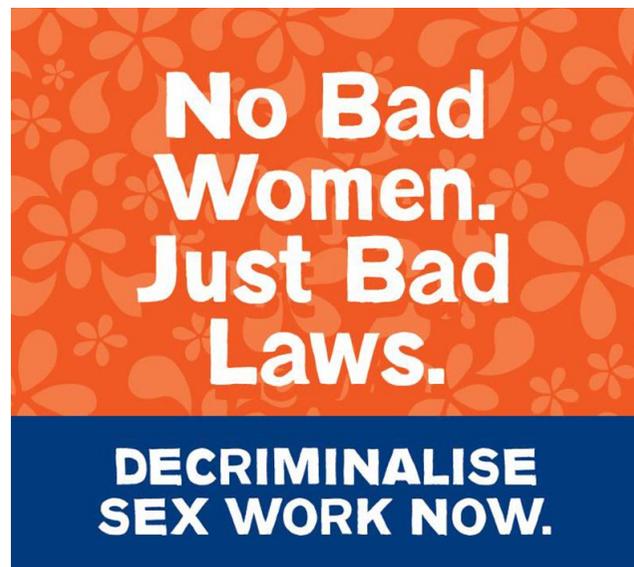


SOUTH AFRICAN LAW REFORM COMMISSION'S REPORT ON 'ADULT PROSTITUTION'

Overview and critiques



Asijiki AGM
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Zia Wasserman
zia@genderjustice.org.za
wasserman.zia@gmail.com
0726063309

Current Legal Framework

Sex work is currently criminalised in terms of:

- Sexual Offences Act 23 of 1957 ('Sexual Offences Act')
- Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 ('Sexual Offences Amendment Act'),
- Various provisions in the Criminal Procedure Act 51 of 1977
- Various municipal by-laws

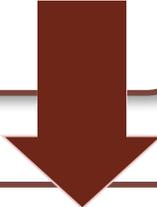
Section 11 of the Sexual Offences Amendment Act criminalises the *purchase* of sex

Section 20(1)(aA) of the Sexual Offences Act criminalises the *selling* of sex

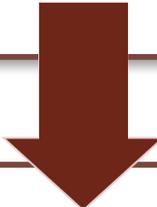
Law Reform Process

1997

Investigation into adult prostitution had as its starting point the investigation originally entitled '**Sexual Offences By and Against Children**'.



SALRC expands the scope of the investigation to include sexual crimes against *adults* and the investigation was renamed '**Sexual Offences**'.



1999

1st Discussion Paper = substantive law relating to sexual offences; contained a draft Sexual Offences Bill

Law Reform Process

2001

2nd Discussion Paper = sexual offences: process and procedures



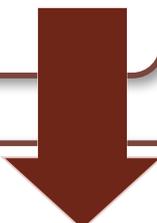
2002

Report on Sexual Offences is published, together with a consolidated draft Sexual Offences Bill



2002

'Adult Prostitution' Issue Paper released



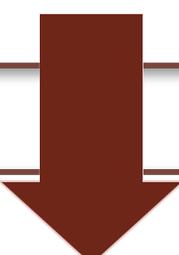
2009

3rd Discussion Paper = **Adult Prostitution**
SALRC begins preparing official report

Law Reform Process

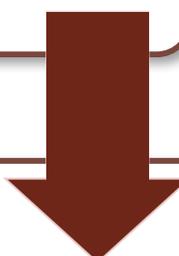
2015

SALRC hands report to Dept of Justice



26 April 2017

Report approved by Cabinet



26 May 2017

SALRC and DoJ release Report on Sexual Offences: Adult Prostitution

What does the final SALRC report say?

“The Commission is of the view that **exploitation**, particularly of women in prostitution, seems **inherent** in prostitution and depends on the external factors of gender violence, inequality and poverty and is **not caused by the legislative framework** in which it finds itself.”

“The Commission has concluded that changing the legislative framework could create an extremely **dangerous cultural shift** juxtaposed against the high numbers of sexual crimes already committed against women. Women would be considered even more expendable than at present.”

SALRC Report Recommendations

First option: Full Criminalisation plus diversion

- ✓ Both the sellers and buyers of sex are criminalised
- ✓ A prosecutor may divert a matter involving a person who is alleged to have committed a 'prostitution related offence' and may select an appropriate diversion option

Second option: Partial Criminalisation

- ✓ Remove criminal law from sex worker, but continue to criminalise the client

Criticism of SALRC Report

1. Inherent Bias

- The aim of law reform is clearly *abolitionism*:
 - Stated aim of the Report = "identify alternative policy and legislative responses that might regulate, **prevent, deter or reduce prostitution.**"
 - Similarly, respondents from the public are asked to state "how their preferred legislative option would affect the following issues: **reduce the demand for prostitution**"
- The pattern of argumentation in the Report is clearly biased in favour of the continued criminalisation of sex work.
 - Arguments that might support decriminalisation are held out as targets for rebuttal (arguments are made extremely briefly before rebuttals are offered)
 - Arguments that might support criminalisation, on the other hand, are often left unquestioned or simply repeated as fact

Criticism of SALRC Report

2. Illogical justification for continued criminalisation

- Criminalisation is ‘best option’ to reduce eliminate sex work, and thus the harms associated with it – YET no evidence to date
- Portrayal of decriminalisation as condonation of the abuse related to sex work
 - ✧ It is not – rather it is an acknowledgement that such abuses exist, and offers the most protection and recourse to sex workers who are perpetrated against.
- Report states that the harms suffered by sex workers can be separated from the legal dispensation
 - ✧ In reference to police brutality: “The chances of a change in the law addressing this abuse of power are negligible”

Criticism of SALRC Report

3. Failure to provide perspective of sex workers

- The sex workers presumably interviewed in the Researchers' evidence-gathering efforts are barely cited in the final Report
- Aside from a few exceptions, the only people identified as sex workers who are cited or quoted in the Report were participants in the "Rocking Chair documentary"
 - ✧ This film was produced and directed by the Christian Broadcasting Network (CBN)

Criticism of SALRC Report

4. Inadequate theorising of work and exploitation

- Authors of the Report use "exploitation" to describe forms of employment that a person enters into because they are poor/socially marginalised and so lack other options
 - ✧ Double standards for sex work (no proposal to criminalise other "exploitative" work)
- Report creates fissure between sex work as work and the need for decriminalisation, and sex work as exploitation and the need for criminalisation.
 - ✧ Some proponents of decrim consider sex work to be "inherently exploitative" as defined – yet still see decrim as the means to reduce harm

Criticism of SALRC Report

5. Failure to reflect the research on HIV/AIDS

- Wealth of peer-reviewed, academically published research showing the far-reaching harms of criminalisation of sex work (e.g. Lancet Journal)

- Commission's conclusion:

"One of the most vocal lobby arguments in favour of non-criminalising adult prostitution stems from the need to curtail the spread of HIV and other STIs and to provide access to adequate health care. The argument is that non-criminalising prostitution would enhance the health and safety of women who sell sex by enhancing their access to health care and increasing their practice of safe sex. However, there is **scant evidence** to suggest that these ideals are achievable in reality."

Conclusion

- The two decades that SALRC and government have delayed, postponed and waived on dealing with sex work and the law have resulted in hundreds of avoidable sex worker deaths; a scourge of sex worker human rights violations by police, clients and the general public; and an HIV/AIDS epidemic that has not been brought under control.
- The evidence of the on-going harm that is associated with the current criminalisation of adult consensual sex work is staggering and widely documented.
- The fact that the SALRC report recommends the status quo in the face of this evidence is deplorable and is evidence that SALRC, and all the Commissioners who signed off on the report, are out-of-touch with the realities of South African society
- The Department of Justice – has yet again – opened the process up to public consultation, which means that there is still no clear end in sight.