



# Oral Submissions

Summit on Adult Prostitution

Multi-Party Women's Caucus

5 March 2018



# ***Introduction***

## ***Background to Cause for Justice (CFJ)***

- CFJ core values implicated by prostitution:
  - Responsible exercise of freedom
  - Protection of the family unit
  - Promotion of human dignity/worth
  - Protection of the vulnerable in society (social justice)

## ***Interest in matters of 'sexual exploitation'***

- ICASA / StarSat
- Films and Publications Amendment Bill

# ***Status of the law: South Africa and abroad***

## ***South Africa***

- Fully criminalised

## ***Overview of Foreign Law***

- Fully criminalised
- Partially criminalised
- Fully decriminalised with regulation

# ***South Africa's obligations under International law***

- UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others
- United Nations Convention on the Elimination of All Forms of Discrimination against Women
- United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime

# ***The basic question: Is law reform necessary?***

***Law reform will only be necessary if criminalising prostitution:***

- Is unconstitutional, and/or
- There are policy considerations that militate so strongly in favour of reform, that a change in the law must be effected.

# ***Need for Law Reform? (continued)***

## ***Policy considerations***

Prostitution should only be decriminalised on the basis of public policy if:

- the harms and the socio-economic marginalisation of prostitution flow either solely or mainly from the fact that prostitution is fully criminalised, as opposed to from the nature/practice of prostitution itself and its underlying causes; and
- the decriminalisation of prostitution, whether fully or partially, would result in the reduction or negating of the harms of prostitution, including improvement of the quality of life for prostitutes.

## ***Need for Law Reform? (continued)***

### ***Does decriminalising prostitution achieve policy objectives?***

- Research proves that fully decriminalising prostitution does not reduce or eradicate the harms of prostitution, but rather exacerbate it.

### ***Constitutionality of full criminalisation***

- In ***S v Jordan*** the Constitutional Court already considered and found that the full criminalisation of prostitution is constitutional.

## ***Answer to the basic question: No, law reform is neither necessary, nor required***

- The harms of prostitution are inherent in the activity of prostitution itself.
- The fact that prostitution is a criminal offense is not the sole or main cause of the harms, health risks, gender discrimination and social/economic inequalities of prostitution.
- The decriminalisation of prostitution will not address the harms or improve the socio-economic circumstances of women.

# ***If decriminalising prostitution does not address the harms, what does?***

The only way to protect women and society from prostitution's harms, is to eradicate it by all available means, including:

- Socio-economic interventions: Pro-actively establish viable opportunities for women to exit prostitution, and/or not enter prostitution in the first place, and
- Law: Criminal prohibition to eradicate demand and supply.

## ***Conclusion***

- The SALRC came to its conclusions after a thorough process of investigation, public participation, consideration of research and law on a global scale and proper application of all its observations to the South African context.
- Findings based on such extensive work by a specialist body designed and mandated to make recommendations to government, should only be departed from in the most exceptional of circumstances, for example if it could conclusively be proved that to follow the recommendations would result in grave injustice.

## ***S v Jordan – para [74]***

- “Our Constitution values human dignity which inheres in various aspects of what it means to be a human being. One of these aspects is the fundamental dignity of the human body which is not simply organic.
- Neither is it something to be commodified. Our Constitution requires that it be respected.
- We do not believe that section 20(1)(aA) can be said to be the cause of any limitation on the dignity of the prostitute.

## ***S v Jordan (continued)***

- To the extent that the dignity of prostitutes is diminished, the diminution arises from the character of prostitution itself. The very nature of prostitution is the commodification of one's body.
- Even though we accept that prostitutes may have few alternatives to prostitution, the dignity of prostitutes is diminished not by section 20(1)(aA) but by their engaging in commercial sex work. The very character of the work they undertake devalues the respect that the Constitution regards as inherent in the human body.”



Thank you.

