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**For the attention of:** Adv. Tsietsi Sebelemetja  
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We understand that in South Africa, the Department of Justice has recently published a draft bill entitled the Criminal Law (Sexual Offences and Related Matters) Amendment Bill, 2022 that intends to repeal all the legislation that currently criminalises the sex work industry in South Africa. We write to fully endorse and support this Bill as it stands.

The Sex Work Donor Collaborative is a collective of [25 philanthropic institutions and individuals](#) in philanthropy, from nearly every region of the world. We envision a world in which sex workers' rights movements are fully resourced, in which sex workers have a strong voice in the decisions that impact their lives, and in which sex workers' rights and other movements are in solidarity to create a more just world. To this end we work to increase the amount and quality of funding and non-financial support for sex worker rights and sex worker organizing, increase the effectiveness and efficiency of funding through peer sharing, research and strategic coordination of grant-making, and provide a platform where sex workers and donors can share information and learning and where sex workers can engage donors as allies in their political advocacy efforts.

The Count Me In! (CMI!) consortium consists of member organizations Mama Cash (MC), the Association for Women's Rights in Development (AWID), CREA, Just Associates (JASS), and the Sister Funds Urgent Action Fund (UAF) and Urgent Action Fund Africa (UAF-Africa) with the sex worker-led Red Umbrella Fund (RUF) and the Dutch gender platform WO=MEN as its strategic partners. CMI! supports the voices and activism of women, girls, and trans and gender non-binary people who are often most marginalized in their communities. Among the most silenced voices are those of sex workers.

One of SWDC's members, Stephen Lewis Foundation, has several partner organizations in Kenya and Uganda that are led by sex workers. These organizations explain that criminalization of sex work increases the physical, sexual, and financial abuse that sex workers face from clients who know they are unlikely to be able to pursue justice.

Another of SWDC's member organizations, New Moon Fund remarks that "The criminalization of sex workers and their clients makes it harder for sex workers to negotiate terms of service, work together for safety, and engage in safer sex practices."

For these reasons, we want to make clear the following points:

**1. We are in full support of the Bill as it stands.**

This bill is the result of 25 years of organizing and self-advocacy by sex workers and their allies for the South African government to take positive steps to redress abuse against women, including gender-based violence against sex workers. We recognize the sex worker led local organisations such as Mother's for Future, SWEAT, Sisonke in their tireless efforts to raise awareness about the dangers of criminalising sex work through training of healthcare workers in human rights.

We applaud the fact that this bill will remove all criminal and administrative prohibitions and penalties on sex work, including laws targeting clients and brothel owners, both in national and provincial legislation. We support the decriminalisation of sex work as an essential precursor to recognizing sex work as work and protecting the rights of sex workers through labor law and workplace health and safety regulations. When sex work is decriminalized, sex workers can safely advocate for fair working conditions and use the justice system to seek redress for discrimination and abuse. Sex workers are more likely to live without stigma, social exclusion, or fear of violence.

We have observed through our work and grantmaking around the world that criminalization of sex work is a failed policy. Criminalization drives sex workers into more isolated locations; impedes the use of safety and harm reduction strategies, such as working together and offering assistance to sex workers; increases the risk of exposure to HIV and other sexually transmitted infections (STIs); and discourages sex workers from seeking health care. It exposes sex workers to violence, abuse and extortion from clients, partners, brothel owners, law enforcement etc.; it impedes sex workers' access to justice because of the fear or reality that they cannot approach law enforcement agencies for redress without being arrested or discriminated against.

In 2003, New Zealand decriminalized sex work through the Prostitution Reform Act. The sex industry there has not expanded, nor have problems such as human trafficking, HIV/AIDS transmission, or minors in the sex industry. Instead, sex workers reported feeling safer and more able to report violence. Sex workers report improved living and working conditions, and it is also easier to leave the sex industry when they wish. Police attitudes have improved, and sex workers have more choice in transactions with clients. Sex workers are able to carry condoms without fear of arrest. Occupational Health and Safety laws, as well as labour laws, apply to sex work, increasing sex workers' bargaining power in negotiating safer sex, with the weight of the law supporting them. Sex workers are free to form collectives for safer

work, share information and speak out on sex worker rights. Nearly all sex workers report that they have more access to their rights after this change.<sup>1</sup>

CMI! started the Counting Sex Workers In! campaign in 2020, which clarifies the harms of criminalizing all or any aspect of sex work and the need to decriminalize sex work. As we have stated, “[Decriminalization] has potential to redress past harms, to affirm the dignity of marginalized groups, and to catalyze positive social change. Bringing about social justice in relation to sex work requires that sex work is regarded as work and legally recognized as such. This means repealing the civil and criminal laws that are used to sanction sex work or penalize sex workers, bringing sex work under appropriate labor frameworks. This will help ensure that sex work is approached in a rights-based manner, make the sex work context safer, increase sex workers’ access to services and protection of the law, while affirming sex workers’ dignity and rights.”

## **2. Sex work can only be considered to be decriminalised if BOTH the selling and buying of sex are decriminalised.**

There will be voices that will advocate that South Africa only decriminalise the selling of sex, but continue to criminalise individuals seeking sexual services and those who promote or manage places of business for sex work. This model is known as the Nordic Model, the End Demand model, or “partial decriminalization.” It was first attempted in Sweden through the 1999 Swedish Sex Purchase Act, and later adopted by many countries in Europe. Advocates for this model claim that by targeting consumers, you reduce the demand, and sex work will go away, along with the human rights abuses many sex workers experience. However, the evidence shows that things are not so simple.

Instead of causing the sex industry to disappear, evidence shows that the End Demand model causes or maintains harmful conditions for sex workers. First, adult sex workers are stripped of their agency and autonomy because they are deemed unable to consent to sexual acts: they are viewed in the law as akin to minors or victims who need to be rescued. Secondly, criminalisation of clients continues the adversarial relationship between sex workers and police: sex workers’ clients are arrested or fined for consensual sex and sex workers remain ‘guilty by association’ and vulnerable to police harassment. Thirdly, to evade the police and protect their clients and livelihoods, sex workers must work in isolated areas and limit the time they take to assess the character of the clients, which places them at risk of being abused. Fourthly, sex workers are discouraged from forming collectives or working indoors, as those who assist sex workers by offering safe locations in which to work or booking clients are punishable for brothel-keeping. Sex workers cannot work safely, or benefit from labor laws, if the consensual activities surrounding their work are criminalized.<sup>2</sup>

Finally, the End Demand model’s message is that the sex trade should be abolished as it is immoral or harmful. This message is heard by the broader community, further stigmatizing sex workers. Under this model, sex workers continue to suffer marginalizations, including being denied access to housing, public

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<sup>1</sup> Prostitution Law Review Committee, Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003 (2008).

<sup>2</sup> Global Network of Sex Work Projects, [The Impact of ‘End Demand’ Legislation on Women Sex Workers and Twenty Years of Failing Sex Workers: A community report on the impact of the 1999 Swedish Sex Purchase Act](#)

services including health care, and justice for acts of violence against them. A recent study of the model's operation in France found that moving to an End Demand model had detrimental effects on sex workers' safety, health and overall living conditions – even compared to the previous model of full criminalization.<sup>3</sup> In addition to the evidence that End Demand laws make sex workers more vulnerable, there is no evidence that it actually reduces demand.<sup>4</sup> For this reason, organizations such as the Global Alliance Against Traffic in Women, Human Rights Watch and the World Health Organization oppose the End Demand model, as do we.

**3. All existing criminal records related to the offenses that will be removed by this bill should be expunged.**

Many sex workers in South Africa have been affected by criminalization and sustained police harassment, arrest, prosecution and incarceration, thus acquiring criminal records. Criminal records simply serve to exacerbate the stigma that this highly marginalized group already experiences on a daily basis.

We have observed in South Africa and around the world that having a criminal record severely limits one's ability to access other employment opportunities. In some cases in South Africa, employers are legislatively prohibited from hiring a person with a criminal record. This can serve to trap sex workers in the profession even if they wish to transition to another. Having a criminal record is stigmatizing in and of itself, and can lead to social exclusion and discrimination, affecting a sex worker in many areas of their life: housing, education, travel, and opportunity.

If South Africa commits to decriminalization, it must extend the benefits of this change to sex workers who have sustained criminal records due to their past engagement in sex work, and expunge past criminal records automatically

**4. This bill is a necessary first step, but additional regulations and bylaw creation will be needed to fully realize its promise.**

Since it is difficult to prosecute someone for engaging in sex work (unless caught in the act), authorities tend to rely on municipal bylaws, such as loitering, to arrest sex workers. The broad policing of these by-laws discriminates against sex workers, along with other marginalized and poor people. Thus, we support the examination and repeal by-laws and expungement of past convictions for by-law offenses currently used to criminalize sex workers.

In conclusion, we cannot improve on the words of your own retired Justice Edwin Cameron: *Penalties on adult sex work are a horrible hangover from a harsher, more ignorant, less public-health-conscious era. They have no place in a healthy democracy. As with ancient crimes targeting queer people like myself, and the appalling apartheid penalties for sex between black and white, these laws are harmful, degrading and unjust. We should consign them to the dustbin without more ado.*

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<sup>3</sup> Le Bail H, Giametta C. What do Sex Workers Think About the French Prostitution Act? A Study on the Impact of the Law from 13 April 2016 Against the "Prostitution System" in France. Paris; 2018. Available: <https://www.medecinsdumonde.org/sites/default/files/ENGLISH-Synthèse-Rapport-prostitution-BD.PDF>

<sup>4</sup>Open Society Foundation, [The False Promise of "End Demand" Laws](#).

Sincerely,

The Sex Work Donor Collaborative  
Count Me In! Consortium