



Correspondence addressed to:

Deputy Director: Policy
Secretariat for Safety and Security Gauteng Province
Attention: Mr Sylvester Rakgoadi
Regarding: NGO Submission regarding Draft Policy Document on
Decriminalising Sex Work

Correspondence from:

The House Group
Jean du Plessis
Chief Executive Officer
Regarding: NGO Submission regarding Draft Policy Document on
Decriminalising Sex Work

Addendum:

Sex Work: Decriminalization

*Paper Presented By Sylvester Rakgoadi
Secretariat For Safety And Security, Gauteng Province*



THE HOUSE GROUP
P O Box 18557
Hillbrow, Johannesburg
2038, South Africa

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Deputy Director: Policy
Secretariat for Safety and Security Gauteng Province
Private Bag X61
Marshalltown
2107

Attention: Mr Sylvester Rakgoadi
Regarding: NGO Submission regarding Draft Policy Document on
Decriminalising Sex Work

Dear Mr Rakgoadi

We heard through the grapevine about the abovementioned draft policy document and eventually located one from a Salvation Army source. Our organisation has been working exclusively with prostitution for the past six years and during that time we have instigated much media coverage regarding these problems. The House also featured about 80 times in the local, national and international media, taking into account television, radio and printed media. We are thus surprised to learn that our address does not feature on your resource list and hope that you will correct this oversight.

During the past six years we created a variety of resources to address the problems of prostitution in Johannesburg and especially with regards to teenage prostitution we are very active on a national, African and international level. We were guest speakers at the first national conference on child prostitution hosted by the HSRC in association with the Department of Welfare. Our organisation is also the only South African project that contributes to the International Conference Against Child Commercial Exploitation, to be held in Stockholm during August 1996. Since we work with these issues on grassroots level we have an in-depth insight into the matter that few other organisations share. Grassroots and hands-on are not our only aspects since we also facilitate academic studies for local and international research authorities.

We requested our various projects to attend to this matter and to submit their

remarks on the draft policy document to you. Please expect input from Hillbrow Drop-In Centre, Intombi Shelter, The House - Field Work Project, HIV/Aids Outreach to Sex Workers, Entembeni Shelter and Mary Magdalene Chapel for street girls, in the near future.

Submission

Since the decision to decriminalise the sex-for-sale industry carries tremendous long term implications we have to assume that the compilers of the draft did extensive research before attempting to formulate policy on this very sensitive issue. We therefore assume that the relevant statistics and figures are known. With this in mind we provide the following comments, pausing for a moment to mention that it is not as much that which is said, but what is not said, which is most bothersome about the draft.

Irrational Motivation Of The Draft

The motivation, or reason for the draft, is presented as a perceived solution to two problems - the humanitarian problem of rights for sex workers, and the so-called cost-of-policing problem. It is our assumption that both 'problems' arise from unwillingness to protect the citizens of this country from the depravity of a small number. We understand this draft to be an attempt to capitulate to a growing social injustice. Furthermore we believe the draft neither understands the so-called problem or the implications of the so-called solution it proposes.

The draft poses the motives for its existence as twofold:

- Firstly the supposed humanitarian aspect that sex workers will be safer since they will have the right to organise and will have recourse to the law, and they will have access to medical treatment.
- The second motive is the alternative deployment of the costly police force and court officials now so very busy arresting and processing sex workers instead of investigating "serious crimes".

Our comments with regards to the first issue - the organisation, safety and health of sex workers. If all sex workers are expected to do HIV tests, will the legislators turn the current confidentiality statutes around for these people? Should they carry certificates of health, will they be compelled to undergo tests (infringing on their individual rights)? How will HIV infections be managed and diminished? Can those certificates be forged, like money, and can they be bought like passports in Hillbrow, for R80? If a test costs the Government R200 and each sex worker takes a test

every three months, the (currently illicit) 60 000 sex workers in the country (expect this figure to escalate dramatically once it is decriminalised) will cost the tax payer R40 million per year in tests alone.

These persons already have access to medical attention and hospitalisation. Decriminalisation will not change this scenario to their benefit. The statement that sex workers will organise into unions is very idealistic since it does not take stock of the fact that brothels and escort agency operators are essentially unscrupulous people with very little social conscience. Your research must show the statistics of violence between rival gangs and syndicates in this trade. If your research was shabby and did not show these, ask the older SANAB officers (those not involved in the trade themselves) about the bombings, killings, looting, extortion and mayhem these operators inflict on one another - not to mention the very scary things they often inflict on girls who go against them. Does the legislator hope the jackal to change overnight or will these people be policed more severely than before?

With regards to the, future decriminalised, sex worker's recourse to the Law we feel that the draft again misses out on the true facts. The issue of rape is a moot point that must be dealt with separately. The draft states that decriminalised sex workers will not be robbed and will not rob but the reasons why these people suddenly changed their ways are not explained. One gets the opinion that the draft does not know that most sex workers are drug addicts and that they are motivated by that primal need and not by the humanitarian ethic of the enjoyment of legal status. It is this naiveté of the draft that tells of its inherent problem, that it does not understand the real issues. The sex work and illicit drug trades are intrinsically linked. For a sex worker to take recourse to the Law when maltreated is to ask to be murdered or to invite violent retribution. Legislators must ask themselves whether they would threaten a person by laying charges against him/her if the legislator's everyday job involved going naked in strange beds three to five times a day, with unknown persons of deviant nature, in compromising vulnerable positions, especially if such legislator lives amidst the violence and desperation of the illicit drug trade? The common stories on the streets tells of clients and pimps executing retribution by pool acid in the face or vagina, with broken bottles, by drug administration, by drawing the girl in under the auspices of a S&M session that ends up going horribly wrong - disfiguring the girl. This is classical street justice, and the Draft proposes that it will cease when the trade is empowered with legal status!? Under the current conditions, where it is criminal to indulge in prostitution and clients and pimps fear the Law, the women are being abused and victimised. Decriminalisation will only

serve to empower these perpetrators and the only constraint, that of being an illicit operator that cannot afford to 'rock the boat', will be removed. The girls cannot afford the luxury of legal retribution. To make recourse to the Law a real possibility will take so much very expensive policing (maintaining a 'Prostitute Unit' that endeavours to protect 10 000 girls of the night), that it will please our organisation endlessly.

Regarding the second issue, of utilising the police force elsewhere - "where more needed". During the past five years The House buried more than 200 girls, most of who died from violent crimes. Sometimes these crimes are drug related but mostly the death seems to be related to street politics and perversion. Brixton Murder and Robbery Unit go to extremes not to investigate these crimes, for reasons one can only guess at. There are so many of these incidents that to mention examples will be exhausting but one case in which we tried to motivate proper policing by means of media pressure was that of young Cheeky, or Jeanette Deetlefs, who died of strangulation in 1994 - also enquire about the death of her boyfriend Mark Francis and so many other deaths that go without policing. Mr Billy Cox from this unit should be able to fill you in on the realities of how evidence gets lost, how members of the police force are involved, how these crimes are not investigated - and then he too will suffer the retribution of the underworld.

If the dream was for these girls to have real recourse to the Law the legislator should budget for seven times the police force it currently has. We deal with an average of forty girls per day - at least three will report rapes, two will report having been violated in other ways and at least one other will complain about being a victim of another crime. Our experience shows that 16% of all girls experience criminal violation every day. If this figure is accurate and generic, and we believe it is, Hillbrow Police Station alone can prepare themselves for an additional 300 to 400 cases every day - adding up to more than three times their current case load.

The draft also mentions certain rules the girls will have to comply with (area of operation, registration, etc.) and the automatic question is who will be doing the enforcement or policing of that? How many officers are budgeted to manage the 10 000 prostitutes currently employed in Gauteng?

The draft mentions that children will be excluded from brothels by this proposed legislation - how will it be done without policing every club and brothel, and how many police officers do the legislators budget for, for this purpose? Even today, and

during the past ten years, when prostitution and child prostitution and illicit drug trafficking is illegal the police is impotent to even know about the various operations. During the past ten years the drug and prostitution trade only escalated into epidemic proportions and the police force is impotent to arrest it, not to speak of eradicating it. We have been dealing with child prostitutes in the various clubs for many years now, and not without the knowledge of the SAP, CPU, Welfare and SANAB but only a few children were removed from these places and hardly any arrests were made.

We do feel that the draft attempts to lie to the public with regards to the amount of police officers involved in policing prostitutes and we urge the legislators to publish those figures their research has shown. We are similarly concerned that the draft wilfully aims to mislead with regards to the case load of sex workers being incarcerated and processed by the courts. We ask that those figures, the legislator's informed research shows, be published and that a cost/benefit analysis be shown instead of the vague misleading statements currently in the draft. We are informed enough to allege that this draft aims to wilfully distort these figures to 'sell' a lie to the public. Why such a lie is necessary can only be postulated about. We can only figure that the Government needs some excuse to decriminalise sex work. If this is the case, we humbly request the legislator to concoct a more credible and more informed reason. The truth of the matter is that to control the sex-for-sale industry, even superficially, will take twenty times more police officers than are currently dedicated to policing of it.

We believe that both motives for this draft policy are redundant and that new motives should be found before proceeding with this travesty.

Rape Of A Prostitute Is Not Defined

The draft refers, almost naively, to the concept of rape of a prostitute, something that can only be so called when prostitution is illegal. In a scenario where prostitution is decriminalised it is not rape but a dispute between the agreements of sale. The seller claims in court that the buyer did not pay sufficiently for the type and quantity of goods he/she allegedly received (or took by force). The buyer alleges that the seller did not provide the goods as agreed and that he will settle for less payment, if any, or that the agreement was for the type of service that was enjoyed by the client. It is essentially a matter of commerce and the word of the supplier against the word of the buyer. Rape of a legal prostitute is traumatised in court since it must be treated not as a sexual offence but as a business transaction in dispute. Can the

prostitute charge the buyer with rape or should he/she take recourse to the small claims court.

Attorney must argue in defence that the client did not rape but committed petty theft to the value of R100. This Draft objectifies women, making their genitals into a commodity. Will future rapists leave a R5 coin with their victims and claim that it was a legal business transaction? Is this what the proposed legislation aims at?

Legal Prostitution Is Not Defined By The Draft

The draft does not define sex work and neither does it define the legal limitations of this trade that commercialises the darkest ugliest side of abnormal human sexuality. Again the draft does not say whether incest, anal sex, bestiality, fetishism, necrophilia and other sexual deviance can be legal in the context of prostitution. The draft does not even attempt to address the most obvious negative aspects, the inherent deviance, of this trade. This aspect is one of the more disturbing elements of the draft, the fact that it negates reality, or it refuses to show that it is aware of the truth - that it is busy making legislation to manage the commercial trade in (mostly) female genitals and human sexuality. The legislator must be crude enough to understand that he/she decides whether the repeated insertion of a penis or an instrument into a vagina is legal trade - and then, when the act is performed by another female person, a male person, a dog or other animal, a group of men or people, with a paying audience present, etc. Would the legislator determine legal instruments for repeated insertion into a prostitute's orifices? Would bottles be regarded as legal, and if, would broken bottles be regarded as illegal? Would the legislator determine legal orifices? May a child watch a prostitute in action? We ask because we treat many girls every month that were perversely raped by very sick people, in very sick ways, and the imagination is boggled by what these persons need. We ask the persons concerned to look up their facts in the studies they made of this very intricate trade before again taking to this issue so flippantly.

No Age Limit Is Proposed

This matter is most serious of all since the legislator now has to decide what constitutes illicit prostitution with regards to age limits. One would have hoped that the issue of child prostitution would receive more consideration than is reflected in the document. One option many people would like to follow would be that of the 'definition of a child' as UNICEF would do it.

This would bring one to the point of stating that it is legal for an 18 year-old to engage in sex work and illegal for a person younger than 18. How would this age

limit deal with the current Statutes of the sexual offences Act? This age limit would effectively mean that commercial sex work becomes a legal career opportunity for school-leavers. In this case we suggest that proper career guidance and job training be done by the responsible authorities. Schools should incorporate this guidance in their syllabus and colleges for prostitutes should be set up to teach the intricacies of this, the most dangerous trade in the world. We doubt whether the public will accept this job creation opportunity from the Government with delight. How many jobs are being created for young adolescents, twenty thousand or more? Will the increase in supply drop the prices? Does this Draft expect the economically disadvantaged women and children it refers to, to do this job for R150 a time or would R20 a time also do?

Given the proven degree of danger (emotional, mental, social, spiritual and physical) associated with this occupation, we cannot else but believe the decision to enter this life should be made by sane adults on behalf of themselves only. Since 21 years-of-age is regarded as the minimum age limit to enter into a legal contract and to make decisions with long term impact, such as marriage, we believe this to be the only acceptable minimum age limit for prostitutes. It should be illegal for parents or any other person to benefit materially from another person's prostitution.

Should the age limit be lower than 18 this Government must expect the most vehement reaction that can be brought about by The House and all of the public that it can muster behind it. We promise to engage every possible parent and other devices to make decriminalisation of child prostitution impossible.

Public Awareness

The draft states that it will be the policy of the Province to oversee a public awareness campaign to uplift the image of the sex worker. We simply cannot accept that one can run a programme teaching the people (that includes educating the children of today) that it is nice, necessary, moral and acceptable to sell the use of one's genitals to buyers. Furthermore to teach the people that Mr and Mrs Sexwale and Mr Mandela sanctions it that young girls suck the penises of depraved men for money; that these girls barter their orifices for unnatural sexual acts for money because, as the draft states, "women become sex workers primarily because of economic necessity" - is totally unacceptable. We believe that neither Mrs Sexwale nor Mr Mandela are prepared to sanction depraved sex because, as the draft suggests, women need money and men need unrestrained sex. No responsible government can survive such a marketing drive and no campaigning Premier should

be as foolish as to attempt to moralise and commercialise human misery.

In response to this Draft we are launching two campaigns to assist the Gauteng Provincial Government to think clearly with regards to this issue. Both campaigns will pre-empt the marketing drive the Draft promises. One campaign will be aimed at school children, soliciting school-leavers to enrol in a college for whores where they will be taught the skills of the trade - how to handle anal sex, oral sex, orgies, drunk and rough customers, instrument sex, etc. If the Province is right in their thinking, the mothers and fathers of Gauteng will be very excited about such a responsible action to teach their young ones how to survive the most traumatic job on earth. Another campaign will be aimed at female job seekers and will solicit recruits for brothels - young women who would like to be beaten, raped, sexually violated and objectified and degraded beyond human imagination. We hope that Mr Mandela's office will deal with the applicants. This constitutes our contribution with regards to the marketing and public awareness campaign the draft hopes to facilitate.

Mental Health Services

The draft makes mention of health services to be available to sex workers. We know that due to the traumatic nature of the work all the young persons we work with need in-depth therapy. They present with severe psycho-pathology that can only be corrected by years of professional therapeutic effort. We have about nine counsellors, variously qualified, who are kept very busy. Our estimation is that about 60% of all the prostitutes need at least six counselling sessions each year to sustain them in their jobs. To assist them to correct their lives one must look at a two year programme of one session per week. All the women who stop working as prostitutes require mental health therapy. If the Province aims to sustain only, then it must provide a minimum of 36 000 counselling sessions per year - that is about 40 therapists. If the Province hopes to assist the 6 000 girls to attain to mental health upon termination of their sex work careers it should provide another 120 000 sessions each year if only 20% of the current number of girls decide to stop the madness and horror they live every day - that is another 125 therapists. Rehabilitation resources for the above number of girls will have to include therapeutic accommodation facilities for about 1 500 girls at any given time.

The House has been battling without resources and financial assistance from the Province for six years now. Under the proposed new dispensation we can surely expect the Province to carry our budgets and provide resources for the retrieval and rehabilitation of these girls. Our combined budget does not exceed R700 000 per year. We however work only with girls and can only provide therapeutic resources

for 20 girls at a time. We therefore propose that the Province fund and fund projects to see to the health of the boy children as well.

Recommendations

We recommend that the legislators take a serious look at their research and either evaluate that or evaluate their own ability to become existentially and objectively involved in this very trauma they now commercialise and decriminalise.

It is clear that the sex worker arena is screaming out for control measures or alternatively for proper policing. The decision on how to continue correcting the problem may be an economic one, but the attempt to sell it as a humanitarian decision is failing dismally. Along economic lines of thinking the future can be determined by calculating the cost of REAL and ADEQUATE policing to subdue the trade in human misery (and perhaps for once the drug trade will experience some policing as well) - this cost can be weighed against the calculated cost of REAL and ADEQUATE control measures in a decriminalised environment.

It is our proposal that the most cost effective method would be to criminalise sex work. If the Sexual Offences Act is sharpened to make real policing and justice procedures possible, and a new police unit, specialising in this scenario is sent in to the main trouble spots (not SANAB, they are part of the problem), this would be more cost effective than to responsibly decriminalise with control. The idle Defence Force can initially be used to clean up this mess. Such an action would earn votes at the national polls as well.

If the reason for the intended legislation is simply to create jobs, then the government should expect most vehement opposition.

Should the motivation behind the proposed decriminalisation be truly to organise and benefit those poor creatures trapped in this hellish lifestyle, then the income from taxes will be adequate to pay for the increased police force, primary health, mental health and rehabilitation resources needed to control, manage and monitor this trade in human misery.

Whichever way around we see only two ways out of this corner you find yourselves in - increase the police, therapeutic, health and control force, or, ignore the issue. Either you increase the policing to criminalise or you increase the policing to decriminalise - alternatively you may decide to do what the old government did,

irresponsibly ignore the problem until it slaps you in the face and then send the army in to clean up.

We further recommend that you **liaise** with other Government bodies who have in the past requested our input on the issue of child prostitution and decriminalisation of prostitution. Legislators will also benefit by looking into international policies that are currently in the news. There are various international bodies who specialise in facilitating proper controls of the sex-for-sale trade to benefit not only the public and the children but also the women who find themselves in this misery.

We further recommend that this Draft be referred to the Constitutional Court since it grossly objectifies all women and it is an attempt of the Government to shun its responsibility toward the necessary policing of depravity.

Finally, we understand this Draft to be likened to capitulating to the escalating anti-social phenomenon of violence in the country, and decriminalising it within the bounds of certain geographical areas, such as Kwa Zulu Natal for instance – perhaps like Pilate washing his hands because of the difficult task to protect the innocent.

Please expect contributions from six of our other projects.

Thank you for the opportunity to submit our views

Jean du Plessis

Chief Executive Officer

Addendum:

Sex Work: Decriminalization

*Paper Presented By Sylvester Rakgoadi
Secretariat For Safety And Security, Gauteng Province*

SEX WORK: DECRIMINALIZATION

*PAPER PRESENTED BY SYLVESTER RAKGOADI
SECRETARIAT FOR SAFETY AND SECURITY, GAUTENG PROVINCE*

Background

The Gauteng Cabinet Committee on Safety and Security and Quality of Life mandated the Gauteng Ministry of Safety and Security to draft a policy document on Sex Work and to provide Cabinet with crime statistics on sex work. The mandate also entails monitoring the way in which police utilise their resources in policing sex work with the view to effecting the process of reprioritising policing activities.

The Ministry produced a draft policy document on decriminalisation of sex work which was distributed to a wide range of role players, for comment. Submissions were made to the Ministry and the draft policy document was refined and discussed further with the role players. A Task Team was set up after the workshop to prepare a report to the provincial Cabinet. The Gauteng Cabinet endorsed and approved the recommendations of the Task Team and suggested that the Gauteng Ministry consult with the National Ministries of Justice, Welfare, Safety and Security, Health and Education.

The South African Human Rights Commission, Gender Commission, among others, supported decriminalization of sex work. The African National Congress, at its national conference in Mafikeng in 1997, supported the Gauteng initiative to decriminalize sex work.

South Africa's Transition to Democracy

South Africa's transition to democracy requires a radical transformation of all state institutions. In restructuring itself, the police institution embarked on a process of reviewing its priorities and sought to align its new priorities with those of the Government, which place much emphasis on the provision of an effective, efficient and people-oriented police service. The challenge facing the police services is to utilize its limited resources (both logistical and human) in a cost-effective, efficient and effective way, in the wake of the increasing rate of violent crimes. The shift in perspective enables the police services to pay more attention to serious and violent crimes, instead of sex work.

There is a wealth of literature and research material that reveals the depressing status and conditions of sex workers. Sex workers are abused, beaten and killed by clients and pimps. They do not have recourse to the law because their activities are criminalized. Lack of recourse to the law encourages clients and pimps to engage in

criminal activity. The criminalization of sex work creates an environment conducive to ancillary crimes. Crimes ancillary to sex work may be seen as a by-product of the environment to which society consigns sex work.

Moreover, sex workers are despised by the public, harassed by the police and incarcerated as criminals. Criminalization and marginalises sex workers lead to their exploitation. Sex workers are deprived of their basic human rights.

Status of women

Women become sex workers primarily because of economic necessity. Women often become sex workers because sex workers' earnings are higher than the earnings of other unskilled women. Moreover, few alternative jobs are available to women. Social values about women also restrict the jobs available to women. Sex workers are often "forced" into their occupation due to economic need, limited opportunities and the impact of male domination on women's economic position. Sex work is symptomatic of gross gender inequality and power imbalance in a patriarchal society.

Decriminalising Sex work

The process of democratising South African society and the principles enshrined in the Constitution lay a solid foundation for the decriminalisation of sex work. The transformation from apartheid rule to democracy brings into being a new set of values based on the protection of and respect for human rights of all citizens of South Africa. Thus, decriminalization is a necessary part of democratizing South African society.

The Constitution grants all citizens the right to equality, dignity, privacy, freedom and security of the person, freedom of trade, occupation and profession.

There is a general move towards the decriminalisation of less serious offences. Judging on the reports of the Attorneys-General, it is clear that the road towards decriminalisation of acts around sex work has already started.

Decriminalisation of sex work would:

- Advance the process of democratising South Africa by affording sexworkers their human rights;
- Result in the repealing of laws that discriminate against sex workers and women, in general.
- Eradicate the stigmatisation (labelling) and marginalization effects of criminalization that allows for the exploitation and harassment of sex workers;
- Eradicate the exploitation of sex workers;
- Afford sexworkers equal status before the law, equal protection and benefit of the law;
- Give sexworkers control over their own lives, a sense of autonomy, in both a personal and commercial capacity;

- Improve the status and conditions of sexworkers by affording them recourse to the law. It would enable them to resort to state protection (including the police) as do other members of society, without fear of criminal sanction or public reprisal;
- Protect sexworkers against crimes to which they are subjected by clientele and law enforcement agencies, particularly the police and thus reducing ancillary crimes;
- Facilitate the re-allocation of police resources in a cost-effective, efficient and effective way. It would enable the police services to concentrate on policing serious and violent crime.

The South African Police Services has a major task at hand, that of reducing the crime rate. The police do not have the requisite resources to combat crime. They seek to revamp their modus operandi and to re-prioritize their work in the wake of incidents of serious and violent crimes. With the decriminalization of sex work, the police would be freed from policing sex work and would be able to attend to the more serious crimes such as murder, assault, car hijacking, child abuse, domestic violence and robbery. As the police focus more attention to serious crimes, the courts and prisons will be relieved of a massive burden of processing (i.e. sentencing and incarcerating) sex workers.

The shift in police priorities would help reduce opportunities for corruption by the police and other law enforcement agencies. Decriminalization would ensure that the police enforce sex workers' rights against clients and pimps and protect clients from fraud and robbery.

Health Considerations

Decriminalization is one of the responses to the growing concern about the spread of AIDS and other sexually transmitted diseases. Decriminalization provides an enabling environment for sex workers to use health and other facilities because they would no longer be seen and treated as criminals.

Sex work is a human rights issue. Mandatory testing of sexworkers for sexually transmitted diseases, including HIV and AIDS is at odds with and nullify decriminalisation because it:

- is an unfair discrimination against sexworkers;
- disempowers and stigmatises sexworkers;
- recrimilises sexworkers;
- is contrary to the spirit of the Constitution and the notion of an open society based on democratic values, social justice, equality and fundamental human rights;
- constitutes an unreasonable and unjustifiable invasion of the individual's constitutional and common law rights;
- breaches sexworkers' right to equality and affronts their dignity;

- disregard sexworkers' control over their bodies by violating their constitutional right to bodily and psychological integrity, which includes the right to security in and control over their body;
- restricts sexworkers' access to their occupation on unjustifiable grounds;
- is in direct opposition to the doctrine of informed consent, which is supported by various constitutional rights;
- requires an unprecedented level of policing on an ongoing basis, in both subjecting sexworkers to testing, and policing failures to comply;
- is an unforceable, ineffective, costly and detrimental practice;
- would drive sexworkers into clandestine operation;

Mandatory testing contradicts its alleged purpose of reducing or even controlling the transmission of HIV or AIDS, instead it increases transmission. Moreover, sexworkers can contract the HIV virus subsequent to being tested. Therefore, there is no guarantee that someone who tests negative today will not seroconvert tomorrow. It is illogical to target sexworkers in isolation from the rest of society. If the rationale behind mandatory testing is to protect public health, then all clients and all sexually active people should be subjected to mandatory testing.

Therefore, mandatory testing should not be considered as an option; educational programmes aimed at both sexworkers and the general public which alerts people about the possibility of transmission of HIV and ways of reducing the risk of transmission; encourage the use of condoms; wide scale distribution of quality condoms; encourage attendance at existing community clinics and create new clinics, with specific attention to the treatment of STDs; encourage the necessity of regular voluntary medical check ups; sensitise health care workers to deal with the specific needs and concerns of sexworkers so as to allow medical and other practitioners to conduct accurate diagnosis; institute life skills training for both the general public and sexworkers; establish transition programs for those sexworkers who wish to pursue other occupations; risk-reduction counselling; access to welfare services; encourage peer counselling;

Given the afore-mentioned effects of mandatory testing, the enforcing safe sex would not be successful. Therefore, the focus should be on targeting behaviour and not persons; and existing programmes which encourage safe sex for all sexually active people be strengthened or new ones be developed.

Registration And Licensing

The Department of Welfare is considering to establish a register for sexually exploited children. It already has a register for other categories of children in difficult circumstances such as missing children. The rationale for the register for "child prostitutes" is to be able to identify these children with the view to providing welfare services to them.

Like mandatory testing of sexworkers for sexually transmitted diseases, registration and licensing of adult sexworkers would, inter alia, disempower and stigmatize sexworkers; recrimilise them; restrict sex workers' access to their occupation; result in unprecedented level of policing on an ongoing basis, in policing failures to comply;

culminate in unenforceable, ineffective, costly and detrimental practice; and drive sexworkers into clandestine operations;

The registration and licensing of brothels could be dealt with under normal business practice. Brothels would be subject to a variety of existing laws and metropolitan and municipal by-laws such as nuisance by-laws. The municipality would then have the responsibility to enforce these by-laws with the assistance of the police services where necessary. The eventual inauguration of the metropolitan and municipal police services where necessary would enhance the enforcement of by-laws governing any kind of business practice.

Therefore, the process of setting up of metropolitan policing to deal with, among other things, general lawlessness and the effective enforcement of by-laws and existing regulations be accelerated. The existing loitering by-laws be reviewed in the context of the provisions of the Constitution. The focus on brothels be on the exploitative nature of operating a brothel and not on the brothel owner per se. Sex workers be encouraged to work collectively without the third party involved. Brothels be subjected to Labour Law and normal business practice. The Board referred to in the section on pimping, also be task with monitoring any form of exploitation of sexworkers in brothels. The protection of sexworkers be of paramount importance in the application of labour regulations or laws. Sex workers be provided with viable and realistic options to leave the industry; and sex workers have access to state protection.

Zoning

Sex workers are a heterogeneous group of both men and women, extending across all racial, cultural, sexual, financial and geographical boundaries. Similarly, those who avail themselves of the services provided by sexworkers, the clientele, are to be found in all sectors of society. Moreover, sex work has de facto zoned itself. Brothels are found in certain parts of cities, towns and township centres. Similarly, sexworkers who operate from the streets are found in some streets and not all streets. It is inconceivable to force sex workers in affluent, up-market places to operate in down-town places like Hillbrow.

Like mandatory testing, zoning of sex work restricts sexworkers right to chose where to trade on unjustifiable grounds; is an unenforceable, ineffective and costly practice; and drive sexworkers into clandestine operation.

Economic activity

The Constitution gives individuals the right to engage in economic activity of their choice. In pursuance of the Constitutional objective of freedom of economic activity, sex workers would be recognized as workers like any other workers who provide service to a clientele. Like other workers, sex workers would have the right to embark on collective bargaining. They could establish trade unions that would safeguard their rights and put an end to victimisation and harassment from the pimps, brothel owners, police, courts, and other powerful groups. Moreover, sex workers would also have access to social security benefits, unemployment compensation, health insurance and retirement benefits (old age pension).

Advertisement Of Sexwork

Sexworkers advertise their services in the newspapers and specific magazines. These adverts are subject to the provisions of the Publications Act as well as the new Labour Relations Act which prescribes the nature of advertisements. In line with the provisions of the Constitution on free speech, sexworkers have the right to advertise their services. However, like any other right, including those referred above, the right to free speech can be subjected to the limitation clause on reasonable and justifiable grounds.

It is highly unlikely that sexworkers would advertise in bill boards and other places which are open to the public. Sexworkers do not necessarily desire to attract attention using expensive methods such as bill boards.

Therefore, in cases where sexworkers advertise their services in newspapers and magazines this practice should not be the concern of the state or the public; existing laws and regulations that govern publications be enforced as is currently the case; and sex workers right to free speech should not be tempered with in an unreasonable and unjustifiable manner;

Drug Consumption

Under the present conditions which criminalises and stigmatises sex work, sexworkers consume drugs mainly to cope with being sexworkers and working under adverse conditions.

Thus, sex workers must have access to health and welfare services in a non-punitive environment and must be encouraged to go for counselling.

Trafficking

Trafficking in women relates to any behaviour which facilitates the legal or illegal entry into transit through, residence in or exit from the territory of a country, of women for the purposes of gainful sexual exploitation by means of coercion, in particular violence, threat, or deceit, abuse of authority or other pressure which is such that the person has no real and acceptable choice but to submit to the pressure or abuse involved.

The state should ensure that trafficking is criminalised and that traffickers are penalized through harsher sentences. Moreover, programmes that seek to protect women and children from being trafficked within and across borders, should be published as a matter of urgency. The state should penalize the coercion and exploitation of women who are forced into sex work or deterred from leaving it. Trafficking in human beings constitutes a fragrant violation of human rights.

Enforcement

Some of the problems with the enforcement strategies include the following:

- The deportation of victims of trafficking can help to perpetuate the crime of trafficking as it increases women's dependency on traffickers and makes it more difficult to prosecute traffickers. Moreover, deportation of victims is costly for the state.
- Very few trafficking cases make it to court and even fewer result in conviction.

- Even when traffickers are convicted, sentences are not harsh. Trafficking in women can be a lucrative trade with less risk than drug trafficking which has more severe sentences.

Lessons for South Africa

Legislative approaches to trafficking which other countries have taken can be instructive in the formulation of policy to eradicate the trafficking of women.

- Both the Netherlands and Belgium have introduced measures to prevent victims from being deported. These two countries give trafficked women temporary residence to allow women to recover and to encourage more reporting and prosecution of traffickers.
- In Belgium two NGOs have been established with the specific purpose of providing shelters for trafficked women. These NGOs have been given responsibility for implementing the victims policy for trafficked women.
- Swiss, Belgian and Dutch NGOs argue that women who wish to return to the country of origin should receive much greater assistance than they do at present. Moreover, there should be a reintegration component which enables returning women to receive counseling, training and job placement assistance.
- Trafficking can only be tackled through a multi-disciplinary and coordinated approach involving all concerned stakeholders and role players.
- Laws against trafficking focus on sex-work and sex-workers (and result in the arrest and deportation of trafficked women) but do not target traffickers and trafficking systems.
- Laws on trafficking are seldom designed to target abuse and violence, but focus only on public order and public health.

Child Prostitution

As a form of child abuse, sex work involving children is an emotive, complex and serious problem that requires deliberate and decisive state and societal intervention. Crimes against children have reached alarming proportions and immediate, drastic steps are needed to stop this devastating trend. Sex work involving (child prostitution) is unacceptable and requires criminal sanction.

South Africa has ratified the Convention on the Rights of the Child; the Rights of the African Child; the African Charter on the Rights and Welfare of the Child; Moreover, the Children's Charter of South Africa, the Constitution, the Child Care Act and various other Acts offer protection to children. South Africa is therefore obliged to implement these conventions through its laws and programmes. The provisions of these conventions are embodied in our Constitution.

Constitutional Protection

The Constitution's overarching principle in relation to children is that the child's best interest will be of paramount importance in every matter concerning the child. Thus, every child has the right to be protected from maltreatment, neglect, abuse or degradation; to be protected from exploitative labour practices; not to be required to

perform work inappropriate to the child's age or that places the child's well-being, education, physical or mental health or spiritual, moral or social development at risk; to have legal representation, paid for by the state, in civil proceedings which affect the child and might result in substantial injustice. The provisions of the Constitution provide the state with the necessary authority to deal effectively with any form of abuse and neglect which threatens the safety and well being of children.

The National Programme of Action for Children is one specific mechanism set up to deal with issues relating to the survival, protection and development of children.

In co-operation with and support of the other initiatives dealing with sex work involving children, the cabinet resolved that the "child prostitute" should not be further traumatized, stigmatized and victimised in the treatment process. The criminal stigma and marginalization must be eradicated in order to facilitate a more humane provision of services. However, decriminalising the "child prostitute" does not mean the "child prostitution" is decriminalised. "Child prostitution" as one form of child abuse remains unacceptable and must receive criminal sanction.

The process of ensuring that the services provided to the "child prostitute" are friendly has begun through collaboration with service providers, particularly those responsible for places of safety where children who are sexually exploited are kept.

The Department of Safety and Security, the Greater Johannesburg Metropolitan Council, the South African Police Services have embarked on an operation which will combat "children prostitution" in Hillbrow and Berea. Similar operations will be planned in 1998.

Decriminalisation In Other Countries

The process of decriminalisation of sex-work in South Africa could be seen as part of an international movement to decriminalise sex work. Most sex-worker advocacy groups including the Red Thread in the Netherlands, SWEAT (Sex-work, Education, Advocacy Task Force) in Cape Town, COYOTE (Call Off Your Old Tired Ethics) in the United States, the Prostitutes' Collective of Victoria (Australia) (PCV) and the English Prostitute's Collective support the decriminalisation of sex-work. By supporting decriminalization, these groups hope to remove the stigma surrounding sex work, as sex work would no longer be regulated by legislation that delineates sex work from other types of work.

The Gauteng initiative on decriminalization of sex work is in consonance with the international trend:

- The Netherlands has decided to decriminalise brothel keeping. Sex work itself is decriminalised in the Netherlands, however the keeping of a brothel was a criminal offence until September 1997;
- The city of San Francisco in the state of California in the United States has decided to decriminalise sex work and brothel keeping in line with a task force recommendation which concludes that prosecution of sex work exacerbates problems in the sex industry including violence, drug dependency and the marginalisation of sex workers. The task force concluded that the San Francisco Police Department does not consistently enforce laws against sex

workers except the most visible - those working on the street including African American, transgender and immigrant women.

Policy Implications

The government should, through an integrated approach, seek to address the socio-economic factors that give rise to sex work. Moreover, it should, together with non-governmental organizations, embark on a public awareness and education campaign to educate the general public about sex workers and their rights in order to influence and possibly change the negative perceptions and attitudes of the public in relation to sex work.

Although the police, courts and correctional services would be relieved from arresting, sentencing and incarcerating sex workers, unregulated and underground sex work, which often co-exist alongside regulated sex work would have to be monitored.

CONCLUSION

Law should reflect social need and not moral repugnance, unless those involved are so young that their involvement cannot be said to be voluntary. Sex workers rights are human rights. Decriminalize sex work in South Africa!! I thank you.

end