

## WORKSHEETS FOR DISCUSSION PAPER ON ADULT PROSTITUTION

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## OVERVIEW OF DISCUSSION PAPER

1. The primary aim of the Discussion Paper is to consider the need for law reform in relation to adult prostitution and to identify alternative policy and legislative responses that might regulate, prevent, deter or reduce prostitution. A secondary aim is to review the fragmented legislative framework which currently regulates adult prostitution. Under South African legislation, voluntary selling of adult prostitution, buying of voluntary adult sex as well as all prostitution related acts are criminal offences.
  
2. In this Discussion Paper the Commission defines prostitution as ‘the exchange of any financial or other reward, favour or compensation for the purpose of engaging in a sexual act’. As there is a marked distinction between the conditions, environment and demographic profile of prostitutes, the Commission makes a further distinction between indoor and outdoor prostitution.
  
3. The Discussion Paper is divided into three parts.
  - **First**, the Commission analyses the social and legal context of prostitution by referring to a range of legal, social and economic factors relevant to the question of whether reform of the law relating to adult prostitution is needed. The Commission explores the impact of the current law on prostitutes and also examines enforcement of the law. The socio-economic determinants of prostitution suggest that prostitution is driven by a complex intersection of social and economic factors in which poverty and inequality are key drivers. The Commission further examines what motivates the supply and the demand for prostitution and considers the links between prostitution and crime, prostitution and drugs and between prostitution and HIV. The Commission raises the question of what is an appropriate response to prostitution in the context of a Constitution committed to advancing human rights and social justice. It also explores international law in relation to prostitution and suggests that the current law might fail to comply with South Africa’s international obligations.
  - **Second**, the Commission engages in an extensive comparative analysis as to how other countries have addressed prostitution in their laws. It also provides information on the European Union and the International Labour Organisation’s approach to legislation dealing with prostitution

- **Third**, the Commission makes **general proposals** in preparation of reforming the law on prostitution. The Commission proposes the following **specific law reform options**:
  - Total criminalisation of adult prostitution (current legal position)
  - Partial criminalisation of some forms of adult prostitution and prostitution related acts
  - Non-criminalisation of adult prostitution
  - Regulation of adult prostitution and prostitution related acts.

**All of the proposed options presuppose the criminalisation of under-aged and coerced prostitution and trafficking of people for the purpose of prostitution. The criminalisation of coerced adult prostitution must be included in the option which is ultimately recommended in the report.**

The Commission requests the public and other role players to comment on the proposals in the Discussion Paper or to propose alternative models to assist the Commission to identify an appropriate legislative model for South Africa.

## WORKSHEET 1: GENERAL PROPOSALS

In Chapter 8 of the Discussion Paper the Commission makes general proposals in preparation of reforming the law on prostitution. To give effect to the **general proposals** the Commission proposes the following:

- Repeal of the Sexual Offences Act

**AND**

- Repeal of sections 11 of the Sexual Offences Amendment Act

**AND**

- A new Adult Prostitution Reform Act which may include or exclude provisions of the Sexual Offences and Sexual Offences Amendment Acts  
See the proposals on worksheets 2-5.

**AND**

- Develop new terms and definitions for archaic terms if needed in the new legislation

### QUESTION ON THE *GENERAL PROPOSALS*

- |    |   |
|----|---|
| 1. | Do you agree with the general proposals? If not, please motivate your disagreement. |
|----|---|



3. assist prostitutes to enforce their rights to equality and access to health?

4. avoid the stigmatisation and discrimination of prostitutes?

5. address concerns regarding prostitution and crime?

6. address concerns regarding public health and HIV?

	<p>7. assist to create an environment for prostitutes to exit prostitution?</p>
	<p>3. How must the issue of criminal record for prostitution when leaving prostitution and seeking alternative employment be addressed?</p>

## WORKSHEET 3: PARTIAL CRIMINALISATION OF ADULT PROSTITUTION

### There are different types of partial criminalisation

- In one, activities related to prostitution such as soliciting, brothel-keeping and living off the earnings of prostitution are prohibited, while prostitutes themselves are free from criminal sanction.
- Another version criminalises persons who solicit or facilitate the performance of sexual services of prostitutes *i.e.* the client or pimp, but not the prostitutes

### If the legislature makes a policy decision to

- *decriminalise* the voluntary *selling* of adult sex
- and
- *criminalise buying* voluntary adult sex
  - indoors
- and/or
- outdoors
- and
- *criminalise* some or all *acts related to unlawful* prostitution,

### the Commission proposes a new Adult Prostitution Act to criminalise specific acts related to unlawful prostitution e.g.

- engaging outdoor sexual intercourse of persons 18 years and over for reward
- having outdoor sexual intercourse for reward with persons 18 years and over
- procurement of unlawful prostitution.
- living on earnings of unlawful prostitution.
- assistance for purposes of unlawful prostitution.
- enticing, soliciting or importuning unlawful prostitution.
- forced prostitution.

**QUESTIONS ON THE *PARTIAL CRIMINALISATION* OPTION**

1.	<ol style="list-style-type: none"><li data-bbox="300 241 1343 331">1. How must prostitution (currently 'unlawful carnal intercourse') be defined in the new Adult Prostitution Act?</li> <li data-bbox="300 546 932 582">2. How must indoor prostitution be defined?</li> <li data-bbox="300 797 951 833">3. How must outdoor prostitution be defined?</li></ol>
2.	<p data-bbox="300 1099 1321 1189">Which of the following acts must be criminalised under a partial criminalisation option:</p> <ol style="list-style-type: none"><li data-bbox="300 1200 1321 1290">1. Engaging outdoor sexual intercourse of persons 18 years and over for reward outside a brothel?</li> <li data-bbox="300 1505 1347 1594">2. Having outdoor sexual intercourse for reward with persons 18 years and over?</li> <li data-bbox="300 1809 884 1845">3. Procurement of unlawful prostitution?</li></ol>

	<ol style="list-style-type: none"><li>4. Living on earnings of unlawful prostitution?</li> <li>5. Assistance for purposes of unlawful prostitution?</li> <li>6. Enticing, soliciting or importuning unlawful prostitution?</li> <li>7. Coerced prostitution?</li></ol>
3.	What would the purposes of the new law?
4.	<p>How will this option comply with</p> <ol style="list-style-type: none"><li>1. South Africa's international obligations?</li> <li>2. The Constitution?</li></ol>

5.	<p>How will this option</p> <ol style="list-style-type: none"><li data-bbox="300 241 861 280">1. reduce the demand for prostitution?</li><li data-bbox="300 600 1311 638">2. reduce harm and vulnerability to abuse and exploitation of prostitutes?</li><li data-bbox="300 958 1337 996">3. assist prostitutes to enforce their rights to equality and access to health?</li><li data-bbox="300 1361 1141 1400">4. avoid the stigmatisation and discrimination of prostitutes?</li><li data-bbox="300 1720 1066 1758">5. address concerns regarding prostitution and crime?</li></ol>
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	<p>6. address concerns regarding public health and HIV?</p> <p>7. assist to create an environment for prostitutes to exit prostitution?</p>
	<p>6. How must the issue of criminal record for prostitution (under the current dispensation) when leaving prostitution and seeking alternative employment be addressed?</p>

## WORKSHEET 4: NON-CRIMINALISATION OF ADULT PROSTITUTION

**The focus of the non-criminalisation model is on self-regulation of prostitutes and prostitution and prostitution related acts are not criminalised.**

The model has the following characteristics:

- Prostitutes working for an employer in a legal prostitution venue are employees under a legal service contract and the general labour-, tax-, unemployment insurance law apply.
- Prostitutes working as independent contractors do not fall in the scope of laws such as the Labour Relations Act of 1995, the Employment Equity Act of 1998, the Basic Conditions of Employment Act of 1997, the Occupational Health and Safety Act of 1993 and the Unemployment Insurance Act of 2001.
- The law of contract applies to any agreements between prostitutes and clients to buy and sell sexual services.
- No action is criminal purely because it took place in a prostitution context.
- Prostitutes and prostitute organisations are involved in systems and processes to design measures to protect the general welfare and human rights of prostitutes.
- Other stakeholders in prostitution such as management, clients and the communities where prostitutes work are involved in systems and processes to develop measures regarding advertising, zoning, ownership of property and trade unions.
- Prostitution supervisory bodies do the following:
  - review the operation of the legislation
  - advise government on policy issues related to prostitution
  - make additional regulations for unforeseen circumstances
  - provide information and education to prostitutes
  - develop alternative options to prostitutes
  - develop exit strategies for prostitutes who want to leave prostitution.



3. Protecting the rights of prostitutes to at any time, refuse to provide or to continue to provide, a commercial sexual service to any other person?

4. Protecting the right of the other party to recover contractual damages for the provision of sexual services that is not performed?

5. Exclusion of persons from running a prostitution business if they are convicted offenders of specific offences?

6. Amnesty to prostitutes with a criminal record for prostitution and prostitution related offences who wish to exit prostitution?

	<p>7. Safe sex practices in prostitution?</p>          <p>8. Enjoyment of human rights by prostitutes and their clients?</p>
2.	Should the matters listed in question 1 be dealt with in this law or elsewhere?
3.	What are you hoping to achieve with this option?

4.	To what extent can this aim be achieved through the law?
5.	Are there further matters that need to be addressed in this law?
6.	<p>How will this option</p> <ol style="list-style-type: none"><li data-bbox="300 1205 861 1243">1. reduce the demand for prostitution?</li> <li data-bbox="300 1608 1316 1646">2. reduce harm and vulnerability to abuse and exploitation of prostitutes?</li></ol>

3. assist prostitutes to enforce their rights to equality and access to health?

4. avoid the stigmatisation and discrimination of prostitutes?

5. address concerns regarding prostitution and crime?

6. address concerns regarding public health and HIV?

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## WORKSHEET 5: REGULATION OF ADULT PROSTITUTION

The regulation model has the following versions:

- Legal and regulated indoor and outdoor prostitution
- or*
- Legal and regulated indoor prostitution *combined with either*
    - criminalised outdoor prostitution
- or*
- legal but strictly regulated outdoor prostitution.

If the legislature makes a policy decision to use the regulation option whereby

- prostitution *is legal but state-regulated*
- and*
- *outdoor prostitution is restricted to prostitution zones*<sup>1</sup>

**the Commission proposes a new Adult Prostitution Reform Act to regulate specific aspects of prostitution and restrict outdoor prostitution to prostitution zones.**

### QUESTIONS ON THE *REGULATION* OPTION

1.	1. How must prostitution (currently 'unlawful carnal intercourse') be defined in the new Adult Prostitution Act?
	2. How must indoor prostitution be defined?

<sup>1</sup> The Commission proposes this version because it allows a fuller description of the possibilities under this option.

2.	Which aspects of prostitution should be regulated?										
3.	<p>Must the following be criminal offences:</p> <table border="0"> <tr> <td data-bbox="295 651 1193 689">1. selling and buying of unlawful prostitution?</td> <td data-bbox="1198 651 1362 689">YES/NO</td> </tr> <tr> <td data-bbox="295 696 1193 734">2. procuring for the purposes of buying unlawful prostitution?</td> <td data-bbox="1198 696 1362 734">YES/NO</td> </tr> <tr> <td data-bbox="295 741 1193 779">3. living on earnings of unlawful prostitution?</td> <td data-bbox="1198 741 1362 779">YES/NO</td> </tr> <tr> <td data-bbox="295 786 1193 824">4. detention for purposes of unlawful prostitution?</td> <td data-bbox="1198 786 1362 824">YES/NO</td> </tr> <tr> <td data-bbox="295 831 1193 869">5. non-compliance with the regulatory system?</td> <td data-bbox="1198 831 1362 869">YES/NO</td> </tr> </table>	1. selling and buying of unlawful prostitution?	YES/NO	2. procuring for the purposes of buying unlawful prostitution?	YES/NO	3. living on earnings of unlawful prostitution?	YES/NO	4. detention for purposes of unlawful prostitution?	YES/NO	5. non-compliance with the regulatory system?	YES/NO
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3. living on earnings of unlawful prostitution?	YES/NO										
4. detention for purposes of unlawful prostitution?	YES/NO										
5. non-compliance with the regulatory system?	YES/NO										
4.	<p>How must the following be regulated:</p> <table border="0"> <tr> <td data-bbox="295 954 651 992">1. safe-sex practices?</td> <td></td> </tr> <tr> <td data-bbox="295 1308 592 1346">2. sex education?</td> <td></td> </tr> <tr> <td data-bbox="295 1659 740 1697">3. advertising of prostitution?</td> <td></td> </tr> </table>	1. safe-sex practices?		2. sex education?		3. advertising of prostitution?					
1. safe-sex practices?											
2. sex education?											
3. advertising of prostitution?											

	<p>4. implementation by the police or similar state law enforcement agencies?</p> <p>5. police access to venues where prostitution takes place?</p> <p>6. legal mechanisms and procedures for the closing down of illegal venues?</p>
5.	Must regulatory powers be housed within administrative authorities or medical authorities?

6.	<ol style="list-style-type: none"><li data-bbox="300 192 1369 481">1. Must the regulatory functions be at national, provincial or local level?</li> <li data-bbox="300 481 1369 898">2. Will provincial administrations and/or local authorities have some discretion e.g. may local authorities choose to criminalise prostitution?</li></ol>
7.	<p data-bbox="300 898 1369 952">How will this option</p> <ol style="list-style-type: none"><li data-bbox="300 952 1369 1265">1. reduce the demand for prostitution?</li> <li data-bbox="300 1265 1369 1579">2. reduce harm and vulnerability to abuse and exploitation of prostitutes?</li> <li data-bbox="300 1579 1369 2011">3. assist prostitutes to enforce their rights to equality and access to health?</li></ol>

4. avoid the stigmatisation and discrimination of prostitutes?
5. address concerns regarding prostitution and crime?
6. address concerns regarding public health and HIV?
7. assist to create an environment for prostitutes to exit prostitution?

8.	How must the issue of criminal record for prostitution (under the current dispensation) when leaving prostitution and seeking alternative employment be addressed?
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**ANY FURTHER COMMENTS OR PROPOSALS**

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