



Commission for Gender Equality
A society free from gender oppression and inequality

**SUBMISSION MADE TO THE MULTIPARTY WOMANS CAUCUS ON THE SEX WORK
DISCUSSION PAPER RELEASED UNDER THE SALRC PROJECT 107 AND PUBLISHED IN 2017**

26 February 2018

Prepared : Office of the Chairperson, Office of the CEO and Parliamentary Office.

1. INTRODUCTION

The Commission for Gender Equality (CGE) welcomes the resolution by the Ruling Party (ANC) to decriminalise sex work (www.enca.com : 20 December 2017). The CGE commends the ANC for taking the right step despite calls by delegates for partial decriminalisation. The CGE and many activists including Sex Workers Education and Advocacy Taskforce (SWEAT) and Women's Legal Centre (WLC) have long called for full decriminalisation. Accordingly, the CGE is both relieved and at the same time encouraged by a decision taken by the Ruling Party which will make a significant improvement in the lives of one of the most vulnerable groups in South Africa.

Although the Ruling Party has adopted a progressive and meaningful position on sex work the SALRC Report in terms of Project 107 relating to sexual offences and adult prostitution which was held in abeyance for a considerable time period is rather disappointing because it articulates a position contrary to that of the Ruling Party.

The release of the SALRC Report is welcome because it is necessary for the government of South Africa to state its official position on sex work, it is both disappointing and unacceptable to find that in a constitutional democracy which has endorsed the right to dignity, equality, freedom of expression and privacy of the person in a bill of rights, the State still finds it justifiable to treat one of the most vulnerable group of human beings in our society as criminals. This harsh approach towards sex workers creates a hostile environment which allows for sex workers who are predominantly female, to be subjected to violence as well as documented instances of inhumane treatment by both ordinary members of society and even members of the SAPS. This is offensive to the values enshrined in our constitution and the relevant international obligations that South Africa has ratified in recent time such as the Convention on the Elimination of All Forms of Discrimination (CEDAW), Beijing Platform of Action and African Charter on Human and People's Rights on the Rights of Women which place an obligation on South Africa to take action in all fields whether it is political, social, economic or even cultural in order to ensure that girls and women can enjoy basic human rights and freedoms.

The CGE acknowledges the fact that all countries struggle with the legal treatment of prostitution or sex work, a practice that is as old as history itself. South Africa is no exception. The current legal situation in South Africa which involves the criminalisation of sex work with consequences such as : widespread abuse of sex workers rights, violence against them, abusive treatment by members of the South African Police Services and stigmatisation which results in them being hesitant to access health care services or even justice when assaulted, robbed or even raped is without doubt, a serious violation of their rights.

This situation is nothing short of a blight on our society which calls itself modern, civilized and democratic on one hand and then chooses to oppress a vulnerable category of women on the other hand.

An examination of the above circumstances indicates that in South Africa as in most other jurisdictions societal perceptions of sex work is very often informed by religious opinions that views sex work as “sin” and therefore, sex workers represent the “fallen” or “sinful women”. The result of this is that sex work is treated as a moral issue and State authorities and more especially politicians who are the personalities behind these State institutions are overwhelmed by the moral positions of powerful religious institutions alongside their personal religious convictions. This makes the issue of sex work being considered as an unsavoury topic and its decriminalisation becomes a unpopular stance. Such circumstances are unacceptable in a society that states as following terms of Section 39 of the Constitution “When interpreting the Bill of Rights, a court , tribunal or forum must promote the values that underlie an open and democratic society based on human dignity, equality and freedom and must consider international law and may consider foreign law”.

In terms of Section 39 of the Constitution the implication is that the SALRC and Department of Justice and Corrections are obliged to take measures that will protect the rights of sex workers as a category of women who are facing various forms of discrimination in South Africa. It is evident that by recommending a retention of “criminalisation of prostitution” in South Africa these fora are failing in their constitutional duty towards women.

2. UNDERSTANDING SOME PERSPECTIVES OF SEX WORKERS (extracted from a Research Study undertaken by Sonke Gender Justice during February 2017)

2.1 Age and Gender Profile of Participants

AGE	FEMALE	MALE	TRANSGENDER
18-20	0	0	0
21-25	5	1	2
26-30	20	1	1
31-35	15	0	0
36-45	11	0	0
61-65	1	0	0
TOTAL	52	2	3

ANALYSIS

The table above indicates that sex workers are predominantly female who are within the age group of 26 to 35 years of age. Some who are above thirty-five continue until the age of about

45 years as their services are still procured while they are in this age group. It seems that sex workers generally continue with their work until the maximum age of 45 years. The sex worker in the age group of 61-65 is an exception.

Contrary to popular belief sex work is not the exclusive domain of females because male sex workers also exist in South Africa.

2.2 Dependants of Sex Workers

AGE OF SEX WORKER	NUMBER HAVING DEPENDANTS	NUMBER OF PEOPLE DEPENDANT ON SEX WORKER	SEX WORKERS WITH CHILDREN
18-20	0	0	0
21-25	7	35	6
26-30	22	163	18
31-35	15	104	14
36-40	8	76	8
41-45	3	13	3
61-65	1	16	1
TOTAL	56	407	50

ANALYSIS

The above statistics reinforces the fact that sex workers are normal human beings who have families and dependants including their own children.

A striking feature of sex workers is the high number of people that are dependent on them(407 dependants for 56 sex workers). Once again the highest level of dependence is on sex workers between the age of 26-40 years.

The average number of people supported by each sex worker in the sample is 7,27 which is very high (407 divided by 56).

2.3 Sex Workers and Arrests by SAPS

Judicial / Police Procedure	Number [sample size 31]
Number of sex workers arrested	31
Average number of times each sex worker was arrested	4
Number of sex workers who appeared in court after arrest	4
Number of sex workers who paid a fine	17
Number of sex workers released without being fined or appearing in court	10
Total hours spent in custody by sex workers reporting an average of 4 arrests and 40 hours in custody	4 960 hours with an average of 6.7 days in custody for each sex worker arrested.

ANALYSIS

It is likely that the same sex worker is arrested in many instances indicating a probability that they are targeted by SAPS officers.

A small number appear in court and the majority pay fines. **It is untenable to observe that although the majority of sex workers arrested either pay fines or are released without any fine or court appearance but still spend an average of approximately 7 days in custody.**

2.4 Sex Worker Interactions with Police and Resultant Treatment [sample size 57]

Police Conduct or Action	Yes	No	Aggregate of times	Not answered
Harassment by SAPS officer(s)	31	23	166	3
Intimidation by SAPS officer(s)	27	24	75	6
Threatened with harm	21	30	43	6
Dropped off at a different location	22	28	45	7
Kidnapped by SAPS officer(s)	7	43	16	7
Pepper Sprayed by SAPS officer(s)	13	36	18	8
Physical Assault by SAPS officer(s)	13	36	22	9

Sexually assaulted (raped)	16	33	29	8
Asked for a bribe	27	23	62	7
Paid a bribe	26	24	69	7
TOTAL			545	

ANALYSIS

The above table indicates that approximately 50 sex workers faced unlawful or hostile action 545 times. This amounts to each sex worker being subjected to police brutality and hostility at last five times.

2.5 CASE STUDY 1

The sex worker (Ms Ofentse) is a 25 year old female who is also employed at a guest house. When she walks home SAPS officials who see her stop and instruct her to get into their car. If she refuses she is threatened with arrest. Generally, two officers are in the car. They begin touching her genitals and request sex. When she refuses free sex they either promise to pay later or threaten her with arrest. In some instances, she is paid while in other cases the officers say that they do not have money.

The SAPS officers request oral sex and penetrative sex with or without condoms. When she complains of being hurt they refuse to acknowledge her discomfort. She was forced to offer free sex on three occasions during 2015.

In a specific incident in 2015 the sex worker was stopped outside a shopping mall by two SAPS officers. One was Black. He requested her Immigration documents which she did not possess. He requested R700 which she refused. They took her bag and searched it. They found R300 and her phone inside. The officers wanted the entire amount and the phone. The sex worker refused and said that she required R100 for taxi fare to return home and she could not afford another phone.

They eventually took only R200.

This case indicates corruption , sexual offences, theft, unlawful arrest and harassment at the hands of police officers.

Ofentse has 3 dependants

2.6 CASE STUDY 2

The name of this sex worker is Jade and she is 31 years old. She is employed in a brothel and on one Thursday night at about 21:30 when she was in the shower, she heard police outside. Jade tried to climb into the ceiling through the manhole out of fear but the police came into the bathroom and ordered her to climb down. She was naked and embarrassed and requested permission to dress but the SAPS refused. They made her walk outside with them naked and she grabbed some clothes as she walked outside.

In the house yard they negotiated with the police members to be released. One officer suggested to his colleagues that they should be released. Unfortunately he was ignored and his colleagues put all into one patrol van. Force was used because it was not easy for them to fit into the back of the vehicle easily. Jade could not even dress whilst in the van because it was packed beyond capacity.

They were driven to Site 6 Police Station and when they got out Jade quickly dressed. They were then placed in a cell that was wet and filthy. At around midnight it was cold and they requested blankets as well as water which was refused.

The landlord came to visit them and brought jerseys as well as jackets as he knew that the women had little clothes at the time of arrest. The police refused to hand the clothes to the women and only at 16 : 00 the next day these items were handed to them when they were leaving.

At 8 : 30 in the morning a police official was releasing them but the Station Commander told him to stop and to send the women back to the cells in order to be charged.

The process of charging the women was only completed at 16 :00 on that day and they were then released. The women appeared in Court during April and May and were fined for loitering.

This case reflects unlawful arrest, unlawful entry, *crimen injuria*, failure to treat accused persons with dignity and unlawful detention.

Jade has 4 dependants.

3. High Level Panel Findings

The High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change was appointed by the Speakers' Forum, a forum of the speakers of the nine provincial legislatures of South Africa. It was set up on the mandate of the Legacy Report coming out of the Fourth Democratic Parliament of the Republic of South Africa (2009 – 2014), which outlined the state of South Africa concerning the triple challenges of poverty, inequality and unemployment. The Speakers' Forum felt the need to assess the

impact of key legislation and policies on four areas, viz; (i) Poverty and unemployment; (ii) Wealth creation and inequality; (iii) Land reform, redistribution, restitution and security of land tenure; and (iv) Social cohesion and nation building. The report of Working Group 3 on Social Cohesion and Nation Building was finalised on 14 March 2017. It is a record of the challenges, concerns and opportunities on social cohesion and nation building, and on the broader theme of the triple challenges of poverty, inequality and unemployment. Key in these public hearings is assessing the impact of key legislation and policies, or lack thereof, in advancing social cohesion and nation building. The public hearings sessions, a combination of a platform for invited stakeholders and general submissions from the public floor which were convened on 10 and 11 March 2017 in Polokwane, Limpopo province. Chaired by the overall Chairperson of the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change, Mr Kgalema Motlanthe. A significant aspect of this initiative were comments **on sex work**. The following findings were made by the High Level Panel on the welfare of sex workers in RSA.

Welfare of Sex Workers:

The concerns raised on the circumstances of sex workers in Limpopo were similar to those in other provinces which were as follows :

- (i) Sex workers' experiences and abilities to access public services are hindered by prejudices.
- (ii) Legal framework: Sexual Offensives Act, works against prostitution.
- (iii) Realities of sex workers: - There is a high murder rate of sex workers. - There is fear in laying criminal charges by sex workers against perpetrators due to fear of stigmatization. - Sex workers are 18 times more likely to be murdered in their line of work.
- (iv) Sex workers are unlikely to report cases to the SAPS because police officers themselves are perpetrators of crimes and rape against sex workers.
- (v) Sex workers face challenges in accessing justice.
- (vi) Sex workers are continually persecuted by the police.
- (vii) Access to health services is hindered and inadequate.
- (viii) Sex workers receive poor health services from health care workers due to prejudice and stigma.
- (ix) The current legal framework is inconsistent with regional and international legal frameworks, and with the Constitution.

4. Commission for Gender Equality Investigation into Sex Workers Complaint : Ref NC /SL/ 01

The Investigation

On 20 November 2012 the Women's Legal Centre (WLC) lodged a complaint with the CGE on behalf of the Sex Workers Education and Advocacy Taskforce (SWEAT). The issue related to allegations of "gross human rights violations and harassment of sex workers by members of the SAPS." The allegations included instances of verbal abuse, psychological abuse, physical abuse, harassment, sexual abuse, unlawful arrests and inhumane conditions during detention by SAPS. Although twenty-eight sex workers lodged complaints the CGE assessed the complaints and interviewed two sex workers.

In the subsequent investigation which was finalised on 18 December 2017 the CGE findings were as follows :

- (i) The SAPS is relying on by-laws and other means such as nuisance to justify the arrest of sex workers.
- (ii) The allegations by sex workers were valid which requires SAPS to cease arrests and harassment of sex workers with immediate effect.
- (iii) The CGE also deemed it necessary to send an urgent directive to the Acting National Commissioner of SAPS requesting him to instruct SAPS members to stop their unlawful conduct regarding sex workers including the confiscation of condoms in their possession.

Way Forward

The CGE findings confirms the fact that archaic laws are being used to infringe the rights of sex workers. These laws are unconstitutional because they allow for an infringement of rights that are protected in the Bill of Rights. Due to this untenable situation sex workers have become a marginalised, vulnerable and stigmatised group. An irony is that the existence of an oppressive set of laws alongside the Bill of Rights which seeks to promote a culture of human rights is perpetrating severe harm and suffering on sex workers. Therefore, the only reasonable solution is for the urgent decriminalisation of sex work. This is not negotiable but a request that must be accommodated in the interests of justice, fairness and the duty of a government to protect its citizens from violence by the State.

5. AN ASSESSMENT OF THE RECOMMENDATIONS OF THE SALRC IN TERMS OF PROJECT 107

2.1 The SALRC Recommendation to Retain Criminalisation

The SALRC has undertaken a comprehensive assessment of different models of sex work namely criminalisation , partial criminalisation, regulation and non-criminalisation.

They have had the benefit of considering numerous viewpoints on the issue and found that many of the submissions came from “religious organisations who acknowledged the harm of prostitution and the vulnerable position of people who provide sexual services, and the need to provide a compassionate hand to them to exit from prostitution. The remainder of submissions also acknowledged the vulnerable position of prostitutes but advocated – decriminalisation” (SALRC Report 2017 : XV ii)

The CGE in its position paper which was released on 16 January 2013 already indicated that the religious sector would treat sex work as a moral issue and support criminalisation. Therefore, the CGE once again reiterates that sex work cannot be dealt with under legislation that criminalises it. Accordingly, the contradiction by religious organisations to acknowledge that there is a need to extend a compassionate hand to help sex workers to exit prostitution but at the same time they must be regarded as criminals cannot be a rational approach. Furthermore, the approach by religious organisations is contradictory to Section 39 of the Constitution which enjoins all in South Africa to be reasonable and justifiable in their initiatives. Under the circumstances the CGE rejection of the position of criminalisation in 2013 is once again supported and a need to shift away from the current position of total criminalisation is recommended (CGE Position Paper 2013 : 23).

5.2 THE SALRC RECOMMENDATION TO RETAIN USE OF THE TERM “PROSTITUTION”

The SALRC has recommended the use of the term “prostitute” because it has found that the use of the words “buyer”, “client”, “customers” and “kerb-crawlers” amongst others lends credibility and “legitimises the act of paying for sex”(SALRC Report 2017, X111).

It was explained in the CGE Position Paper (2013:3) that “sex work” and “prostitution” are not the same concept. Prostitution is viewed as coerced sexual activity where women have no choice in the matter. Therefore, it is demeaning and women are victims in these instances

In contrast “sex work” indicates agency and therefore allows for women’s decision making powers to be exercised. Liberal and radical feminists are divided about the treatment of sex work. Feminists in general prefer law reform that would lead to the regulation of sex work which includes registration, mandatory health checks and occupational benefits. Some radical feminists regard sex work as “an institution of male supremacy” under patriarchal auspices and even consensual sex is under coercion because of the subordinate position of women in all societies. Other feminists view sex work as a right to self - determination and freedom of choice.

The last view is gaining prominence amongst self-identified feminist sex workers.

It is clear that the SALRC recommendation to retain the term “prostitute” is not only due to its irrational approach to criminalise sex work but it is also a failure to embrace the dynamic and evolutionary nature of South African society. All social systems have norms , values and practices that change with time. Once upon a time infidelity was a crime that was punishable in South Africa. Furthermore, intimacy between Black and White couples was an offence and punishable under the Immorality Act. The SALRC must be reminded that the Immorality Act was regarded as reprehensible and mostly repealed because South African society does not tolerate the value of discrimination that underpinned the Immorality Act. Similarly the Sexual Offences Act of 1957 which was promulgated to serve the interests of an undemocratic, conservative and minority group exactly sixty years ago at a time when all of the sex workers in South Africa were not even borne can be held to be justifiable today is just mind boggling. These sex workers did not have a say in the law that regulates their lives yet it is held to be necessary. The CGE places on record that the Sexual Offences Act of 1957 cannot be held to be legitimate in a society that has not only embraced a progressive Bill of Rights (BOR) but a society that has experienced a wave of development and progressive change cannot be burdened by a discriminatory law such as the Sexual Offences Act of 1957. It is simply out of tune with our current value system and we must be liberated from this sixty year old Act.

5.3 SALRC RECOMMENDATIONS ON PEOPLE WHO PAY FOR SEXUAL SERVICES

The SALRC has taken the approach that “criminalisation of sex work will send a clear message to society that buying sexual services that are provided largely as a result of the “prostitute’s” poverty, inequality and unemployment is illegal (SALRC Report 2017 : XXVii). The recommendation goes further to say that given the inequality between prostitutes and buyers impacts on their ability to exercise the right to demand the use of condoms during sex work and therefore criminalising demand would be a feasible consideration. Accordingly, the SALRC has recommended criminalisation of the buyer.

The CGE believes that the SALRC has not explored the transactional aspects of sex work adequately and therefore, its understanding of the nexus between criminalisation and the transactional aspects are faulted. The CGE’s belief on the admission by the SALRC in its report (2017:27) where it states “ It is the Commission’s view that transactional relationships should not be conflated with adult prostitution. Although these relationships do not form part of this investigation, the Commission has found troubling results that deserve attention. The Commission therefore, recommends that relationships of this nature, as a growing social phenomenon , be further investigated from a social and gender based violence perspective rather than in response to a need for legal intervention or law reform.”

Firstly, the CGE is encouraged by the acknowledgment that transactional aspects of sex work requires more in depth investigation because there is more than what meets the eye in this regard. In its investigations the CGE has found that there is a strong relationship between the economic and social aspects of sex work and correctly indicated by the SALRC this requires a focussed study.

However, for the purposes of the issue before us at present namely criminalisation and its relationship on the buying and selling of sex there is undisputed knowledge that the sex worker, people who traffic sex workers, pimps who derive an income from sex workers in a parasitic relationship and even seemingly legitimate businesses that operate as massage parlour or adult entertainment places all have significant economic interests and relationships in sex work and sex workers. These clandestine circumstances contribute to the “rot” that remains hidden and continues to be entrenched due to criminalisation. Unfortunately, this huge gap was ignored by the SALRC in its investigations and has a significant bearing on the appreciation of the vulnerabilities and atrocities perpetrated on sex workers.

The simple buying and selling of sex is the tip of the ice berg and must be seen as the commercial and economic dimension of sex work which exists within the wider context of the transactional paradigm. Where policemen threaten sex workers with arrest if they are not bribed and cases where SAPS members detain sex workers and remove valuables from their possession and demand sex before the sex worker is released is rife. These instances of abuse are often perpetrated by policemen who know that sex workers will not complain because their activities are unlawful in the first place. The complaints by sex workers are often dismissed because they are told that they should not be soliciting their services and as such they are turned away or detained for being sex workers instead of having their complaints addressed.

A more serious aspect of the commercial and economic nature of sex work is where organised crime networks procure women and girls and hold them in bondage for sex work. This feature of sex work is acknowledged but little is understood due to the undercover criminal networks that operate below the radar of law enforcement agencies. It is sad that criminalisation of sex work serves to favour the existence of powerful criminal operations that control sex workers in these circumstances. The reason is that the women who are procured are often deprived of their travel documents and made to understand that their actions as sex workers are illegal and they will not enjoy any protection from law enforcement agencies. In these circumstances women and girls who are generally foreigners are afraid to escape from bondage and even to testify against the perpetrators for fear of reprisals against them and even their families who may be in other countries.

Finally, it was not surprising to learn that even family members sometimes wittingly and even unwittingly sell their daughters to organised crime syndicates to be used as sex workers.

It is a CGE view that criminalisation of sex work ensures that the phenomenon of sex work as well as the deplorable activities of criminal syndicates remain obscured from the general public because the reality is that no law abiding person is willing to get involved with conduct that is illegal. This only serves to fuel the appetite for ill - gotten gains that organised crime derives from sex work in South Africa.

5.4 SALRC Acknowledgment of the fact that Criminalisation Perpetrates Violence on Sex Workers

The SALRC acknowledges that criminalisation of sex work gives rise to violence from clients, their partners, expose them to unsafe and dangerous working conditions, prevents them from accessing social services, legal and financial services and makes it difficult for them to protect themselves from HIV infections (2017: 36).

The majority of NGO's and organisations working with sex workers and even the CGE have raised the above issue and called for the decriminalisation of sex work. Unfortunately, these recommendations have not been taken seriously by the SALRC and no plausible reason can be advanced for its disregard of this unanimous call to protect sex workers against systemic abuse.

5.5 THE NOTION THAT CRIMINALISATION PROTECTS THE TOURISM BRAND OF SOUTH AFRICA

The notion that sex tourism will be encouraged and this will affect the brand value of South Africa with serious long term economic consequences is a concern raised by the Minister of Tourism and favoured by the SALRC. This is a fiction that has no basis because eighteen countries such as Australia, New Zealand, Austria, Netherlands, Turkey, Switzerland and even Greece, "prostitution" is either legalised or regulated but none of these countries except Netherlands is regarded as a sex tourist destination.

If the tourism branding was a real concern then none of the countries listed herein would have legalised sex work.

5.6 RELIANCE ON THE CONSTITUTIONAL COURT JUDGMENT OF JORDAN VS THE STATE

The SALRC seeks to justify the retention of criminalisation on the basis that the Constitutional Court held that open and democratic societies generally denounce prostitution (*Jordan v The State* 2002). Furthermore, the Court in *Jordan* was more concerned with the confirmation of the orders of invalidity granted by the High Court which declared Section 20(1)(a) which criminalised the provision of sex for reward as unconstitutional. Strictly speaking the requirements for commercial sex to be unlawful has been misinterpreted because if one reads the law carefully one will find the following :

Section 20 of the Sexual Offences Act of 1957 :

(1) Any person who knowingly lives wholly or in part on the earnings of prostitution shall be guilty of an offence.

Section (1A) states as follows :

Any person 18 or older who :

- (a) Has unlawful carnal intercourse, or commits an act of indecency with another person for reward or
- (b) In public commits an act of indecency with another person shall be guilty of an offence.

It is evident that the legislature in Section (1) used the words **“knowingly lives”** and did not use the words **“ family members”** or **“dependents”** because the intention was address the exploitation of sex workers by brothel owners and other criminal elements. This kind of sexual activity must be regarded as unlawful carnal intercourse because it is **coerced sex for reward**. Sex for reward is **different from sex for the generation of income**. Reward is clearly an entitlement, which is not generally connected to the welfare and social needs of a person or his or her dependants but is rather as **“prize”** or **“benefit”**. Income generation is a practice linked to a socially accepted practice of being remunerated for goods or services. Income generation is a fundamental principle on which the well - being of society is maintained.

Therefore, the legislature clearly prohibits sexual activities linked to reward and had no intention of prohibiting sex workers where their activities are related to income generation connected to their well being and that of their dependants. The ordinary meaning of the legislation conveys this. This point was not argued in the Jordan case because the issue before the Court was on whether Section 20(1)(aA) was rationally linked to a legitimate constitutional purpose , namely to outlaw commercial sex.

The Court stopped short of examining whether the prohibition on **commercial sex was in fact a legitimate constitutional imperative**. **If the court had done this exercise then it would have had to consider the issue of reward, unlawful sex and income generation as is indicated herein.** The court only assumed that there was a legitimate constitutional purpose in the prohibition.

The CGE believes and is supported in its view that if the issue of decriminalisation of sex work should be treated differently fifteen years after the Jordan case for the following reasons:

- (i) Much has changed in the social landscape within South Africa and even the world where the attitude towards sex work is less hostile.
- (ii) Legal developments in South Africa favour a greater respect for the privacy and personal choices of individuals.
- (iii) The legal convictions of South African society as was developed in *Minister of Police v Ewels* (1975) 3 (AD) has indicated that an act must not only raise the moral indignation but also the legal convictions of society to attract criminal sanctions. Therefore, in this day and age it is only the moral convictions of conservative elements that support the

criminalisation of sex work in our society. The legal system is losing interest in punishing sex workers as seen by a failure to prosecute sex workers.

Finally, if one is to apply Section 20 of Act 23 of 1957 then a child who lives with its mother who is a sex worker must be prosecuted in a criminal court and punished. The reason being that this child “lives on the earnings of prostitution” in terms of the relevant provisions.

Clearly a child who is dependant on a parent who is a sex worker cannot be punished as this would be absurd. It is also something that the legislature would not intend. Therefore, the CGE would like to see the repeal of the Sexual Offences Act of 1957 before someone deems it fit to imprison a minor child who is a dependant of a parent that generates an income from sex work.

6. CONCLUSION

The Commission for Gender Equality per Commissioner Janine Hicks has placed on record with the SALRC that the “CGE supports decriminalisation on the grounds that it would lift prostitution out of the criminal realm, where abuse and exploitation flourish. It would then be part of a transparent arena where the rights of both the *prostitute* and buyer could be ensured, abuse minimised and vulnerability addressed.”

Taking cognisance of the SALRC Report (2017) on Sexual Offences and Adult Prostitution wherein the SALRC makes a conclusion which is fundamentally faulted when they state as follows : “There is a general consensus from respondents to the Discussion Paper that the practice of selling sexual services often arises out of the choice made in severely limiting socio-economic circumstances, and in the context of social inequality”. The CGE is encouraged by this statement which is an objective description of the circumstances facing most sex workers.

Unfortunately, the SALRC goes further and states the following “Criminalisation would send out a clear message to society that buying sexual services that are provided largely as a result of the prostitute’s poverty and inequality and unemployment is exploitative and therefore illegal”.

This statement is both faulted and represents a sad day in our history because our constitutional society recognises that social evils such as poverty and inequality drive women and girls into sex work and as a responsible nation one cannot address a social problem with criminal remedies. This is fundamentally wrong and will only generate additional problems such as increased prison populations, job losses, family disintegration and increasing levels of poverty. Surely this should be anticipated by the reliance on criminal remedies to address social challenges. Furthermore, as was indicated in my discussion our legal convictions as South Africans have developed to a stage where “prostitution” must be treated similar to infidelity and teenage sex where these acts no longer constitute crimes.

Unfortunately, the SALRC hangs onto demeaning terminology such as “prostitution” instead of opting for a more acceptable term such as “sex work”. This is a clear indication that the SALRC has not as yet embraced the winds of change, that have phased in significant levels of transformation on social, economic, political and jurisprudential frontiers in South Africa. This is the only conclusion that a reasonable person can reach when a law reform structure still seeks to rely on an archaic, faulted, irrelevant and colonial inspired relic drawn from South African statutes.

Notwithstanding the above the CGE is encouraged with the position of the Ruling Party namely the decriminalisation of sex work. The ruling party is not only supported but lauded for its stance on sex workers because empirical evidence provided by Sonke Gender Justice illustrates the inhumane, brutal and unlawful treatment handed down to sex workers.

The position of the ANC is supported by the findings of the High Level Panel chaired by Mr Kgalema Motlante which indicate that sex workers are subjected to abuse and exploitation which is offensive in our constitutional democracy.

Furthermore, the President in his State of the Nation Address on 16 February 2018 stated as follows : “We affirm that no liberation can be complete and no nation can be free until its women are free.” This is a seminal statement and must serve as a reminder to the SALRC that criminalisation of sex work is a tool through which women are subjected to the worst kinds of oppression. Therefore, the retention of any legal instrument that seeks to criminalise sex work must not be tolerated any longer.

Finally, the CGE investigation into complaints of violence and harassment by SAPS members confirms that decriminalisation is the only reasonable solution which will restore dignity and human rights to all sex workers in South Africa.

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