

To: The Joint Multi-Party Women's Caucus  
Chair: Hon RMS Morutoa

Attention:  
Bryan Mantyi  
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RE: Response to the South African Law Reform Commission's Report on 'Sexual Offences: Adult Prostitution'

My name is Jennifer Thorpe and I am a former researcher to the Select Committee on Women, Children and People with Disabilities, and the Select Committee on Cooperative Governance and Traditional Affairs. I am currently an independent research consultant working in the field of violence against women and children. Contact: [thorpe.jenn@gmail.com](mailto:thorpe.jenn@gmail.com)

During my time at Parliament (2013 – 2017) the issue of the decriminalisation of sex work came up on a number of occasions, both in individual committee meetings and in the Women's Parliament. In many instances, sex worker organisations detailed the extent of violations by police and health care workers, including physical abuse, verbal abuse, the denial of their HIV treatment or chronic medication, and harassment. In addition, according to several research studies the decriminalisation of sex workers makes them more vulnerable to all forms of physical and sexual violence by their clients.

In many of these instances sex workers struggle to access justice or recourse following these violations because of the fact that sex work is criminalised, they fear arrest, they face stigma from state service providers, or they have lost faith that the criminal justice system will protect them as it would other women, men, and trans persons.

The continued criminalisation of sex work in South Africa facilitates a situation of rights violations, in particular the violation of sex workers' rights to dignity, equality, freedom from violence, freedom of movement, and sexual and reproductive health rights. Sex work is work.

Parliament committed to considering the decriminalisation of sex work at the 2015 Women's Parliament, and this was reiterated in the 2016 Women's Parliament, and in the work of the Multi-Party Women's Caucus during 2016 and 2017.

The South African Law Reform Commission report on adult prostitution has been a long time in the making. The report process was a process that was not consultative, and did not consider the South African context or the evidence-base produced by sex worker organisations such as SWEAT and Sisonke.

I was working at Parliament when this report was presented, and was in the parliamentary meeting when the SALRC had to respond to questions from the MPWC, none of which were answered fully or addressed the concerns of the Members of Parliament.

The report itself showed a number of flaws including:

- A clear bias toward the continued criminalisation of sex work including illogical justification for continued criminalisation;
- Ignorance around existing legislation to protect children from violence and women and children from trafficking, and confusion around the difference between sex work and trafficking. It cannot be overstated that extensive legislation already exists to prohibit the abuse of children and to prohibit trafficking, and that these issues should not be relevant to a debate on the choice to work as a sex worker;
- A significant failure to provide the perspective of South African sex workers, who the legislation affects;
- The denial of sex worker agency and decision-making ability, describing sex workers as exploited by the system because they choose this career. However, no similar view is taken of the many low-income workers who also work in dangerous conditions such as mine workers, domestic workers, and construction workers. This view is thus discriminatory;
- The report does not sufficiently consider the research around HIV/AIDS and that show the far reaching harm of criminalisation of sex work. South Africa has an extremely high HIV infection rate, and the majority of those infected are women. The criminalisation of sex work makes it more difficult for sex workers to access sexual and reproductive health care (a Constitutional Right) and to make decisions concerning their bodies and reproduction (another Constitutional Right).

As a result of the delays in researching and publishing the report the product is an outmoded and outdated research report that is not in line with constitutional values, and in effect makes sex workers more vulnerable to violence, abuse, and illness. In addition, this position goes against the ruling party position to decriminalise sex work.

One of the key roles of Parliament is to facilitate public participation into legislative processes. This SALRC report process has to date denied full public participation, particularly the participation of sex workers. There is very little about the SALRC report that can be said to uphold the South African Government's commitment to gender equality, freedom from violence, and access to justice and health.

The MPWC position to decriminalise sex work is a brave and necessary one, enhancing Government's constitutional and policy commitments where the SALRC fails to do so. It is my suggestion that the MPWC recommend that:

1. The Department of Justice set aside this report due to its poor quality,
2. That the Department be required to provide clarity on the law reform process over the next financial year, and over the medium term;

3. The Department of Justice clarifies how it will ensure that sex workers are included in the consultation process around legislation, including at the NA and the NCOP, and in the Departmental consultations on the issue.

I congratulate the MPWC on its leadership on this matter, and wish them all the best for considering this issue. It is not a matter of morals or preferences, it is a matter of human and women's rights, which must always be furthered to move South Africa forward.

I would like to attend the session on the 5<sup>th</sup> of March, and am happy to read this submission orally in the session.

Yours Sincerely,  
Jennifer Thorpe