

# Lifestyle choice or sex work? The criminality or otherwise of blesser-blessee relationships within the context of the 2021 amendments to the Sexual Offences and Related Matters Act, and the implications for healthcare providers and researchers

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This article critically examines the phenomenon of ‘blesser-blessee’ relationships – arrangements in which older, financially secure individuals (blessers) provide material support to younger individuals (blessees) in exchange for companionship or intimacy. While these relationships have become increasingly visible in South Africa, they are not typically classified as sex work, despite their transactional nature. The analysis is situated within the framework of the 2021 amendments to the Sexual Offences and Related Matters Amendment Act, which introduced a new category of ‘vulnerable persons’. This includes students and trainees <25 years old residing in institutional accommodation, raising complex legal questions about the potential criminalisation of blesser relationships. The article explores the implications of mandatory reporting obligations imposed on healthcare professionals and researchers, who are now required to report suspected sexual offences involving consenting adults. This may inadvertently encompass blesser-blessee relationships, particularly where the exchange of material benefits is interpreted as exploitative or coercive. The legal ambiguity surrounding these relationships is further compounded by the lack of clear statutory definitions, which risks conflating consensual arrangements with criminal conduct. We present a balanced discussion of the competing perspectives on criminalisation. Advocates argue that blesser relationships reinforce harmful gender norms and contribute to gender-based violence. In contrast, critics caution against overly broad interpretations of the law, noting that such relationships may also involve genuine emotional intimacy and mutual agency. Ultimately, the article concludes that while the legislative intent may not have been to criminalise blesser relationships *per se*, the imprecise drafting of the amendments creates a legal grey area. We call for clearer statutory guidance and interpretive direction from the Department of Justice and Constitutional Development to ensure that the law is applied consistently and justly.

**Keywords:** blesser-blessee relationships, transactional intimacy, vulnerable persons, mandatory reporting obligations, sex work, prostitution, criminalisation of consensual relationships, gender-based violence, legal ambiguity

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Blesser relationships refer to a social trend where older, often wealthy individuals (the ‘blessers’) provide financial support and/or gifts to younger individuals, typically women (the ‘blessees’), in exchange for companionship, affection, or intimacy.<sup>[1,2]</sup> The naming of this phenomenon originated in the online environment,<sup>[1,3]</sup> following a proliferation of pictures of young women in luxurious settings under the hashtag #blessed.<sup>[4,5]</sup>

While blesser relationships are seen as a transactional arrangement between the parties,<sup>[1,6,7]</sup> they have not been viewed as a form of sex work<sup>[8]</sup> despite some academics arguing that the law could be used to criminalise these relationships.<sup>[9]</sup> Changes to the mandatory reporting obligations introduced into the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007<sup>[10]</sup> (SORMA) in 2021

add to the debate regarding whether the state wants to criminalise blesser relationships.<sup>[10]</sup> The amendments we refer to are notably (i) the insertion of a definition of ‘vulnerable person’ into section 40 of SORMA, which includes students or trainees, <25 years old, living in residences (students/trainees are often perceived to be in blesser relationships); (ii) the expansion of the mandatory reporting obligations to include the reporting of sexual offences against vulnerable persons; and (iii) broadening of circumstances in which all mandatory reporting should take place by lowering the information threshold.<sup>[10]</sup>

The inclusion of young-adult students or trainees in the definition of vulnerable persons raises a number of questions related to the criminalisation of consensual sexual relationships between adults. It

is therefore unclear when reporting obligations would be triggered. Is there now an assumption that blesser-lessee relationships are a form of sex work, and thereby an offence under SORMA? If not, what offence is this reporting obligation linked to? Further, does this place an obligation on healthcare providers or researchers to report such relationships to the police if they fall into the category described above?

These changes raise a critical legal and ethical puzzle: has poor legislative drafting inadvertently created a framework in which consensual relationships between adults are treated as criminal conduct?

This article explores the implications of this ambiguity, particularly for healthcare providers and researchers who may now be legally obligated to report consensual relationships between adults. It situates the analysis within broader debates on the decriminalisation of sex work, the appropriate reach of criminal law and the tension between protecting vulnerable individuals and respecting adult autonomy.

### Criminal offences targeting transactional sex

Currently, anyone >16 years old can lawfully engage in consensual sex.<sup>[11]</sup> However, if the sexual act is in exchange for reward, it may be criminalised as sex work<sup>[12]</sup> in terms of section 11 of SORMA<sup>[10]</sup> and section 20(1A)(a) of the Sexual Offences Act 23 of 1957 (SOA).<sup>[13]</sup>

Section 20 of SOA<sup>[13]</sup> provides that it is an offence for any person >18 years old to have ‘unlawful carnal intercourse’ or to commit ‘an act of indecency’ with any other person for reward.<sup>[13]</sup> This section had been understood to criminalise the conduct of the sex worker and all those living off the earnings of sex work, but did not criminalise the conduct of the client. Section 11 of SORMA<sup>[10]</sup> creates the crime of engaging the sexual services of another adult,<sup>[13]</sup> and thereby also criminalises the conduct of the client.

Reading these two sections together makes it clear that transactional sex (of any nature) is illegal.<sup>[10]</sup> To fall into this category, the sex must be traded, i.e. the transaction must be one in which sex is offered in return for a reward, which can take the form of ‘financial or other reward, favour or compensation’, and as such, the ‘reward’ is not limited to cash.<sup>[1,2,9,10,13,14]</sup> Further, to secure a conviction it must be shown that the parties intended to obtain or provide sexual services for a reward.<sup>[10]</sup> The conduct of all parties involved in the transaction is criminalised.

### Mandatory reporting obligations relating to sexual offences

The 2021 amendments to SORMA<sup>[10]</sup> do not alter the statutory definition of sex work, but they significantly expand the scope of mandatory reporting through the introduction of ‘vulnerable persons’ in section 40, and the broadened reporting duty in section 54. The term ‘reward’, central to the criminalisation of transactional sex, remains undefined in the statute, but has been interpreted broadly in South African (SA) jurisprudence to include non-monetary benefits such as gifts, housing, or social status.<sup>[15]</sup>

Section 40(b) of SORMA describes a vulnerable person as including a ‘female under the age of 25 years who –

(i) receives tuition at a higher education college, higher education institution or university college as defined in section 1 of the

Higher Education Act, 1997 (Act No. 101 of 1997);

(ii) receives vocational training at any training institute, other than the institutions referred to in subparagraph (i), or as part of their employment; or

(iii) lives in a building, structure or facility used primarily as a residence for any of the persons referred to in subparagraphs (i) and (ii).<sup>[10]</sup>

While there is no case law directly addressing blesser-lessee relationships, courts have considered the meaning of ‘reward’ in cases involving sex work and age-disparate relationships. For example, in *S v Jordan and Others*,<sup>[15]</sup> the Constitutional Court acknowledged the socioeconomic dimensions of sex work, and cautioned against overly broad criminalisation that fails to distinguish between coercion and agency. This jurisprudence suggests that the mere presence of material exchange does not automatically render a relationship criminal.

Further, the circumstances in which a report must be made have been broadened,<sup>[10]</sup> and now any person who has ‘knowledge, reasonable belief or suspicion that a sexual offence has been committed against a person who is vulnerable’ must report this to the police. This means that if any person, including a healthcare provider or researcher, merely suspects that a female student, <25 years old, living in a residence is involved in a sexual relationship ‘for reward’, they are required to report this to the police. Failing to make such a report is an offence in terms of SORMA.<sup>[10]</sup> The reporting duty is triggered – particularly in consensual relationships involving students <25 years – on mere suspicion.

### Arguments for and against criminalisation of blesser relationships

The question of whether blesser-lessee relationships should be criminalised is deeply contested. While the 2021 amendments to SORMA do not explicitly criminalise such relationships, the expanded definition of ‘vulnerable persons’ and the broadened mandatory reporting obligations raise concerns about whether these relationships are now implicitly treated as criminal conduct.

Arguments in favour of criminalisation often rest on the premise that these relationships perpetuate patriarchal norms, reinforce gender inequality and contribute to gender-based violence. Scholars argue that the power imbalance inherent in age- and resource-disparate relationships undermines the autonomy of younger women and entrenches toxic masculinity.<sup>[4,16-18]</sup> These critiques are grounded in feminist legal theory, which views such relationships as symptomatic of broader structural inequalities. However, the invocation of ‘toxic masculinity’ must be situated within the theoretical framework of hegemonic masculinity, which explains how dominant male norms are reproduced through socioeconomic and sexual hierarchies.<sup>[17,18]</sup> The criminalisation argument thus reflects a normative stance that the law should intervene to disrupt these harmful dynamics.

Arguments against criminalisation, however, challenge the assumption that all transactional relationships are exploitative. Empirical studies suggest that many participants in blesser-lessee relationships do not identify as sex workers, and view their relationships as emotionally meaningful, interdependent and socially acceptable.<sup>[2,19-21]</sup> Some scholars argue that these relationships may offer women a form of agency – enabling them to negotiate terms,

access financial support and achieve social mobility.<sup>[1,22,23]</sup> Moreover, the normalisation of transactional intimacy may obscure the structural vulnerabilities that lead women to enter such relationships in the first place.<sup>[19,24]</sup>

From a constitutional perspective, the criminalisation of consensual adult relationships raises serious concerns. The rights to dignity, privacy and autonomy – enshrined in the SA Constitution<sup>[36]</sup> – may be infringed if the law treats adult women <25 years old as incapable of determining the terms and parameters of their relationships with other adults.<sup>[9,25]</sup> This risks infantilising young women and equating their consent with that of minors or mentally incompetent persons. The narrow definition of ‘vulnerable persons’ – limited to females <25 in institutional residences – also raises questions of gender and age discrimination, and may be subject to constitutional challenge under the equality clause.<sup>[26]</sup>

Ultimately, we submit that while blesser-lessee relationships may be socially and ethically complex, they do not warrant criminalisation under current legal frameworks. The use of criminal law should be reserved for conduct that is clearly exploitative, coercive, or harmful. Poor legislative drafting should not result in the overreach of criminal liability into domains of adult intimacy and socioeconomic negotiation.

If the state did intend to broaden the scope of sex work to include blesser-lessee relationships, this would be at odds with its previous commitment to decriminalise sex work. In 2022, the Department of Justice and Constitutional Development published the Criminal Law (Sexual Offences and Related Matters) Amendment Bill of 2022.<sup>[37]</sup> This provided for the repealing of section 11 of SORMA.<sup>[25]</sup> Hence the crime of engaging the sexual services of an adult would fall away, but it would remain an offence to live off the earnings of ‘prostitution’ as per section 20 of SOA.<sup>[13]</sup> However, the draft Bill was later withdrawn prior to it being tabled in Cabinet, and it is unclear whether it will be re-introduced onto the parliamentary agenda in the foreseeable future.<sup>[27]</sup>

### If the purpose was to criminalise blesser relationships, is this justified?

There are arguments both for and against criminalising such relationships.

Although the current amendments do not specifically state that blesser-lessee relationships should be criminalised, there are those who view them as harmful (but not necessarily criminal). Four arguments are raised in support of this contention. The first is that these relationships are inappropriate as they are deeply rooted in a culture of toxic masculinity and patriarchy that undermines attempts to promote gender equality.<sup>[7,16,28-29]</sup> Second, endorsing blesser-lessee relationships perpetuates gender stereotypes and power imbalances between men and women.<sup>[2,4,8,18,30]</sup> Third, given the inequality in such relationships, they may lead to higher levels of gender-based violence.<sup>[16,17,28]</sup> Fourth, women in blesser relationships view them as transactional. George *et al.*<sup>[31]</sup> noted that ‘more than half of the interviewees felt that the relationship was purely transactional and therefore devoid of any emotional connection’.

On the other hand, a number of authors argue that while such relationships involve some form of reward, they are also built around companionship, affection and even possibly an emotional connection.<sup>[14]</sup> Sexual intimacy is not always the primary focus.<sup>[14]</sup>

Further, research shows that neither party in such a relationship identifies him/herself as being involved in commercial sex work.<sup>[22,32]</sup> Societally, these relationships appear to have been normalised and are considered broadly acceptable.<sup>[17,23,24]</sup> Brouard and Crewe<sup>[19]</sup> assert that one party is not necessarily the victim and the other the predator because often these unions are interdependent, stabilised and acceptable. Crankshaw and Freedman<sup>[2]</sup> observe that commercial sex work is characterised as a formalised exchange of sex for payment, while transactional sex is viewed as informal and often occurs within the context of a relationship that may include elements of love and trust. In this framework, transactional sex involves economic support provided within intimate relationships, while sex work is a straightforward purchase of sexual services that typically occurs outside of personal relationships. Crankshaw and Freedman submit that this distinction between a relationship of direct exchange and one that is transactional is an important one. Supporting this approach, some argue that blesser-lessee relationships are simply another form of partnering, along with marriage and casual sex encounters.<sup>[16,17,28]</sup> Finally, some suggest that these are not unequal relationships but ones that empower women to negotiate their own terms, ease financial burdens, or acquire social status.<sup>[1,7,20,21,24]</sup>

### Implications for healthcare providers and researchers regarding the enhanced mandatory reporting obligations

Despite the lack of clarity in the amended SORMA,<sup>[10]</sup> healthcare providers and researchers need to be aware that there are new mandatory reporting obligations that may impact on their work. First, they need to be mindful that if they are working with this age category of young students or trainees, any questioning into their sexual activity may result in information that would trigger reporting obligations.<sup>[10]</sup> Second, if this is a possibility, healthcare providers and researchers ought to advise the students or trainees of the implications of such a disclosure.<sup>[33]</sup> Researchers would be required to state that there will be reporting of blesser-lessee conduct in the informed consent document, unless a waiver of this obligation is requested from the Research Ethics Committee.<sup>[33]</sup> Finally, healthcare providers and researchers should be aware that while there is no general obligation to report a sexual offence committed against an adult, there is one for this category of individuals.<sup>[10]</sup> For example, there is no general duty to report that a rape has occurred, but there is one if it has been disclosed by a student/trainee, aged <25 years, living in an institution.<sup>[10]</sup>

### Conclusion

The changes to SORMA potentially reflect a response to societal concerns regarding blesser-lessee relationships. However, this intention is unclear given the nature of the amendments. In the last two decades the phenomenon has sparked discussions about morality, gender roles, the impact of socioeconomic conditions and culturally accepted norms on personal relationships and sexual and reproductive health.<sup>[1,21,24]</sup> What come to the fore are disparate views about the social acceptability of blesser-lessee relationships,<sup>[23]</sup> while the common ground is that they are indeed transactional in nature.<sup>[2,16,18,21,34,35]</sup> The question posed by the 2021 amendments to SORMA is: even if they are transactional, are they now criminal if the lessee is aged between 18 and 25, a student or trainee and living in

a residence/hostel, because they are considered vulnerable persons? A further question worthy of clarification is: who is the offender? Is it the blesser, the lessee, or both?

This is further complexified by poor legislative drafting. Sections 11, 40 and 54 of SORMA<sup>[10]</sup> do not draw a distinction between 'commercial sex work' and 'transactional sex'.<sup>[13]</sup> Further, the definition of vulnerability narrows it down to students or trainees, who are <25 years old, living in residences or hostels. Made and Madonsela<sup>[26]</sup> ask why the definition is so narrow that it only applies to institutions of higher learning, and uses 25 years as a cut-off age, observing the arbitrary nature of this approach.

We submit that it was unlikely that the intention was to criminalise blesser-lessee relationships, but because of poor drafting that may link the part of the definition of vulnerable persons in section 40 of SORMA to section 11 of SORMA and the mandatory reporting obligation per section 54 of SORMA, the conclusion is that such conduct is now a criminal offence. In this vein, it is surprising that in an era of supposed political commitment to the decriminalisation of sex work, Parliament has amended SORMA in a way that potentially extends the net of liability to include blesser-lessee relationships.

We submit further that if Parliament has done this through the definition of 'vulnerable person' in SORMA, it has misunderstood the nature of these relationships and may be leaning toward the over-zealous use of criminal law for matters that should not fall within its ambit. Even those who are opposed to such relationships do not advocate for the use of criminal law against them. Other avenues and mechanisms may be appropriate for dealing with sexual relationships that might be disenfranchising than reliance on the criminal law.

We submit that clarity is required from the Department of Justice and Constitutional Development in order to guide the appropriate application of these sections of SORMA. However, until then, researchers and healthcare providers ought to be aware of these provisions and develop standard operating procedures if needed.

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