CONSIDERATIONS IN DECRIMINALISING ADULT PROSTITUTION IN SOUTH AFRICA

Submission By:

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Introduction to Love Justice

Love Justice South Africa is a registered PBO that is currently running the most effective Human trafficking prevention project in the country- working to identify and intercept victims of Human Trafficking *en route* to being exploited. To date, LJSA has aided in the interception of 249 potential victims of TIP at a prominent port of entry in close partnership with various government departments. Additionally, LJSA is integrated into the ongoing investigation of over 30 TIP matters across Gauteng and the Eastern Cape. LJSA has also engaged directly with individuals working in prostitution.

Overall Position

It remains our core belief at LJSA that the findings of the South African Law Reform Commissions Report on adult prostitution are consistent with the realities found working on the ground with women in the sex industry in South Africa and should be considered as the primary source of input when deciding on whether to decriminalise adult prostitution in South Africa. It is further emphasised that partial decriminalisation should remain the only viable alternative to full criminalisation of the rights of those engaged in prostitution are to be upheld.

However, bearing in mind the ANC’s recent resolution to decriminalise prostitution in South Africa, Love Justice South Africa would like to bring to mind the following considerations if parliament is to
proceed with full decriminalisation against the recommendations of the SA Law Reform Commission’s Recommendations. These considerations are founded upon protecting those in prostitution from all forms of abuse rendered against them by both clients and various management structures.

**Primary Considerations**

If decriminalisation is to proceed, it should be done in a way that respects the rights and dignity of all people in South Africa while recognising the inherent risks that it will pose to those working in prostitution as well as vulnerable people groups. Therefore, as much as possible needs to be done to mitigate those risks.

Full decriminalisation would imply the legitimisation of the sex industry in its entirety; including the recruitment, advertising, and management of these services. Each of these elements will need to be thoroughly regulated in order to ensure that there is no unintended increase in the rates of Trafficking for the purposes of sexual exploitation, forced or coerced sex acts, grooming of individuals into prostitution, degradation of the physical or mental health of the individual engaged in sex work, or the legitimisation of criminal networks. To ensure this, the *partial decriminalisation* model can be very effective to ensure that the individuals engaged in prostitution are protected against the exploits of abusive clients, corrupt law enforcement, pimps and traffickers.

If this option is, for some reason, is not selected and *full decriminalisation* preferred, then the management of these establishments and individuals needs to be strictly regulated through the formation of a regulatory body who will issue operating licences to prospective establishments, managers, and sex workers.

**Considerations when pursuing full decriminalisation**

1. *Operating Licence*
   
   a) An ‘operating licence’ should be put in place that regulates:
      
      a. sex workers working independently;
      b. sex workers working with a pimp;
c. formal establishments (brothels) that exist for the purpose prostitution.

b) This licence should ensure that if establishments dedicated to this practice are permitted to exist, then they should be subjected to complying to regulations that ensure the emotional, psychological, and physical wellbeing of the individuals that are employed there by providing a safe and non-exploitative working environment as well as respecting the rights of those who choose not to engage in these activities.

c) This licence should also include a monthly fee or ‘tax’ that will enable the state to enforce these regulations and fund the necessary support services with which the state will be burdened.

d) Care in terms of regular debriefing sessions should be offered at the cost of the establishment.

e) It is strongly suggested that establishments operating without these licences remain fully criminal, as non-compliance will directly compromise the well-being of both those working in prostitution and clients paying for services. Factors that should be incorporated into the issuing of this licence are outlined below.

2. Screening Procedures

Giving charge to individuals over the well-being of vulnerable people is a serious concern and therefore should be treated as such. Therefore, it is suggested that any individual involved in the management or ownership of an establishment that exists for the purposes of exchanging sexual services for payment needs to:

a. be subject to a police clearance and

b. submit their documents to SARS for audit before a licence for the establishment to operate should be granted.

3. Helpline for Sex Workers

a. Each establishment should be required to display on their premises the details of an anonymous tip-off line for misconduct of both management and clients.

b. Clear signage on the rights of the individual needs to be displayed in a language that the employees can understand.

c. In cases of independent workers or those working with pimps outside of a fixed location, regular meetings with government social workers is recommended in order for them to maintain their registration.
4. **Access to premises by law enforcement and support workers**

   a. It needs to be legislated that under no circumstances can access be denied to law enforcement officers and social workers that are tasked to conduct random visitations on the establishments. If such access is denied, the establishment’s licence to operate will be revoked.

   b. Pimps may not prohibit sex workers from accessing the relevant support services. If this occurs, they should lose their licence to operate and may have criminal charges laid against them.

5. **Sexual services for law enforcement officers**

   a. Sexual services are not to be solicited by any law enforcement official whether on or off duty to prevent the undermining of regulation enforcement. Violating this code will result in dismissal of the law enforcement official and the removal of the institutions licence to operate.

6. **Concealment of HIV Status**

   a. It should be illegal for those engaged in sex work to conceal their HIV status from management or clients.

   b. It should likewise be illegal for clients to conceal their HIV status from sex workers.

   c. Establishments should have onsite HIV testing services to ensure the health of either party is not compromised.

   d. To enable this, each establishment may have to employ a health worker.

   e. If it is found that either party has been misleading about his/her HIV status, a criminal case needs to be opened against him/her.

7. **Pregnancy**

   a. In the case where a sex worker falls pregnant from one of the clients and decides to proceed with the pregnancy, she should have the liberty to claim compensation from the client.

   b. The decision of whether to terminate the pregnancy or not remains the full discretion of the woman and should not in anyway be influenced by management or clients.
c. Counselling services should be made available to the sex worker in these instances and ensure all procedures are conducted by a registered health professional.

8. **Health insurance**
   
a. A health insurance policy for employees will need to be mandatory for the licence to operate of any establishment.

9. **Condom usage**
   
a. The establishment must, at all times, have a sufficient supply of condoms on the premises. These need to be provided to the workers without discretion and cannot be charged to the worker. Disposal of used condoms must be done in a medical grade waste container.
   
b. A client, may not in any circumstances, request to have unprotected sex with a sex worker. If a client removes a condom during sex, he will be liable for criminal prosecution.
   
c. A pimp or manager cannot compel a sex worker to perform any unprotected sex acts.

10. **Physical Safety**
   
a. Every establishment needs to install panic buttons into each room. If a client is found physically abusing a sex worker in any way, s/he needs to be placed under arrest.
   
b. If a sex worker reports abuse by a client, management, or law enforcement official, this claim needs to be treated with urgency and with relevant arrests to be made.
   
c. This report can be made to the tip-off line mentioned above and can result in the removal of the licence to operate and/or criminal charges.

11. **Disclosure of Client’s identity**
   
a. In order to ensure that the legal considerations above to be able to be realised against a client who has violated the terms of engagement, a client will need to submit accurate personal and contact information at the establishment to allow for follow-up. Not doing so will create conditions whereby clients can engage in abusive behaviours without consequence.
   
b. This disclosure can either be in the form of documenting his/her ID or Passport number, a RICAed cell phone number, or a personal credit/debit card.
12. Employment of Foreign Nationals

a. Undocumented foreign nationals may not, in any circumstances, engage in sex work. If a client is found engaging with an undocumented foreign national, that client must face criminal charges.
b. If an establishment mentioned above employs any undocumented foreign nationals, they will immediately lose their licence to operate.
c. If an establishment attempts to legalise undocumented foreign nationals, they will immediately lose their licence and be subject to a fine no less than R100 000.
d. If an establishment has individuals with fake or fraudulently obtained documentation in their possession, they will immediately lose their licence and be subject to a fine no less than R100 000.
e. If an establishment is found to have removed from the possession of the employees their identity or travel documents in order to enforce compliant behaviour or the repayment of a purported debt, they will face charges under the prevention and combatting of Trafficking in Persons Act.
f. If an institution seeks to recruit foreign nationals to work in the establishment, they must adhere to the conditions of a general work visa. The institution is not, under any circumstances, to fund the travel of the individual or to allow them to enter into any debt with the institution.

13. Prohibited Substances

a. If it is found through the work of licencing individuals or social workers that there are any prohibited substances being utilised by sex workers on the premises or
b. that prohibited substances are being used, stored, or harboured on site, the institution will be shut down and criminal charges be issued against them.
c. If a sex worker is forced to take drugs, the individual who compelled him/her will be criminally prosecuted.
d. If it is found that a sex worker’s addiction to drugs is being leveraged in order to exploit her, that individual will face charges under the prevention and combatting of trafficking in person’s act.
14. SARS Compliance

a. All individuals and establishments need to be fully complaint to their SARS obligations. Not adhering to these obligations should automatically revoke the licence to operate.

b. No institution is to accept cash transactions for services rendered and must operate out of only one bank account.

c. An additional levy should be instated that covers the regulation enforcement measures as mentioned above.

15. Recruitment

a. No individual or establishment should be permitted to recruit individuals into sex work. Any adverts pertaining to vacant positions at the establishment need to be advertised with the role and duties in clear, plain language. If an individual or establishment is found to be engaging in coercive and/or deceitful recruitment practices will lose their licence to operate and may have criminal charges issued against them.

b. During the recruitment process, due diligence needs to be done to ensure that the individual is legitimately eligible to work in South Africa and that they are over the age of 18. If this is not done, the establishment will lose their licence to operate and may have criminal charges issued against them.

16. Maintaining freedoms

a. An establishment or individual cannot compel an individual to engage in sexual activities against their will. The decision to engage with client remains the full discretion of the women. If this right is violated, the client and the institution will face rape charges.

b. No individual can have targets issued that they need to achieve in terms of number of clients.
c. No establishment or individual shall be permitted to issue any form of debt to a sex worker for any reason. This extends to payments for lodging, fines, or any type of amenities.

d. No establishment is permitted to issue fines to employees. If an employee breaks the establishment’s code of conduct, they are to be issued with verbal/ written warnings when appropriate. If fines are issued against employees, the individual/establishment should face criminal charges of trafficking in persons.

17. Preventing the monetisation of consent

a. It is important to ensure that decriminalised prostitution does not enable sexual harassment or abuse where unwelcomed sexual advances can be justified.

b. Therefore, in order to protect vulnerable individuals, specially woman who do not want to engage in prostitution, from undesired sexual advances, all sex workers will need to be registered on a sex worker register and be given a sex worker identification card that indicates such. Any advance by a ‘client’ towards an individual who is not on the register will be seen as sexual harassment.

c. To that end, prostitution may only be engaged in in circumstances where a sex worker is registered on the sex worker register. If an individual is not on the register they are not a recognised sex worker and cannot under any circumstances be asked to engage in prostitution.

d. If anyone is under 18 is being prostituted, charges of statutory rape will be instated.

e. It can also not be excused that any form of vulnerability, including power imbalances, poverty, pregnancy, or disability can be abused in order to coerce an individual into prostitution. In such circumstances, the ‘client’ will face criminal prosecution in terms of the sexual offences act and/or the prevention and combatting of trafficking in persons act.

Closing remarks

As previously stated, full criminalisation is favoured by LJSA and is seconded by partial decriminalisation which would not require the extensive regulations outlined above. However, it is
believed that if these considerations are implemented in the role-out of full decriminalisation, the rights of sex-workers should be adequately protected.

Sincerely,

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