

**Submission by COSATU on  
The South African Law Review Commission's  
Report on Adult Prostitution**

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**Submitted to:**

**Multi-Party Women's Caucus  
Parliament  
Republic of South Africa**

## **1. INTRODUCTION**

COSATU is the federation of workers' trade unions which represents just over 1, 7 million members. COSATU is submitting its comments on the SALRC Report as a representative of workers in South Africa. COSATU does not support the use of the term "prostitution" and instead considers the issue of transactional sex where adults participate to be "sex work".

COSATU is of the view that "prostitution" is coerced sex work where women in particular have no choice in the matter and is necessarily demeaning and women are victims. "Sex work" recognises the agency that women have even in conditions of inequality and recognises women's decision making power in capitalist systems.

COSATU understands that sex work is undertaken by people voluntarily and should not be conflated with human trafficking and sex slavery which are recognised as oppressive and criminal acts.

Whilst COSATU calls upon government to crack down on human trafficking and sex slavery with the full might of the law, we believe that sex workers should be not be criminalised. Rather alternative forms of employment, support and assistance should be provided to persons who due to desperation to earn an income, take care of their family, survive etc. have become sex workers. Prosecuting them is not appropriate.

COSATU further calls for the full decriminalisation of sex work, including the industry's clients. Criminalising the clients and decriminalising sex workers, may lead to instances where sex workers are threatened and physically assaulted by clients under threat of arrest and prosecution.

The police need to be allowed to focus on violent and the many other crimes ravaging South Africa and not to be chasing after sex workers and their clients.

Government should invest in providing safe, regulated and secure districts where sex workers can work without fear of being exploited, harassed etc. A prime example being the red light district in Amsterdam, the Netherlands. Such designated locations could then be assisted by the Departments of Health and Labour and the police to ensure that sex workers' health, human and labour rights are protected as well as to ensure safe health conditions for both workers and clients.

## **2. BACKGROUND**

COSATU has engaged with Sex Workers Organisations and NGOs that support sex workers for almost a decade. The organisation has resolved in 2015 that sex workers should be protected and that their work should be recognised as such and therefore, be decriminalised.

COSATU has engaged on the democratic processes that have led to this position from 2011 which led to the National Gender Conference of 2012 which recommended decriminalisation. The resolution was ultimately taken in 2015.

### 3. RESPONSE TO SALRC

- About 90% of sex workers are women and about 10% are men and transgender people. This represents sections of the population that are reeling under the exclusionary and discriminatory practices of patriarchy. The treatment of the issue of sex work in the report is still leaning on the dictates of patriarchy in relation to how the recommendations have been made.
- In a capitalist environment where labour-brokering and casualisation of labour is allowed when it is practiced by big companies; it appears quite hypocritical to raise the issue of the ILO's Decent Work Agenda only to beat down on the marginalised sections of society who are eking out a living by using their bodies to put food on the table. This is not only hypocritical, but it is also paternalistic (read patriarchal) as our engagements with sex workers and their NGOs have indicated that sex work is a choice.

In a capitalist environment there are many hazardous jobs that women and men do and these are sanctioned by government and we have not heard the views of the SALRC on these. Many of these jobs are without consideration of the worker's humanity and not providing mutual pleasure even factory work which is often linked to very long hours, linked to being tedious and boring, not leading to any personal satisfaction, and at very low pay per hour just like sex work. None of these jobs are as stigmatized as sex work.

- COSATU is in agreement with the belief that sex work is very difficult to deal with under legislation that criminalizes it. We have noted that in cases where trafficking is involved the law often conflates voluntary and non-voluntary forms of sex work and this is what the federation seeks to have addressed.

The structural inequalities that permeate the nature of the buying and selling of sex work in capitalist patriarchal societies dictate that sex work should not have separate legislation, but should be decriminalized and recognised as work, and has to be regulated by other types of existing legislation, such as legislation dealing with labour related issues, health and wellness issues, pay regulations, sexual violence, racism and equality issues.

- Decriminalisation, also known as non-criminalisation, is a position advancing for the repeal of all laws against sex work and the removal of provisions that criminalise all aspects of sex work a position that COSATU supports.. Decriminalisation makes a distinction between voluntary sex work and coerced, oppressive and criminal practices in prostitution. The aim of decriminalisation is to focus on the sex worker – promoting respect for their human rights, and improving their health, safety and working conditions. Proponents of decriminalisation argue that the cost of keeping sex work illegal

outweighs the gains, and that sex work should essentially be seen as consenting behaviour between adults.

They also point to potential violation of civil liberties that state regulated legalisation might involve, through controls such as registration and mandatory health checks (Jordan 2005). In decriminalised regimes, there is typically a shift in power away from the state and clients to sex workers themselves. Decriminalisation is advanced as a way of avoiding the two tier reality of legal and illegal operations where the latter operates underground. It also helps avoid the social exclusion that renders sex workers vulnerable to exploitation. Leading countries on decriminalization includes New Zealand and one State in Australia.

- The issues that pertain to police brutality are significant and are part of the debate for decriminalisation. COSATU's engagement with sex workers shows that the current legislation that criminalises sex work in South Africa has failed sex workers. Engagements with law enforcement have also revealed that it is also difficult to implement and enforce. At the same time it has not been able to tamper the levels of sex work and the levels of violence against sex workers. The current legislation interferes with the interests of sex workers by denying them their rights to protection as well as preventing access to legal assistance and enjoyment of their right to work. In fact current legislation contributes to the harassment and abuse of sex workers at the hands of the police.

#### **4. COSATU RECOMMENDATIONS**

- That sex work should be decriminalised as this focuses on the sex worker instead of focussing on regulation and enforcement and eradication of sex work which will not succeed.
- The police and the policy of the police would need to change its focus to ensure that it promotes the safety, security and protection of sex workers to eliminate the waste of resources spent on enforcement, policing, harassment and prosecution of sex work.
- There is a need to allocate resources for training and capacity building within local law enforcement agencies to ensure greater awareness and protection of the rights and safety of sex workers. This is important in the context of our constitutional imperatives in Chapter 2 of the constitution which states that we can choose our own employment, suggesting that no-one should interfere with the choices.
- Police must be monitored in relation to how they treat sex workers going forward.

- Sex workers should receive training that will help them to improve and/ or acquire relevant skills, knowledge and abilities that will allow sex workers to attain their business goals and protect their interests and enhance their ability to demand and enforce their rights as workers.
- The SALRC can assist the Department of Labour in the review of labour legislation that will incorporate the rights of sex workers and the incorporation thereof into current legal framework.
- We also urge that this report be redone in the context that the SALRC was left without a collective of Commissioners for two years with one Commissioner driving the process of compiling the report in that time and we fear bias in the report in that regard. We do not feel that justice has been done for sex workers as a result of this.

Our own research has shown that in 2011 this report was recommending decriminalisation, but when other Commissioners left the report veered towards full criminalisation in 2014 with an addition of the smoke screen of another option of partial criminalisation in the final version we have now.

COSATU would like to thank the committee for the chance to share its thoughts and suggestions on this important matter. We hope that our contributions will assist the committee in its important work.

Yours comradely,

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