**Submission to the Parliamentary Multi-Party Women’s Caucus on the South African Law Reform Commission Report Project 107 – Adult Prostitution**

**and request for**

**Oral Submission at the Summit on 5 March 2018**

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**Context**

Even though South Africa has been enjoying democracy for over two decades, the inequalities between white and black, man and woman, and rich and poor still persist. It is therefore no wonder that the vast majority of the estimated 153 000 prostituted persons in South Africa, are poor black women, who mostly have entered prostitution because of lack or minimum choices, but mainly poverty. Women in prostitution do not wake up one day and decide to be prostituted, but prostitution is chosen for us by our colonial past and apartheid (which limited our access and protection of basic human rights like education, dignity and security of the person as enshrined in the constitution), persistent inequalities, poverty and patriarchy.

**Kwanele**

KWANELE is a movement of survivors of prostitution formed by survivors, for survivors, predominantly black women, living in South Africa. We dream of a life free from oppression, patriarchy, violence and economic inequalities. A life where we have access to a wider array of dignified and decent employment and economic empowerment options. Where we can participate as citizens, and where we can exercise our rights as humans and not a key population (sex workers). We declare that prostitution is an embodiment of violence and sexual exploitation making it one of the worst forms of violence against women.

The South African Law Reform Commission (SALRC) released its report on Project 107 Adult Prostitution making recommendations on which legal option South Africa consider to address the issue of prostitution.

This is after many years of hard work and research by the commission. We appreciate the use of the term prostitution that the report quotes, in accordance with the fact that its legal term is prostitution and not sex work.

The Commission recommends two options. Option 1 being the partial criminalisation (criminalization of all aspects of prostitution with the exception of the seller) with a diversion programme, and Option 2 which is to retain a fully criminalised legal framework with a diversion programme to prohibit prostitution in South Africa.

These were two the recommendations despite the mounting evidence (globally regionally and nationally) that full criminalisation (which is what we have had for the past ten years) has not, and will not reduce prostitution, nor has it or will it improve the lives and access to basic human rights for those who are bought, sold and exploited within the system of prostitution.

The first recommendation of partial criminalisation as an option is the only promising legal framework that will reduce prostitution, improve the lives of and access to basic human rights of those who are bought, sold and exploited. Evidence shows that criminalising of those who are bought and sold in the system of prostitution has resulted in high levels of violence from the men who buy sex, pimps, brothel owners, the police and the community at large against prostituted persons.

A study by Sonke Gender Justice reported in Bhekisisa Centre for Health Journalism (<http://bhekisisa.org/article/2017-07-31-00-nine-factors-that-make-a-man-more-likely-to-beat-and-rape-a-woman>) shown that men who buy sex, have sexual entitlement, multiple sexual partners and those who engage in transactional sex are more likely to beat or rape a woman.

We welcome the first recommendation of partial criminalisation or more correctly partial decriminalisation of prostitution (criminalisation of the system of prostitution with an exception of the seller) with an understanding that the seller in most settings does not freely choose to be prostituted, but that prostitution is chosen for us by our colonial past and apartheid, persistent inequalities, poverty, past sexual and physical abuse, the pimps who take advantage of our vulnerabilities and the men who buy us in prostitution and therefore they should remain criminalised. But the recommendation by the commission is not clear on some aspects of this option such as its implementation, and who will be diverted and how.

We call for:

* Parliament to advise on policy with regard to the system of prostitution to free women from violence, patriarchy, oppression and stigma and enable prostituted women to exit.
* Recognition and treatment of the system of prostitution as violence against women as per qualification of it in international human rights law (Article 6: UHRD)
* The piloting of Option 1, even under the present law, to gather evidence of its effect, because Option 2 is already in place and is not working.

**APPENDIX**

KWANELE

Survivors of Prostitution Manifesto

Inaugural Dialogue

Melville, Johannesburg, South Africa

May 2017

We, the survivors of prostitution gathered at this dialogue from 14 – 20 May 2017 in Melville, Johannesburg declare that prostitution is men’s violence against women.

We are gathered as predominantly black, poor and disadvantaged women who live in South Africa.

Women in prostitution do not wake up one day and “choose” to be prostituted. Prostitution is chosen for us by our colonial past and apartheid, persistent inequalities, poverty, past sexual and physical abuse, the pimps who take advantage of our vulnerabilities and the men who buy us in prostitution.

Prostitution is an embodiment of violence and sexual exploitation, becoming one of the worst forms of women's inequality and a violation of basic human rights.

Many women in prostitution have been severely injured or murdered by their pimps and the men who buy us.

Many suffer ill-health and mental trauma, unwanted pregnancies, cervical and throat cancer as well as HPV, HIV and other sexually transmitted infections.

We have been dehumanised, humiliated and stripped of our dignity.

Physical violence, rape and degradation are often inflicted on us by men who buy us, pimps, recruiters, and police. The public either judges us as “whores” or thinks we make a lot of money.

The conditions of women in prostitution are worsened by laws and policies that treat us as criminals, as the scum of society. On the other hand, buyers, pimps, managers and sex trade and brothel owners are not made accountable. Our conditions are worsened by the lack of political will to implement laws prohibiting the buying of sex, pimping, brothels, and other prostitution enterprises.

Most women are drawn into prostitution at a young age, some as young as 13 years old. Victims of prostitution have almost no resources to help them exit. There is currently no government psycho-social support or economic empowerment programmes to provide alternatives for women in prostitution.

Women in prostitution dream of a life free from oppression, patriarchy and economic inequalities. A life where we have access to a wider array of dignified and decent employment options, where we can participate as citizens, and where we can exercise our rights as human beings, not as “sex workers.”

The South African Constitution and the international human rights law, grant women's fundamental human rights such as to dignity, equality, integrity, freedom from oppression and exploitation and security of the person.

Section 12. (1) of the Bill of Rights states that:-

“Everyone has the right to freedom and security of the person, which includes the right:-

(c) To be free from all forms of violence from either public or private sources.”

(e) Not to be treated or punished in a cruel, inhuman or degrading way.”

We, survivors of the sex trade declare that: -

1. Prostitution must be eliminated. Thus, it should not be legalized or promoted.
2. Prostituted women need services to help them create a future outside of prostitution, including legal and fiscal amnesty, financial assistance, job training, employment, housing, health services, legal advocacy, residency permits, and cultural mediators and language training for victims of prostitution.
3. Women in prostitution need governments to punish traffickers, pimps and men who buy women for prostitution and to provide safety and security from those who would harm them.
4. The Law Enforcement Agents and the Police should stop harassing, exploiting, arresting and deporting migrant prostituted persons but should rather offer support and protection.
5. The Law Enforcement Agents and Police should arrest the perpetrators of prostitution.
6. Any form of police harassment of women in prostitution, including prostituted migrant women should come to an END.
7. The current law that criminalises prostitution targets the bought, sold and exploited. It further victimises them and does not prevent or provide for exit. Criminalisation of the bought, sold and exploited is not an effective way to eliminate prostitution.
8. Prostitution is not “sex work,” and sex trafficking is not “migration for sex work.”
9. Our government should not consider decriminalising the sex industry, as that would be giving pimps and buyers legal permission to abuse women in prostitution.
10. Our government should create an enabling legal environment for the prevention and elimination of prostitution as well providing support for exit, by adopting the Equality Law on prostitution, which is the only promising legal framework to end prostitution.

As survivors of prostitution, we will continue to strengthen and broaden our unity, to engage with all stakeholders, including parliament, the government, and the general public. We will organise and mobilise others who are exploited in prostitution and the sex trade, and will work with our allies to promote equitable legal frameworks to promote and protect the human rights of victims of prostitution.