

DEFENDING A PROSTITUTE’S DIGNITY STARTS WITH SAYING ‘NO’ TO FULL DECRIM

On 8 February 2022, the Department of Justice and Constitutional Development re-opened the South African prostitution law reform debate. The Deputy Minister has been meeting with various stakeholders to discuss policy options – including the full decriminalisation of prostitution.

Currently, South African law fully criminalises prostitution and prostitution-related activities. The legal status of prostitution has been under consideration for several years. In May 2017, the South African Law Reform Commission (SALRC) published its extensive and authoritative [Report on Adult Prostitution](#), recognising that prostitution is exploitation and not work, and recommending that prostitution remain fully criminalised or, alternatively, partially decriminalised (meaning, only the acts of the prostitute are decriminalised).

The reality is that prostitution is a gross violation of human dignity and is inherently exploitative. It preys on the vulnerable and marginalised – making entering prostitution less of a real choice and more of a survival strategy. [Fully decriminalising an inherently harmful and exploitative system, is simply *not* an option.](#)

Human dignity and sexual exploitation are incompatible

Prostitution exploits the vulnerable

The SALRC Report notes the research proves prostitution in South Africa is exploitative: most women and girls who enter the system of prostitution are essentially coerced by their dire socio-economic circumstances which include [poverty, lack of education and inequality](#).¹ This means they are not exercising a free – or real – choice, but turning to prostitution as a [desperate survival strategy](#).

Many – if not most – persons in prostitution are [marginalised and vulnerable](#) by “*severely limiting socio-economic circumstances ... and ... social inequality*”.² The tragic reality is that [many women are forced by family members or circumstances to work as prostitutes](#) because the family [needs money to survive](#). Like [mothers who sell their bodies to feed their children](#). Having entered into prostitution, the system exploits the vulnerable even further. Prostitution is characterised by [high levels of gender-based violence and inequality – and together with poverty creates a system where women are treated as merchandise](#).

Fully decriminalising prostitution will only increase – and give an implicit nod of approval – to the exploitation of the marginalised and vulnerable. As one survivor of prostitution remarked, prostitution is based on a system of violence against women and the [exploitation inherent in it precludes prostitution from ever realistically being categorised as “work”](#).

¹ SALRC at [2.460].

² SALRC at [55].

From a human rights perspective, the Constitutional Court's observations in [S v Jordan 2002 \(6\) SA 642 \(CC\)](#)³ are insightful: the human dignity of persons in prostitution is not infringed by laws that criminalise prostitution, but rather by the very nature of prostitution itself.⁴

There is only one solution to exploitation through prostitution: abolishing the system of prostitution, eradicating demand, and supporting the vulnerable and marginalised.

Prostitution harms communities

The harmful impact of prostitution does not stop at the individual, but spills over into communities and detrimentally affects families and businesses. This is because prostitution is closely associated with other crimes and often takes place where urban decay – caused by poverty, inequality, and unemployment – has set in, only exacerbating the existing lack of social cohesion and environmental neglect.⁵

The SALRC contends it would be naïve to presume that fully decriminalising prostitution could separate prostitution and its surrounding crimes,⁶ and research evidence agrees. In countries where prostitution has been legalised, such as Australia and the Netherlands, the violence and criminal activity associated with prostitution continue unabated.⁷

Full Decriminalisation is NOT an option

Prostitution cannot be made safe: its trauma cannot be regulated away

Prostitution is [inherently harmful and exploitative](#). The SALRC interviewed prostituted women extensively. It found the extent of the [physical and psychological harm experienced by prostitutes, nothing less than horrific](#).⁸ [One of the largest international studies done on prostitution](#) found that 63% of women in prostitution were raped, 71% were physically assaulted, and [68% met the criteria for post-traumatic stress disorder on the same level as combat and torture victims](#).

The mere fact that money – or any other form of compensation – is exchanged for sexual services does not change the reality of the bodily and psychological violations experienced by prostitutes.⁹ These traumatic violations cannot be regulated away by a system of legalised prostitution but will continue to exist while the law turns a blind eye.

Detrimental consequences of fully decriminalising prostitution

³ S v Jordan 2002 (6) SA 642 (CC).

⁴ S v Jordan at [74].

⁵ SALRC at [2.457].

⁶ SALRC at [2.457].

⁷ SALRC at [2.457].

⁸ SALRC at [2.460].

⁹ SALRC at [4.289].

Research shows that full decriminalisation does not remove the abuse and exploitation inherent in prostitution, but on the contrary, it continues to exist and even increases.¹⁰ Most violence against prostitutes is inflicted by buyers.¹¹ One survivor left the system of prostitution after [she was almost killed by a buyer](#). Another survivor remarks that “[sex buyers are violent and they kill us without any mercy, it’s like we are not human](#)”.

According to the SALRC Report, buyer violence includes [being beaten, raped, robbed, abandoned in isolated places, left naked](#) and [thrown or being forced to jump from moving vehicles](#) (further exposing women to being robbed and raped by passing men).¹² The reality is that [when entering a car, a prostitute does not know whether she will come back alive – many women in prostitution have been brutally murdered](#).

When prostitution – or any aspect of the sexual exploitation industry – is legalised, it normalises buying sexual services which encourages men who would otherwise have been deterred for fear of criminal sanction, to buy sex.¹³ Consequently increases the demand for prostitution. Fully decriminalising prostitution only benefits those who gain from the sexual exploitation of others: [sex buyers, pimps and brothels owners, and sex traffickers](#).

Prostitution does not exist in isolation. [The decriminalisation of prostitution increases the market for commercial sex](#). Prostitution is connected to and overlaps with the system of sex trafficking much more when [compared to countries where prostitution remained illegal](#). Fully decriminalising prostitution also risks increasing rates of child prostitution (i.e. trafficking children for sex).¹⁴

Fully decriminalising prostitution only creates a [façade of legitimacy](#), which hides ongoing sexual exploitation from law enforcement oversight coupled with even less accountability for perpetrators.

Stopping demand by deterring sex buyers

Not all men engage in prostitution, in fact, most don’t.¹⁵ This means men are not instinctively driven to buy sexual services.¹⁶ Neither are men who do, inevitably compelled to – as this would (erroneously) imply some men are so impulsive they are unable to exercise rational decisions and self-control.¹⁷ On the contrary, research evidence shows that proactive and effective law enforcement against buyers [reduces the demand for prostitution](#).¹⁸ Educating sex buyers about prostitution [has also been shown to reduce demand](#).

¹⁰ SALRC at [4.292].

¹¹ SALRC at [3.115].

¹² SALRC at [3.115].

¹³ SALRC at [2.496].

¹⁴ SALRC at [2.509].

¹⁵ SALRC at [3.81].

¹⁶ SALRC at [3.42].

¹⁷ SALRC at [3.43].

¹⁸ SALRC at [3.64].

Helping the vulnerable and marginalised

The only way to truly help persons in prostitution is by providing them with viable opportunities to existing the system of prostitution – or better still, prevent them from feeling forced to turn to prostitution in the first place. [Education and training, coupled with job opportunities, give vulnerable and marginalised people access to better options than submitting to prostitution to survive.](#)

Real justice for persons in prostitution

Persons trapped in prostitution face a reality characterised by horrific abuse and exploitation that cannot be legislated away.

“As a poor black woman who was once trapped in prostitution, stripped of my human dignity, labelled and humiliated by our society, I plead with our government to restore our womanhood and not become a vehicle for promoting sexual exploitation, patriarchy, gender-based violence and gender inequality towards vulnerable women by decriminalising the system of prostitution and recognising it as work.” – [Hildah Nompoti Tlou](#) (survivor of prostitution)

The heinous human rights violations and inherent harms of the exploitative system of prostitution require an urgent and just response from government and civil society:

- Stop the demand for sexual services by keeping sex buying fully criminalised, and pro-actively and effectively prosecute offenders.
- Abolishing the system of prostitution by keeping the activities of pimps, brothels and others who profit or benefit from the prostitution of others, fully criminalised, and pro-actively and effectively prosecute offenders.
- Helping the vulnerable and marginalised to exit prostitution or never submit to it at all.

Take Action to Stop the Legalising of Sexual Exploitation in South Africa

The only way to stop the sexual abuse and exploitation of the system of prostitution system is to [ensure sex buying, pimping and brothel-keepers remain criminalised – and help those trapped in prostitution to exit the system.](#)

Fully decriminalising prostitution is simply not an option in a caring society based on human dignity, equality and freedom. All people have the right to be protected from sexual abuse and exploitation. All people should be able to enjoy real choices about how to make a living – and none should be forced into prostitution to survive.