

MEDIA STATEMENT BY THE SOUTH AFRICAN LAW COMMISSION CONCERNING ITS INVESTIGATION ON SEXUAL OFFENCES: ADULT PROSTITUTION (PROJECT 107)

Generally prostitution is regarded as the exchange of sexual acts for reward. While it is often said that prostitution is one of the oldest professions, the legal response to it differs from society to society and over the course of time. Internationally, the topic of prostitution remains an emotive one and opinions on the legal treatment of prostitution are generally strongly polarised. This is no different in South Africa.

The Sexual Offences Act 1957 regulates various aspects of prostitution. The keeping of brothels, the procurement of women as prostitutes, soliciting by prostitutes, and living off the earnings of prostitution inter alia is criminalised. In addition, various other pieces of legislation such as the Liquor Act 27 of 1989 and municipal by-laws apply to prostitutes. Of particular interest is section 20(1)(aA) of the Sexual Offences Act, 1957 which provides that any person who has unlawful intercourse or commits an act of indecency with any other person for reward is guilty of an offence. The section was declared inconsistent with the Constitution and therefore invalid in the Transvaal Division of the High Court in *Jordan and others v The State* 2002 (1) SACR 19 (TPD). This finding is currently awaiting confirmation by the Constitutional Court.

This issue paper deals with adult prostitution and is the first paper of the third leg in the series of the investigation into sexual offences (Project 107). The issue paper sets out three legal options in the management of adult prostitution. These options are:

- Criminalise all aspects of adult prostitution;
- Legalise adult prostitution within certain narrowly circumscribed conditions;
- Decriminalise adult prostitution which will involve the removal of laws that criminalise prostitution.

The issue paper gives an exposition of the implications of each option and poses questions in respect of each of the options presented. At this stage of the investigation and pending the decision of the Constitutional court in the Jordan matter the Commission has decided not to take a particular position as to any of the options. Consequently no draft legislation is proposed at this stage.

The Commission has covered all aspects related to child prostitution in the first two discussion papers (Discussion Papers 85 and 102) in this investigation as well as in Discussion Paper 103 on the Review of the Child Care Act. The Commission's preliminary view is that the conduct of persons who engage in child prostitution should be fully criminalised whilst the child prostitute should be regarded as a victim in need of care and protection.

The issue paper is published in full so as to provide persons and bodies wishing to comment or make suggestions for the reform of this particular branch of the law with sufficient background information to enable them to place focussed submissions before the Commission. Comments and submissions on the issue paper are invited. After the consultation process, the Commission will prepare a discussion paper, with draft legislation if appropriate.

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