

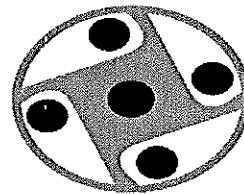


**sweat**

Sex Workers' Education & Advocacy Taskforce



**WOMEN'S LEGAL CENTRE**



**SONKE  
GENDER  
JUSTICE**

HIV/AIDS • GENDER EQUALITY • HUMAN RIGHTS

Reg. No: 2006/023739/08

### **Inter-Ministerial Committee on Migration**

President Jacob Zuma

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19 May 2015

### **Re: Response to the Inter-Ministerial Committee on Migration Operation Fiela**

As the Sisonke the National Movement of Sex Workers in South Africa (Sisonke), The Sex Worker Education and Advocacy Taskforce ('SWEAT'), Sonke Gender Justice and the Women's Legal Centre we have noted a number of concerns with the Inter-Ministerial Committee on Migration's ('the IMCM') Operation Fiela.

All of the organization's submitting this letter are civil society organizations' working towards the advancement and protection of sex workers human rights through advocacy and litigation. Some of

these organisations' also provide direct health, psycho-social and legal services to sex workers and build the capacity of sex workers through training so that sex workers can make informed health decisions and can demand that their human rights are respected and upheld.

Accordingly, this response is focused on the impact of Operation Fiela on sex workers and more particularly on migrant sex workers in relation to stigma and unfair discrimination; the conflation between sex work and human trafficking; the use of resources to police adult consensual sex; and the impact of raids on sex worker access to services:

### **1 Reinforcing Stigma and Unfair Discrimination against Sex Workers**

The name "Operation Fiela" (Fiela being a Sesotho word for sweep) raises immediate concern as to the way in which the government chooses to view those who live in its borders. The suggestion that particular people can be identified as 'dirt' that needs to be 'swept' away serves to reinforce the negative stereotypes that currently pervade our country and fuel violence and unfair discrimination.

Specifically, we are concerned that in a context where violence against women is rife, sex workers (who are by and large women) are targeted by these government sanctioned actions. Although we applaud the IMCM's desire to create an environment where "people can be and feel safe", this statement makes it clear that sex workers are not deemed 'people' or that they are viewed as second class citizens as they are identified as targets that need to be 'swept' away. This has the impact of dehumanising sex workers and reinforces sex workers' criminal status in South Africa.

The provisions of the Criminal Law (Sexual Offences and Related Matters) Amendment Act of 2007 and the Sexual Offences Act of 1957 that criminalises sex work contradicts the Constitution of South Africa which vests all people living in South Africa with the fundamental human rights to human dignity, equality and freedom. Subsequently, the enforcement of these laws perpetuate stigma and serves to create a precarious context that pushes sex workers to the margins of society where they face an increased risk to violence and poor health outcomes. It is our assertion that while sex work is fully criminalised in South Africa, the vision for a 'safe' country will be impossible to achieve.

South Africa's increasingly restrictive Immigration Act of 2002 makes it difficult for migrants to ensure that their stay is documented in accordance with South African law. The result is that migrant sex workers face double vulnerabilities on the basis of their nationality and livelihood.

Operation Fiela makes it possible for migrant sex workers to be targeted and accordingly facilitates unfair discrimination against a vulnerable group.

## **2 The Conflation of Human Trafficking and Sex Work**

Another pressing concern this statement raises is the conflation of human trafficking and sex work and a disregard for individual agency. Despite what this statement infers as well as media reports to the contrary, foreign migrant sex workers are not necessarily victims of human trafficking. When individuals leave their country of origin for another, they may have limited opportunities to generate income and so they may choose to engage in sex work. This is not the same as human trafficking which is the movement of people, against their will, for the purpose of exploitation as clearly outlined by the United Nations 'Palermo Convention', of which South Africa is a signatory and the Prevention and Combatting of Trafficking in Persons Act 2013. Other forms of exploitation that are often regarded as human trafficking, such as forced labour, bonded labour and involuntary domestic servitude have not received much research or media interest in South Africa. Although we applaud the IMCM's intent to combat human trafficking, these efforts will be largely ineffectual given the criminalised status of sex work in South Africa as current legislation forces sex work underground and enables the exploitation of sex workers to occur with impunity.

## **3 The Use of Resources to Police Adult Consensual Sex and Migrants**

Furthermore, we are concerned with the amount of state resources that are being used to implement this Operation Fiela. In the African Centre for Migration and Society's 2012 research report titled 'Breaking the Law Breaking the Bank - The Cost of Home Affairs Illegal Detention Practices' it was found that arrests, detention and deportation is not effective and simply a tremendous burden on the country. Technikon South Africa's Institute for Human Rights and Criminal Studies claims that: at a minimum, it costs the police close to R14 million a year to prosecute sex workers; police action against sex workers is inconsistent; most cases against sex workers are dropped after coming to court, wasting valuable court time and sex work is more heavily policed than serious violent crime. Given the high levels of violence and inequality in the country we appeal to government to use its resources to combat violence and social inequality rather than policing adult consensual sex and migrants.

#### 4 The Impact of Raids on Sex Worker Access to Services

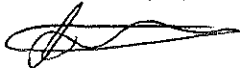
There is also strong international evidence [SHAHMANESH, M., WAYAL, S., ANDREW, G., PATEL, V., COWAN, F. M. & HART, G. 2009. HIV prevention while the bulldozers roll: exploring the effect of the demolition of Goa's red-light area. Soc Sci Med, 69, 604-12; and BUSZA, J. 2004. Sex work and migration: The Dangers of Oversimplification – A Case Study of Vietnamese Women in Cambodia. Health & Human Rights, 7,231-249.] that police raids drive marginalised people away from essential health, social and legal services, in creating an atmosphere of suspicion and fear of officials and institutions. This has far-reaching consequences on individual and public health.

#### 5 Our Appeal

*"The state should find better ways of addressing issues around crime and documentation for migrants as South Africa is a country with double standards. It prides itself with a constitution built on humans rights and they are the biggest perpetrators of human rights violations. Who questions the government?"*

Ruvimbo Tenga, Media Liaison for Sisonke National Sex Worker Movement and a migrant sex worker Operation Fiela serves to entrench negative stereotypes and justify violence against sex workers. We urgently call on President Jacob Zuma and the leadership of the IMCM to terminate Operation Fiela. The termination on the Operation will show commitment and political will to combatting violence against sex workers. We urge the IMCM to find alternative methods of clamping down on criminal activity that aligns with the Constitution and does not target vulnerable groups of people living in South Africa.

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