commitments

- The ruling party (now in coalition) added decrim to their manifesto at their party conference many years back, making it official ANC policy.
- Decriminalisation was included in the National Strategic Plan for HIV and Aids, which is a document binding on government.
- It was then added to the National Strategic Plan on GBV, also a document that is binding on Govt.
- The current President, when we have the Deputy President publicly committed to decrim to Kholi Buthelezi the Director of Sisonke (we remind him of this every year)
- The South African Human Rights Commission (SAHRC) which is a government structure declared their formal support for Decrim.



Learnings on the positive front

- We identified and then one by one approached all the people and structures that had a hand in Government policy and process. We sent the right people to speak to the right people and build a core of support even long before we needed it.
- We worked hard to shift public language and perspective. The word prostitute is now hardly used in public discourse because we made it unacceptable.
- We followed different strategies at different times, leaning into the litigation when needed, being on board with the law reform when it was moving but always had more than one route to our goal.
- We brought the voices and needs of sex workers into a variety of spaces and built a broad coalition with LGBTI, migrant, unhoused people, public health organisations etc....

Some pitfalls (warnings)

- Legal change can take a long time, political processes rarely move fast and while some delays are deliberate others are just part of the system
- People change and move, a great supporter and driver of your work can be voted out of office, moved to a new portfolio or retire at any time and a lot of work can feel wasted.
- Sex work remains controversial and unpopular for many people, the public participation process following the first bill showed us that we can exist in an echo box. This may be more or less true for the area in which you work.
- The forces working against us are often (usually) better funded and organised than we are and they have fewer morals or values.

Last thoughts

- The funding situation is looking increasingly bleak for many of us. We have to do more with less.
- Case study: The drafting desk

"The decriminalisation of sex work and the human rights of sex workers remain high on government's human rights agenda."
— DOJ, 30 May 2023



No plan. No consultations. No Bill.
30 May 2025



Questions?

- Happy to answer any questions and my colleagues in the room with you can also help!
- Also keen to hear any stories of government accountability in your work, situations where you might have similar or totally different experiences to share.