

EHP SA Case Study Series:
Included! How change happened for key populations and HIV prevention

Just bad laws

The journey to the launch of
South Africa's National Sex Worker HIV Plan



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We launch this plan knowing that our national effort to arrest new HIV infections will not succeed if sex workers are disempowered, marginalised and stigmatised. We need to respond to the legal, social, health and welfare dimensions of sex work in a comprehensive and consistent manner.'

Deputy President Cyril Ramaphosa, Launch of the South African National Sex Worker HIV Plan, 11 March 2016¹

1. INTRODUCTION

The exceptionally high prevalence of HIV infection amongst sex workers in South Africa was recognised early in the history of the epidemic. In South Africa, the limited number of nongovernmental organisations (NGOs) that acknowledged this began delivering services in the 1990s. Although successive national HIV/AIDS strategic plans (NSPs) documented the disproportionate vulnerability to HIV in this group² it was not until 2016 that South Africa launched a comprehensive national plan specifically relating to sex workers and HIV.³

A significant contributor to the delay was the insistence on the part of sex workers – and NGOs speaking with them – that the national plan must include commitments to safeguard sex worker rights and decriminalise sex work. Decriminalisation was essential not only in terms of recognising the rights of sex workers; it would create a safer context for the behaviour of sex workers to change and thus reduce the risk of infection for them and their clients.

In government circles, opposition to decriminalisation was because of traditional and conservative attitudes to sex work, a lack of policy for legislative reform or because people were not convinced of the need. There was also no champion within government to drive this change. Furthermore, significant US government funding from PEPFAR came with an anti-prostitution pledge, which prevented recipients – including policy-developers – from supporting decriminalisation.⁴

In South Africa, the demands for 'decrim' created a more complicated and contested framing of the arguments for a plan than in other countries where the focus was simply on the provision of HIV services relating to sex work.⁵ Tensions are reflected in the erratic progress on commitments to sex workers and decriminalisation in national HIV policies described below.

The March 2016 launch of the 2016 SA National Sex Worker HIV Plan was a highly significant event because it made public three notable developments:

1. A political commitment to decriminalisation endorsed by the plan.
2. Findings from a major survey of sex work completed in 2014 that documented extremely high HIV prevalence and poor uptake of HIV treatment. Until the launch these findings had been suppressed.
3. Strong support and understanding of the need to find a way to respond to the legal, social, health

1 Launch of the National Sex worker HIV Plan, 11 March 2016. <http://www.gov.za/speeches/address-deputy-president-cyril-ramaphosa-launch-south-african-national-sex-worker-hiv-plan>

2 Richter, M. and Chakvinga, P., 2012. Being pimped out – How South Africa's AIDS response fails sex workers. *Agenda*, 26(2), pp.65–79. (<https://www.tandfonline.com/doi/abs/10.1080/10130950.2012.704751>)

3 South African National AIDS Council, 2016. The South African National Sex Worker HIV Plan, 2016–2019.

4 Richter, M., 2016. How PEPFAR's anti-prostitution pledge impedes sex worker health. *Spotlight*, 13 December, (<https://www.spotlightnsp.co.za/2016/12/13/pepfars-anti-prostitution-pledge-impedes-sex-worker-health/>)

5 See other case studies in the *Included!* series: Fellow Kenyans: How Kenya achieved national HIV policy commitments for key populations by 2010; A Manual for Swaziland healthcare workers: A cooperative venture in developing a key population manual

and welfare dimensions of sex work while acknowledging its complex legal, moral and social issues, as demonstrated in a speech delivered at the launch by (then) Deputy President Ramaphosa. When Ramaphosa said 'sex work is essentially work as well' he was one of the first high-ranking South African officials to do so.⁶ Although his language was carefully nuanced, there was at last formal backing from government to move forward on decriminalisation and related issues. In the context of HIV, the launch of the plan was a high point in the quest for decriminalisation of sex work.

This case study seeks tracks the main processes and considerations that culminated in the launch of the plan and examines how sex workers and other civil society actors influenced policymakers. In particular, it seeks to understand what caused the positive shift from the frustrations of 2013 and enabled the 2016 launch. In the face of institutional factors delaying progress, the study points to the growing strength and influence of the sex-worker lobby, changed international positions, and pressure from respected sources to respond to evidence of the severity of the situation. The coming together of various factors in an unplanned way meant that the South African government eventually acknowledged the need to embrace changes in its position on a sensitive and critically important issue.

About this paper

This paper is part of the series **Included! How change happened for key populations for HIV prevention**, commissioned by Evidence for HIV Prevention in eastern and southern Africa (EHPSA) to Nordic Consulting Group (NCG). The full series of nine case studies and a discussion paper will be made available on the EHPSA website as it is completed, at <http://www.ehpsa.org/critical-reviews/included>.

The series was based on a literature search and interviews and a focus group discussion with key actors. Annexure 1 lists sources for this case study.

About EHPSA

Evidence for HIV Prevention in eastern and southern Africa (EHPSA) is a catalytic intervention, contributing to national, regional and global processes on HIV prevention for adolescents, men who have sex with men (MSM) and prisoners, through generating evidence of what works and why, and developing strategies to inform policymaking processes. It is a five-year programme funded by DFID and managed by Mott MacDonald.

2. CONTEXT

2.1 Sex work and HIV in South Africa

For many people in South Africa limited education opportunities, inequity along gender, racial and geographical lines, high unemployment and a high demand for paid sex combine to present sex work as a way to make a living.

Not everyone engaged in sex work identifies as a sex worker. There are also different options: people may work on a full- or part-time basis in a range of environments: on the street, in venues, or using print and online platforms.^{7,8} When the first national sex worker population-size estimate was completed in 2013 there were about

6 See 'Sex work is essentially work as well', says Ramaphosa, SABC, published March 2016. <https://www.youtube.com/watch?v=7ioZFpMiK2M>

7 Sex Worker Evaluation and Advocacy Taskforce (SWEAT), 2013. National Sex Worker National Sex Worker Programme Evaluation. Cape Town. Supported by NACOSA and the Global Fund to Fight AIDS Tuberculosis and Malaria. (<http://www.sweat.org.za/wp-content/uploads/2016/02/National-Sex-Workers-Programme-Evaluation.pdf>)

8 South African National AIDS Council, 2016. South African National Sex Worker HIV Plan 2016–2019. Pretoria.

153 000 sex workers – including 138 000 female, 6 000 male, and 7 000 trans-female sex workers.⁹

South Africa remains the epicentre of the global HIV epidemic. In 2016 over seven million people were living with HIV and around 270 000 were newly infected.¹⁰ Over 18% of all adults (15–49 years) were infected with HIV.¹¹ This is reflected in a very high prevalence and incidence of HIV among sex workers.

Research published as far back as 1998 highlighted high HIV prevalence (50%) among female sex workers working along truck-stops in KwaZulu-Natal province.¹² A study conducted in 2013–2014¹³ found that HIV prevalence among female sex workers in South Africa's three largest cities ranged between 40% and 72% – about four times higher than women in the general population. Conversely, uptake of services such as antiretroviral treatment was comparatively low.

Sex work also accounts for a large share of new infections. A 2009 modelling study estimated that 6% of all new HIV infections in South Africa occurred among sex workers; an additional 14% were among sex-worker clients and their sexual partners.¹⁴ High levels of unprotected sex linked to challenges around condom negotiation with clients and intimate partners; high levels of physical and sexual violence; hazardous alcohol and substance use; and, limited access to appropriate HIV services have been identified as risk factors for HIV infection among sex workers in South Africa.¹⁵

Although South Africa's 1996 Constitution is progressive, many South Africans hold socially conservative views on issues such as LGBTI rights and sex work. Stigma towards those living with HIV remains strong. Often, this reflects a synergy between traditional and cultural values, the teachings of faith leaders, and socialisation and support of harmful gender roles within families. It follows that many government officials had personal concerns that made decriminalisation unpopular. This was an unspoken but significant factor that had a negative impact on the pace and extent of change.

2.2 Legal context

In South Africa, all forms of sex work – which includes living off the proceeds of sex work and purchasing sex – are illegal. The Sexual Offences Act No 23 of 1957 states that it is a crime to have 'unlawful carnal intercourse' or commit an act of 'indecentry' for reward. In addition, police use municipal by-laws that address a range of 'public nuisance' issues that include street trading, noise and loitering¹⁶ to arrest sex workers.¹⁷ The number of

9 Konstant, T.L., Rangasami, J., Stacey, M.J., Stewart, M.L. and Nogoduka, C., 2015. Estimating the number of sex workers in South Africa: Rapid population size estimation. *AIDS and Behavior*, 19(1), pp.3-15.

10 UNAIDS, 2017. Country data: South Africa. <http://www.unaids.org/en/regionscountries/countries/southafrica>

11 *Ibid*

12 Ramjee, G., Karim, S.S.A. and Sturm, A.W., 1998. Sexually transmitted infections among sex workers in KwaZulu-Natal, South Africa. *Sexually Transmitted Diseases*, 25(7), pp.346-349.

13 South African Health Monitoring Survey (SAHMS), 2014. An Integrated Biological and Behavioural Survey among Female Sex Workers, South Africa 2013–2014, Final Report. Partners: The United States Centers for Disease Control and Prevention (CDC); The University of California, San Francisco (UCSF); Anova Health Institute; Wits Reproductive Health and HIV Institute (WRHI). <http://sanac.org.za/2016/03/29/ucsf-south-african-health-monitoring-survey-2016/>

14 South African Centre for Epidemiological Modelling and Analysis (SACEMA), 2009. The Modes of Transmission of HIV in South Africa. Report.

15 Scheibe, A., Richter, M. and Vearey, J., 2016. Sex work and South Africa's health system: Addressing the needs of the underserved. *South African health review*, 2016(1), pp.165-178.

16 Memeza, M., 2000. By-law Enforcement in South African Cities. City Safety Project. Johannesburg, Centre for Study of Violence and Reconciliation.

17 Manoek, S.L., Shackleton, S. and Richter, M., 2015. Briefing on sex work, the criminal law and law reform in South Africa. *Memorandum to the SANAC Legal and Human Rights Technical Task Team*. Cape Town: Women's Legal Centre.

cases of sex-worker harassment and arrest has not been quantified nationally but is well described.^{18,19,20}

Legal reform in relation to sex-work criminalisation has been a lengthy process. In 1997, the then Deputy Minister of Justice charged the South African Law Reform Commission (SALRC) to investigate adult consensual sex work, along with sexual offences by and against children. Two discussion papers were released for comment in 2002 and 2009, discussing legal issues relating to sex work. Public comment was received until 2014 and a draft report written in 2015. When the Sex Worker HIV Plan was published in 2016, the final report had not yet been made public.

Globally and locally, the far-reaching negative impact of criminalising sex work has been well understood and carefully documented in the literature.²¹ Many leading organisations, including the WHO, have supported decriminalisation on human rights and public health grounds. They argue that criminalisation prevents sex workers from adopting safer practices that would lower the risk of HIV transmission. Police harassment, for example, contributes significantly to the low uptake of services by sex workers: some police even use possession of condoms as evidence that a woman is a sex worker.

Studies have empirically quantified the effects of criminalisation of sex work on HIV. A modelling study based on data from Kenya, India and Canada estimated that if sex work was decriminalised, 33 to 46% of HIV infections could be averted among female sex workers and clients within a decade.²²

3. THE CHANGE PROCESS

The chronological summary of the change process that led to the 2016 sex worker policy clearly describes the tensions that existed around the demand for decriminalisation and the government's preference for a public health approach which emphasised increased service provision but didn't address structural issues, especially decriminalisation.

1990–2000: NGOs organise

In the 1990s, research in the two most-populated provinces – Gauteng and KwaZulu-Natal – identified high HIV prevalence amongst female sex workers.^{23,24} The Sex Workers Education and Advocacy Task Force (SWEAT), an NGO established in Cape Town in 1994, focussed on sex education for sex workers. The first clinic to provide health services tailored to the needs of sex workers opened in 1996 in Hillbrow, Johannesburg.²⁵ In 1999, SWEAT began to provide outreach services to sex workers, including crisis counselling, legal advice and skills training.

18 Gould, C. and Fick, N., 2008. Selling sex in Cape Town: Sex work and human trafficking in a South African city. Institute for Security Studies.

19 Impact Consulting for NACOSA and SANAC, 2016. *Creating safe spaces: evaluation of the Red Umbrella Sex Work Programme*.

20 Scorgie, F, et al., 2011. "I expect to be abused and I have fear": sex workers' experiences of human rights violations and barriers to accessing healthcare in four African countries. *Final report*. African Sex Workers Alliance.

21 For an example see: Commission for Gender Equality, 2013. Decriminalising sex work in South Africa 2013 Official position of the Commission for Gender Equality.

22 Shannon, K., et al., 2015. Global epidemiology of HIV among female sex workers: influence of structural determinants. *The Lancet*, 385(9962), pp. 55-71.

23 Ramjee, G., Karim, S.S.A. and Sturm, A.W., 1998. Sexually transmitted infections among sex workers in KwaZulu-Natal, South Africa. *Sexually Transmitted Diseases*, 25(7), pp.346-349.

24 Rees, H., et al., 2000. Commercial sex workers in Johannesburg: risk behaviour and HIV status. *South African Journal of Science*, 96(6).

25 Richter, M., 2008. Sex work, reform initiatives and HIV/AIDS in inner-city Johannesburg. *African Journal of AIDS Research*, 7(3), pp.323-333.

2000–2008: Sex worker advocacy, increasing awareness

The Sisonke Sex Workers Movement was launched in 2003 in the Western Cape with 70 founding members – a significant event because it was the first time a sex-work collective had been established in South Africa. Sisonke's aim was to develop national solidarity among sex workers and support organisation around health and human rights issues. Sisonke was housed within SWEAT, which provided Sisonke members with technical support and capacity development, specifically for its advocacy efforts directed at policy change such as the decriminalisation of sex work. Since 2003 Sisonke has increased in size and influence.

PEPFAR funding, which began in 2004, was critical to the expansion of South Africa's HIV response for sex workers. However, PEPFAR's anti-prostitution pledge disallowed funding to any group or organisation which: (i) did not have a policy explicitly opposing prostitution and sex trafficking; or (ii) promoted or advocated the legalisation or practice of prostitution or sex-trafficking. This directly hindered the decriminalisation debate.

The South African National HIV/AIDS Strategic Plan (NSP) of 2007–2011 identified sex workers as an important target group; it also included decriminalisation of sex work as part of the approach proposed to reduce HIV infection among sex workers. Civil society organisations (CSOs) had overcome political challenges to decriminalisation and had successfully advocated for this recommendation.

2009: SANAC Sex Work Sector

In 2009, the South African National AIDS Council (SANAC) resolved to admit sex work as a sector alongside its other formal civil-society sectors.²⁶ The Sex Work Sector provided a forum for collaboration between civil society organisations and the sex-worker movement and a conduit for them to engage with government around HIV programming, rights and policy from a sex-work perspective. Members included Sisonke, sex work human rights organisations (e.g. SWEAT, Sonke), legal organisations (e.g. Women's Legal Centre) and organisations providing HIV and related services to sex workers. As the Sex Work Sector grew in membership, strength and legitimacy it became a critical platform for engagement around decriminalisation; an example is the inclusion of Sex Work Sector representatives in task teams that later developed and negotiated the South African National Sex Worker HIV Plan.

2010: The World Cup

In 2010, South Africa hosted the Soccer World Cup Tournament, ahead of which came concerns over the possible increase in demand for paid sex, and anticipated challenges around the enforcement of sex work legislation and by-laws. Sex-worker CSOs saw this as a window of opportunity for strategic advocacy around sex work and decriminalisation. Ahead of the event, the Sex Work Sector and CSOs, supported by UNFPA, hosted a consultation on sex work and the World Cup and developed recommendations to address any fears related to the soccer tournament. Sisonke, SWEAT and researchers raised awareness of the issues affecting sex workers, pushed for a change in law enforcement practices and stimulated public debate about decriminalisation.^{27,28,29}

Advocates of decriminalisation believed the popularity of the tournament and the success of the intervention would create a positive shift in the sex work decriminalisation debate but few (if any) of the recommendations from the consultation were implemented.³⁰

26 The LGBTI sector, established in 2011, is the only other key-population civil-society sector within SANAC.

27 Richter, M., et al., 2012. Female sex work and international sport events-no major changes in demand or supply of paid sex during the 2010 Soccer World Cup: a cross-sectional study. *BMC public health*, 12(1), p.763.

28 Richter, M. and Massawe, D., 2010. Did South Africa's soccer bonanza bring relief to sex workers in South Africa? The 2010 FIFA World Cup and the impact on sex work. *Agenda*, 24(85), pp.21-30.

29 Vearey J and Richter M., 2015. A World Class African host for whom? Implications of hosting the 2010 Soccer World Cup on the lived experiences of migrant sex workers in Johannesburg, South Africa. *Design practices for urban safety and security*. Padova: Il Poligrafo.

30 Richter, M. and Massawe, D., 2010. Did South Africa's soccer bonanza bring relief to sex workers in South Africa? The 2010 FIFA World Cup and the impact on sex work. *Agenda*, 24(85), pp.21-30.

In 2010, the Desmond Tutu HIV Foundation – along with civil society partners and with support from UNAIDS and UNFPA – synthesised the data on key populations and HIV to inform the development of the forthcoming NSP 2011–2016, and included recommendations for the decriminalisation of sex work.³¹

Despite growing momentum, by the end of 2010 it was estimated that fewer than 5% of sex workers were being reached by HIV-prevention services.³²

2011: NSP 2012-2016, challenges and victories

When work began on drafting the new NSP (2012–2016) in 2011, the Sex Work Sector's recommended in its submission to SANAC that sex work be decriminalised. However, a commitment was removed by cabinet at a late stage of drafting because it was not politically palatable. This was contentious; the Sex Work Sector highlighted its objections through a range of platforms, including SANAC and other meetings such as the Sex Work Symposium (described below). However, the official position on decriminalisation remained unchanged; SANAC publicly supported the new NSP (with no mention of decriminalisation) but reassured the Sex Work Sector that *increasing services for sex workers* would be retained in the NSP.

The final version of the NSP (2012–2016) defined sex workers as a key population that needed specialised HIV-prevention services.³³ This recognition was critical: PEPFAR and the Global Fund significantly increased financing for HIV-prevention programmes for sex workers across the majority of metropolitan areas and the National Department of Health embarked on a process to strengthen its High Transmission Area programme to better reach sex workers (and other key populations) with prevention and testing services. Furthermore, recognition of sex workers as a key population meant they were considered in wider HIV-prevention initiatives for key populations.

2011–2014: Global and local recommendations for the decriminalisation of sex work

In 2011, various local and global bodies began recommending decriminalisation of sex work. These included:

- The Global Commission on HIV and the Law, an independent body convened by UNDP on behalf of UNAIDS, reviewed evidence relating to the criminalisation of sex work. The Sisonke Sex Worker Movement, supported by SWEAT, made a submission supporting decriminalisation to the commission that highlighted the stigma, discrimination, violence and barriers to accessing health and justice services that were being experienced by sex workers in South Africa.³⁴ The Commission report recommended decriminalisation of sex work in 2012.³⁵
- A report published in 2013 by the South African Commission on Gender Equality, based on its own review, recommended the decriminalisation of sex work.³⁶ The report was made available as an advocacy tool to support the decriminalisation debate.
- In 2014, the WHO's *Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations* recommended that 'Countries should work toward decriminalisation of sex work and elimination

31 Scheibe, A., et al., 2011. Key populations, key solutions: a gap analysis for key populations and HIV in South Africa, and recommendations for the National Strategic Plan for HIV/AIDS, STIs and TB (2012–2016). Desmond Tutu HIV Foundation, Joint UN Team on HIV and AIDS.

32 Larson, H.J., Bertozzi, S. and Piot, P., 2011. Redesigning the AIDS response for long-term impact. *Bulletin of the World Health Organization*, 89, pp.846-851.

33 SANAC, 2012. National Strategic Plan on HIV, STIs and TB, 2012–2016. Objective 2.2. <http://sanac.org.za/2013/07/01/the-national-strategic-plan-nsp-2012-2016-in-a-nutshell/>

34 Sisonke Sex Worker Movement, 2011. Submission to the Global Commission on HIV and the Law from sex workers in South Africa. Cape Town.

35 Global Commission on HIV and the Law, 2012. HIV and the law: risks, rights and health. *Final report*.

36 Commission for Gender Equality, 2013. Decriminalising sex work in South Africa. Johannesburg.

of the unjust application of non-criminal laws and regulations against sex workers.³⁷

- In 2014, the Lancet published a series of papers on HIV and sex workers³⁸ which included a paper by Shannon and others that used modelling to demonstrate the positive effects of decriminalisation on HIV transmission.

2012–13: First steps in sex-work HIV policy

In 2012, the HIV prevention sub-directorate at the National Department of Health, in partnership with SANAC, the CDC and civil society organisations,³⁹ formed a key populations technical working group (TWG) to develop draft operational guidelines for HIV, STI and TB programmes for key populations in South Africa.⁴⁰ The guidelines were intended to provide managers and implementers with additional detail required to deliver services to key populations, in line with the objectives of the NSP 2012–2016. Service delivery was informed by the National Guidelines for HIV/STI programmes for sex workers developed by the Government of Kenya in 2010.⁴¹ SANAC coordinated meetings and consultants to develop the guidelines.

Although the final draft of the guidelines recommended decriminalisation of sex work, these guidelines were never formally finalised or adopted by the National Department of Health. No clear reason was given. Development of the Key Populations Draft Operational guidelines was, however, a starting point for collaborative multi-stakeholder key population policy development, which informed the sex-work policy processes that followed.

In August 2012, SANAC's Sex Work Sector and its member organisations hosted the first national sex-work symposium in Johannesburg.⁴² The event was supported by the SANAC secretariat, UNDP and CDC/PEPFAR. It was a turning point for mobilising health and human rights for sex workers and facilitated multi-sector engagement around a range of issues, including decriminalization, between representatives of the national health, social development and police departments, sex workers, civil society organisations and researchers. Office bearers for the Sex Work Sector were elected for the 2013 to 2016 period. The Sex Work Sector developed a SANAC Sex Work Sector Plan, that reflected the priorities and issues highlighted during the symposium, including a clear call for the decriminalisation of sex work.

Later that year, SANAC established a National Sex Work Technical Working Group tasked to develop a National Strategic Plan for HIV Prevention, Treatment and Care of Sex Workers. This strategic plan built on the Sex Work Sector Plan and was finalised by SANAC in 2013. Although SANAC presented on it at the Melbourne

37 World Health Organization, 2017. *Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations*. 2014. <http://apps.who.int/iris/bitstream/10665/246200/1/9789241511124-eng.pdf>.

38 Shannon, K. et al., 2014. Global epidemiology of HIV among female sex workers: influence of structural determinants. www.thelancet.com/series/HIV-and-sex-workers

39 Partners also included CDC, FHI360, PEPFAR, Department of Correctional Services, African Centre for Migration and Society, ICAP, Desmond Tutu HIV Foundation, Sisonke, SWEAT, WITS RHI, TB/HIV Care Association, Foundation for Professional Development, S.H.E., Gender Dynamix, Anova Health Institute, Just Detention, South African Medical Research Council, IOM, OUT LGBT Wellbeing, South Africa Partners, Trucking Wellness, UNFPA, UNODC, UNDP, UNAIDS, USAID

40 These draft guidelines have subsequently been referred to as the Operational Framework for HIV, STI and TB Programme but have not been formally adopted.

41 See the Included! case study: Fellow Kenyans: How Kenya achieved national HIV policy commitments for key populations by 2010.

42 National Sex Workers' Symposium website, no date. Best practices for HIV prevention, care and treatment for sex workers in South Africa.

AIDS conference in July 2014,⁴³ and made it widely available,⁴⁴ once again it was never formally endorsed or launched by the South African Government, and had little authority.

Civil society representatives interviewed for this case study suggested that the lack of endorsement was partly due to the plan not going through all relevant structures of SANAC and other government departments. Another perceived reason was reluctance by the National Department of Health to support decriminalisation without clear guidance or recommendation from the Department of Justice where the process of legal reform relating to sex work had stalled. Other possible factors were decision-makers who held personal, morally-based, perspectives about sex work and the lack of a champion from within government to lead such a process. Overall, there was an apparent lack of political will.

This slow progress on policy was accompanied by a significant increase in HIV service delivery for sex workers. The Red Umbrella Programme, funded through Global Fund, scaled up to reach 19 health districts, and PEPFAR funding complemented service delivery in the other health districts. These programmes enhanced local capacity for HIV prevention interventions for sex workers in different contexts and provided valuable experience to inform future policy and programmes. Very little funding was allocated to specifically monitor or evaluate the risks and fraction of new HIV infections linked to sex work that could be attributed to criminalisation.

2014: New evidence

The first robust, multi-city HIV prevalence and risk study among female sex workers and additional size estimation was completed in 2014 by a partnership of international and local researchers working with the National Department of Health. This integrated biological and behavioural survey (IBBS)⁴⁵ found extremely high HIV prevalence and poor uptake of services among female sex workers in three of South Africa's largest cities. These findings had been established in other local studies; IBBS was different in that it was a multi-city study convened by the National Department of Health. Even so, the results were only formally released two years later at the time of the launch of the National Sex Worker HIV Plan.

Civil society organisations attempted to get the results released sooner by, for example, asking direct questions in SANAC and Department of Health meetings, and indirectly through the media to pressure government into releasing the study results. It was widely perceived that the National Department of Health did not want the study findings to be released without a national plan that outlined interventions to reduce new infections among sex workers. However, as time unfolded, civil-society support for such a plan became conditional on a commitment to decriminalisation.

2015: Deadlock over decriminalisation

During 2015, civil society stepped up the pressure for decriminalisation. The Asijiki coalition⁴⁶ was launched to formally represent the major civil society advocacy players – Sisonke, Sonke, SWEAT and Women's Legal Centre – and enabled a series of coordinated advocacy activities.

One of the key objectives of the coalition was decriminalisation of sex work. A range of online and local level advocacy events, meetings and activities took place. Publications drew on local, published research as well as grey literature. A submission to the civil society summit on the implementation of sexual offences

43 Mangold K, Nogoduka C, Mungoni, Abdullah F., 2014. We have finally woken up to the need to reach sex workers comprehensively. South Africa Launches the National Sex Worker HIV Treatment and Prevention Programme. Presentation at AIDS2014 Conference, Melbourne, 24 July 2014. Available at http://pag.aids2014.org/PAGMaterial/PPT/1072_2559/thac03_mangold.pptx

44 SANAC. National Strategic Plan for HIV Prevention, Care and Treatment for Sex Workers, 2013. Pretoria, South Africa

45 UCSF, Anova Health Institute, WRHI. South African Health Monitoring Study (SAHMS), 2015. The integrated biological and behavioural survey among female sex workers, South Africa 2013–2014.

46 See <http://www.asijiki.org.za>

legislation of sex worker experiences and challenges in accessing services and justice was also included.⁴⁷ In September 2015, SWEAT hosted a national meeting to share lessons learnt from the Red Umbrella Programme and launched the ‘Good Practice Guide to Integrated Sex Worker Programming’, based on their experiences.⁴⁸ Although sex-worker research had previously been conducted and published, the Asijiki Campaign enabled the development of evidence-informed advocacy tools that focused directly on issues relating to decriminalisation.

A 2015 national meeting on sex work, aligned to The Global Fund, included representatives from SANAC and sex workers and the minister of social development. It highlighted the need for ongoing services for sex workers and increased political support around legal reform. The 2015 South African AIDS Conference included a session on HIV programmes for sex work, as well as a session around the decriminalisation debate.⁴⁹

During this year, it became a priority of SANAC to develop a national sex worker HIV plan that would be adopted by the South African Government. CSOs interviewed for this case study reported that high-ranking officials within SANAC wanted to separate the issue of decriminalisation from the plan as a way to avoid contention that would delay progress. However, this differed significantly from the position of the sex work sector, for whom decriminalisation was fundamental and non-negotiable.

Tensions intensified; towards the end of 2015 the Sex Work Sector in SANAC threatened to withdraw from the plan-development process if decriminalisation was not included. By now the Sex Work Sector was well organised with a high profile both nationally and internationally with support from AIDS and human-rights activists, and a strong evidence base to draw upon. The sector calculated that although separation of the plan from the decriminalisation debate would expedite the plan’s finalisation, it would also be a missed opportunity for a policy document to highlight the most important sex-worker issue. It assumed government would be reluctant to launch a plan without the legitimacy of the Sex Work Sector’s support. The power dynamics appeared to have shifted at this stage; the Sex Work Sector was aware of the high HIV burden found by the IBBS and that the government was under pressure to present a plan to address this issue. This gave the Sex Worker Sector the leverage to push for decriminalisation.

In the end consensus was reached for the inclusion of decriminalisation in the final plan, although the actual language used is nuanced and does not include clear monitoring and evaluation indicators.

The outcome: South African National Sex Worker HIV Plan, March 2016

Deputy President, Cyril Ramaphosa launched the National Sex Worker HIV Plan, 2016–2019 on 11 March 2016.⁵⁰ The launch was accompanied by the release of HIV-prevalence estimates from the 2014 IBBS study on female sex workers. The 2016 National Sex Worker HIV Plan⁵¹ was highly significant, as it recognised the importance of addressing a range of contextual factors and endorsed the pursuit of a political commitment to decriminalisation. In launching the plan, Ramaphosa demonstrated strong support and understanding of the need to find a way to respond to the legal, social, health and welfare dimensions of sex work that also acknowledged the complex legal, moral and social issues to be addressed.

Although Ramaphosa’s language was carefully nuanced, there was formal backing from government to move forward on decriminalisation and related issues.

It is not clear why the South African Government’s position on decriminalisation shifted between NSP 2012–

47 SWEAT and Sisonke, 2015. Submission to Civil Society-Led Summit regarding the implementation of sexual offences legislation in South Africa on sex workers’ experiences and sex workers’ ability to access services and justice. Cape Town.

48 SWEAT, 2015. Good practice guide to integrate sex worker programming based on the experiences of the Red Umbrella Programme. Cape Town.

49 Greener L., et al., 2016. Female sex workers in Durban, South Africa : High co-occurring STI and HIV prevalence and the poor treatment cascade. 21st International AIDS Conference THPED360.

50 Deputy President Cyril Ramaphosa: Launch of South African National Sex Worker HIV Plan (2016–2019) <http://www.gov.za/speeches/address-deputy-president-cyril-ramaphosa-launch-south-african-national-sex-worker-hiv-plan>

51 SANAC, 2016. The South African National Sex Worker HIV Plan. 2016– 2019. Pretoria.

2016 and March 2016. Potential explanations include shifts within influential government decision-makers around sex work; the risk of potential backlash for not doing enough to reduce the burden of HIV infections among sex workers once the IBBS results were made public; and, normative guidance supporting decriminalisation that became available after the NSP was launched, from a range of organisations including the WHO, the Global Commission on HIV and the Law, *Lancet*, the South African Commission for Gender Equality, and the Southern African HIV Clinicians Society.⁵²

Pressure for concrete progress on decriminalisation continued in 2016. In July, the 21st International AIDS Conference in Durban provided an opportunity to bring the issue to global attention.⁵³ Civil society was active through various protests to raise the profile of sex work, whilst SANAC hosted a satellite session on the National Sex Work HIV Plan that was chaired by the Deputy Minister of Social Development. On 17 August, a committee meeting of Parliament's Joint Multi-party Women's Caucus took place around the decriminalisation of sex work, and concluded with the steps needed for the caucus to move the agenda forward within parliamentary and legislative processes.⁵⁴

What happened next

Round One of this lengthy battle was clearly won by proponents of decriminalisation, who achieved government buy-in for their cause. However, what followed illustrates the contentious nature of the subject. In summary:

- May 2017: The new NSP 2017–2022, also launched by Deputy President Ramaphosa, did not include a recommendation to decriminalise sex work. (However, a near-final draft circulated for public comment in February 2017 had called for steps to decriminalise sex work). Once again, somewhere in the process of finalisation, commitment to decriminalisation was removed. This was a significant reversal because the NSP has more authority and is better resourced than the sex work plan.
- May 2017: The long-awaited report of the South African Law Reform Commission (SALRC) on Sexual Offences and Adult Prostitution⁵⁵ recommended that the country continue to criminalise sex work. As an option it proposed partial criminalisation, in which the buyers but not sellers of sex are prosecuted. This report has been severely criticised as can be seen from submissions to the Multi-Party Women's Caucus.⁵⁶
- December 2017: The media reported that the African National Congress had resolved to decriminalise sex work at its party congress. In fact, the text of the resolution calls for more debate before a position is finalised.
- March 2018: As a result of the ANC resolution, Parliament's Joint Multi-party Women's Caucus hosted a summit on sex work to discuss the SALRC report. It took submissions from a range of organisations including sex worker NGOs and faith-based organisations. A position on the issue is due to be presented at the National Assembly for consideration.

52 Southern African HIV Clinicians Society, 2016. Southern African HIV Clinicians Society states its support for the decriminalisation of sex work, 9 March. www.sahivsoc.org/Files/Draft%20statement%20decrim%20of%20sex%20work.pdf

53 Sex Workers Education and Advocacy Taskforce, 2016. International AIDS Conference. SWEAT YouTube channel: https://www.youtube.com/watch?v=0mtX1Jcpa_E

54 Parliamentary Monitoring Group (PMG), 2016. Sex Work Decriminalisation: Commission on Gender Equality, SWEAT, South African Law Reform Commission, Department of Justice, Parliamentary Legal Services. PMG website. 17 August. https://pmg.org.za/committee-meeting/23084/?utm_source=homepage&utm_medium=meeting-card

55 South African Law Reform Commission, 2017. Report. Project 107. Sexual offences. Adult prostitution. Pretoria.

56 Parliamentary Monitoring Group (PMG), 2018. SALRC Adult Prostitution Report: Summit Recommendations; IEC initiatives on gender quotas for 2019 elections. PMG website: <https://pmg.org.za/committee-meeting/26543/>

4. HOW CHANGE HAPPENED

The potholed road to South Africa's first fully endorsed HIV and sex-work policy document was smoothed by a range of key actors and critical contextual and enabling factors.

4.1 Key actors

Key actors in the process leading up to the launch of the Sex Worker HIV Plan and those engaged in the decriminalisation debate are summarised below.

Actor category	Actor(s)	Role and Key actions
Sex-worker-led organisations	Sisonke Sex Worker Movement	Lead in sex worker advocacy efforts: Mobilised sex workers, linked with other advocacy organisations to prioritise the need for law reform.
Organisations working with sex workers around rights	Sex Worker Education and Advocacy Taskforce (SWEAT), Sonke Gender Justice (Sonke), Women's Legal Centre (WLC)	Lead in policy development and advocacy: Provided technical support for Sisonke and the Sex Worker Sector of SANAC. WLC involved in strategic impact litigation cases relating to sex work and rights violations.
Organisations providing HIV and health services to sex workers	Wits RHI, TB/HIV Care Association, Re-Action, Mott MacDonald Health Development Africa, NACOSA	Involved in development of Sex Worker HIV Plan. Service delivery experience informed recommended package of services included in the policy.
Research institutions	Wits RHI, UCSF, MatCH, Anova Health Institute, Southern African HIV Clinicians Society University of Stellenbosch, Perinatal HIV Research Unit.	Knowledge production: Estimating the attributable fraction of new HIV infections related to sex work; estimating the size of the sex-worker population; estimating HIV prevalence and risk in major cities and elucidating links between the criminalisation of sex work and HIV. Networking and advocacy with government and international actors around sex-work programmes and the policy process.
National multi-sectoral bodies involved in the HIV response	South African National AIDS Council (SANAC)	Coordinated the national HIV response, provided political will to put evidence into action, work with all stakeholders
	Sex Worker Civil Society Sector of SANAC (Sex Work Sector)	Developed earlier strategies and plans that informed the Sex Worker HIV Plan. Remained steadfast in requirement for decriminalisation of sex work to be included in the Sex Worker HIV Plan.
National Government Departments and agencies	Law Reform Commission (SALRC)	Responsible for conducting research around law to recommend reform. Slow to develop recommendations around decriminalisation despite growing evidence.
International actors	WHO, UNAIDS, UNFPA, PEPFAR, Global Fund	Led the development of key-population policies at global level; provided technical assistance and funding of HIV service provision at a national level. PEPFAR pledge limited discussion around decriminalisation by organisations that received funding from them.

4.2 Contributing factors

In identifying the factors that contributed to the achievements of March 2016, a distinction is made between those that created an enabling environment for change and the tactics used to bring about change in this context. Inevitably, there is some overlap of these.

Many factors that were significant contributors to change in other case studies were less apparent in the face of resistance to decriminalisation across government, and specific inhibiting factors are identified.

Creating an enabling environment

- Context provided opportunities for CSOs to develop; CSOs had the capacity to respond:* The sex-worker-led organisation (Sisonke) was a crucial leader in the decriminalisation debate. Human rights, advocacy and legal organisations working with sex workers played key roles, by providing technical assistance, support, guidance and speaking out to amplify the effectiveness of sex work-led advocacy efforts. Together their legitimacy as representatives of sex workers gave them critical leverage in keeping decriminalisation on the agenda for the National Sex Worker HIV plan. The Asijiki coalition provided a formalised brand and platform for the decriminalisation debate and critically raised the level of collective negotiating and advocacy power. The campaign became particularly effective when AIDS and human rights activists joined it from within South Africa and internationally.
- Quality evidence available:* Although earlier local surveys had similar findings, only the multi-city IBBS (which was funded by CDC/PEPFAR) appeared to be sufficient to catalyse government endorsement of the Sex Worker HIV Plan. It provided robust data from well-respected institutions which demonstrated extremely high HIV-prevalence estimates for female sex workers, low uptake of ART, and indicators of high incidence of HIV. It found high levels of excessive use of alcohol, non-medical drug use, physical and sexual assault. Government knew it should provide a substantive response to the situation depicted by the IBBS report, but this delayed publication of a response and of the findings for two years. As elaborated below, by 2014 there were already evidence-based recommendations for decriminalisation from two international standard-setters – the UNAIDS commissioned Global Commission on HIV and the Law, and the WHO. However, these were ignored until the launch of the plan in 2016.
- Researchers expected to engage on findings:* The research organisations that carried out the IBBS – University of California San Francisco (UCSF), University of Witwatersrand Reproductive Health Institute (WitsRHI) and Anova – had engaged with other research findings and expected likewise to engage over the IBBS. They also had significant experience of working in the sector through HIV service-provision and of networking and advocacy with government and international actors around sex-work programmes and the policy process. Civil society activists also appreciated the value of using research findings to pressurise government in various ways.
- International norms:* The expansion of HIV prevention services for sex workers and the increased intensity of the decriminalisation debate was partly the result of a sense within South Africa that the country was not responding to international developments that placed greater emphasis on dedicated services for sex workers and accepting decriminalisation as best practice. The latter was reflected in the Global Commission on HIV and the Law recommending decriminalisation in 2012, and the WHO calling for it in its Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations launched in 2014. Although these standards exerted pressure, it did not result in immediate adoption of such policies by the National Department of Health unlike the adoption of WHO guidance on providing PrEP to sex workers which South Africa accepted within weeks of the publication of the case study, PrEP for Sex Workers! Public sector policy and implementation in South Africa.
- Evidence-based practice within government:* There is a long history of the National Department of Health adopting evidence-based best practice for HIV responses. However, as indicated, the health department was not keen to reflect international calls for decriminalisation in its policy and may have been reluctant to engage on what was seen to be an issue for the Department of Justice. Additionally, as described below, there were strong conservative forces that resisted decriminalisation.
- Coordination:* Support and coordination from SANAC and the existence of the Sex Work Sector enabled ongoing advocacy and discussion between stakeholders, particularly to enable policy development and

support ongoing communication. SANAC's more favourable stance gave space for civil society, particularly the Sex Work Sector, to develop its positions.

Tactics used to bring about change

The tactics employed included many that have been seen in other case studies:

Persistence and sustained commitment

It has been a long journey since SWEAT was formed in 1994 and Sisonke in 2003. Despite the many dashed hopes and disappointments, activists have remained committed and continued to engage with SANAC, many for more than ten years. With this they have retained knowledge within the movement and grown to be highly experienced. More generally, civil society vigorously pursued a great many opportunities to push for decriminalisation and make its message clear.

Wise and committed leadership applied politically astute approaches

Leadership displayed great political acumen in navigating across the sex-worker movement and through the impediments placed by various dimensions of government. The best example is from the end of 2015 when the Sex Work Sector threatened to withdraw from the plan-development process if decriminalisation was not included. It calculated that although separation of the plan from the decriminalisation debate might expedite the plan's finalisation, it would result in a missed opportunity for a once-in-five-year policy document to highlight the most pressing sex-worker issue; government would also likely be reluctant to launch a plan that was not legitimised by the Sex Work Sector's support.

The power dynamics appeared to have shifted at this stage; the Sex Work Sector had strong domestic and international support, and was aware of the high HIV burden found by the IBBS and that the government needed to present a plan to address this issue. This gave the Sex Worker Sector, which was well organised, had a high profile and a strong evidence base, the leverage to push for decriminalisation. In the end consensus was reached for the inclusion of decriminalisation in the final plan, although the actual language used is highly nuanced.

Inhibiting factors

As indicated above, there was significant resistance to the adoption of decriminalisation:

Conservative social, cultural and religious norms: Although South Africa's 1996 Constitution is progressive, many South Africans hold socially conservative views on issues such as LGBTI rights and sex work. Stigma towards those living with HIV remains strong. Often this reflects a synergy between traditional values and the teaching of faith leaders. It meant that many within government had personal concerns about decriminalisation and politically it would have been unpopular. This was an unspoken, but significant, background factor that impacted on the pace and extent of change.

Champions: Despite the many champions supporting sex-work service delivery, few in government or the SANAC secretariat openly supported decriminalisation. The lack of clear support for decriminalisation alongside opposition from people within government delayed the release of key strategic information and commitment of support for decriminalisation.

PEPFAR pledge: PEPFAR's anti-prostitution pledge prevented research organisations and other CSOs from advocating for legal reform.

Separation of HIV services and legal reform: Attempts to separate HIV service delivery for sex workers from the decriminalisation debate to avoid contention had the effect of delaying finalisation of the plan because civil society was not prepared to pass up the opportunity to pursue decriminalisation.

4.3 The role of civil society

Civil society organisations played a key role in the build-up to, and drafting of the National Sex Worker Plan. Their strengths included:

- Sex-worker voices and representatives included in decision-making forums.

- Advocacy for policy to strengthen services for sex workers, based on years of experience.
- Robust evidence and its application to policy arguments.
- Ability to organise and coordinate a range of organisations with different skills.
- A strong communications profile.
- *Locus standi* to influence policymakers with arguments for policy on strengthening services and decriminalisation.

5. CONCLUSIONS

The launch of the South African National HIV Sex Worker Plan, 2016–2019, with its holistic approach and recommendations for the decriminalisation of sex work, was the culmination of years of advocacy around sex-work rights and health and unequivocal evidence about the need to improve programming for sex workers to end HIV transmission.

A distinguishing feature of the March 2016 plan, was its recognition of the importance of addressing a range of contextual factors, and in particular, the clear (yet nuanced) commitment to move to decriminalisation. The demands from sex workers and their advocates for the inclusion of this undoubtedly contributed to delays in the launch of the plan.

Later developments, however, dented the optimism around decriminalisation, which remains a prize yet to be won at the time of writing.

ANNEXURE 1: SOURCES

The case study draws on document review, a focus group discussion an interview and electronic engagement with informants. Andrew Scheibe led the research and provided the initial synthesis and analysis.

Interviews

- Mariette Slabbert, responsible for implementation of the National Sex Worker HIV Plan (7 October 2016)

Focus group participants (10 October 2016):

- Stacey-Leigh Manoek (Attorney from Women's Legal Centre)
- Sally Shackleton (Director of SWEAT)
- Nosipho Vidima (Co-Chair of Technical Working Group that developed the National HIV Sex Worker Plan and Advocacy Officer at SWEAT)
- Kholi Buthelezi (National Coordinator of Sisonke Sex Worker Movement)

Email correspondence

- Lloyd Rugara (Sisonke Sex Worker Movement, Provincial Coordinator)
- Marlise Richter (Advocacy lead, Sonke Gender Justice)

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