



the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

SISONKE NATIONAL MOVEMENT'S INAUGURAL NATIONAL SEX WORK CONFERENCE: DATE: 5 & 6 DECEMBER 2024

STATEMENT BY MR ANDRIES NEL, MP: DEPUTY MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT

Progress on the Development of a Legal Framework Relating to the Decriminalisation of Sex Work in South Africa

The Department of Justice and Constitutional Development has embarked on efforts to decriminalise sex work in South Africa. This follows Cabinet's approval on 30 November 2022 for the publication of the Criminal Law (Sexual Offences and Related Matters) Amendment Bill, 2023 for public comment. The Bill was subsequently published on 9 December 2022, with the public commenting period concluding on 31 January 2023.

The Office of the Chief State Law Advisor (OCSLA) and Senior Counsel provided legal opinions on the Bill. Both opinions highlighted constitutional challenges with the Bill. More specifically, it was advised that a Bill that solely decriminalises sex work without a regulatory framework would not pass constitutional muster due to it being overbroad and vague.

In light of these concerns, the Department is actively working on a legislative framework to address the regulation of the sex work industry. This includes the development of a consultation document and a revised draft Bill, which aims to safeguard the rights and well-being of sex workers while addressing broader societal concerns. These documents are currently undergoing internal review before further engagement with stakeholders, including government departments, civil society organisations and sex worker advocacy groups.

Key Issues Identified for Regulation

The Department recognises that decriminalising sex work requires a robust and comprehensive legal framework. To this end, several key areas have been identified for possible regulation:

Labour Rights: To ensure fair compensation, safe working conditions and the right to unionise for sex workers.

Protection of Children: This will involve implementing measures to prevent exploitation and abuse of minors in the industry.

Health and Safety: This will include facilitating access to healthcare services, mental health support and public health education for sex workers.

Non-Discrimination: Consideration is being given to ways in which to address intersectional issues such as gender, race, class, and immigration status to combat discrimination against sex workers.

Access to Support Services: Providing legal aid and harm reduction programmes tailored to the needs of sex workers.

Expungement of Criminal Records: Allowing sex workers previously convicted under the current legislative framework to have their records expunged.

Repeal of Laws: Repealing existing legislation that criminalises consensual adult sex work while ensuring alignment with other legal frameworks.

Fostering Partnership with Government and Civil Society and Implementing a Human Rights Approach to Sex Work.

To advance this initiative, an internal task team has been established within the Department. This team will leverage expertise in human rights issues to ensure that the proposed framework aligns with constitutional principles and international best practices. Furthermore, the Department is actively collaborating with other government entities to establish a comprehensive inter-departmental team, which will work collectively to develop and implement the framework effectively.

These include the Department of Labour, Department of Home Affairs, Department of Health, Department of Social Development, National Treasury, the National Prosecuting Authority, the South African Police Service and the South African Local Government Authority. Government is also committed to implementing the National Strategic Plan on Gender-Based Violence and Femicide and the National Strategic Plan of SANAC, and the Department continues to engage on these platforms.

The Department remains committed to extensive consultation with all relevant stakeholders, including sex workers, civil society organisations and members of the public in the development of the legislative regime. Communication has been initiated with several sex work advocacy groups represented at this conference today. These engagements aim to ensure that the final legislative framework not only decriminalises sex work but also takes affected groups into consideration and provides legal protections that uphold human dignity, safety and equality.

As you are moving towards the closure of this Conference, I would also like to make use of the opportunity to convey my sincere appreciation to the organisers and all the participants in making the 2024 Sisonke National Conference a success. It is important for government and civil society to strengthen partnerships, as we continue to affirm the democratic values of human dignity, equality and freedom as enshrined in our Constitution.

ANDRIES NEL, MP

DEPUTY MINISTER: JUSTICE AND CONSTITUTIONAL DEVELOPMENT

DATE: 4 December 2024